U.S. DISTRICT COURT
EASTERN DISTRICT OF WI

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN '07 AUG -1 A 9:36

United States Securities and Exchange Commission,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**No.**
	)	
Joseph A. Frohna,	)	
	)	
Defendant.	)	07-C-0702

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission ("the Commission") alleges as follows:

Summary

1. This case involves insider trading in the shares of XOMA, Ltd. ("XOMA") by Joseph A. Frohna (" Joe Frohna"), a former portfolio manager with U.S. Bancorp Asset Management, Inc. ("USBAM") while in possession of material inside information that he misappropriated from his brother.

2. During the relevant time period, Joe Frohna's brother was an Associate Medical Director at Genentech, Inc. ("Genentech") and was the leader of a joint bio-equivalence study (the "Bio-Equivalence Study") for a drug that Genentech and XOMA were developing. Joe Frohna knew the success of the Bio-Equivalence Study was critical to the approval of the drug by the Food and Drug Administration ("FDA") for subsequent sale to the general public. During an April 3, 2002 telephone conversation with his brother, Joe Frohna learned that there were problems with the Bio-Equivalence Study.

3. On April 4, 2002, in breach of the duty of trust and confidence that Joe Frohna owed to his brother, Joe Frohna directed the mutual fund he managed, First American Investment Funds, Inc.'s Micro Cap Fund (the "Micro Cap Fund") to aggressively sell all of its XOMA shares based on the material inside information he had misappropriated from his brother about the Bio-Equivalence Study the day before.

4. On April 5, 2002, XOMA and Genentech issued a press release announcing that the Bio-Equivalence Study had been unsuccessful. That day, XOMA's stock price declined by forty-two (42) percent. The Micro Cap Fund, managed by Joe Frohna, avoided a total of $954,776 in losses by selling all of its XOMA shares the day before this announcement.

5. As alleged herein, Joe Frohna engaged in transactions, acts, practices, and courses of conduct that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S. C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

6. By this action, the Commission seeks: (a) permanent injunctive relief to prevent future violations of the federal securities laws; (b) disgorgement of the $954,776 in losses avoided, plus prejudgment interest thereon in the amount of $315,286.57; (c) a civil penalty in the amount of $954,776; and (d) such other equitable relief as the Court may deem appropriate.

Jurisdiction and Venue

7. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77v(a)] and Sections 21(d), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1 and 78aa].

8. In connection with the transactions, acts, practices and courses of business alleged in this Complaint, Joe Frohna, directly or indirectly, made use of the means or instrumentalities of interstate commerce and of the mails.

9. This Court has personal jurisdiction over Joe Frohna, and venue is appropriate in this District, because Joe Frohna resides here and many of the acts, transactions, practices and course of conduct giving rise to this action occurred in this District.

The Defendant

10. Joe Frohna, age 43, resides in Waukesha, Wisconsin. From February 1995 to March 2004, Joe Frohna worked as a portfolio manager in the Milwaukee office of USBAM. In that capacity, he managed the Micro Cap Fund. At the time of the conduct alleged herein, Joe Frohna was associated with USBAM, a registered investment adviser. He also was and continues to be a Chartered Financial Analyst.

Related Person and Entities

11. Joe Frohna's brother resides in San Francisco, California. During the relevant time period, Joe Frohna's brother was an Associate Medical Director in Clinical Pharmacology at Genentech. He was also the leader of the Bio-Equivalence Study.

12. USBAM is now known as FAF Advisors, Inc.. At all relevant times, USBAM was a Delaware Corporation that is headquartered in Minneapolis, Minnesota. It is registered with the Commission as an investment adviser. In April 2002, USBAM had a

Milwaukee, Wisconsin office, which it closed in March 2004. Joe Frohna managed the Micro Cap Fund from USBAM's Milwaukee office.

13. First American Investment Funds, Inc. ("FAIF") is a registered open-end investment company based in Minneapolis, Minnesota. FAIF incorporated in Maryland on August 20, 1987 under the name "SECURAL Mutual Funds, Inc." The company changed its name to FAIF in 1991. FAIF is part of the First American Family of Funds, which are managed by USBAM. The Micro Cap Fund changed its name to the Small Cap Growth Opportunities Fund (the "Small Cap Fund") on January 31, 2003.

14. XOMA is a biopharmaceutical company that develops and manufactures genetically engineered protein, peptide, and antibody pharmaceuticals, with headquarters in Berkeley, California. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on NASDAQ under the symbol "XOMA."

