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

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**SECURITIES AND EXCHANGE COMMISSION,** :  
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 **Plaintiff,** :  
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 **-against-** :  
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 **13 Civ. ( )** :  
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 **COMPLAINT** :  
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 **ECF CASE** :  
 :  
 **ONE OR MORE UNKNOWN TRADERS IN THE** :  
 **SECURITIES OF** :  
 **ONYX PHARMACEUTICALS, INC.** :  
 :  
 :  
 **Defendants.** :  
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Plaintiff Securities and Exchange Commission (the “SEC”), for its Complaint against  
defendants Certain Unknown Traders in the Securities of Onyx Pharmaceuticals, Inc.

(“Defendants”), alleges as follows:

## SUMMARY

1. This is an insider trading case involving highly suspicious trading in call option contracts (“call options”) of Onyx Pharmaceuticals, Inc. (“Onyx”) by one or more unknown traders (collectively, the “Defendants”) just prior to an announcement by Onyx on June 30, 2013 that it had received, but rejected, an unsolicited proposal from Amgen, Inc. (“Amgen”) to acquire all of Onyx’s outstanding shares and share equivalents for \$120 per share in cash (the “Announcement”). The Announcement also stated that Onyx’s board of directors rejected Amgen’s proposal because it concluded that the offer significantly undervalued Onyx and that Onyx had authorized its financial advisors to contact potential acquirers who may have an interest in a transaction with Onyx that is in the best interests of Onyx’s shareholders.

2. Amgen’s \$120 per share price offer represented a 38% premium to Onyx’s closing share price of \$86.82 on Friday June 28, 2013. As a result of the Announcement, Onyx’s share price increased from a close of \$86.82 on June 28 to a close of \$131.33 on Monday July 1, an increase of over 51%, placing the Defendants in a position to gain substantial profits. The Announcement also caused a dramatic rise in Onyx’s trading volume by over 900% from June 28 to July 1.

3. Defendants in this action are either foreign traders or traders trading through foreign accounts whose timely purchases of Onyx calls generated profits of over \$4.8 million. On information and belief, the Defendants are either located or trading through accounts located in the Canary Islands and Beirut.

4. On information and belief, the Defendants purchased Onyx calls while in possession of material, nonpublic information about the offer to acquire Onyx at a substantial premium over the stock price at the time they made the purchases alleged in this Complaint.

5. The Defendants' trading in Onyx call options is highly suspicious. On June 26, 2013, on the day that Onyx's board was considering the Amgen offer, one or more of the Defendants purchased 80 Onyx call options with a strike price of \$80 (the "July 80 call options") and 175 call options with a strike price of \$85 (the "July 85 call options"), which were out of the money at the time based on Onyx's closing price of \$84.17 that day. These purchases deviated from the historical trading for these series of calls. The July 80 calls began trading on June 20, 2013, and the average daily volume was 16 contracts per day. The 80 July 80 calls purchased on June 26 represented an approximately 400 % increase over the average daily volume. The July 85 calls began trading on June 11, 2013, and the average daily volume was 6 contracts per day. The 175 July 85 calls purchased on June 26 represented an approximately 2,817% increase over the average daily volume.

6. The next day, June 27, 2013, one or more of Defendants purchased 544 more July 85 call options, which were slightly in the money based on Onyx's closing price of \$85.20 that day. The June 27 purchases also deviated from the historic trading for these series of calls. The average daily trading volume in the July 85 calls prior to June 27 was approximately 39 contracts, so the June 27 purchase represented a 1,294% increase over the average daily trading volume. The purchase of 544 contracts represented approximately 64% of the total trading volume in July 85 calls on June 27, 2013.

7. Finally on June 28, 2013, one or more Defendants purchased 50 call options at a strike price of \$90 (the "July 90 call options") and 270 call options at a strike price of \$92.50 (the "July 92.5 call options"). The June 28 purchases also deviated from the historic trading for these series of calls. The July 90 calls began trading on May 23, 2013, and the average daily volume was 21 contracts. The 50 July 90 calls purchased on June 28, 2013 represented an approximately

138% increase over the average daily volume. The July 92.5 calls began trading on May 22, 2013, and the average daily volume was 10 contracts. The 270 July 92.5 calls purchased on June 28 represented an approximately 2,600% increase over the average daily volume.

8. In all, Defendants collectively paid \$305,000 for the options purchased on June 26, 27 and 28, the three days leading up to the Announcement. They generated profits of \$1.1 million from the call options purchased on June 26, over \$2.3 million from the options purchased on June 27, and over \$1.1 million from the options purchased on June 28. Thus, as a result of these well-timed trades, Defendants collectively earned a return of over 14,200% in just three days.

