

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

	:	
SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	Case No.
	:	
v.	:	Jury Trial Demanded
	:	
D. MICHAEL DONNELLY,	:	
	:	
Defendant.	:	
	:	

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

NATURE OF THE ACTION

1. This is an insider trading case. Between November 18, 2011 and November 22, 2011, D. Michael Donnelly (“Donnelly” or “Defendant”), then Chief Operating Officer of Solutia, Inc. (“Solutia”), violated the federal securities laws by purchasing 8,130 shares of Solutia common stock in the brokerage accounts of his children on the basis of material, non-public information concerning the potential acquisition of Solutia by Eastman Chemical, Co. (“Eastman”). Through this illegal conduct, Donnelly realized ill-gotten gains of \$104,391.

2. On October 25, 2011, Donnelly learned that Eastman’s CEO had approached Solutia’s CEO with an offer to acquire Solutia for \$23.00 per share.

Donnelly learned on November 18, 2011, that Eastman's CEO informed Solutia's CEO that Eastman was going to submit an improved offer to acquire Solutia. After obtaining this material, non-public information, in breach of his duty of trust and confidence owed to his employer, Solutia, Donnelly purchased common stock of Solutia in the brokerage accounts of his children.

3. On January 27, 2012, a joint press release was issued announcing the acquisition of Solutia by Eastman for an implied value of \$27.65 per share, representing nearly a 42% premium over Solutia's closing share price at the close of trading the day before. After the announcement, Solutia stock rose to \$27.52 by the close of trading on January 27, 2012.

4. Between February 7-8, 2012, Donnelly sold all 8,130 shares of Solutia stock in his children's accounts for between \$27.93 and \$28.00 per share, resulting in a profit of \$104,391.

5. By engaging in the conduct described in this Complaint, Donnelly violated, and unless enjoined will continue to violate, Section 10(b) and of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

JURISDICTION

6. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§78u(e) and 78u-1] to enjoin such transactions, acts, practices, and courses of business, and to obtain disgorgement, prejudgment interest, civil money penalties and an officer and director bar.

7. This Court has jurisdiction over this action pursuant to Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u-1, and 78aa].

8. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa]. Certain of the transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within the Eastern District of Missouri and elsewhere, and were effected, directly or indirectly, by making use of any means or instrumentality of interstate commerce or the mails, or of any facility of any national securities exchange in connection with the acts, practices, and courses of business alleged herein.

FACTS

Defendant

9. D. Michael Donnelly (“Donnelly”), age 64, is a resident of Clayton, Missouri. During the relevant time period, Donnelly was employed as Chief Operating Officer of Solutia. Donnelly’s employment at Solutia terminated on July 2, 2012.

Relevant Entities

10. Solutia was a Delaware corporation headquartered in St. Louis, Missouri that manufactured performance materials and specialty chemicals. Until July 5, 2012, Solutia’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. Solutia filed periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. Solutia now operates as a subsidiary of Eastman.

11. Eastman is a Delaware corporation headquartered in Kingsport, Tennessee, manufacturing a range of advanced materials, additives and functional products, specialty chemicals, and fibers. Eastman's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. Eastman files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. Eastman's stock trades on the New York Stock Exchange.

Events Leading up to Eastman's Acquisition of Solutia

13. In July, 2011, Eastman's CEO contacted Solutia's CEO to set up a meeting to further discuss the possibility of a transaction between the two companies.

14. In August, 2011, the two met for dinner and Eastman's CEO explicitly expressed Eastman's interest in acquiring Solutia.

15. Subsequently, during the first half of October, 2011, the CEOs of Eastman and Solutia consulted with financial advisers and their respective boards of directors about the possibility of an acquisition.

16. On October 25, 2011, the CEOs of Eastman and Solutia met for dinner, where Eastman's CEO conveyed a verbal offer to acquire Solutia for \$23.00 per share, representing a 46% premium over the prior day's closing price.

17. On November 1, 2011, Solutia's board of directors held a special meeting by telephone with its outside legal counsel from Law Firm A, to discuss its response to Eastman's offer.

18. On November 2, 2011, Solutia's CEO informed Eastman's CEO that Solutia was not for sale at the \$23.00 price. Although Eastman's CEO told Solutia's

CEO that he was disappointed, he indicated that Eastman remained interested in acquiring Solutia.

19. On November 18, 2011, Eastman's CEO contacted Solutia's CEO and informed him that Eastman was willing to consider increasing its proposed price and planned to submit a letter with an improved offer to the Solutia board of directors.

20. On December 2, 2011, Eastman's CEO sent a letter to Solutia's CEO proposing that Eastman acquire Solutia for an implied value of \$25.75 per share, composed of cash and Eastman stock, which represented a 60% premium over the prior day's closing price. This proposal was discussed by the Solutia board of directors and representatives from Solutia's outside financial advisors and Law Firm A, at a regular meeting on December 5 and 6, 2011.

21. On December 7, 2011, Solutia's CEO informed Eastman's CEO that the Solutia board of directors felt Eastman's offer was still inadequate, but it was willing to continue discussions and provide due diligence to Eastman.