15. Genentech is a biotechnology company that develops, manufactures, and markets human pharmaceuticals for medical needs, and it is headquartered in South San Francisco, California. Genentech's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock exchange under the symbol "DNA."

Factual Background

16. In April 1996, XOMA and Genentech entered into a collaboration agreement to develop and commercialize a drug called Raptiva™ (efalizumab, formerly Xanelim) ("Raptiva"), which was intended to combat the effects of psoriasis, a painful skin condition.

17. In the fall of 2001, the FDA requested that the Bio-Equivalence Study be completed to confirm bio-equivalence between the Raptiva material used for clinical testing and the Raptiva material planned for large scale manufacturing. The FDA would not approve Raptiva for sale to the public unless and until XOMA and Genentech could demonstrate bio-equivalence.

18. On October 4, 2001, XOMA and Genentech publicly announced that they would conduct the Bio-Equivalence Study. This announcement also said that this study would delay the submission of their Biologics License Application until the summer of 2002. FDA approval of the Biologics License Application was necessary to permit Raptiva to be sold to the general public.

19. The success of the Bio-Equivalence Study was the key to XOMA's stock value in the near term because it was critical to XOMA's ability to sell Raptiva to the public.

20. At all relevant times, Joe Frohna's brother was a Genentech Associate Medical Director and the leader of the Bio-Equivalence Study. Joe Frohna's brother designed the study, created the study's protocols, formed and supervised the study's team, attended meetings regarding the progress of the study, reviewed internal documents, including e-mail and draft press releases, and received the results of the Bio-Equivalence Study before they were made public. Consequently, he had possession of nonpublic information regarding the Bio-Equivalence Study.

21. Information pertaining to the Bio-Equivalence Study was treated as confidential by both Genentech and XOMA. In addition, Genentech had policies and procedures that applied to Joe Frohna's brother, which required him to limit access to the Bio-

Equivalence Study's results to those individuals who needed that information to perform their job functions.

22. USBAM also had insider trading policies and procedures that prohibited Joe Frohna from causing his fund to buy or sell shares of a company based on material nonpublic information that he came to possess.

23. Joe Frohna was aware that his employer had policies and procedures that prohibited portfolio managers from buying or selling shares of a company based on material, nonpublic information. He also knew that it was illegal to trade on material, nonpublic information. In addition, Joe Frohna owed his brother a duty of trust or confidence.

24. On November 1, 2001, Joe Frohna purchased shares of XOMA on behalf of the Micro Cap Fund.

25. As a result of the Micro Cap Fund's purchase of XOMA shares, Joe Frohna called his brother in the fall of 2001 and asked him about XOMA. In response, his brother told him that he was actually the leader of the Bio-Equivalence Study for XOMA and Genentech. He then explained to Joe Frohna what they were doing in the study.

26. Joe Frohna monitored any news about XOMA closely. He knew from XOMA and Genentech's October 4, 2001 announcement and from financial analyst reports that the results of the Bio-Equivalence Study for Raptiva would likely be released by the summer of 2002. Joe Frohna knew that the success of the Bio-Equivalence Study was the key to XOMA's stock value in the near term because it was critical to XOMA's ability to sell Raptiva to the public.

27. On April 3, 2002, Joe Frohna's brother's team completed the Bio-Equivalence Study. At that time, the team that Joe Frohna's brother was leading concluded that the study did not establish the requisite bio-equivalence between the Raptiva material used for clinical testing and the material planned for manufacturing.

28. As a result, Raptiva would not yet receive FDA approval and could not be sold to the general public.

29. Joe Frohna's brother, as the leader of the Bio-Equivalence Study, was one of the first people to learn that it was unsuccessful, and he was responsible for communicating these negative results to his superiors.

30. On April 3, 2002, a few hours after Joe Frohna's brother received the negative information about the Bio-Equivalence Study, Joe Frohna called his brother. During that call, Joe Frohna asked his brother about XOMA. His brother responded that things were not going well because he had problems with his study. Joe Frohna gleaned from this information that the Bio-Equivalence Study was not going to be successful.

31. The negative information about the Bio-Equivalence Study that Joe Frohna obtained from his brother was information that a reasonable investor would have considered important in making an investment decision about XOMA. There is a substantial likelihood that its disclosure would have been viewed by a reasonable investor as having significantly altered the total mix of publicly available information about XOMA.

32. On April 4, 2002, the morning after Joe Frohna obtained the negative information about the Bio-Equivalence Study from his brother, he caused his Micro Cap Fund to sell

all of its 332,200 shares of XOMA. When he placed the orders to sell out the position, he directed the trading desk to "be aggressive."

33. Joe Frohna sold the XOMA shares based on the negative information about the Bio-Equivalence Study that he misappropriated from his brother.

34. On April 5, 2002, Genentech and XOMA publicly announced that the Bio-Equivalence Study had failed to prove bio-equivalency of the Raptiva materials. The price of XOMA's stock fell 42% that day from the previous day's closing price of $7.63, and closed at $4.42 a share. The daily trading volume in XOMA shares also increased dramatically, from an average of 1,508,700, to 23,484,200 shares.

35. Joe Frohna's decision to liquidate his fund's position in XOMA allowed the Micro Cap Fund to avoid a loss of $954,776.

36. Through the actions alleged above, Joe Frohna engaged in manipulative and deceptive conduct in the offer and sale and in connection with the sale of securities. Joe Frohna knew or was reckless in not knowing that he breached a duty of trust and confidence by trading the XOMA shares while in possession of the negative material nonpublic information about the Bio-Equivalence Study that he misappropriated from his brother.

Count I

Violation of Section 10(b) of the Exchange Act and Rule 10b-5

37. Paragraphs 1 through 36 are re-alleged and incorporated by reference as if fully set forth herein.

38. Joe Frohna knew or was reckless in not knowing that he breached a duty of trust and confidence by trading the XOMA shares while in possession of the negative material

nonpublic information about the Bio-Equivalence Study that he misappropriated from his brother. While in possession of this material, nonpublic information, Joe Frohna caused the Micro Cap Fund to sell all of its XOMA shares and avoid $954,776 in losses.

39. By the conduct described above, Joe Frohna, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements true; or (c) engaged in acts, practices, or courses of business which operated as a fraud or deceit upon other persons. By reason of the foregoing, Joe Frohna violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

Count II

Violation of Section 17(a)(1) of the Securities Act

40. Paragraphs 1 through 36 are re-alleged and incorporated by reference as if fully set forth herein.

41. Joe Frohna knew or was reckless in not knowing that he breached a duty of trust and confidence by trading the XOMA shares while in possession of the negative material nonpublic information about the Bio-Equivalence Study that he misappropriated from his brother. While in possession of this material, nonpublic information, Joe Frohna caused the Micro Cap Fund to sell all of its XOMA shares and avoid $954,776 in losses.

42. By the conduct described above, Joe Frohna, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate

commerce or by use of the mails, directly or indirectly, employed devices, schemes or artifices to defraud. By reason of the foregoing, Joe Frohna violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)].

Count III

Violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act

43. Paragraphs 1 through 36 are re-alleged and incorporated by reference as if fully set forth herein.

44. By the conduct described above, Joe Frohna, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, obtained money or property by means of an untrue statement of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made not misleading; or engaged in transactions, practices or courses of business which operated or would operated as a fraud or deceit upon the purchaser. By reason of the foregoing, Joe Frohna violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)].

Relief Requested

Wherefore, the Commission requests that this Court:

I.

Issue findings of fact and conclusions of law that Joe Frohna committed the violations charged and alleged herein.

II.

Issue an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Joe Frohna and his agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of the Order of Permanent Injunction, by personal service or other wise, and each of them, from, directly or indirectly, violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

III.

Issue an Order requiring Defendant Joe Frohna to pay disgorgement in the amount of $954,776, which represents the losses avoided as a result of the XOMA trades, which he entered into on the basis of material, nonpublic information, plus prejudgment interest thereon in the amount of $315,286.57.

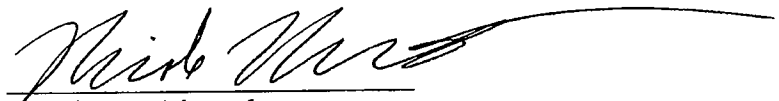
IV.

Issue an Order requiring Defendant Joe Frohna to pay $954,776 in civil money penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

V.

Issue an Order for such other relief as this Court deems appropriate.

Respectfully submitted,



Nicole D. Meinertzhagen
(IL Bar # 6242743)
meinertzhagenn@sec.gov
James G. Lundy
(IL Bar # 6231095)
lundyj@sec.gov
175 W. Jackson Blvd., Suite 900
Chicago, Illinois 60604
(312) 353-7390
(312) 353-7398 (fax)

Attorneys for the Plaintiff, United States Securities and Exchange Commission

Dated: July 31, 2007