#### **NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

9. The SEC brings this action pursuant to the authority conferred upon it by Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78u(d). The SEC seeks permanent injunctions against the Defendants, enjoining them from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, disgorgement of all ill-gotten gains from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest, and civil penalties pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1. The SEC seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act, 15 U.S.C. § 78u(d)(5).

#### **JURISDICTION AND VENUE**

10. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. § 78u(d), 78u(e), and 78aa.

11. Venue lies in this Court pursuant to Section 21(d), 21A, and 27 of the Exchange Act, 15 U.S.C. § 78u(d), 78u-1, and 78aa. Certain of the acts, practices, transactions, and

courses of business alleged in this Complaint occurred within the Southern District of New York and elsewhere, and were effected, directly or indirectly, by making use of means or instrumentalities of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange. During the time of the conduct at issue, shares of Onyx stock were traded on the NASDAQ Stock Exchange (“NASDAQ”), and options on its stock trade on various stock options markets in the United States, including the New York Stock Exchange and the Chicago Board Options Exchange.

### **DEFENDANTS**

12. As set forth in this Complaint, **certain unknown traders** engaged in highly suspicious and highly profitable trading in Onyx calls through omnibus accounts at Citigroup Global Markets, Inc. (“Citigroup Account”) and Barclays Capital, Inc. (“Barclays Account”).

### **RELEVANT ENTITIES**

13. **Onyx** is a biopharmaceutical company engaged in the development and commercialization of cancer therapies. Onyx is based in South San Francisco, California. Onyx’s common stock trades on NASDAQ under the ticker symbol ONXX, and options on its stock trade on various stock options markets in the United States, including the New York Stock Exchange and the Chicago Board Options Exchange.

14. **Amgen** is a biotechnology company based in Thousand Oaks, California. Amgen’s common stock trades on NASDAQ under the ticker symbol AMGN.

### **FACTS**

#### **Amgen’s Private Proposal to Acquire Onyx**

15. On June 13, 2013, Amgen’s CEO met with Onyx’s CEO and made a verbal, unsolicited offer to acquire Onyx. The next day, June 14, Onyx received a written proposal from

Amgen to purchase Onyx, for the same terms discussed verbally on June 13th. Amgen's written proposal was also forwarded to the members of the Onyx Board of Directors on June 14th.

16. On June 26, 2013, Onyx's Board of Directors met to consider Amgen's offer and decided not to accept Amgen's offer.

17. On June 28, 2013, Onyx informed Amgen that it was rejecting the offer.

18. Also on June 28, 2013, an article appeared in the Financial Post, a Canadian publication, regarding the Amgen offer.

19. On June 30, 2013, Onyx issued the Announcement, which disclosed to the market, among other things, that: (1) Amgen had made an unsolicited offer to purchase Onyx for \$120 per share, (2) Onyx had rejected the offer because it determined that Amgen's offer "undervalued Onyx and its prospects," and (3) Onyx had authorized its financial advisor to contact potential acquirers who may have an interest in a transaction with Onyx that is in the best interests of Onyx's shareholders. Onyx had not disclosed any of these facts to the market prior to June 30, 2013.

20. In reaction to the Announcement, on Monday, July 1, 2013, Onyx' stock closed at \$131.33, an increase of \$44.51, or approximately 51%, over the previous day's closing price of \$86.82. The trading volume in Onyx also substantially increased on July 1, 2013, to over 18,623,700 shares—an increase of over 900% from the previous day's trading volume of 1,851,600.

### **Suspicious and Profitable Trading by Unknown Traders of Onyx Securities**

21. Equity call options, like the ones traded by Defendants, give the buyer the right, but not the obligation, to purchase a company's stock at a set price (the "strike price") for a certain period of time (through "expiration"). In general, one buys a call option, or call, when

the stock price is expected to rise, or sells a call when the stock price is expected to fall. For example, one “July 85” call on Onyx stock would give the purchaser the right to buy 100 shares of that stock for \$85 per share before the call expired on July 20, 2013. If at the time of purchase the call strike price is above the price at which the stock is then trading, the call is “out-of-the-money” because it would be unprofitable to exercise the call and pay more for the stock than if it were purchased on a stock market.

22. On June 26, 2012, on the day that Onyx’s board was considering the Amgen offer, one or more of the Defendants using the Citigroup Account paid approximately \$99,000 to purchase 80 July 80 Onyx call options and 175 July 85 Onyx call options. The July 85 call options were out of the money at the time of purchase based on the Onyx’s closing price of \$84.17 on June 26, 2013. Therefore, these purchases were a bet that Onyx’s stock price would increase.

