

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108

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Securities
DIVISION

IN THE MATTER OF:

RISK REWARD CAPITAL
MANAGEMENT CORP.

ADMINISTRATIVE
COMPLAINT

RRC MANAGEMENT LLC

Docket No. E-2010-0057

RRC BIO FUND, LP

JAMES A. SILVERMAN

I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (respectively, the "Enforcement Section" and the "Division") files this administrative complaint (the "Complaint") in order to commence an adjudicatory proceeding against Risk Reward Capital Management Corp., RRC Management LLC, the RRC Bio Fund, LP (the "Fund") and James A. Silverman (collectively, "Risk Reward" or "Respondents") for violating M.G.L. c. 110A, the Massachusetts Uniform Securities Act (the "Act"), and 950 CMR 10.00 *et seq.* (the "Regulations"). This Complaint focuses upon the Respondents' use of material, non-public information when trading securities and subsequent attempts to hide wrongdoing by destroying evidence and altering documents filed with the Division.

The Enforcement Section seeks an order: 1.) requiring the Respondents to cease and desist from further violations of the Act; 2.) ordering the Respondents to provide an accounting of

all ill-gotten gains received as a result of the alleged wrongdoing; 3.) ordering the Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 4.) ordering the revocation of Respondent Risk Reward Capital Management's registration as an registered investment adviser; 5.) ordering the revocation of Respondent Silverman's registration as an investment adviser representative; 6.) enjoining Respondent Silverman from performing investment advisory services for compensation on behalf of any person or entity within the Commonwealth; 7.) imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Hearing Officer may determine; and 8.) requesting the Director or Hearing Officer to take any other appropriate actions against Respondents which may be in the public interest and necessary for the protection of Massachusetts investors.

II. SUMMARY

In May 2010, the Division initiated an announced books and records examination of Risk Reward Capital Management, Corp (the "Corporation"), an investment adviser registered in the Commonwealth of Massachusetts, and James A. Silverman ("Silverman"), its sole investment adviser representative. As part of the examination, the Division also reviewed RRC Management, LLC (the "LLC"), which manages the RRC Bio Fund (the "Fund"). The Fund is concentrated in biotechnology stocks and controlled by Mr. Silverman. Collectively, these persons and entities are referred to throughout this complaint as "Risk Reward."

Silverman began managing the Fund in early 2007. The first year returns for the Fund were poor, losing 16.9% of its value. In early 2008 Silverman began to pay \$80,000.00 a year from the Fund's assets to retain the services of Guidepoint Global LLC, ("Guidepoint") a so-called "expert network" firm, in an effort to make the hedge fund more profitable. With access

to Guidepoint, the Fund began a dramatic resurgence, generating returns of over 55% in 2009 and 52% in 2010. These returns were generated, at least in part, upon Silverman's receipt of material non-public information he received through Guidepoint consultations.

Guidepoint acts as a matchmaker, providing its clients, largely investment professionals, access to industry insiders for one-on-one consultations. Despite the inherent risk that insiders, such as investigators on clinical trials, may provide non-public information, Guidepoint does not take any proactive steps to ensure that consultants do not relay confidential information to clients. For example, Guidepoint does not prohibit consultants who are subject to confidentiality agreements from participating in consultations. In fact, Guidepoint does not screen the confidentiality agreements to which its consultants are subject. Finally, Guidepoint does not monitor consultations or inquire as to their substance. Rather than taking proactive steps, Guidepoint places the responsibility of recognizing and avoiding such conflicts squarely upon the expert consultant.

Silverman used Guidepoint to get access to clinical trial investigators working on ongoing clinical trials; indeed over 60% of the consultants Silverman met with were clinical trial investigators. Silverman knew clinical trial investigators are bound by confidentiality as to the drugs they are investigating, but claimed he relied on Guidepoint's "screening process" to ensure that nonpublic information was not released to him. Silverman's reliance was misplaced as Guidepoint takes no active steps to screen out consultants due to confidentiality concerns.

This complaint focuses on two public companies – Ariad Pharmaceuticals, Inc. ("Ariad") and Questcor Pharmaceuticals Inc. ("Questcor") – for which Silverman received non-public information through Guidepoint consultants.

In the case of Ariad, a small pharmaceutical company developing a cancer drug called AP24534, Silverman used Guidepoint consultants to access clinical investigators involved in the clinical trials of AP24534. From 2008 through 2010, AP24534 was undergoing Phase 1 clinical trials, a critical step in obtaining Food and Drug Administration (“FDA”) approval. AP24534 was believed to have great potential, both in treating cancer patients whose cancer was resistant to other treatments, and in generating revenues for Ariad, which had never turned a profit. Despite AP24534’s promise, in early 2009 uncertainty remained as to whether AP24534 would prove as effective and safe in humans during clinical trials as it had been in animal studies. Silverman, while excited about the prospects of AP24534, was also acutely aware that unexpected negative results in human trials – such as major side effects or a lack of efficacy in humans – could drive down the price of Ariad stock. Prior to establishing a substantial position in Ariad, Silverman used Guidepoint to access clinical investigators on the AP24534 trial, who revealed interim results for AP24534 before they were made public.

Each of the investigators Silverman consulted was barred by confidentiality from discussing AP24534 Phase 1 while it was ongoing. Despite their confidentiality obligations, each investigator provided Silverman material, non-public information regarding how the trial was progressing. In return, the investigators received between \$400.00 and \$1,000.00 an hour through Guidepoint. Armed with inside information regarding the AP24534 trial, Silverman purchased 263,500 shares of Ariad. When Ariad released preliminary information akin to what Silverman had received, its stock shot up in value, increasing 30% in one day’s trading. Since that release Ariad’s stock price has continued to rise as more data has become available.

In the case of Questcor, Silverman obtained non-public information including exact statistics on the outcome of a case series on the efficacy of Questcor’s primary product Acthar

Gel before the results were published in a medical journal. The medical society, which published the results, had an embargo policy that prohibited disclosure of the case study results until they published the information. In an interview with the Division, the Doctor who provided the results to Silverman, ahead of their publication, stated it would be improper to provide such information to an investor prior to its publication. After receiving the information Silverman established a significant position in Questcor. Silverman also knew that he should not have received this information, as he deleted his notes containing the study results prior to producing them to the Division in response to its subpoena.

