

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA : Hon.
 :
 v. : Criminal No. 13-
 :
 KEVIN DOWD : 18 U.S.C. § 371

INFORMATION

The defendant having waived in open court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

Relevant Entities and Individuals

1. At all times relevant to this Information:

a. Gilead Sciences Inc. (“Gilead”) was a biotechnology company based in Foster City, California, and was engaged in the business of developing, manufacturing and marketing antiviral drugs to treat patients infected with HIV, hepatitis B and influenza. Gilead’s stock was registered with the U.S. Securities and Exchange Commission (“SEC”), and was publicly traded on the NASDAQ stock exchange.

b. Pharmasset Inc. (“Pharmasset”) was a pharmaceutical company based in Princeton, New Jersey, and was engaged in the business of developing, manufacturing and marketing antiviral drugs. From in or about April 2007 through in or about January 2012, Pharmasset’s stock was registered with the SEC, and was listed on the NASDAQ stock exchange under the ticker symbol “VRUS.” On November 21, 2011, Gilead publicly announced that it was acquiring Pharmasset for \$11 billion, or \$137 per share; the acquisition was completed in or about January 2012.

c. “Brokerage Firm A” was a global wealth management firm, which provided access to a wide range of products and services to individuals, businesses and institutions, including brokerage and investment advisory services, financial and wealth planning, credit and lending, cash management, annuities and insurance, retirement and trust services. Brokerage Firm A had offices internationally, and throughout the United States, including a branch office in Aventura, Florida (the “Aventura Branch”).

d. The “Director” served as a member of Pharmasset’s Board of Directors from in or about August 2000 through in or about January 2012, and was a client of the Aventura Branch.

e. The “Senior Vice President” was a Senior Vice President and Portfolio Manager at the Aventura Branch, and provided investment, tax and estate planning advice to Director

f. Defendant KEVIN DOWD was a registered representative, who worked at the Aventura Branch, and held the titles of Second Vice President and Financial Advisor. Defendant DOWD joined the Aventura Branch in or about 2005 and worked there through late October 2012. Among other things, defendant DOWD developed insurance strategies for sophisticated estate planning purposes for the Aventura Branch’s clients, assisted in the development of asset allocation recommendations for clients, and was responsible for equity trading at the Aventura Branch.

g. “Co-conspirator J.F.,” a co-conspirator not named as a defendant herein, was defendant DOWD’s childhood friend, and resided in or around Del Ray Beach, Florida.

h. “Co-conspirator E.B.,” a co-conspirator not named as a defendant herein, resided in or around Boca Raton, Florida.

The Insider Trading Scheme

2. From in or about November 2011 through in or about July 2012, defendant DOWD obtained material nonpublic information concerning Gilead's November 2011 acquisition of Pharmasset (the "Pharmasset Inside Information") through the course of his employment at the Aventura Branch, and passed that information to Co-conspirator J.F., who along with Co-conspirator E.B., executed and caused to be executed securities transactions in Pharmasset based on the Pharmasset Inside Information, earning substantial sums in unlawful profits for Co-conspirator J.F., Co-conspirator E.B., and defendant DOWD.

3. In passing the Pharmasset Inside Information to Co-conspirator J.F., defendant DOWD violated (i) fiduciary and other duties of trust and confidence he owed to Brokerage Firm A and to its clients, including the Director; (ii) expectations of confidentiality held by Brokerage Firm A and the Director; and (iii) written policies of Brokerage Firm A regarding the use and safekeeping of confidential business information.

The Pharmasset Inside Information

4. On or about September 2, 2011, Gilead made an initial offer to acquire Pharmasset for \$100 per share in cash. This confidential information was communicated to Pharmasset's board of directors and key executives, including the Director.

5. Between in or about September 2011 and in or about October 2011, the Director confidentially informed the Senior Vice President that Pharmasset was going to be sold, and that Pharmasset was in the process of soliciting acquisition offers from other large pharmaceutical companies. Shortly thereafter, the Senior Vice President informed defendant DOWD and several other key employees at the Aventura Branch that Pharmasset was in the process of being sold to

another pharmaceutical company and that they could not trade or recommend Pharmasset stock as a result of the information they received from the Director.

6. In or about November 2011, Gilead increased its offer for Pharmasset to the \$130 per share range. This confidential information was relayed to the Director, who relayed it to his financial advisers, including the Senior Vice President. The Senior Vice President, in turn, informed defendant DOWD, among others at the Aventura Branch, that the final purchase price of Pharmasset was going to be in the high \$130s per share range, and reiterated that they could not recommend Pharmasset or trade in it.

7. On or about November 17, 2011, Gilead increased its offer to \$135 per share in cash, and on or about November 18, 2011, Pharmasset's board of directors, and certain key executives based in Pharmasset's Princeton, New Jersey headquarters convened a telephone conference call to review Gilead's latest offer. At that time of the call, the Director was in New Jersey and participated in the conference call. Also on that date, the Director made a series of calls to the Senior Vice President. On or about November 18, 2011, defendant DOWD overheard one of these telephone conversations between the Director and the Senior Vice President, and learned that Gilead's acquisition of Pharmasset was imminent.