23. These purchases deviated from the historical trading for these series of calls. The July 80 calls began trading on June 20, 2013, and the average daily volume was 16 contracts per day. On June 26, the Citigroup Account purchased 80 July 80 calls, which represents an approximately 400 % increase over the average daily volume. The July 85 calls began trading on June 11, 2013, and the average daily volume was 6 contracts per day. On June 26, the Citigroup Account purchased 175 July 85 calls, which represents an approximately 2,817% increase over the average daily volume. Moreover, the Citigroup Account had not traded Onyx call options in the previous year.

24. In addition, on June 27, 2013, one or more Defendants using the Barclays Account paid approximately \$151,000 to purchase 544 July 85 call options. These call options were slightly in the money based on Onyx’s closing price of \$85.20 that day. These purchases

also deviated from the historic trading for these series of calls. The average daily trading volume in the July 85 calls prior to June 27 was approximately 39 contracts, so the June 27 purchase represented a 1,294 % increase over the average daily trading volume. The purchase of 544 contracts represented approximately 64% of the total trading volume in July 85 calls on June 27, 2013.

25. Furthermore, on June 28, 2013, one or more Defendants using the Citigroup Account paid approximately \$55,000 to purchase 50 July 90 call options and 270 July 92.5 call options. The June 28 purchases also deviated from the historic trading for these series of calls. The July 90 calls began trading on May 23, 2013, and the average daily volume was 21 contracts. On June 28, the Citigroup Account purchased 50 July 90 calls, which represents an approximately 138% increase over the average daily volume. The July 92.5 calls began trading on May 22, 2013, and the average daily volume was 10 contracts. On June 28, the Citigroup Account purchased 270 July 92.5 calls, which represents an approximately 2,600% increase over the average daily volume.

26. As a result of the Announcement, Onyx's share price increased from a close of \$86.82 on June 28 to a close of \$131.33 on Monday July 1, an increase of over 51%, placing Defendants in a position to gain substantial profits. The Announcement also caused a dramatic rise in Onyx's trading volume by over 900% from June 28 to July 1.

27. After the Announcement and the sharp increase in Onyx's share price, Defendants generated significant profits from their call options. Specifically, those Defendants trading in Onyx call options in the Citigroup Account generated profits of \$1.1 million on the July 80 and July 85 call options purchased on June 26, 2013 and over \$1.1 million on the July 90 and July 92.5 call options purchased on July 28, 2013. And the Defendants trading in Onyx call options

through the Barclays Account generated profits of at least \$2.3 million on the July 85 call options purchased on June 27, 2013.

28. The timing, size, and profitability of the Defendants' trades, as well as the absence of Onyx call options trading for at least a year prior to June 26, 2013 in the Citigroup Account, make these trades highly suspicious. Defendants collectively invested about \$305,000 in risky option positions less than a week before the Announcement. As a result of these well-timed trades, Defendants generated a profit of about \$4.6 million from their investment—a return of nearly 14,200% in just three days.

29. On information and belief, the unknown traders of Onyx securities were in possession of material, nonpublic information about the offer to acquire Onyx at a substantial premium over the stock price at the time they made the purchases alleged in this Complaint.

### **CLAIM FOR RELIEF**

#### **Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder (Against All Defendants)**

30. The SEC realleges and incorporates by reference paragraphs 1 through 29, as though fully set forth herein.

31. Upon information and belief, at the time the Defendants purchased Onyx calls, as alleged above, they were in possession of material, nonpublic information about the unsolicited offer for Onyx. Defendants: (a) knew, recklessly disregarded, or should have known that their trading was in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, owed to the shareholders of Onyx, or to the source from whom they received the material, nonpublic information; and/or (b) knew, recklessly disregarded, or should have known, that the material, nonpublic information about the contemplated acquisition that had been

conveyed to them was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence.

32. Upon information and belief, any and all material, nonpublic information that the Defendants received concerning the unsolicited offer for Onyx, as set forth above, was disclosed to them by a person or persons who tipped such information with the expectation of receiving a benefit.

33. By virtue of the foregoing, the Defendants, singly or in concert with others, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a 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 the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

34. By virtue of the foregoing, the Defendants, directly or indirectly, violated, and unless enjoined, will again 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 SOUGHT**

**WHEREFORE**, the SEC respectfully requests that this Court enter a Final Judgment:

#### **I.**

Permanently restraining and enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, 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.

**II.**

Ordering Defendants to disgorge, with prejudgment interest, all illicit trading profits or other ill-gotten gains received as a result of the conduct alleged in this Complaint.

**III.**

Ordering Defendants to pay civil monetary penalties pursuant to Section 21A of the Exchange Act, 15 U.S.C. §§ 78u(d)(3), 78u-1.

**IV.**

Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
July 3, 2013

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