

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

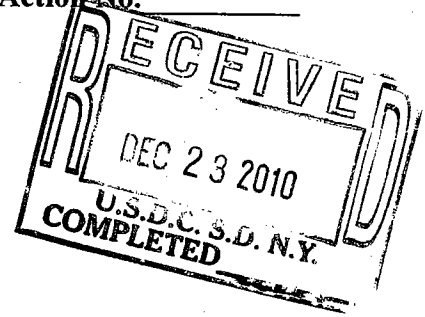
v.

ONE OR MORE UNKNOWN PURCHASERS
OF OPTIONS OF INTERMUNE, INC.,

Defendant.

Civil Action No. _____

ECF



COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY OF THE ACTION

1. This is an insider trading case involving highly profitable and suspicious purchases of call options of InterMune, Inc. ("InterMune"), a company headquartered in California and whose shares of common stock are traded on NASDAQ in this district. The purchases of InterMune options were made through accounts at UBS Securities Ltd and Barclay Capital by one or more unknown purchasers ("Unknown Purchasers" or "Defendants") between December 7 and December 13, 2010 and were made in advance of a public announcement ("Announcement") on December 17, 2010 that one of InterMune's development drugs had been recommended for approval by the European Union's Committee for Medicinal Products for Human Use ("CHMP"). Following this Announcement, the prices of InterMune options increased by as much as 466%. As a

result, the Defendant Unknown Purchasers are in a position to realize total profits of approximately \$912,000 from the sale of their calls following the Announcement.¹

2. The identities of the defendants are not yet known because the purchase orders originated through foreign brokerage firms. Those brokerage firms, in turn, cleared the options trades through domestic brokerage firms, which in turn executed the purchase orders through the facilities of the Chicago Board Options Exchange and the Philadelphia Stock Exchange. Defendants' purchases, over three days, comprised a suspiciously high volume of the call options concerning InterMune – either 100%, 57%, or 66% of the available options series purchased on the days in question.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to Sections 21(e), 21A, and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 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.

4. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts, practices, transactions and courses of business constituting the violations occurred in the Southern District of New York.

¹ This potential profit has been calculated assuming that the sales were effected on the day of the Announcement, December 17, 2010, and using Bloomberg for the InterMune calls closing bids for the day.

5. 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.

DEFENDANTS

6. The Defendants, the Unknown Purchasers, made suspicious purchases of a large number of InterMune call options through an account at UBS (UBS Securities Ltd. London Branch A/C Option #1, Account No. 452000160, Customer ID 980235527 (“UBS Omnibus Account”)), and Barclays Capital (BARCAP Omnibus Account 12240 BBPLAC New York, Account No. 211122400, Customer ID 134942190 (“Barclays Omnibus Account”)). Both accounts are held in London, England. The trades occurred on the Chicago Board Options Exchange and the Philadelphia Stock Exchange.

RELEVANT ENTITIES

7. InterMune, Inc. is a Delaware corporation headquartered in Brisbane, California. InterMune is a biotechnology company focused on developing and commercializing innovative therapies in pulmonology and hepatology. Its common stock is registered with the Commission under Exchange Act Section 12(b) and is listed on The NASDAQ Stock Market, trading under the symbol ITMN. Options in its common stock trade on the Chicago Board Options Exchange, the Philadelphia Stock Exchange, the Boston Stock Exchange, the International Securities Exchange, the American Stock Exchange, and the New York Stock Exchange’s Arca System.

8. UBS Securities Ltd., a wholly owned subsidiary of UBS AG, provides securities brokerage and investment banking services. It is located in London, England.

9. UBS Securities LLC, is a registered broker dealer in the United States and is headquartered in Stamford, Connecticut with offices in New York, New York.

10. Barclays Capital, Inc., a registered broker dealer in the United States, is located in New York, New York.

11. Barclays Capital is an investment services firm headquartered in London, England.

FACTUAL ALLEGATIONS

12. On December 17, 2010, before the opening of the American securities markets, InterMune issued a press release, announcing that CHMP, the regulatory body in the European Union responsible for evaluating new drugs for sale and use in the EU, had recommended granting marketing authorization for Esbriet, a drug developed by InterMune. According to the Announcement, once CHMP issues a positive opinion, it is forwarded to the European Commission for ratification, which typically takes two to three months. Once ratified, a drug may be marketed in all EU countries.

13. After the Announcement and the opening of the New York securities markets, the price of InterMune's stock rose materially, approximately 144% during a single trading day, from the previous day's close of \$14.27, to close at \$34.89.

14. Between December 7, 2010 and December 13, 2010, the Unknown Purchasers bought a total of 637 call options contracts. The options contracts were purchased on the Chicago Board Options Exchange and the Philadelphia Stock Exchange.

15. A "call option" gives the purchaser the right to buy 100 shares of an underlying security at a specified price up to a specified expiration date. A call option gives the purchaser the right to "call in" or buy stock, and profit is made on a call option

when the underlying stock increases in price. The purchaser of a call option may also sell the option contracts back into the market.

16. On December 7 and 8, 2010, one or more Unknown Purchasers purchased 400 INTM call option contracts through the UBS Omnibus Account. The options had a strike price of \$20 and a July 2011 expiration date, and the purchases comprised 100% and 57.2% , respectively, of the volume of transactions in the series over these two days of trading. The option contracts cleared through UBS Securities LLC and are currently held by UBS Securities LLC or UBS Securities Ltd. Following the Announcement, the Unknown Purchasers' imputed trading profits were approximately \$522,000.

17. On December 13, 2010, one or more Unknown Purchasers purchased 237 contracts through the Barclays Omnibus Account. The options had a strike price of \$14 and an April 2011 expiration date, and the purchases comprised approximately 66% of the volume in the series over that day's trading. The options contracts cleared through Barclays Capital in New York and are currently held by Barclays Capital. Following the Announcement, the Unknown Purchasers' imputed profits were \$390,070.

CLAIM FOR RELIEF

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

18. Paragraphs 1 through 17 are realleged and incorporated by reference.

19. Upon information and belief, at the time the Defendants purchased InterMune call options as set forth above, they were in possession of material, nonpublic information about CHMP's recommendation for approval of InterMune's new drug, Esbriet. The Defendants (a) knew, or recklessly disregarded the fact, that their trading was in breach of a fiduciary duty or similar duty of trust and confidence owed to the shareholders of

InterMune, or to the source from whom they received the material, nonpublic information; and/or (b) knew or should have known that material, nonpublic information concerning the new drug's recommended approval had been communicated to them, in breach of a fiduciary or similar duty of trust and confidence.

20. Upon information and belief, any and all material nonpublic information that the Defendants received concerning InterMune as set forth above, was disclosed in exchange for a personal benefit that benefited the communicator of such information.

21. By reason of the conduct described above, the Defendants, in connection with the purchase or sale of securities, by the use of any 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 fact 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; or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any persons, including purchasers or sellers of the securities.

22. By reason of the foregoing, the Defendants, directly and indirectly, 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that the Court enter judgment:

(a) permanently enjoining the Defendants from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5];

(b) ordering the Defendants to disgorge all illicit trading profits resulting from the conduct alleged in this Complaint, along with prejudgment interest thereon;

(c) ordering the Defendants to pay civil monetary penalties pursuant to Exchange Act Section 21A [15 U.S.C. § 78u-1]; and


(d) granting such other and further relief as the Court deems just and appropriate.

Dated: December 23, 2010

Of Counsel:

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Respectfully submitted,



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