UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100977 / September 9, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22086

In the Matter of **JAMES M. PHILLIPS,** **Respondent.**	**CORRECTED ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against James M. Phillips ("Phillips" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings concern insider trading by James M. Phillips based on material, nonpublic information about a meeting between his then-employer (Inhibrx) and the U.S. Food and Drug Administration ("FDA") concerning the regulatory treatment of a clinical trial being conducted by Inhibrx. After learning of the meeting's positive outcome from a senior officer of Inhibrx, Phillips breached his duty of trust and confidence to Inhibrx and its shareholders by purchasing over $32,000 worth of Inhibrx stock. After Inhibrx publicly announced the meeting's outcome and the heightened probability of favorable treatment by the FDA, Inhibrx's stock price increased by almost 50%, and Phillips generated profits of over $42,000.

2. By engaging in the conduct described above, Phillips violated the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondent

3. **James M. Phillips**, age 48, resides in San Diego, California. From approximately September 2020 to January 2023, he was Director of Finance at Inhibrx.

Other Relevant Entities

4. **Inhibrx, Inc.**, incorporated in Delaware with its principal place of business in La Jolla, California, was a clinical-stage biopharmaceutical company whose common shares were registered with the Commission under Section 12(b) of the Exchange Act.

Background

5. As of the summer of 2022, Inhibrx was developing INBRX-101, a treatment for Alpha-1 Antitrypsin Deficiency ("AATD"). At this time, Inhibrx had not generated revenue from product sales and the company's value depended on the possibility that products then in development, including INBRX-101, would generate future revenues. INBRX-101 was Inhibrx's principal drug candidate, and Inhibrx was seeking a pathway for the drug's accelerated approval by the FDA.

6. Critical to the FDA's accelerated approval decision was establishing the clinical endpoint to be used in determining the efficacy of INBRX-101. At a meeting on August 31, 2022, FDA officials suggested to Inhibrx's management that the FDA might accept the use of a

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

surrogate endpoint instead of the typical endpoint used for drug approvals. Use of the surrogate endpoint would make accelerated approval of INBRX-101 more likely. According to a senior officer of Inhibrx ("Officer 1"), INBRX-101 "would be dead" if the FDA had refused to use the surrogate endpoint because the costs of the approval process would have increased dramatically.

7. Approximately one week after the FDA meeting, another senior officer of Inhibrx who had attended the meeting ("Officer 2"), emailed a senior FDA official to follow up on the meeting. He wrote that the FDA officials at the August 31 meeting appeared to be receptive to the use of a surrogate endpoint for INBRX-101 and, correspondingly, accelerated approval for the drug. The senior FDA official responded that he "look[ed] forward to our center working together with you to help to advance and expedite development here."

8. By this time, Phillips had been on Inhibrx's finance team for approximately two years and reported directly to Officer 1. His principal responsibility was to create financial projections for Inhibrx, focusing on its future income from investment and debt financing and its anticipated outlays for, among other things, clinical trials of drug therapy candidates.

9. One week before the August 31 FDA meeting, Officer 1 sent a company-wide email informing employees of an imminent meeting with the FDA concerning "the regulatory path" for INBRX-101. In her email, which Phillips received, Officer 1 told employees that "the outcome of this meeting may have a material impact on our stock," and that a trading blackout period was being imposed—that is, employees were prohibited until further notice from trading in Inhibrx's securities.

10. Officer 1 attached to her email a copy of Inhibrx's insider trading policy, which prohibited employees from trading in Inhibrx's securities while in possession of material, nonpublic information. Phillips had agreed to abide by this policy at the time of his onboarding to Inhibrx in September 2020. Phillips had also certified in September 2020 that he had virtually attended Inhibrx's "Public Company Training," which covered the insider trading policy.

11. Inhibrx's insider trading policy defined material, nonpublic information as "any information (positive or negative) that: is not generally known to the public, and which, if publicly known, would likely affect either the market price of [Inhibrx's] securities or a person's decision to buy, sell, or hold [Inhibrx's] securities." The policy and training materials provided examples of material, nonpublic information, including "significant clinical or regulatory developments" and "[r]egulatory actions by the FDA or other government agencies."