Silverman additionally deleted other documents, failed to maintain required records, and made multiple false filings with the Division. Silverman deleted notes from a consultation regarding Ariad which revealed that the consultant was an investigator on the clinical trial. Silverman also deleted electronic correspondence that was responsive to a pending Division subpoena rather than producing the documents to the Division, including notes he feared “crossed the line” because they contained discussions with Ariad insiders. Silverman also submitted documents to the Division under false pretenses, including producing documents in response to a Division document request which had not been in existence when the document request was issued.

The Division’s books and records review of Risk Reward also uncovered a widespread pattern of non-compliance with the Act and the Regulations. The Division uncovered violations of minimum financial requirements, document retention requirements, and a myriad of dishonest and unethical business practices, including improper assessment of performance-based fees. The Division observed a disorderly office appearance during the on-site Examination. In addition to leaving client documents including sensitive financial information laying about on tables, chairs,

sofas and floors, the Division discovered that the office doors did not lock, leaving client data vulnerable.

Silverman used Guidepoint to gain access to material non-public information, which he traded upon. Silverman's actions allowed him to gain an unfair advantage over other investors. Then in response to the Division's investigation into his practices, Silverman destroyed and altered documents relative to the investigation. Silverman's actions crossed the line from legitimate research, to seeking out material non-public information, which he acted on to the detriment of other investors.

III. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities, as provided for by the Act. The Act authorizes the Division to regulate: 1.) the offers, sales, and purchases of securities; 2.) those individuals offering and/or selling securities; 3.) those individuals providing investment advice to others for compensation; 4.) investment advisers registered in the Commonwealth; and 5.) individuals transacting business as investment adviser representatives within the Commonwealth.

2. The Division brings this action pursuant to the enforcement authority conferred upon it by §§204 and 407A of the Act and M.G.L. c. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all Regulations and rules promulgated thereunder.

3. This proceeding is brought in accordance with §§ 101, 102, 204, 404 and 407A of the Act and its Regulations. Specifically, the acts and practices constituting violations occurred within the Commonwealth of Massachusetts.

4. The Division specifically reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RESPONDENTS

5. James A. Silverman (“Silverman”), age 43, is an individual with a last known residential address of 9B Russel Street, Cambridge MA 02140. Silverman is currently assigned Central Registration Depository (“CRD”) number 2421305. Silverman is the sole registered investment adviser representative of Risk Reward Capital Management Corp and the sole managing member of RRC Management LLC.

6. Risk Reward Capital Management (the “Corporation”) is a Massachusetts Corporation, with a last known principal place of business at 217R Concord Avenue, Cambridge, MA 02138. The Corporation is an investment adviser registered with the Commonwealth of Massachusetts and assigned Investment Adviser Repository Designation (“IARD”) number 124513.

7. RRC Management, LLC (the “LLC”) is a Delaware limited liability company, with a last known principal place of business at 217R Concord Avenue, Cambridge, MA 02138. The LLC is assigned employer identification number 000950143. The LLC functions as the management company for the RRC Bio Fund LP.

8. RRC Bio Fund, LP (the “Fund”) is a Delaware limited partnership, with a last known principal place of business at 217R Concord Avenue, Cambridge, MA 02138. The Fund is assigned employer identification number 000950210.

9. Risk Reward (“Risk Reward” or “Respondents”) refers collectively to Silverman, the Fund, the Corporation, and the LLC.

V. OTHER INVOLVED AND RELATED PARTIES

10. Guidepoint Global LLC (“Guidepoint”) is a New York limited liability company, with a principal place of business at 730 Third Avenue, 11th Floor, New York, NY, 10017. Guidepoint is a so-called “expert consulting firm” that offers services whereby clients are provided access to industry participants with expertise in particular areas, including biotechnology.
11. Questcor Pharmaceuticals, Inc. (“Questcor”) is a California corporation, with a principal place of business at 3620 Whipple Road, Union City, CA, 94578.
12. Ariad Pharmaceuticals, Inc., (“Ariad”) is a Delaware corporation, with a principal place of business at 26 Landsdowne Street, Cambridge, Massachusetts 02139-4234.
13. Doctor 1 is a medical doctor and a Guidepoint Global expert consultant specializing in Nephrology. Silverman was granted access to consult with the Doctor 1 pursuant to Silverman’s Guidepoint Global service contract on June 14, 2010.
14. Investigator 1 is a medical doctor and Director of hematologic malignancies. Investigator 1 was a clinical investigator involved in phase 1 clinical trials of AP24534. Silverman consulted with Investigator 1 pursuant to Silverman’s Guidepoint Global service contract on April 29, 2009, August 8, 2009, January 12, 2010, and November 11, 2010.
15. Investigator 2 is a Professor of Medicine and a cancer specialist. Investigator 2 was a clinical investigator involved in phase 1 clinical trials of AP24534. Silverman consulted with Investigator 2 pursuant to Silverman’s Guidepoint Global service contract on May 6, 2009, and again December 29, 2009.
16. Investigator 3 is a medical doctor and cancer specialist. Investigator 3 was a clinical investigator involved in phase 1 clinical trials of AP24534. Silverman consulted with Investigator 3 pursuant to Silverman’s Guidepoint Global service contract on July 13, 2009.

VI. ALLEGATIONS OF FACT

17. In May 2010, the Securities Division of the Office of the Secretary of the Commonwealth initiated a routine, announced examination of the books and records of Silverman, Risk Reward Capital Management, and RRC Management LLC (the “Examination”).

18. The allegations contained herein were discovered during the course of the Examination.

Structure and History of Respondents’ Business Operations

19. On January 1, 1997, Silverman registered Risk Reward Capital Management (the “Corporation”) with the Commonwealth of Massachusetts as an Investment Adviser.

20. On September 29, 2006, Silverman established the RRC Management LLC (the “LLC”) as a Delaware limited liability company.

21. In September, 2006, Silverman formed the RRC Bio Fund Limited Partnership (the “Fund”), an unregistered hedge fund.

22. The LLC was “formed to render investment advisory and consulting services to individuals and institutions.” The LLC is the general partner of the Fund and provides all investment advisory services to the Fund.

23. From its inception Silverman has been the sole managing member of the LLC.

24. The stated purpose of the Fund is to invest “in equity securities of U.S. and foreign small and mid-cap biotechnology and specialty pharmaceutical and device companies.”

