UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION 450 Fifth Street, N.W. Washington, D.C. 20549 Plaintiff,	:	
v.	:	Case Number:
ELAN CORPORATION, PLC Lincoln House, Lincoln Place Dublin, Ireland, Defendant.	:	

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

SUMMARY

1. During 2001 and 2002, Elan Corporation, plc misled investors by failing to disclose material information about the company's financial results in periodic reports filed with the Commission and in quarterly earnings press releases disseminated to investors in the United States. Elan represented that it was generating record amounts of revenue, net income, and operating cash flow from drug sales and licensing activities. Elan also claimed that it was making significant progress towards achieving its goal of transforming itself into a fully integrated pharmaceutical company and generating $5 billion of annual revenue by 2005. However, these statements were materially misleading because Elan failed to disclose, or inadequately disclosed, certain transactions that were critical to Elan's perceived success. As a result, investors were led to believe that Elan had achieved record results through improvements in the company's business, when in fact it had not.

2. Specifically, Elan knowingly or recklessly failed to disclose that a substantial portion of its reported product revenue was generated by selling partial royalty rights to some of its most important products and by selling off other drug product lines entirely. Despite the fact that these transactions were non-recurring, Elan classified the revenue from these programs as product revenue on its income statement, thereby creating the false impression that the company's product revenue growth was due to drug sales in the normal course of business.

3. Elan also misled investors about its joint venture program, which generated approximately $490 million of revenue during 2000 and 2001. Elan failed to disclose that it required its joint venture partners to engage in "round-trip" transactions, in which the ventures paid license fees to Elan using money that Elan had provided to the partners. As a result, Elan obscured the true demand for the licensed technology and the company's ability to generate license revenue in the future, thereby misleading investors about the quality of the revenue, earnings and cash flow that it generated from its joint venture program.

4. Finally, Elan facilitated an artificial sale of certain joint-venture securities between one of its off-balance-sheet subsidiaries (EPIL III) and an ostensibly independent third party (Shelly Bay Holdings, Ltd.) in an attempt to continue favorable accounting treatment. In doing so, Elan concealed liquidity issues that existed with respect to hundreds of millions of dollars of the subsidiary's debt (which Elan had guaranteed) and with more than a billion dollars of the company's own debt.

5. By engaging in this conduct, Elan violated the antifraud, reporting and internal controls provisions of the federal securities laws. The Commission requests, among other

things, that Elan be enjoined from further violations of the federal securities laws as alleged herein and pay a civil monetary penalty.

JURISDICTION

6. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78aa]. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). Venue is proper pursuant to Section 27 of the Exchange Act. Elan engaged in certain transactions, acts, practices and courses of business alleged herein, including filing and furnishing periodic reports with the Commission, within this District.

7. Defendant Elan, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the acts, practices, and courses of business alleged herein.

DEFENDANT

8. Elan is a pharmaceutical company headquartered in Dublin, Ireland, with substantial operations in the United States, including New York, California, and Georgia. Elan's common stock is listed on the Irish Stock Exchange, and its American Depository Shares ("ADS") trade on the New York Stock Exchange and are registered with the Commission pursuant to Section 12(g) of the Exchange Act. Elan operates on a calendar fiscal year and is required to file annual reports with the Commission on Form 20-F. Elan also furnished certain information (such as quarterly earnings press releases) to the Commission on Forms 6-K during the relevant time period.

FACTUAL ALLEGATIONS

BACKGROUND

9. In the mid-1990s, Elan operated two businesses, one concentrating on drug delivery technologies, and the other a specialty pharmaceutical business. Generally, the drug delivery group developed or acquired intellectual property, which it licensed to other drug companies, and the pharmaceutical group developed and marketed various drug therapies.

10. For fiscal year 1995, Elan reported approximately $183 million of revenue, with $88 million coming from drug sales and $63 million resulting from licensing activities. In 1997, Elan publicly announced that it had set a goal to achieve $1 billion of revenue by 2001 and $5 billion of revenue by 2005.

11. Elan claimed that it could reach these revenue targets by developing new products and by licensing its technology to third parties. Elan's primary goal, however, was to decrease its dependence on license revenue and transform the company into a fully integrated pharmaceutical company that generated most of its revenue and profits from drug sales.

12. During 2001, Elan publicly announced, in press releases and the company's periodic reports, that it had exceeded its goal by reporting "record revenues" of $1.9 billion, of which $1.4 billion was product revenue. Elan's stock price also reached its peak in 2001, closing at a high of $65.00 per share on June 20, 2001.

13. However, the statements that Elan made about its reported revenue in the company's 2000 and 2001 Forms 20-F and 2001 quarterly press releases were materially misleading, because the source of significant amounts of that revenue was either not disclosed or inadequately disclosed to investors.

14. On January 30, 2002, the Wall Street Journal published an article about Elan's joint venture program and product line sales, which reported some of the information that Elan previously had failed to disclose to investors. That day, Elan's stock price dropped 36%, from $35.20 to $22.40 per share. On February 4, 2002, Elan issued a press release warning that its net income for fiscal 2002 would be lower than it had been in 2001. The company attributed part of the shortfall to its product rationalization program. The earnings warning caused Elan's stock price to drop 49%, to $14.20 per share. Eventually, Elan's stock traded as low as $1.03 per share, or 98% less than the highest price that it traded at during 2001.

Elan's Risk Sharing Program (Pharma Marketing)

15. In June 2000, without any public announcement, Elan sold certain royalty rights for five of its key products (Frova, Myobloc, Prialt, Zanaflex, and Zonegran) for $275 million in order to help pay for the costs of researching and developing these drugs. Elan sold these rights to Pharma Marketing, Ltd, an entity established by Elan's investment bankers, who raised the money from institutional investors.

16. Pursuant to the ten-year agreement between the parties, Pharma Marketing was entitled to receive ever increasing royalties, averaging 24% by the mid-point of the agreement. However, Elan did not receive the $275 million up front. Instead, when Elan incurred research and development costs, it billed Pharma Marketing for the amounts spent, and Pharma Marketing then made corresponding payments to Elan. Elan then recorded these payments as revenue, classifying most of it as product revenue on its income statement.

17. During the last two quarters of 2000, Elan recognized $88.7 million in revenue from Pharma Marketing, classifying $61.1 million, or 69%, as product revenue, and $27.6

million as contract revenue. During 2001, Elan recognized $189 million in revenue from Pharma Marketing, classifying $141.8 million, or 75%, as product revenue.

18. Prior to July 2002, when Elan filed its 2001 Form 20-F, Elan never disclosed that it had sold royalty rights to some of its most important drugs, that a significant amount of Elan's "product revenue" was not derived from actual drug sales, and that such revenue was non-recurring. For example, in Elan's 2000 Form 20-F, which was filed with the Commission in May 2001, the company failed to disclose these facts, and only stated vaguely that it had "disposed of royalty rights on certain products and development products."

19. By omitting virtually all information about Pharma Marketing in its Commission filings between June 2000 and July 2002, Elan presented a materially misleading picture of its operations and financial condition to investors, who were falsely led to believe that Elan (i) was earning all (or virtually all) of its product revenue from drug sales and (ii) would be earning full royalties on the products that it previously had hyped as being key to the company's future growth.

Elan's Product Rationalization Program

20. During fiscal 2001, Elan sold seven drug product lines:

- During the first quarter of 2001, Elan sold Diastat for $105 million.
- During the second quarter of 2001, Elan sold Mysoline for $55 million, Midrin for $15 million and Entex for $15 million.
- During the third quarter of 2001, Elan sold Permax for approximately $45 million and Nasarel/Nasalide for about $120 million.
- During the fourth quarter of 2001, Elan sold Furadantin for $16 million.

21. Nearly all of the proceeds from these product line disposals were recorded by Elan as product revenue in each of the 2001 quarters, amounting to between 15% and 22% of Elan's total revenue reported in the first three quarters of 2001.

22. Prior to February 2002, Elan never disclosed to investors that it had sold these seven drug product lines and that most of the money received from the transactions was classified as product revenue on the company's income statement.

23. For example, in Elan's 2000 Form 20-F, which was filed with the Commission in May 2001, the company disclosed that its "promoted products portfolio is being rationalized to focus on higher potential brands." Elan did not identify the specific product lines that were being sold, nor did it disclose the impact that the transactions had on Elan's financial results, including its reported product revenue.

24. Moreover, approximately one month after Diastat and Midrin were sold, Elan included the drugs in a chart showing the company's "major products" in its 2000 Form 20-F.

25. As a result, Elan secretly enhanced its "record" results because investors did not know that a significant amount of the "product revenue" that Elan reported in fiscal 2001 was generated by Elan's one-time sale of entire product lines, rather than from drug sales in the normal course of business.

Elan's Press Releases

26. Elan's fiscal 2001 quarterly earnings press releases were materially misleading because they failed to disclose important information about the company's financial results.

27. On April 23, 2001, Elan issued its first quarter earnings press release, which stated that Elan had achieved "record first quarter 2001 financial results" and that its revenue ($429.3 million) had increased 27% over the first quarter of 2000. Elan's CEO was also

quoted as stating, "I am pleased with the performance of the business in the first quarter of 2001. The significant growth in product revenue and the expansion in the gross margin reflect the continuing transformation of the company to a fully integrated pharmaceutical company."

28. These statements were materially misleading because Elan led investors to believe that the company's drug sales were responsible for the record financial results. In fact, $85.5 million or 26% of Elan's first quarter product revenue came from its risk sharing and product disposal programs, and not from actual drug sales.

29. On July 24, 2001, Elan issued its second quarter earnings press release, which stated that the company had achieved "record" financial results, including $461.2 million of total revenue and "an increase of 48% in product revenue to $356.4 million." In this press release, Elan's CEO is quoted as stating:

> [t]he significant growth in product revenue and the expansion in the gross margin reflects the continuing transformation of the company to a fully integrated pharmaceutical company. Our key products Zanaflex, Skelaxin, Abelcet and Maxipime continue to perform strongly. Zanaflex and Skelaxin deserve special mention as they are performing significantly better than we expected at the start of 2001.

30. These statements were materially misleading because Elan led investors to believe that the company's drug sales were responsible for the record financial results. In fact, $110.8 million or 31% of Elan's second quarter product revenue came from its risk sharing and product disposal programs, and not from actual drug sales. Moreover, Elan's statements about the performance of Zanaflex were materially misleading because the company failed to disclose that it had already sold partial royalty rights to the product to Pharma Marketing.

31. On October 25, 2001, Elan issued its earnings release for the third quarter of 2001. This press release reported "record" financial results, citing a 24% increase in total revenue, a 44% increase in product revenue, and a 32% increase in earnings per share. Elan

also represented that "product revenue accounted for 79% of total revenue in the quarter compared to 68% in the third quarter of 2000."

32. These statements were materially misleading because Elan led investors to believe that the company's drug sales were responsible for the record financial results. In fact, $124.3 million or 33% of Elan's third quarter product revenue came from its risk sharing and product disposal programs, and not from actual drug sales.

33. By creating the false impression that Elan's drug sales were responsible for the company's record achievements, Elan misled investors about the company's true performance and its ability to generate product revenue in the future.

34. In contrast to the positive public statements that Elan was making about its business, internal company documents indicated that there were significant problems, due to "the lack of a balanced pipeline of products and projects." One of the documents also stated that:

> Existing significant revenue contributors are in rapid decline as they become genericised while pipeline weakness has resulted in no new significant product introductions to date. **As a result, revenue and operating profit have deteriorated compared to past performance. Income from joint ventures and amortization of past licenses (SAB 101) have helped mask the current status of the business.** [Emphasis added]

Elan's Joint Venture Program

35. As of December 31, 2001, Elan had 55 joint ventures with various public and private biotechnology and specialty pharmaceutical companies. In each of these deals, Elan and the joint venture partner contributed proprietary technology to the joint venture, which was supposed to use both technologies to develop new drugs. In its filings with the Commission, Elan stated that it entered into these transactions to create a drug pipeline that would help transform the company into a fully integrated pharmaceutical company.

36. However, during the relevant time, Elan also used the joint venture program to manage the company's earnings. The joint venture program helped Elan achieve the revenue targets that it had provided to shareholders and investment analysts and masked shortfalls in the company's operating business units.

37. Elan designed the joint venture transactions to provide it with license revenue and the company refused to enter into any joint venture that prevented it from doing so. During 2000 and 2001, the joint venture program generated approximately $490 million of revenue for the company.

38. The joint venture arrangements typically were structured as follows: (i) Elan purchased common stock and convertible/exchangeable preferred stock from the partner; (ii) the partner established the joint venture as a subsidiary and capitalized it using the money that the partner had obtained from Elan for selling the preferred stock; (iii) Elan purchased a 19.9% equity stake in the joint venture; and (iv) the joint venture paid all of the money that it was initially capitalized with to Elan to purchase a license to use Elan's drug delivery technology.

39. In every joint venture transaction, the money used by the joint venture to pay for the license fee was provided by Elan. None of the partners or joint ventures ever used any of their own assets to pay for the license fee (most of them did not have the financial resources to do so); rather, money that Elan invested in the partner and the joint venture was returned to Elan in a "round-trip" fashion.

40. Although every transaction arranged by Elan required that the joint venture pay a license fee to Elan ($10-15 million, in most cases), the company never sold a license for its drug delivery technology to any unaffiliated entity at that price. In addition, during 2000 and 2001, Elan did not sell any such licenses other than through the joint venture program.

41. By failing to disclose these facts about its joint venture program, Elan obscured the true demand for the licensed technology and the company's ability to generate license revenue in the future, thereby misleading investors about the quality of the revenue, earnings and cash flow that Elan generated from its joint venture program.

Elan's Off-Balance Sheet Subsidiaries

42. Between 1999 and 2001, Elan created three off-balance sheet subsidiaries to generate cash flow from the securities that it had acquired through the company's joint venture program and from other sources. The subsidiaries, which were commonly referred to as EPIL I, EPIL II and EPIL III (the acronym EPIL stands for Elan Pharmaceutical Investments, Ltd.), sold notes to institutional investors and used the proceeds to purchase securities from Elan. All of the notes were unconditionally guaranteed by Elan. In the aggregate, Elan obtained approximately $1 billion from the institutional investors using the EPIL entities.

43. Elan treated the subsidiaries as qualified special purpose entities ("QSPEs") and therefore did not consolidate them with the company's financial results for U.S. GAAP reporting purposes. As a result, Elan received several accounting benefits, such as not reflecting the entities' debt on its balance sheet, not being required to record any interest expense on the EPIL debt (approximately $20 million per quarter in 2001) and not being required to record impairment losses on a security-by-security basis.

44. The first maturity date for any of the EPIL entities was originally scheduled for June 2002, when EPIL I was required to pay its noteholders $350 million. To delay this payment obligation, Elan created EPIL III in March 2001 and sought to extend the maturity date on the EPIL I notes. As part of the transaction, Elan convinced most of the EPIL I noteholders to exchange their notes for EPIL III notes that matured in June 2005. However,

some EPIL I noteholders opted not to do so and, elected to receive a class of EPIL III notes that matured in June 2002 (the original maturity date for EPIL I). As a result, EPIL III had $160 million of notes due on June 29, 2002, and $390 million of notes that were due in June 2005.

Elan Failed to Disclose that its Establishment of EPIL III
Accounted for 52% of its Net Income in the First Quarter of 2001

45. In the first quarter of 2001, Elan formed EPIL III and recognized a $40 million gain by selling certain securities to the entity. This gain represented approximately 52% of Elan's reported net income for the quarter and it helped the company meet Wall Street analysts' earnings expectations. In its earnings press release for the quarter ended March 31, 2001, Elan disclosed details of certain non-recurring losses. However, Elan did not disclose to investors that its financial results were enhanced via this one-time gain (the gain itself was included as part of a net "other income" in the income statement, but was not identified).

46. As a result, the press release was materially misleading because investors were led to believe that Elan's "record" financial results were due to improvements in the company's core business, rather than from a non-recurring gain involving a sale to one of its own subsidiaries. This information was not disclosed to investors until July 2002, when Elan filed its 2001 Form 20-F.