12. Following the August 31 FDA meeting, Phillips received several indications that Inhibrx's management anticipated favorable regulatory treatment from the FDA. On September 7, 2022, Officer 1 asked another employee to email her "the backup for the peak sales projections we use in our deck for AATD," and noted, "[w]e're going to start building in the revenue into our [financial] model." The spreadsheet that she received and forwarded to Phillips in the same email chain included sales forecasts for INBRX-101 and another drug candidate meant to treat AATD. Separately, on September 13, 2022, Officer 1 asked Phillips to create slides for Inhibrx's board of directors showing a financial model reflecting all five of Inhibrx's

drug candidates, including INBRX-101, moving through the FDA approval process. This was a reversal from Officer 1's messaging to Phillips earlier in 2022, in which she had suggested that Inhibrx might terminate or sell INBRX-101 operations.

13. On September 16, 2022, Phillips attended an in-person meeting with Officer 1. During that meeting, Officer 2 stopped by and expressed his expectation of favorable regulatory treatment for INBRX-101, and explained this was due in part to his impressions from the August 31 FDA meeting and from the positive email he had received from a senior FDA official a week after the meeting. In a text message later that day, Officer 1 told Phillips: "Think about how much more exciting stuff you know about the company from being there today - it just makes it so much [more] than a job." Phillips responded, "I agree 100."

14. Phillips knew or was reckless in not knowing that the information conveyed to him by Officer 2 on September 16, 2022, was material and nonpublic.

15. The September 16 meeting between Phillips, Officer 1, and Officer 2 took place on a Friday after stock markets had closed for the weekend. On the following Tuesday, September 20, 2022, Phillips bought Inhibrx securities. In order to fund the purchase, he sold his entire positions in two other stocks for proceeds of $33,460.52. Approximately three minutes after entering these sale orders, he used those proceeds to buy 2,500 Inhibrx shares for $32,248.98, or approximately $12.90 per share.

16. Phillips' trading on September 20, 2022, was part of a broader pattern of placing trades in Inhibrx securities during the company's securities trading blackout periods. As a member of the company's finance team, Phillips was subject to regular blackout periods beginning 20 days before the end of each financial quarter and ending two business days after the announcement of results for that quarter. Phillips had traded Inhibrx stock within these regular blackout periods on three previous occasions.

17. Phillips' trading on September 20, 2022, in addition to falling within the blackout period announced by Officer 1 one week before the FDA meeting on August 31, also took place during a regular, end-of-quarter blackout period applicable to members of the finance team.

18. Prior to the opening of stock market trading on October 4, 2022, Inhibrx announced that, "based on discussions with the [FDA], there is potential to pursue an accelerated approval for [INBRX-101] . . . using functional alpha-1 antitrypsin (AAT) serum levels as the surrogate endpoint. . . . The FDA expressed support to collaborate and work with [Inhibrx] to address the regulatory challenges associated with AATD drug development." Inhibrx's stock price closed at $29.76 on October 4—an increase of 47.47% above the previous day's closing price—on trading volume over 10 times higher than its 15-day average volume.

19. As a result of the company's announcement, the value of the Inhibrx shares that Phillips purchased based on material, nonpublic information increased substantially. As of

market close on October 4, 2022, Phillips' shares were worth $74,400, representing a profit of $42,151.02.

20. As a result of the conduct described above, Phillips violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

Disgorgement and Civil Penalties

21. The disgorgement and prejudgment interest ordered in paragraph IV.C are consistent with equitable principles, do not exceed Respondent's net profits from his violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.C shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent be, and hereby is, barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act for a period of five (5) years from the entry of this Order.

C. Respondent shall, within 21 days of the entry of this Order, pay disgorgement of $42,151.02, prejudgment interest of $5,432.93, and a civil money penalty in the amount of $63,226.53 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

D. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Phillips as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Joseph G. Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 21 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary