

Mark L. Williams
williamsml@sec.gov
Counsel for the Plaintiff
Securities and Exchange Commission
Denver Regional Office
1961 Stout Street, 17th Floor
Denver, Colorado 80294

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

ONE OR MORE UNKNOWN TRADERS IN THE
SECURITIES OF BIOVERATIV, INC.,

Defendants.

18 Civ. ()

ECF CASE

COMPLAINT

Plaintiff United States Securities and Exchange Commission (the “SEC”) alleges as follows:

I. SUMMARY OF THE ACTION

1. This is an insider trading case involving highly suspicious trading by one or more unknown traders (“Defendants”) in call option contracts (“calls”) of Bioverativ, Inc. (“Bioverativ”) just prior to the January 22, 2018, announcement (the “Announcement”) that Bioverativ had entered into an agreement to be acquired for \$105 per share by French *société anonyme* Sanofi (“Sanofi”), a global life sciences company. The \$105 per share price

represented a premium of 63.8% over Bioverativ's Friday, January 19, 2018 closing share price of \$64.11.

2. As a result of the Announcement, Bioverativ's share price increased substantially, nearly reaching the price Sanofi offered in its tender offer. On Monday, January 22, 2018, Bioverativ shares opened at \$104.21, reached a high of \$104.30 for the day, and closed at \$103.79 per share, a 61.9% increase over its January 19 closing price. Bioverativ had not closed at or above \$64.12 per share at any point since it began trading on the NASDAQ market in January 2017.

3. Defendants, who may be foreign traders and who are trading through foreign accounts, made highly suspicious, timely, and lucrative purchases and sales of options on Bioverativ stock and generated profits of approximately \$4.9 million.

4. The identities of the Defendants are not yet known because the options purchase orders originated through a foreign brokerage firm located in Zurich, Switzerland. That foreign brokerage firm, in turn, cleared the transactions through a domestic brokerage firm, which in turn executed the purchase orders through the facilities of a domestic options exchange.

5. Defendants' trading in Bioverativ calls is highly suspicious. Between Friday, January 12, 2018 and Friday, January 19, 2018, immediately preceding the Announcement, Defendants purchased 1,610 out-of-the-money Bioverativ calls with strike prices between \$65 and \$75 and an expiration date of February 16, 2018, despite the fact that Bioverativ shares had never closed above \$64.11 per share. On January 22, 2018, after the Announcement made that same day, Defendants sold 732 of those contracts for a profit of

approximately \$2,518,622.70. Defendants sold an additional 75 contracts on January 23, 2018, netting an additional \$207,825 in profits. Based on the last reported sale prices on January 24, 2018, Defendants' remaining options contracts were valued at approximately \$2.2 million.

6. Defendants' pre-Announcement purchases of short-term Bioverativ call options represented a significant share of all reported trades in Bioverativ options during the relevant period, including all or nearly all of the trades in particular series of Bioverativ options on several days. Moreover, Defendants had never before placed reportable orders for Bioverativ options through the same account. In light of the Defendants' large, unprecedented purchases of Bioverativ options just before the Announcement, on information and belief, Defendants purchased the Bioverativ calls while in possession of material, nonpublic information concerning the proposed acquisition of Bioverativ.

II. NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

7. The SEC brings this action pursuant to the authority conferred upon it by Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)]. The SEC seeks an emergency, temporary, and preliminary order against Defendants: (i) freezing assets; (ii) requiring Defendants' identification; (iii) requiring repatriation of assets; (iv) preventing document alteration or destruction; (v) expediting discovery; (vi) providing for alternative service of process against Defendants; and (vii) requiring Defendants to show cause why the Court should not issue a Preliminary Injunction and impose other relief against them. The SEC also seeks permanent injunctions against the Defendants, enjoining them from engaging in the transactions, acts, practices, and courses of

business alleged in this Complaint, disgorgement of all ill-gotten gains from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest, and civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. The SEC seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

III. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to Sections 21(d), 21(e), 21A and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa]. The Defendants have directly or indirectly made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, practices, transactions, and courses of business alleged in this Complaint.

9. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within the Southern District of New York and elsewhere, and were affected, directly or indirectly, by making use of the means or instruments or instrumentalities of transportation or communication in interstate commerce, or of the mails, or the facilities of a national securities exchange. During the time of the conduct at issue, the main office of Credit Suisse Securities (USA), LLC, through which Defendants’ trades were cleared, was located in New York, New York. Bioverativ’s common stock is traded on the NASDAQ exchange.

