ALERTS

Financial, Corporate Governance And M&A Litigation Alert - SEC Secures Largest-Ever Settlement For Insider Trading Case

March 21, 2013 | Atlanta | Chicago | Columbus | Delaware | Elkhart | Fort Wayne | Grand Rapids | Indianapolis | Los Angeles | Minneapolis | South Bend

Hedge fund advisory firm CR Intrinsic Investors (CR Intrinsic), a unit of hedge fund SAC Capital Advisors LP (SAC), has agreed to pay more than $600 million to settle insider trading claims brought by the SEC. The suit against CR Intrinsic was the largest insider trading case ever charged by the SEC, and the settlement was the largest ever in an insider trading case.

The SEC's complaint alleged that from 2007 through mid-2008, CR Intrinsic and one of its portfolio managers, Mathew Martoma, obtained material nonpublic information from Dr. Sidney Gilman concerning the clinical trial results of an Alzheimer's drug being jointly developed by two pharmaceutical companies. Dr. Gilman was the chairman of the safety monitoring committee overseeing the clinical trial for the Alzheimer's drug. During that period, Dr. Gilman provided Mr. Martoma with the material nonpublic information regarding the drug trials through numerous phone calls and paid consultations arranged by an expert network firm.

Then, in July 2008, Dr. Gilman obtained final but nonpublic efficacy and safety results from the clinical trial for the Alzheimer's drug, which he allegedly provided to Mr. Martoma. In turn, Mr. Martoma caused hedge fund portfolios managed by CR Intrinsic and an affiliated investment advisor to drastically alter their positions in the two pharmaceutical companies. CR Intrinsic and the affiliated investment advisor liquidated over $700 million in long positions in the two pharmaceutical companies and then took large short positions in the two companies.

After the news regarding the trial results hit the market, CR Intrinsic and the affiliated investment advisor gained and avoided losses of over $276 million.

According to the recently announced settlement, CR Intrinsic will pay approximately $275 million in disgorgement, $52 million in prejudgment interest, and a $275 million penalty—with no debarment or admission of wrongdoing by CR Intrinsic.

These charges and the enormous settlement constitute further warning for the hedge fund industry that the SEC is not afraid to target hedge funds and their advisory firms and may likely demand very substantial sums from them for settlement. George S. Canellos, Acting Director of the SEC's Division of Enforcement, explained the impact on hedge funds: "The historic monetary sanctions against CR Intrinsic and its affiliates are sharp warning that the SEC will hold hedge fund advisory firms and their funds accountable when employees break the law to benefit the firm." Sanjay Wadhwa, Senior Associate Director of the SEC's New York

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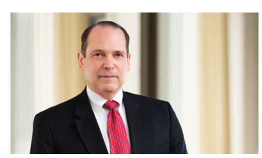

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Regional Office, added: “A robust culture of compliance and zero tolerance toward employee misconduct can help other firms avoid the severe financial consequences that CR Intrinsic is facing for its misconduct.”

The massive settlement, however, hardly ends the matter for entities associated with CR Intrinsic and the insider trading. The SEC’s investigation continues. And in a recently filed amended complaint, the SEC added SAC and four hedge funds managed by CR Intrinsic and SAC as relief defendants for allegedly receiving ill-gotten gains from the insider trading.

Further, the SEC floated the possibility that it may pursue additional individuals at the firms, including Steven A. Cohen, the billionaire hedge fund founder and owner of SAC. As of now, however, it appears that Mr. Cohen is just stuck paying the settlement from, ultimately, his own pocket. Mr. Martoma has pleaded not guilty and is refusing to cooperate in a case against Mr. Cohen. Mr. Martoma is also subject to a criminal suit brought by federal prosecutors for his part of the scheme. Dr. Gilman agreed to a consent judgment requiring him to pay disgorgement and prejudgment interest.

In short, an enormous settlement may not, as in this case, be enough to dissuade further action by the SEC. If no charges are filed against additional individuals, SAC and CR Intrinsic will likely be able to live with the settlement, despite its enormous size. However, with the SEC continuing its investigation, the end may not be near for other individuals and entities associated with the insider trading in this matter.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, or a leader of the firm’s Financial, Corporate Governance and M&A Litigation group in the following offices: Trace Schmeltz, co-chair, 312-214-4830; Anne DePrez, co-chair, 317-231-7264; Brian Casey, South Bend, 574-237-1285; Kevin Rising, Los Angeles, 310-284-3888; David Powlen, Delaware, 302-300-3435; Kevin McDermott, 614-628-1425; and Tom Gallo, Atlanta, 404-264-4053.

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