47. Until the company filed its 2001 Form 20-F in July 2002, Elan had consistently represented to investors that the fair value of the assets in the EPIL entities exceeded their debt obligations, thus implying that there were no liquidity issues (i.e., that Elan would not have to make a payment on its guarantee). However, as discussed below, Elan knowingly or recklessly failed to disclose to investors the fact that the securities could not be sold for the amounts assigned to them by Elan.

The Shelly Bay Transaction

48. As set forth above, EPIL III had $160 million of notes that were due on June 29, 2002 and a second series of notes for $390 million that were due in June 2005, all of which were unconditionally guaranteed by Elan. Because EPIL III only had $12 million in cash, it had to sell some of its securities by the end of June 2002 to raise the $148 million needed to pay off the first series of notes. To comply with U.S. GAAP and maintain EPIL III's status as a QSPE, Elan was not permitted to maintain effective control of the securities that it had sold to EPIL III. As a result, the securities held by EPIL III were required to be sold in a particular order, which was set forth in a list that was prepared when the entity was formed.

49. Some of the securities held by EPIL III were convertible preferred stock of non-public companies that had no established resale market. Other securities in EPIL III's portfolio were liquid and could readily be sold. However, according to the list specifying the order of sale, many of the liquid securities were scheduled to be sold last.

50. Until the last week of June 2002, Elan tried to sell the securities to several potential investors, but received no bids that were anywhere close to the values that Elan had assigned to the securities. Thus, Elan knew that EPIL III would not be able to raise the amount of money needed to pay off the $160 million of notes, unless Elan increased the number of securities to be sold or honored its guarantee to the noteholders. However, selling more securities raised serious liquidity issues for Elan, because it would have required EPIL III to sell most of its securities to raise the $148 million needed to pay off the noteholders on June 29 and would have left EPIL III with insufficient assets to cover the remaining $390 million obligation that had a later maturity date. Also, if Elan's guarantee of EPIL III's debt was triggered, there was a risk that cross defaults on other company debt might occur.

51. To avoid these consequences, on or about June 28, 2002, Elan arranged an artificial sale between EPIL III and another entity that Elan created, called Shelly Bay Holdings, Ltd. ("SBH"). Elan had SBH "purchase" the first fifteen securities on EPIL III's list for $148 million. However, because SBH did not have any money to pay for the securities, Elan had to arrange for a bank to loan the $148 million to SBH. The loan was unconditionally guaranteed by Elan for three months. In addition, to entice the individual who became SBH's principal to participate in the transaction, Elan paid SBH $1 million.

52. Under its agreement with Elan, SBH had ninety days (until September 30, 2002) to resell the EPIL III securities and repay the bank loan. If there was a shortfall, Elan was responsible for making up the difference, and there was no recourse against SBH.

53. By September 30, SBH had raised only $8 million from reselling the EPIL III securities. As a result, Elan had to pay the shortfall to the bank, which caused the company to record a loss of approximately $142 million.

Elan's Misleading Disclosures Concerning the Shelley Bay Transaction

54. In its 2001 Form 20-F, Elan stated that EPIL III "disposed of certain of its financial assets at estimated fair value . . . to an unaffiliated third party ("the Purchaser") for approximately $148.0 million. The Purchaser raised the financing for the purchase of the financial assets through borrowings under a bank facility." Elan also stated that it had "provided a guarantee and provided cash collateral to the bank to support the Purchaser's obligation to repay the $148.0 million loan," and that if the Purchaser did not repay the loan, sell the assets, or otherwise refinance the sale, "the bank will call upon the guarantee and the cash collateral."

55. In its earnings release for the second quarter of 2002, Elan disclosed that "EPIL III had disposed of certain financial assets at estimated fair value, in accordance with the legal documentation entered into upon formation of EPIL III, to an unaffiliated third party (the "Purchaser") for approximately $148 million." The press release also stated that Elan believed that it had sufficient cash and other liquid assets to meet its liquidity requirements.