22. On December 9, 2011, the companies executed a confidentiality and standstill agreement.

23. During December, Solutia provided due diligence information to Eastman and the Solutia board of directors continued to discuss the acquisition with its financial advisers and Law Firm B, which were officially retained on December 21, 2011.

24. On January 19, 2012, after additional negotiations regarding the proposed acquisition price, Solutia's CEO informed Eastman's CEO that the due diligence meetings could be scheduled. Over the next several days, Solutia's CEO and Eastman's

CEO continued to discuss how to facilitate further negotiations, and Eastman's CEO indicated he would consult Eastman's board of directors on a price increase.

25. On January 23, 2012, the Solutia board met with its advisers to consider these alternatives and authorized Solutia's CEO to respond to Eastman with a price between \$28.00 and \$28.50 per share. Later that evening, Solutia's CEO informed Eastman's CEO that the Solutia board would approve an acquisition at an implied value of \$28.50 per share.

26. On January 24, 2012, Eastman's CEO proposed an implied price of \$26.85 per share. Later that day, after a meeting of the Solutia board of directors and its advisers, Solutia's CEO proposed a \$27.50 per share price to Eastman's CEO. By the afternoon of January 24, 2012, the CEOs of Solutia and Eastman had agreed to a deal in principle for \$22.00 per share in cash and .12 shares of Eastman stock, which worked out to be an implied value of \$27.65 at the close of business on January 26, 2012.

27. After additional negotiations over the terms of the merger agreement, on the evening of January 26, 2012, the boards of directors for Solutia and Eastman approved the acquisition.

28. On the morning of January 27, 2012, the parties issued a joint press release announcing Eastman's acquisition of Solutia. The price of Solutia closed at \$27.52 on January 27, 2012, roughly a 41% increase from the prior day's close. A total of approximately 78.7 million shares of Solutia stock were traded on January 27, 2012, compared to its historical average daily volume of 950,000 shares.

Donnelly Obtained Confidential, Non-public Information Regarding the Possible Acquisition

29. On October 25, 2011, Donnelly was part of a small group of Solutia executives made aware of Eastman's offer to purchase Solutia.

30. On November 18, 2011, Donnelly learned that Eastman was going to submit an improved offer to purchase Solutia.

Donnelly's Profitable Trading in Solutia Common Stock

31. Between November 18, 2011 and November 22, 2011, Donnelly purchased a total of 8,130 shares of Solutia stock in the brokerage accounts of his children.

32. After the press release announcing the acquisition of Solutia by Eastman, between February 7-8, 2012, Donnelly sold all 8,130 shares of Solutia stock in his children's accounts for a profit of \$104,391.

Donnelly Breached His Duty to Solutia and Violated Solutia's Policies

33. As an employee of Solutia, Donnelly owed his employer a fiduciary duty, or an obligation arising from a relationship of trust and confidence, to maintain the confidentiality of Solutia's information regarding its strategic transactions and to refrain from using information regarding the potential acquisition of Solutia for his own personal profit.

34. During the relevant time period, Solutia had policies and procedures in place imposing an obligation on its employees to maintain the confidentiality of its information and prohibiting its employees, including Donnelly, from trading on material, non-public information. In particular, Solutia's insider trading policy prohibited its

employees from buying or selling securities of Solutia, or any other company, if they became aware of material, non-public information about that company.

35. The policy defined material, non-public information as “information that is not available to the public at large that could affect the market price of a security and which a reasonable investor would regard as important in deciding whether to buy, sell or hold the security,” and included as an example, “news of a pending or proposed merger, acquisition, tender offer, or divestiture.”

36. By trading Solutia stock based on material, non-public information regarding the potential acquisition of Solutia by Eastman, Donnelly breached his duty to Solutia as well as Solutia’s stated policies and procedures regarding confidentiality and securities trading.

37. At the time of each illegal trade identified in this Complaint, the information was confidential and non-public.

38. The information was material and there is a substantial likelihood that the disclosure of the misappropriated information would have been viewed by a reasonable investor as having significantly altered the total mix of information available to investors.

39. Donnelly traded on the basis of this material, non-public information.

40. At all times relevant to this Complaint, Donnelly acted knowingly or recklessly.

COUNT I

Violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder

41. Paragraphs 1 through 40 are re-alleged and incorporated by reference herein.

42. As more fully described in paragraphs 1 through 40 above, Donnelly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or by the use of the mails, directly or indirectly: employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers and sellers of such securities.

43. Donnelly acted with scienter.

44. By engaging in the foregoing conduct, Donnelly violated, and unless enjoined will continue to violate, 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].

RELIEF REQUESTED

THEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that the Defendant committed the violations charged and alleged herein.

II.

Grant an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant from violating 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].

III.

Issue an Order requiring Defendant to pay to the Commission disgorgement of his ill-gotten gains from his illegal conduct, gained directly or indirectly from the transactions complained of herein, together with prejudgment interest thereon.

IV.

Order Defendant to pay to the Commission civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. §78u-1].

V.

Issue an Order, pursuant to Section 21(d)(2) of the Exchange Act, prohibiting Defendant 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 [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant an Order for such further relief as the Court may deem appropriate.

Dated: November 25, 2014

Respectfully submitted,

s/ Jeffrey A. Shank

JEFFREY A. SHANK

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