25. The Fund began accepting partnership interests in January 2007 and began trading in February 2007.

26. Silverman had no experience as a hedge fund manager prior to the operation of the Fund.

27. Silverman has no formal education or training with respect to biotech matters.

28. The Fund lost 16.9% of its value in its first twelve months in operation.

29. After the Fund lost 16.9% in its first year of operation, Silverman chose to begin paying, from Fund assets, \$80,000.00 in annual fees to Guidepoint.
30. In consideration of this \$80,000.00 annual fee, Guidepoint provided Silverman access to biotech industry insiders.
31. On January 1, 2008, Silverman entered a Services Agreement with Guidepoint (the “Agreement”).
32. Silverman began using Guidepoint – despite the added cost and the poor returns of his first year of operation – because the service would be useful for Silverman’s “research process” and to “try[] to get educated.”
33. Shortly after executing the agreement with Guidepoint, the Fund hit its all-time lowest value, down 27.3% in March of 2008. From March of 2008 forward, armed with information from Guidepoint’s insiders, the Fund began a dramatic rebound.
34. In 2009, the Fund had an annual gain of 55.3%.
35. In 2010, the Fund had an annual gain of 52%.

Silverman Gained Access to Industry Insiders through Guidepoint Global

36. Guidepoint describes itself as a “customized knowledge network” and advertises that it provides “industry professionals who provide consulting services to the financial, investment, strategy consulting, and corporate communities.”
37. Guidepoint claims its service provides “the information you need to make timely, informed investment decisions.”
38. Guidepoint’s clients are predominantly investment advisers to hedge funds and other investment professionals.

39. Silverman used Guidepoint to procure access to industry insiders who would otherwise not be available for consultations.
40. To initiate a consultation, Silverman would contact Guidepoint with a request to discuss a particular topic (a “Project”).
41. Guidepoint maintains a network of industry experts and insiders (“Expert Consultants”) in a variety of specialties, including biotechnology and pharmaceuticals. Guidepoint uses this network to locate individuals that may have the expertise required for each Project.
42. In response to his request for information on a Project, Silverman would receive contact information for one or more Expert Consultants, along with times when the Expert Consultant(s) would be available.
43. Expert Consultants’ rates of compensation vary.
44. Expert Consultants are compensated by Guidepoint for consulting with Guidepoint clients on a Project.
45. Once Guidepoint forwarded the name(s) and contact information of the Expert Consultant(s) to Silverman, Silverman chose which Expert Consultant(s) to contact.
46. Only Expert Consultants that participate in Guidepoint Projects are compensated. Expert Consultants who refuse a consultation citing confidentiality concerns, or other reasons, are not compensated.

Guidepoint Global Does Not Screen Expert Consultants for Conflicts of Interest or Confidentiality Restrictions Prior to Placing Expert Consultants on Projects

47. Guidepoint does not consider any disclosed conflicts of interest or confidentiality restrictions that Expert Consultants may be under prior to providing clients access to those experts. Silverman’s project manager at Guidepoint testified: “if the [expert] says that they’re bound [by confidentiality] and they don’t want to even touch the subject then they’re not sent to

the client . . . but if they're bound and they're still willing to talk on the topic then I send them to the client.”

48. Guidepoint's terms and conditions place the responsibility entirely upon the Expert Consultant to identify and avoid any disclosure that would violate a confidentiality agreement. Guidepoint's current Expert Consultant agreement contains the following conditions:

Conditions of Membership in Guidepoint Global Advisors and Participation in Consulting Projects

You may become an Advisor and participate in any particular Project if, and only if, all of the following compliance conditions are satisfied:

. . .

4. Your membership and participation would not result in the disclosure of any confidential or proprietary information (including trade secrets) not owned exclusively by you.
5. Your membership and participation would not result in any communication or disclosure to any third party of any material non-public information concerning any public company.

49. While Guidepoint has this policy, the company takes no affirmative steps to restrict Expert Consultants from participating in consultations on matters for which they are bound by confidentiality. Rather, the onus is solely upon the Expert Consultant to recognize a conflict and avoid it.

50. In fact, because Guidepoint does not participate or monitor consultations in any way, Guidepoint would have no way of detecting or averting purposeful or inadvertent disclosure of confidential information during consultations.

51. Guidepoint does not prohibit pharmaceutical company insiders or clinical study investigators from participating in consultations with clients on drugs or clinical trials for which they are bound by confidentiality.

52. Guidepoint does not screen out or inquire whether a potential Expert Consultant with expertise on particular drugs is bound by any confidentiality agreements that would restrict what he or she can disclose to Guidepoint's clients.

53. Guidepoint does request that Expert Consultants disclose to Guidepoint matters to which they are bound by confidentiality. However, Guidepoint does not conduct an independent evaluation of the relevant confidentiality agreements to determine whether they are applicable to specific Projects, and as discussed in paragraph 47 above, will still allow Expert Consultants to participate in a Project when they are bound by such confidentiality.

54. Guidepoint does not participate in consultations between clients and Expert Consultants and has no involvement with the substance of the discussions.

Silverman Elicited Material, Non-Public Information from Industry Insiders, Excusing His Conduct through a Mislplaced and Unreasonable Reliance on Guidepoint's "Screening Process"

55. Silverman received material, non-public information related to publicly traded companies through Guidepoint Expert Consultants and then traded in the securities of publicly traded companies while in possession of the material, non-public information.

56. Silverman used Guidepoint's services in order to get quick, convenient access to industry insiders.

57. Specifically, Silverman gained access to clinical trial investigators involved in ongoing clinical trials and obtained confidential information on those trials.

58. During 2009 and 2010, Silverman met with approximately 225 Expert Consultants. At least 60% of those Expert Consultants are believed to be clinical trial investigators bound by confidentiality with respect to a clinical trial.

59. In testimony, Silverman claimed Guidepoint “screened” its Expert Consultants to make sure they did not breach their confidentiality duties:

“[T]hey do have the screening. . . I’ve seen their policy. You know, whether they are vigilant in it, I’m not in a position to know, but for their (sic) sake of their business, they ought to be as vigilant as they damn well can be.”

60. Silverman testified that he knew clinical investigators could be insiders, duty-bound not to discuss clinical trial data.

61. Silverman claimed he believed Guidepoint actively screened Expert Consultants to ensure they did not transmit inside information:

I mean part of the reason – part of the advantage of using like a Guidepoint . . . for this type of services is that they are acting as the intermediary, you know, for their clients, so they – you know, they presumably would educate the doctors, you know, on, hey, if you have nondisclosure agreements, you can’t do calls and educating them on what insider information is so they are not taking calls.