10. Venue also lies in this Court pursuant to 28 U.S.C. § 1391(c)(3) because, upon information and belief, the Defendants are not residents of the United States.

11. Unless restrained and enjoined, the Defendants will continue to engage in the acts, practices, transactions, and courses of business alleged in this Complaint, or in acts, practices, transactions, and courses of business of similar purport and object.

IV. DEFENDANTS

12. As set forth in this Complaint, **one or more unknown traders** engaged in highly suspicious and highly profitable trading in Bioverativ calls through an account located in Zurich, Switzerland in the name of Credit Suisse (Switzerland), Ltd. Those trades were then executed through an omnibus execution account maintained at CSSU (the “CS Omnibus Account”). Upon information and belief, CS Ltd. provides its clients access to the U.S. markets through the CS Omnibus Account.

V. RELEVANT ENTITIES

13. Credit Suisse Securities (USA), LLC (“CSSU”) is a New York, New York-based broker-dealer that is registered with the SEC. CSSU is a wholly-owned subsidiary of Credit Suisse (USA), Inc., and an indirect wholly-owned subsidiary of Credit Suisse Holdings (USA), Inc., whose ultimate parent is Credit Suisse Group AG.

14. Credit Suisse (Switzerland), Ltd. (“CS Ltd.”), which is based in Zurich, Switzerland, provides securities brokerage and investment banking services to its customers. CS Ltd. is affiliated with CSSU. On information and belief, CS Ltd. is a subsidiary of Credit Suisse Group AG. CS Ltd. maintains omnibus trading accounts with CSSU.

VI. FACTS

A. Defendants' Suspicious Purchases

15. Between January 12, 2018, and January 19, 2018, inclusive, Defendants purchased 1,610 Bioverativ calls, all of which were "out-of-the-money" at the time of purchase, having strike prices between \$65 and \$75 per share. All of the purchased options were set to expire on February 16, 2018.

16. Specifically, Defendants purchased the following:

<u>Date</u>	<u>No. of Call Option Contracts Purchased</u>	<u>Strike Price</u>	<u>Average Premium Paid</u>	<u>Percentage of Trading By Defendants (Source: Bloomberg)</u>
1/12/2018	342	\$65	\$2.44	75%
1/12/2018	370	\$70	\$.79	82%
1/12/2018	100	\$75	\$.59	96%
1/16/2018	3	\$65	\$3.10	1.9%
1/16/2018	100	\$75	\$.80	97%
1/17/2018	20	\$65	\$2.29	32.3%
1/17/2018	100	\$75	\$.50	95%
1/18/2018	300	\$75	\$.59	100%
1/19/2018	275	\$75	\$.56	50%
TOTAL	1,610			

17. Defendants' purchases cost a total of approximately \$170,081.

18. Defendants' purchases made up a significant volume of all reportable options trades on those days, and on several days constituted all or nearly all of the trades in the particular series of options contracts in which Defendants traded.

19. No other reportable trades in Bioverativ options had been placed through the CS Omnibus Account in the year leading up to the Announcement—by Defendants or anyone else.

20. All of Defendants' purchases of Bioverativ options as detailed above were made after Sanofi and Bioverativ had taken substantial steps toward consummating an agreement pursuant to a tender offer.

21. By November 3, 2017, Sanofi had delivered an unsolicited bid to acquire Bioverativ for a definite price per share, after which Bioverativ began to contemplate selling.

B. The Effect of the Announcement and Defendants' Sales

22. Before the NASDAQ market open on January 22, 2018, Sanofi and Bioverativ announced their agreement that Sanofi would acquire the stock of Bioverativ. As a result of the Announcement, Bioverativ's share price increased substantially. On Monday, January 22, 2018, Bioverativ shares opened at \$104.21, reached a high of \$104.30 for the day, and closed at \$103.79 per share, a 61.9% increase over its January 19 closing price.

23. Bioverativ had not closed at or above \$64.12 per share at any point since it began trading on the NASDAQ market in January 2017.

24. On January 22, 2018, Defendants sold 362 call option contracts with a strike price of \$65 at an average price of \$38.60 and 370 call option contracts with a strike price of \$70 at an average price of \$33.50. That is, Defendants sold all but 3 of their contracts with a \$65 strike price, and all of their contracts with a \$70 strike price. From these sales, Defendants received approximately \$2,636,820 in proceeds, for a net profit of approximately

\$2,518,622.70 (assuming they retained the 3 most expensive contracts with a \$65 strike price).