8. After receiving the Pharmasset Inside Information discussed in paragraphs 4 through 7 above, defendant DOWD made several telephone calls to Co-conspirator J.F. on Friday, November 18, 2011, and conveyed the Pharmasset Inside Information to Co-conspirator J.F. Co-conspirator J.F., in turn, conveyed the Pharmasset Inside Information to, among others, Co-conspirator E.B. Thereafter, on or about November 18, 2011, Co-conspirator J.F. and Co-conspirator E.B. executed and caused to be executed the following securities transactions based in whole or in part on the Pharmasset Inside Information: (a) the purchase of 2,700 shares of

Pharmasset stock at \$71.89 per share for a total purchase price of \$195,808; (b) the purchase of fifty “\$75.00 Pharmasset December 2011” call option contracts at prices between \$2.98 to \$3.20; and (c) the purchase of fifty “\$80 Pharmasset December 2011” call option contracts at prices between \$1.65 to \$1.67.

9. At approximately 7:00 a.m. on November 21, 2011, Gilead publicly announced that it had entered into an agreement to acquire Pharmasset for approximately \$11 billion, or \$137 per share in cash. The purchase price represented an approximately 89% premium over Pharmasset’s closing price of \$72.67 on November 18, 2011. In response to the announcement, Pharmasset’s stock price increased to \$134.14 per share at the close of trading on November 21, 2011. Prior to the November 21, 2011 public announcement, Gilead’s offers to acquire Pharmasset and its impending acquisition of Pharmasset at \$137 were not generally known to the public.

10. On or about November 21, 2011, following the public announcement of Gilead’s acquisition of Pharmasset, Co-conspirator J.F. and Co-conspirator E.B. executed or caused to be executed the following securities transactions: (a) the sale of all 2,700 of the Pharmasset shares they purchased on November 18, 2011 for net illegal profits of approximately \$163,621; and (b) the sale of all call options they purchased on November 18, 2011 for total illegal profits of approximately \$544,706.

11. In or about January 2012, Co-conspirator J.F. gave defendant DOWD a cashier’s check dated January 3, 2012 in the amount of \$35,000, which defendant DOWD deposited on or about January 5, 2012 into a bank account that he controlled.

The Conspiracy

12. From in or about November 2011 through in or about July 2012, in the District of New Jersey and elsewhere, defendant

KEVIN DOWD

did knowingly and willfully conspire and agree with others to commit offenses against the United States, namely, securities fraud, by using and employing, in connection with the purchase and sale of securities and through interstate commerce and the mails, manipulative and deceptive devices, including the purchase and sale of a security of an issuer on the basis of material nonpublic information about the security and issuer, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes and artifices to defraud, (b) making untrue statements of material facts and omitting 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 (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, contrary to Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy – Securities Fraud

13. The object of the conspiracy was for defendant DOWD, Co-conspirator J.F., and Co-conspirator E.B., and others to enrich themselves through the purchase of Pharmasset securities on the basis of material nonpublic information obtained by defendant DOWD through his employment at Brokerage Firm A.

Manner and Means of the Conspiracy

14. The manner and means by which defendant DOWD and others known and unknown sought to accomplish the conspiracy included, among other things, the following:

a. Defendant DOWD misappropriated the Pharmasset Inside Information in violation of: (1) the fiduciary and other duties of trust that he owed to Brokerage Firm A and the Director; (2) the expectations of confidentiality of Brokerage Firm A; and (3) Brokerage Firm A's policies and procedures regarding the use and safekeeping of confidential and material, nonpublic information.

b. Defendant DOWD passed the Pharmasset Inside Information to Co-conspirator J.F. and recommended that Co-Conspirator J.F. purchase Pharmasset securities in light of Gilead's anticipated acquisition of the company at a premium price.

c. Co-conspirator J.F. and Co-Conspirator E.B. executed and caused to be executed securities transactions for their benefit and for the benefit of defendant DOWD based in whole or in part on the Pharmasset Inside Information provided by defendant DOWD, knowing that the Pharmasset Inside Information had been disclosed by defendant DOWD in violation of duties of trust and confidence defendant DOWD owed to Brokerage Firm A and its clients.

Overt Acts

15. In furtherance of the conspiracy and to effect its unlawful object, the following overt acts, among others, were committed in the District of New Jersey and elsewhere:

a. On or about November 18, 2011, defendant DOWD called Co-conspirator J.F. and provided Co-conspirator J.F. the Pharmasset Inside Information, which defendant DOWD had obtained through the course of his employment at Brokerage Firm A.

- b. On or about November 18, 2011, Co-conspirator J.F. called Co-conspirator E.B. and passed the Pharmasset Inside Information to him.
- c. On or about November 18, 2011, Co-conspirator J.F. caused approximately \$196,000 to be transferred into a brokerage account that he controlled at a brokerage firm in New Jersey.
- d. On or about November 18, 2011, Co-conspirator J.F. used the \$196,000 he had transferred to his New Jersey brokerage firm to purchase 2,700 shares of Pharmasset stock.
- e. On or about January 5, 2012, defendant DOWD caused a \$35,000 cashier's check that he had received from Co-conspirator J.F. to be deposited into a bank account that he controlled.

In violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATION

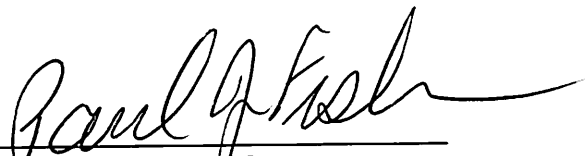
1. The allegations contained in this Information are hereby realleged and incorporated by reference for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. The United States hereby gives notice to the defendant, that upon his conviction of the offense charged in this Information, the government will seek forfeiture in accordance with Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which requires any person convicted of such offense to forfeit any property constituting or derived from proceeds obtained directly or indirectly as a result of such offense.

3. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without

difficulty; it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of such defendant up to the value of the forfeitable property described in paragraph 2.



PAUL J. FISHMAN
United States Attorney

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