62. Despite his claim that Guidepoint actively screened consultants, Silverman could not recall anyone at Guidepoint ever providing him any assurances that doctors were actively screened to ensure they did not provide inside or confidential information during consultations.

63. When questioned, Silverman could not recall any specifics of Guidepoint’s supposed “screening process.”

64. In testimony Silverman could not recall any representative of Guidepoint telling him that such screening existed.

65. Guidepoint’s policies – which Silverman has seen – do not support Silverman’s claim that such screening occurs.

66. Under the Agreement, Silverman paid Guidepoint \$80,000.00 a year to access up to two Guidepoint-provided industry insiders per week.

67. Silverman, in the Agreement, agreed not to:

elicit or otherwise obtain from any Advisor . . . any material nonpublic or otherwise confidential information concerning any individual or entity with which they have or have had a consulting, advisory, employment, or similar relationship. Such actions may constitute a violation of applicable laws (including, without limitation, federal and/or state securities laws).

A. ARIAD PHARMACEUTICALS, INC.

Silverman Received Material, Non-Public Information about Ariad Pharmaceuticals' Ongoing Clinical Trial of AP24534

68. One of the companies that Silverman discussed with multiple Guidepoint-provided industry insiders was Ariad Pharmaceuticals.

69. Ariad is a small, start up pharmaceutical company. Ariad describes its mission as “to discover, develop and commercialize small-molecule drugs to treat . . . aggressive cancers.”

70. Ariad has never been profitable, does not generate revenue, and does not have any marketable drugs.

71. As a result, the future viability and success of Ariad is inextricably tied to the success or failure of the drugs it is developing.

72. Generally, in order to develop and eventually market pharmaceutical drugs in the United States, drugs must undergo substantial studies and rigorous clinical trials. The purpose of such clinical trials is to demonstrate safety and efficacy of the drug, and thereby to obtain Food and Drug Administration (“FDA”) approval. FDA approval is a necessary step to bring drugs to the market where they can produce revenues.

73. As a result, the driving force behind the stock price of a small pharmaceutical company such as Ariad is the progression of clinical trial studies, with the eventual goal of achieving FDA approval.

74. Study results, whether they be good or bad, expected or unexpected, may dramatically impact on the value of Ariad’s stock.

AP24534's Strong Market Potential

75. In 2009, Ariad's most promising oncology drug candidate undergoing clinical trials was AP24534, also known as Ponatinib ("AP24534").

76. From 2009 to the present day, AP24534 has been in phase I and II clinical studies.

77. Through Guidepoint, Silverman gained access to four (4) Expert Consultants a total of eight (8) times regarding AP24534. On information and belief, all of these Expert Consultants were clinical investigators in the clinical trial of AP24534.

78. On October 9, 2007, ARIAD announced, for the first time, the structure of a protein responsible for drug-resistant chronic myeloid leukemia ("CML") and acute myeloid leukemia ("AML"). The protein is referred to as Bcr-Abl.

79. AP24534 is thought to be a potential treatment for CML. The drug is believed to work by inhibiting the Bcr-Abl protein.

80. The promise of AP24534 was particularly strong in that it was thought potentially effective in combating all Bcr-Abl mutations, including a mutation that was resistant to all other available drugs ("T315i" or the "T315i mutation").

81. Mutations of Bcr-Abl, including the T315i mutation, can cause cancer cells to become resistant to drug treatments over time, making the drugs ineffective in combating the cancer.

82. However, before clinical trials, such promise had only been demonstrated in pre-clinical animal data.

83. Positive results in animal data do not always translate into similar positive results in human subjects.

84. According to Ariad, AP24534, if effective and safe for use, would be “the first drug ... that cuts across all of the forms of resistance and is highly potent at modest levels of administration.”

Results from Clinical Trials Were Critical to Ariad’s Future and Would Impact Investors’ Decisions as to Whether to Invest in the Company

85. Despite AP24534’s promising results in animal studies, in early 2009 uncertainty remained as to whether AP24534 would prove as effective and safe in humans during clinical trials as it was observed in preclinical studies.

86. Ariad warned as much to its investors in its SEC filings: “[T]he promising activity we have seen in AP24534 in preclinical studies may not be predictive of the results obtained in clinical trials.”

87. Ariad did not have any drugs on the market or any source of revenue, there was an increased risk that negative results in AP24534’s trials could cause the value of Ariad’s stock to fall. As a result, Ariad warned that the company’s success was dependant in part upon the ability of the company to successfully bring products such as AP24534 to market by gaining regulatory approval for its use.

88. Certain risks related to the company’s potential for future profitability were also explicitly detailed by the company:

Factors which could affect the ability to obtain regulatory approval and to achieve market acceptance and gain market share for . . . AP24534 . . . include, among other factors, product formulation, *dose, dosage regimen, the ability to obtain timely and sufficient patient enrollment in clinical trials, the risk of occurrence of adverse side effects in patients participating in clinical trials . . . the ability to successfully differentiate product candidates from competitive product(s)* and to sell, market and distribute, directly or indirectly, such product candidates. (emphasis added).

89. Silverman, while excited about the prospects of AP24534, was also acutely aware that unexpected negative results in human trials could drive down the price of Ariad stock.

90. Silverman knew positive data in animals may not translate into positive data in human trials, and that potential problems or major side effects may also unexpectedly manifest for the first time during human trials. Therefore, a large amount of uncertainty remained as to whether AP24534 would be a viable drug in the market.

91. Ariad began conducting Phase 1 clinical trials of AP24534 on April 15, 2008. The formal title of the study was “A Phase 1 Dose Escalation Trial to Determine the Safety, Tolerability and Maximum Tolerated Dose of Oral AP24534 in Patients With Refractory or Advanced Chronic Myelogenous Leukemia and Other Hematologic Malignancies” (“AP24534 Phase 1”).

92. The purpose of AP24534 Phase 1 was to perform a dose escalation study to determine safety of the drug, the maximum tolerated dose (“MTD”) and any dose-limiting toxicity (a “DLT”). The effectiveness of the drug would also be studied.