56. These statements were materially false and misleading because Elan failed to disclose material facts about the SBH transaction that undermined its description of the disposal of the securities as a sale to an unaffiliated purchaser at fair value. Elan failed to disclose, among other things, that: (i) SBH was not an "unaffiliated third party" because Elan created it (and was required to consolidate it under applicable accounting rules); (ii) Elan paid SBH $1 million to participate in the transaction; (iii) SBH did not negotiate the $148 million purchase price, which was fixed by Elan; and (iv) the claimed "estimated fair value" of the assets sold to SBH did not reflect what a willing buyer would pay to acquire the securities, which was substantially less than $148 million.

The Restatement

57. On September 4, 2003, Elan filed its 2002 Form 20-F with the Commission. In the filing, Elan restated its financial results for 2001 and 2002 by consolidating EPIL III as of March 15, 2001 (its formation date). Elan's accounting for EPIL III was restated because Elan maintained effective control of EPIL III's securities and therefore never qualified for off-balance sheet treatment under U.S. GAAP. EPIL III's formation documents (which under QSPE rules were required to limit Elan's ability to exercise control over the entity) failed to prevent Elan from bidding above fair value for the underlying assets, which Elan did by setting a sales price above fair value and guaranteeing a bank loan to provide the capital in the SBH

transaction. The company's restatement reduced its 2001 net income by $73.9 million, or 22%.

FIRST CLAIM

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

58. Paragraphs 1 through 57 are realleged and incorporated by reference herein.

59. As set forth more fully above, Elan knowingly or recklessly failed to disclose material facts about its financial condition in Commission filings and earnings press releases. Therefore, Elan directly or indirectly, by use of the means or instrumentalities of interstate commerce, or by the use of the mails and of the facilities of a national securities exchange, in connection with the purchase or sale of securities: has employed devices, schemes, or artifices to defraud, has made untrue statements of material facts 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 has engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person.

60. By reason of the foregoing, Elan violated 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

Violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-16

61. Paragraphs 1 through 60 are realleged and incorporated by reference herein.

62. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-16 thereunder require issuers of registered securities to file with the Commission factually accurate annual reports and other periodic reports. Exchange Act Rule 12b-20 provides that in addition to the information expressly required to be included in a statement or report, there shall be added

such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

63. During the relevant time period, Elan was an issuer subject to these reporting requirements.

64. During the relevant time period, as alleged herein, Elan filed the following Forms 20-F that contained false or misleading financial information, and/or failed to disclose material information necessary to make the statements, in the light of the circumstances under which they were made, not misleading: (i) Elan's Form 20-F for fiscal year ended December 31, 2000, filed with the Commission on May 10, 2001; and (ii) Elan's Form 20-F for fiscal year ended December 31, 2001, filed with the Commission on July 1, 2002.

65. During the relevant time period, as alleged herein, Elan filed the following Forms 6-K that contained false or misleading financial information, and/or failed to disclose material information necessary to make the statements, in the light of the circumstances under which they were made, not misleading: (i) Elan's Form 6-K, furnished to the Commission on April 24, 2001; (ii) Elan's Form 6-K, furnished to the Commission on July 26, 2001; (iii) Elan's Form 6-K, furnished to the Commission on October 29, 2001; and Elan's Form 6-K, furnished to the Commission on February 5, 2002.

66. By reason of the foregoing, Elan violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16].

THIRD CLAIM

Violations of Section 13(b)(2)(B) of the Exchange Act

67. Paragraphs 1 through 66 are realleged and incorporated by reference herein.

68. Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with applicable accounting principles.

69. During the relevant time period, Elan was an issuer subject to these internal control requirements. Elan failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with applicable accounting principles.

70. By reason of the foregoing, Elan violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

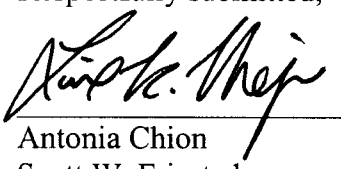
A. Grant a Permanent Injunction restraining and enjoining Elan from violating the statutory provisions set forth herein, and ordering Elan to pay a civil penalty;

B. Pursuant to Section 308 of the Sarbanes-Oxley Act of 2002, enter an order providing that the amount of civil penalties ordered against Elan be added to, and become part of, a disgorgement fund for the benefit of the victims of the violations alleged herein; and

C. Grant such other and additional relief as this Court may deem just and proper.

Dated: February 8, 2005

Respectfully submitted,



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