

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>SECURITIES AND EXCHANGE</b>	:	
<b>COMMISSION,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>10 Civ. 9527 (WHP)</b>
	:	
<b>GIUSEPPE TULLIO ABATEMARCO,</b>	:	<b>ECF CASE</b>
	:	<b>JURY TRIAL DEMANDED</b>
	:	
<b>Defendant.</b>	:	
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**AMENDED COMPLAINT**

Plaintiff Securities and Exchange Commission (the "SEC" or "Commission"), for its Amended Complaint, alleges as follows:

**SUMMARY OF THE ACTION**

1. This is an insider trading case involving transactions in the securities of Martek Biosciences Corporation ("Martek") in advance of the December 21, 2010 public announcement that Royal DSM, N.V. ("DSM") would commence a cash tender offer to acquire all the outstanding shares of the common stock of Martek. In the days preceding the announcement, Defendant Giuseppe Tullio Abatemarco purchased 2,616 Martek call option contracts based on material non-public information he obtained about the acquisition from a common-law wife of a DSM employee. Upon selling all the call options shortly after the announcement, Defendant Abatemarco netted illegal trading profits of almost \$1.2 million.

2. By engaging in the conduct set forth in the Amended Complaint, Defendant Abatemarco 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] and Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

3. The Commission seeks an injunction against future violations; disgorgement of ill-gotten gains, with prejudgment interest thereon; and civil penalties.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter 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]. Defendant Abatemarco has 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 Amended Complaint.

5. 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 within this judicial district.

6. Unless restrained and enjoined, Defendant Abatemarco will continue to engage in the acts, practices, transactions, and courses of business alleged in this Amended Complaint, or in acts, practices, transactions, and courses of business of similar purpose and object.

### **CALL OPTIONS**

7. A “call option contract” entitles a purchaser, in exchange for a premium, to buy a specified security or commodity at a specified price within a specified time period. Using call options as an alternative to investing in the underlying stock limits the risk of price decline to the cost of the option while ensuring the benefit of a price increase.

**DEFENDANT**

8. Giuseppe Tullio Abatemarco, age 40, is a resident of Switzerland. Defendant Abatemarco is an insurance salesman.

**RELEVANT ENTITIES**

9. During the relevant period, Martek was a Delaware corporation with its headquarters in Columbia, Maryland. Martek is now a wholly-owned subsidiary of DSM. Martek develops and commercializes nutritional products. Martek's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was quoted on the NASDAQ Global Select Market under the ticker symbol MATK. Options in its common stock traded on, among other places, the following exchanges located in New York, New York: NYSE Amex operated by NYSE Amex LLC, NYSE Arca operated by NYSE Arca, Inc., and the International Securities Exchange.

10. DSM is a Dutch company with its headquarters in Heerlen, the Netherlands. DSM is a multinational chemical company which specializes in life sciences and material sciences.

**DEFENDANT'S ILLEGAL INSIDER TRADING**

**DSM-Martek Tender Offer and Merger**

11. On December 7, 2010, after prior discussions with Martek, DSM's supervisory board approved a tender offer proposal to acquire all the outstanding shares of Martek.

12. On December 8, 2010, DSM conveyed the acquisition proposal to Martek.

13. On December 21, 2010, before the opening of the securities markets in the United States, DSM and Martek announced that they had entered into a definitive agreement under which DSM would acquire all the outstanding shares of the common stock of Martek for \$31.50

in cash per share (the “Public Announcement”). The \$31.50 price represented a 35% per cent premium over the closing price for December 20, 2010.

14. Prior to the Public Announcement on December 21, 2010, there was no public information available concerning the contemplated acquisition of Martek.

**Defendant Abatemarco Acquires Non-Public Information About the Acquisition of Martek**

15. Before December 2010, DSM employees who worked on the potential acquisition of Martek were required by DSM to sign a confidentiality agreement and were notified of trading restrictions with respect to Martek.

16. Before December 10, 2010, a DSM employee, residing in Switzerland, who was engaged in the due diligence activities in support of DSM’s efforts to acquire Martek, disclosed material and non-public information concerning the acquisition to his common-law wife, with whom he had lived for more than 15 years. The DSM employee and his common-law wife had a history, pattern, or practice of sharing confidences such that the DSM employee expected that the information he disclosed would be kept confidential and that the common-law wife knew or reasonably should have known that it should be maintained in confidence.

17. The common-law wife and Defendant Abatemarco worked together at an insurance company in Switzerland for several years. The common-law wife was in a subordinate position to Defendant Abatemarco and provided administrative support for Defendant Abatemarco and others. Defendant Abatemarco knew that the common-law wife’s spouse (the DSM employee) worked on mergers and acquisition projects.

18. After the disclosure by the DSM employee to his common-law wife, but before December 10, 2010, Defendant Abatemarco obtained material non-public information concerning the acquisition of Martek from the common-law wife.

19. Defendant Abatemarco knew or should have known that the information obtained from the common-law wife was material and non-public.

20. Defendant Abatemarco knew or should have known that the common-law wife violated a relationship of trust by disclosing the material, non-public information regarding the acquisition of Martek.

21. Defendant Abatemarco knew or should have known that the non-public information about the Martek acquisition came from DSM, an acquiring company in a contemplated tender offer and merger of Martek.

**Defendant Abatemarco Purchases Martek Call Options**

22. Based upon the material and non-public information obtained from the common-law wife, Defendant Abatemarco liquidated all his holdings in his Swiss brokerage account and obtained additional funding from others to purchase Martek call option contracts.

23. Between December 10, 2010 and December 15, 2010, Defendant Abatemarco bought 2,616 call options contracts. The purchases constituted over 90% of the volume for the options.

24. The option purchases were executed on the Boston Options Exchange, the Chicago Board Options Exchange, the International Securities Exchange, NYSE Amex Options, NYSE ARCA Options and the NASDAQ OMX PHLX. By placing orders for securities that were listed in the United States and that traded on U.S. exchanges, Defendant Abatemarco purposely availed himself of the privilege of conducting business in the United States and engaged in conduct that had a foreseeable substantial effect within the United States.

25. There was no public information available concerning the contemplated acquisition before Defendant Abatemarco bought the Martek call option contracts.

26. The purchases made between December 10, 2010 and December 15, 2010 were the only options contracts that the Defendant Abatemarco traded through this brokerage account.

27. After the Public Announcement on December 21, 2010, the price of Martek's common stock increased 36% from the closing price on December 20, 2010.

28. The call option contracts held by Defendant Abatemarco rose dramatically during the day. In one instance, for example, the options increased 2,500% in value from the previous day's close of \$.25 to a closing on December 21, 2010 of \$6.50.

29. As a result of the above-described material increase in price, Defendant Abatemarco illegally profited by approximately \$1,193,594.00 from the sale of the call options.

### **FIRST CLAIM FOR RELIEF**

#### **VIOLATIONS OF EXCHANGE ACT SECTION 10(b) AND RULE 10b-5 PROMULGATED THEREUNDER [15 U.S.C § 78j(b) and 17 C.F.R. § 240.10b-5]**

30. Paragraphs 1 through 29 are realleged and incorporated by reference.

31. At all relevant times, Defendant Abatemarco knew, or should have known, that the information he possessed concerning the proposed acquisition of Martek had been conveyed to him in breach of a duty of trust and confidence. On the basis of that information Defendant Abatemarco purchased Martek call options.

32. By reason of the conduct described above, Defendant Abatemarco, 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.

33. By reason of the foregoing, the Defendant, 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].

**SECOND CLAIM FOR RELIEF**

**VIOLATIONS OF SECTION 14(e) OF  
THE EXCHANGE ACT AND RULE 14e-3  
[15 U.S.C. § 78n(e) and 17 C.F.R. § 240.14e-3]**

34. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

35. Prior to the public announcement of the tender offer for Martek, and after a substantial step or steps to commence the tender offer had been taken, Defendant Abatemarco, while in possession of material information relating to the tender offer, which information he knew or had reason to know was non-public and had been acquired directly or indirectly from a person acting on behalf of the offering person; the issuer of the securities sought or to be sought by the tender offer; or an officer, director, partner, employee, or other person acting on behalf of the offering person or such issuer, purchased securities of Martek.

36. By reason of the foregoing, Defendant Abatemarco directly or indirectly violated Section 14(e) of the Exchange Act [15 U.S.C. § 78n (e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court enter judgment:

- (a) permanently enjoining Defendant Abatemarco from violating Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];
- (b) ordering the Defendant to disgorge all illicit trading profits resulting from conduct alleged in this Amended Complaint, along with prejudgment interest thereon;
- (c) ordering the Defendant 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: April 20, 2011

Respectfully submitted,

/s/ Richard Hong

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