Investigator 1 Provided Silverman Material Non-Public Information in Violation of His Confidentiality Agreement with Ariad

93. Based upon Guidepoint Global invoices, Silverman consulted with Investigator 1 on April 29, 2009 (the “April 29th Consultation”).

94. Investigator 1 was a principal investigator on AP24534 Phase 1. At the time of the consultation, Silverman knew that Investigator 1 was involved in AP24534 Phase 1.

95. Investigator 1 entered a confidentiality agreement with Ariad with respect to AP24534 Phase 1 on July 28, 2008.

96. At the time of the April 29th Consultation, Investigator 1 was bound by confidentiality with respect to the AP24534 Phase 1 clinical trial.

97. Under the terms of the Investigator 1's confidentiality agreement with Ariad, study data was deemed the property of Ariad and Investigator 1 was prohibited from disclosing such confidential information to third parties.

98. Despite being bound by confidentiality, Investigator 1 provided Silverman information regarding how many patients were enrolled in AP24534 Phase 1, specific observations of efficacy in patients with the T315i mutation, specific observations of side effects (or the lack thereof), and dosage levels.

99. Investigator 1 received \$400.00 for the April 29th Consultation.

100. As was Silverman's practice, Silverman created contemporaneous notes for the April 29th Consultation. (**Exhibit 1**)

101. At the April 29th Consultation Investigator 1 provided Silverman with material non-public information in violation of his confidentiality agreement with Ariad.

102. During the April 29th Consultation Investigator 1 told Silverman that, as of the time of the consultation, six (6) or seven (7) patients were taking AP24534 and he had seen one patient in an "accelerated blast crisis" that was "resistant to a bunch of things before" having "a remarkable response."

103. During the April 29th Consultation Investigator 1 also indicated one of his patients with the T315i mutation may be responding to AP24534 favorably, and that he had not yet seen any side effects with the use of the drug.

104. On information and belief, none of this information referenced in paragraphs 102 through 103 above was publicly available.

105. Silverman's receipt of material, non-public information relating to the known efficacy, safety, and dosage levels of AP24534 Phase 1 directly from Investigator 1, in violation of

Investigator 1's confidentiality agreement, gave Silverman an unfair advantage vis-à-vis other investors, as Silverman now knew that AP24534 Phase 1 was progressing without significant setbacks.

106. The Fund held a 5000 share position of Ariad prior to the April 29th Consultation. Silverman established this position shortly before the consultation.

107. In testimony Silverman stated that with respect to the April 29th Consultation, he "didn't see anything in there that would have raised some flags for [him]", but had Investigator 1 noted major adverse side effects with AP24534, he would have been dissuaded from investing.

108. Far from being dissuaded by the April 29th Consultation, Silverman purchased 38,000 shares of Ariad for the Fund in the next two days, increasing the position almost tenfold.

109. From April 29, 2009 to May 5, 2009, Silverman purchased, with scienter, 47,000 shares of Ariad stock for the Fund while in possession of material, non-public information.

Investigator 2 Provided Silverman Material Non-Public Information in Violation of His Confidentiality Agreement with Ariad

110. Silverman consulted with Investigator 2 on May 6, 2009 (the "May 6th Consultation").

111. Investigator 2 was a principal investigator on AP24534 Phase 1. At the time of the May 6th Consultation, Silverman knew that Investigator 2 was involved in AP24534 Phase 1.

112. Investigator 2 had entered a confidentiality agreement with Ariad with respect to AP24534 Phase 1 on March 11, 2008.

113. At the time of the May 6th Consultation, Investigator 2 was bound by confidentiality with respect to the AP24534 Phase 1 clinical trial.

114. Under the terms of the Investigator 2 confidentiality agreement with Ariad, study data was deemed the property of Ariad and Investigator 2 was prohibited from disclosing such confidential information to third parties.

115. Despite being bound by confidentiality, during the May 6th Consultation Investigator 2 provided Silverman material non-public information including: 1.) how many patients were enrolled in AP24534 Phase 1; 2.) specific observations of AP24534's efficacy in patients with the T315i mutation and CML patients in general; 3.) specific observations of side effects (or the lack thereof); and 4.) dosage levels.

116. Investigator 2 received \$1000.00 in compensation for the May 6th Consultation.

117. As was Silverman's practice, Silverman created contemporaneous notes for his May 6, Consultation with Investigator 2 (**Exhibit 2**).

118. Silverman's notes included the following notations with regard to AP24534 :

- 24-8 and now 15mg (Edit: June 3, 2009 up to 30mg)
- 20 patients so far
- All have T315i
- First 8, 6 responders, people who have failed everything
- Only issue is toxicity.
-
- AP so far is a dynamite drug
 - If continues with no unexpected tox
 - Will be a super gleevec
 - With 20 on drug
 - 6/8 first responded
 - Appears at least 75% are responding well
 - Mutated, accelerated or blastic phase, the worst patients and have failed 2-3, gleevec, desatonib, and ilotnib and have progressed.

119. Investigator 2 told Silverman that, as of the May 6th Consultation, the clinical data was consistent with preclinical data with respect to AP24534's affect on the T315i mutation, that the clinical trial dosage level had been increased to eight milligrams, that twenty (20) patients had been enrolled in the study, and that these were the "worst patients" with the worst cases of leukemia.

120. During the May 6th Consultation, Investigator 2 further stated that of the first eight (8) patients on the trial, six (6) were responding to treatment (75%) and that he had seen some “wonderful responses.”

121. During the May 6th Consultation, Investigator 2 additionally provided that barring the development of severe side effects such as QT prolongation, which he had not seen, it would be a “dynamite drug.”

122. On information and belief, none of the information outlined in paragraphs 118 through 121 above was publicly available.

123. During the May 6th Consultation, Investigator 2 provided Silverman material, non-public information regarding the ongoing AP24534 Phase 1.

124. Immediately following the May 6th Consultation and up to July 12, 2009, Silverman purchased, while in possession of material, non-public information, 178,200 shares of Ariad for the Fund.

Silverman Invested in Ariad Based Off of the Material Non-Public Information Acquired in the May 6th Consultation

125. In July 2009, Silverman authored a quarterly newsletter to his investors (the “July Newsletter”). (Exhibit 3)

126. The July Newsletter, in part, describes the rationale for adding Ariad to the Fund’s portfolio:

Interim results of the Phase 1 dose escalation study have been remarkable to date, showing strong efficacy including complete hematologic responses in patients who have failed multiple prior regimens, have untreatable genetic mutations or in blast crisis, i.e. the worst of the worst patients, all with a benign side effect profile.