25. At least some of the proceeds from the above sales were transferred to Defendants' account(s) in Switzerland.

26. On January 23, 2018, Defendants sold 75 call option contracts with a strike price of \$75, for additional profits of approximately \$207,825, based on the last reported sale price for January 23 of \$28.30 and on a first-in-first-out basis.

27. As of close-of-markets January 24, 2018, Defendants retained at least 803 Bioverativ option contracts, which if sold at the last reported prices would result in additional profits of approximately \$2,216,417.40.

28. The timing, size, and profitability of the Defendants' trades, as well as the lack of prior history of significant trading in Bioverativ options in the CS Omnibus Account, make these trades highly suspicious. In particular, with no prior history of trading Bioverativ options in the CS Omnibus Account, Defendants invested \$170,081 in risky options in the ten days prior to the Announcement, including significant purchases of risky options on the last trading day before the Announcement. As a result of these well-timed trades, the Defendants' turned an investment of \$170,081 into over \$4.9 million in realized and unrealized profits, a return of more than 2900% in less than two weeks.

29. Upon information and belief, at the time the Defendants purchased Bioverativ options as set forth above, they were in possession of material, nonpublic information about Sanofi's impending acquisition of Bioverativ. The Defendants: (a) knew, recklessly disregarded, or should have known that their trading was in breach of a fiduciary duty, or

obligation arising from a similar relationship of trust and confidence, owed to the shareholders of Bioverativ, or to the source from whom they received the material, nonpublic information; and/or (b) knew, recklessly disregarded, or should have known that the material, nonpublic information about the impending acquisition that had been conveyed to them was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence.

30. Upon information and belief, any and all material nonpublic information that the Defendants received concerning Bioverativ as set forth above was disclosed to them by a person or persons who tipped such information with the expectation of receiving a benefit.

FIRST CLAIM FOR RELIEF

Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder (Against All Defendants)

31. Paragraphs 1 through 30 are re-alleged and incorporated by reference.

32. By engaging in the conduct described above, Defendants, singly or in concert with others, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- (a) employed devices, schemes or artifices to defraud; and
- (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or

- (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

33. By engaging in the foregoing conduct, the Defendants, directly and indirectly, violated, and unless enjoined, will again violate, Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

Violations of Exchange Act Section 14(e) and Rule 14e-3 Thereunder (Against All Defendants)

34. Paragraphs 1 through 30 are re-alleged and incorporated by reference.

35. By virtue of the foregoing, Defendants, singly or in concert with others, in connection with a tender offer, directly or indirectly: (a) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (b) purchased or caused to be purchased securities or options to obtain securities while in possession of material information related to a tender offer which information Defendants knew or had reason to know was nonpublic and which Defendants knew or had reason to know had been acquired directly or indirectly from Sanofi or Bioverativ or any officer director, partner, employee or any other person acting on behalf of Sanofi or Bioverativ before such information and its source were publicly disclosed.

36. By virtue of the foregoing, Defendants, directly or indirectly, violated, and unless enjoined, will again violate, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3(a) thereunder [17 CFR § 240.14e-3(a)].

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that this Court enter an emergency, temporary, and preliminary order against Defendants: (i) freezing assets; (ii) requiring Defendants' identification; (iii) requiring repatriation of assets; (iv) preventing document alteration or destruction; (v) expediting discovery; (vi) providing for alternative service of process against Defendants; and (vii) requiring Defendants to show cause why the Court should not issue a Preliminary Injunction and impose other relief against them.

Further, the SEC respectfully requests that the Court enter a final judgment:

I.

Permanently restraining and enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from, directly or indirectly, violating Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) & 78n(e)] and Rules 10b-5 and 14e-3(a) thereunder [17 C.F.R. §§ 240.10b-5 & 240.14e(3)(a)];

II.

Ordering Defendant to disgorge all ill-gotten gains or unjust enrichment derived from the activities set forth in this Complaint, together with prejudgment interest thereon;

III.

Ordering Defendants to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

IV.

Granting such other and further relief as this Court may deem just, equitable, or necessary in connection with the enforcement of the federal securities laws and for the protection of investors.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the SEC demands trial by jury in this action of all issues so triable.

Dated: January 26, 2018

Respectfully submitted,



Mark L. Williams (NY Bar No. 4796611)
Senior Trial Counsel
Attorneys for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION
1961 Stout Street, 17th Floor
Denver, Colorado 80294
(303) 844-1000
williamsml@sec.gov