127. On information and belief, at the time of Silverman’s July Newsletter, the information referenced in paragraph 126 was not available to the general public.

Investigator 3 Provided Silverman Material Non-Public Information in Violation of His Confidentiality Agreement with Ariad

128. On July 13, 2009, Silverman had a consultation with Investigator 3 (the “July 13th Consultation”).

129. Investigator 3 was a principal investigator on AP24534 Phase 1. At the time of the July 13th Consultation, Silverman knew that Investigator 3 was involved in AP24534 Phase 1.

130. Investigator 3 entered a confidentiality agreement with Ariad with respect to AP24534 Phase 1 on July 1, 2008.

131. At the time of the July 13th Consultation Investigator 3 was bound by confidentiality with respect to the AP24534 Phase 1 clinical trial.

132. Under the terms of Investigator 3’s confidentiality agreement with Ariad, study data was deemed the property of Ariad and Investigator 3 was prohibited from disclosing such confidential information to third parties.

133. Despite being bound by confidentiality, during the July 13th Consultation, Investigator 3 provided Silverman with material, non-public information regarding the AP24534 Phase 1, including: 1.) how many patients were enrolled in AP24534 Phase 1; 2.) specific observations of efficacy in patients with the T315i mutation and CML patients in general; and 3.) specific observations of side effects (or the lack thereof), and dosage levels.

134. Investigator 3 received \$600.00 for the July 13th Consultation.

135. As was Silverman’s practice, Silverman created contemporaneous notes during the July 13th Consultation. (**Exhibit 4**)

136. Silverman’s notes from the July 13th Consultation include the following material, non-public information, regarding the AP24534 Phase 1:

- Thoughts on AP24534

- Last 2-3 months within dose levels high enough to let us believe inhibiting the target.
- Very promising.
- 30 mg dose level, bump up toward end of month . . .
 - So far so good
 - Clearly patients with meaningful responses haven't had significant side effects, grade 1 at the very best.

137. Silverman testified that “grade 1” side effects were insignificant and did not concern him as an investor:

“Grade 1 may mean . . . a headache or migraine, or . . . a minor side effect. . . . Grade 1 would not concern me [for a cancer drug].”

138. In the July 13th Consultation, Investigator 3 also informed Silverman that 40 patients were involved in the clinical study.

139. As a result of the July 13th Consultation, Silverman knew that AP24534 had an acceptable side effect profile weeks before any interim results of AP24534 Phase 1 were made available.

140. During the July 13th Consultation, Investigator 3 provided Silverman material, non-public information regarding the ongoing AP24534 Phase I.

141. Immediately following the July 13th Consultation and through July 24, 2009, Silverman purchased, while in possession of material, non-public information, 38,300 more shares of Ariad for the Fund.

Ariad's Release of Preliminary Data Already in Silverman's Possession Led to an Increase in the Value of Ariad Stock

142. On July 27, 2009, Ariad disseminated a press release entitled “Announcement of Preliminary Results from Ongoing Clinical Trials” (the “July 27th Release”). (**Exhibit 5**)

143. The July 27th Release contained the preliminary results of the AP24534 Phase 1 clinical trial, including partial data relating to efficacy, safety, and DLT of the drug.

144. The July 27th Release included “key preliminary findings” indicating that a “significant degree of anti-tumor activity of AP 24534 in highly resistant CML patients.” The document indicated that “of 23 CML patients in the four highest dosing groups, 19 patients remain on study without disease progression, evidence of control of their disease. *Most importantly, of 12 CML patients with the T315i mutation, nine patients remain on study without disease progression, providing further evidence of control of their disease*” (emphasis added).

145. Through the April 29th, May 6th and July 13th Consultations, Silverman was already in possession of much of the information contained in the July 27th Release, and aware of what the interim study results would be.

146. Because of the April 29th, May 6th and July 13th Consultations, months earlier, Silverman was already aware of AP24534’s efficacy. The July 27th Release was the first publicly available data from the company regarding efficacy of AP24534.

147. The July 27th Release stated that AP24534 was successful in controlling the disease in nine (9) of the twelve (12) patients with the T315i mutation, or 75%.

148. Due to the May 6th Consultation two months earlier, Silverman was well aware that AP24534 was demonstrating efficacy of 75% in treating patients with the T315i mutation.

149. The July 27th Release further indicated that “Preliminary safety assessment shows that AP 24534 is well tolerated without dose-limiting toxicity at doses studied to date. . . .” Specific dosing levels were not released.

150. Due to the April 29th, May 6th and July 13th Consultations, Silverman was already aware that AP24534 was well tolerated and had not reached a DLT. Silverman also had knowledge of specific dosage information that was not released as part of the July 27th Release.

151. Several days after the July 27th Release, Ariad, during a conference call, described their results in detail and why they chose to “level the playing field” by releasing preliminary study results:

What we’ve seen is that patients have posted their personal data and study results with 534 online and we have been getting more and more inquiries about these postings. We felt that it was important to level the playing field and provide everyone with some initial insights into this ongoing trial.

Key findings to date include first, initial clinical evidence of hematologic, cytogenetic, and molecular responses to 534 in heavily pretreated patients with chronic myeloid leukemia and Philadelphia positive acute lymphoblastic leukemia, importantly including those with a T315i mutation of BCR-Abl.

So why is that important? This is a patient group that has very limited clinical options. These patients have generally failed multiple rounds of BCR-Abl inhibitors, both two or three of the approved agents, as well as in most instances various investigational agents as well . . .

Obviously responses, especially cytogenetic responses, are the hallmark of efficacy of the drug, but importantly given that this trial is ongoing, results that demonstrate patients remaining on study are very important.

We are seeing what I think are the clinicians in the trial strongly believe quite unexpected early hematologic, cytogenetic and molecular responses . . .

What we are seeing though is an excellent early safety profile, the kind of responses that are the hallmark of successful treatments as well as initial insights into the durability of those responses.

(emphasis added)

152. On July 27, 2009, following the July 27th Release, Ariad’s stock closed at \$2.45 per share, an increase of 30% from the previous day’s close at \$1.89 per share.

153. Following the 30% increase in Ariad shares on July 27, 2009, Ariad’s shares have continued in increase in value as the AP24534 trials have progressed.

Respondents Leveraged Material Non-Public Information to Defraud the Market

154. Between April 29, 2009, and July 28, 2009, while in possession of material, non-public information, Silverman purchased, with scienter, approximately 263,500 shares of Ariad for the Fund at an average price of approximately \$1.50 a share. Upon information and belief, the Fund paid approximately \$395,250.00 to buy these shares.

155. Silverman benefitted from his access to industry insiders and the receipt of confidential non-public information prior to its public release, which allowed him to eliminate many of the uncertainties surrounding AP24534 Phase 1's outcome. He then acted on this material inside information by purchasing hundreds of thousands of shares of Ariad stock prior to the public release of this information.

156. During testimony Silverman articulated his views on: 1.) why a demonstration of safety was a critical element of the AP24534 Phase 1 trial; 2.) his analysis for whether AP24534 was safe; 3.) the importance of determining the maximum tolerated dose and proper dosage levels; and 4.) the importance of knowing whether unexpected side effects were developing.

A. With drugs they have what is called a therapeutic window, so you have a window where something works, and there's a period where something can harm you, so ideally you want to have a window as wide as possible. So if something is effective way down here (gesturing), kills you way up here, you know, that's a good thing. So you don't want it to be narrow. So some drugs are very narrow in their therapeutic window, so the higher they go would tell you they have a lot of room for lower doses or lower than effective doses. So it would be a good thing to go really high, but the down side would be timing.

Q. Okay, and how does that affect your opinion on the drug?

A. You know, it would be seen as favorable, so

Q. So even if the Phase I takes longer, you think that the eventual outcome would be favorable?

A. As long as terrible side effects didn't crop up that were unexpected; that's a risk in any study like this is the unexpected.

157. Silverman believed that determining the dose limiting toxicity and whether it was tied to a side effect that would cause you to “drop dead” was also critical:

The reason that one was important was the dose limiting toxicity actually turned out to be pancreatitis, or at least as established in the Phase I study, as opposed to something like – I think its (*sic*) in my notes. Like, you know, the worst could be what’s called QLT, which would be like – you know, it’s where the drug would cause a heart rhythm abnormality, and a patient could just drop dead.

It would be rare to die from pancreatitis from a trial . . . I guess pancreatitis is commonly cause by alcoholism, so you can die from it, but it would be a slow, gruesome death versus just dropping dead. . .

Competitively its (*sic*) important because if the problem is that people are dropping dead obviously that’s going to restrict the use quite a bit. . .

... if you started out and the very first dose someone dropped dead, then you’d have to start all over again...

. . . if the effect was that bad, you know, it probably, you know, may not move forward [to Phase II or III]. . .

Knowing that the dose limiting toxicity turned out to be pancreatitis in a Phase I was beneficial at that point.”

158. Silverman knew the answers to his concerns as a result of his April 29th, May 6th and July 13th Consultations, and well as other consultations, in which investigators violated their confidentiality agreements to tell Silverman enrollment figures, the side effect profile known to date including that no serious side effects had developed, that the study had not reached a DLT, the dosing levels, the therapeutic window, and its effectiveness against CML, particularly with respect to the T315i mutation. Silverman was told all these things months before the information became public.

159. As a result, Silverman was in receipt of confidential non-public information assuring him that AP24534 would move forward to further clinical trials.

160. The price of Ariad stock increased upon public release of the information Silverman had received in violation of the Investigators' confidentiality agreements with Ariad. The seeming success of AP24534 Phase 1 provided strong evidence that the drug would continue into Phase 2 trials and along the path toward FDA approval and eventually become a revenue-producer for Ariad.

161. As of the date of this Complaint, AP24534 is now in a pivotal Phase 2 study.

162. Silverman continued to receive material non-public information from Guidepoint Investigator 1 and Investigator 2 with respect to AP24534 trials after the Ariad Press Release. Such information led Silverman to continue to purchase 250,000 more shares of Ariad stock on August 4, 2009 at \$1.75 per share.

163. Silverman subsequently began selling shares. Between August 24, 2009, and May 21, 2010, Silverman sold approximately half of the Fund's shares (249,000) at an average price of \$3.41 per share, for a profit of \$413,340.00.

164. As of March 8, 2011, Ariad is trading at \$6.10 per share. The Fund's remaining shares bought between April 29 and July 28, 2009, would now be worth approximately \$1,604,300.00, an unrealized gain of \$1,209,050.00.

165. To the detriment of other investors, Silverman, while in possession of material, non-public information, traded, with scienter, in Ariad stock.

Silverman Altered Notes Indicating that Investigator 2 was an Investigator on the AP24534 Phase 1 Prior to Submitting Those Notes to the Division

166. Silverman altered the version of May 6th Consultation notes produced to the Division by deleting a reference to one of the clinical trial sites for AP24534 Phase 1. The information deleted indicated that the data that followed was derived from "patients at MD Anderson."

167. The information Silverman deleted from the May 6th Consultation notes would have made apparent that Investigator 2 was working at one of the sites of the AP24534 Phase 1 trials, and that the data that followed was clinical trial data.

B. QUESTCOR PHARMACEUTICALS, INC.

Silverman Destroyed Evidence to Hide His Receipt of Information About Questcor Pharmaceuticals

168. Questcor Pharmaceuticals, Inc. (“Questcor”) is a publically traded, small-cap biotech company which derives over 99% of its revenue from one drug, H.P. Acthar Gel (“Acthar”).

169. In August of 2007, Questcor announced its Acthar-centric business strategy, which included raising the price of Acthar over 13 fold, from \$1,650.00 per vial to \$23,039.00 per vial.

170. Since 2007, Questcor has sought to identify diseases and disorders where Acthar proved effective, so Questcor could increase sales of the drug.

Silverman’s Early Trading in Questcor

171. Silverman first traded Questcor in the Fund in December of 2007, after the company announced its Acthar-centric business strategy; Silverman purchased 41,800 shares of Questcor, at an average price of \$6.08 for a total cost of \$254,144.00.

172. In November of 2008, Silverman sold the Fund’s shares in Questcor at an average price of \$8.54 realizing 48% gain in the Fund.

173. In testimony, Silverman described his rationale for these transactions as follows.

So this company raised the price, took a whole lot of flack. No one thought the price would stick. I bought the stock knowing that people may not like it, but there’s nothing anyone can do about it, so then the company went from being almost bankrupt to earning a fair bit of money. The stock went up. I sold, then the stock kind of settled back.

In June of 2010, Silverman Established a Significant Position of Questcor within the Fund

174. In October of 2008, Questcor first announced that it was evaluating the use of Acthar to treat a debilitating kidney disease, nephrotic syndrome.

175. In June of 2010, after attending a Questcor presentation at the Jefferies' 2010 Global Life Sciences Conference, Silverman began to invest heavily Questcor based off the company's expansion into the NS market.

176. On June 10, 2010, sold 60 put contracts, for \$1 each, with a strike price of \$7.50 and a call date of January 22, 2011, earning the Fund \$6,000.00.

177. On June 10, 2010, Guidepoint responded to Silverman's request to speak with Expert Consultants regarding Acthar and nephrotic syndrome, providing the names of Doctor 1 and Doctor 2.

178. On June 11, 2010, Silverman consulted with Doctor 2, and contacted Doctor 1 to schedule a consultation.

179. Following his consultation with Doctor 2, on June 11, 2011, Silverman purchased 2,200 shares of Questcor in the Fund at \$9.30 a share, a \$20,460.00 investment.

Silverman Deletes Consultation Notes Concerning his Consultation with Doctor 1

180. On June 14, 2010, Silverman consulted with Doctor 1 (the "June 14th Consultation").

i. Background on Doctor 1

181. Doctor 1 is a physician at a major medical center in New York.

182. Doctor 1 conducts clinical research on several topics, including the treatment of refractory nephrotic syndrome with Acthar. Beginning in December of 2009 Doctor 1 was a principal investigator on an investigator-initiated study, funded by Questcor, entitled "The Treatment of Resistant Nephrotic Syndrome with ACTH Gel (ACTHAR)."

183. On January 15, 2010, Doctor 1 additionally entered into a consulting agreement with Questcor. Under the agreement Doctor 1 was paid \$50,000.00 annually to: 1.) take phone calls or meetings with healthcare practitioners who are interested in learning more about the experiences of Doctor 1 and other nephrologists related to the use of Acthar Gel in the treatment of nephrotic syndrome; 2.) provide feedback to Questcor management on issues, challenges and key learnings related to working with insurance providers when prescribing, and confirming insurance coverage for, Acthar in the treatment of nephrotic syndrome; and 3.) train and educate Questcor personnel as requested.

184. Under Doctor 1's consulting agreement he was restricted from disclosing confidential information Doctor 1 learned from Questcor, including marketing and business plans, which have not been made public by Questcor.

ii. Information Silverman Received from Doctor 1

185. During the June 14th Consultation, Doctor 1 provided Silverman with the results of a case series he had conducted, which demonstrated the efficacy of Acthar in the treatment of a debilitating kidney disease, nephrotic syndrome ("NS").

186. Doctor 1 provided the results of his case series to Silverman on June 14, 2010 one day before he submitted an abstract of his study to the American Society of Nephrology, ("ASN") for consideration to be presented at ASN's "Renal Week" conference in November of 2010.

187. To prevent individuals from profiting upon ASN's publication of research findings, ASN has an embargo policy that specifically restricts researchers from trading in the securities of any issuer, or providing their findings to others who may use them for securities-trading purposes, until the Abstracts are publicly released. (**Exhibit 6**).

188. Doctor 1 was aware of the embargo policy.

Q. Through your interactions with ASN, were you aware or are you aware of their embargo policy regarding abstracts?

A. I don't know the specifics of the embargo policy but when you get notified of your abstract, I think they do send you in the notification something regarding the embargo policy.

Q. Do you have an understanding of generally what the embargo policy provides?

A. I assume it's that -- my assumption is that until the abstract is publicly available, you can't discuss it.

189. In the June 14th Consultation, Doctor 1 provided Silverman with results from a case series

Doctor 1 was working on, Silverman recorded the following results in his notes:

- His own patients all patients are showing a response
- Treated 10 with 8 clear responses other 2 just on a couple of months
- Collecting all data from all patients since 2009 (December)
- 7 of first 10 responded well
- Only about 8 docs prescribed
- 21 prescriptions, 9 responded, 7 were membranous responder, 1 could have been called membranous

190. This same information appeared in Doctor 1's case abstract published in October of 2010, and presented at Renal Week in November of 2010.

- 21 pts with NS were treated with Acthar
- Overall, 9 pts (47%) achieved a complete remission, with 5 (26%) in complete remission.
- Of these 9 responders, 7 had MN, 1 had class V SLE GN, and 1 had IgA nephropathy.
- Of the 10 pts with MN, 3 achieved complete remission and 4 achieved partial remission despite having previously failed a mean 2.3 therapies.
- **Conclusion:** Acthar is a viable treatment option for resistant nephrotic syndrome (NS) due to MN. Short-term data suggests that for this disease, complete or partial remission rates may approach 70%.

191. In a statement to the Division, Doctor 1 could not recall specifically what information he shared with Silverman, but claimed it would have been improper to provide information from the case study to investors such as Silverman prior to the information being published.

Q. So any information regarding the abstract would be out of bounds in these calls?

A. Absolutely. The only information that they could know about the abstract is that it's being prepared, and they would know the date that it would be presented.

Silverman Knew or Should have Known that Doctor 1 was Associated with Questcor

192. During their consultation, Doctor 1 described his involvement with Questcor.

Silverman's notes contained the following references to Questcor:

Has told the company this isn't a bad thing that it only works in membranous

- if it had to work in only one this is the best for the company
- patients tend to be young, healthy, insured
- more responses, less side effects

...

MS: 4-8 weeks

MN: 6 months

- each patient is getting 10-11 vials
- Part of the reason why qcor is so supportive
- If good results it's a big avenue
- Qcor treats them very well, no pushback on anything

...

Cost of Acthar: \$27,000/month

- But its still cost effective versus dialysis and its lifetime
- Save transplant
- Can point out patients it saved dialysis and transplant
- He thinks it's a fit for 2nd line.
- Company has asked him to rx front line
- Wants to set precedent with a case
- All his other patients had failed two

193. Doctor 1 further informed Silverman that he would be submitting his abstract for ASN's Renal Week, and that the abstract would be used by Questcor in its sales efforts. Silverman's notes contained the following references to Doctor 1's abstract and Questcor's sales efforts:

How long to take off in MN?

- Waiting for data
- ASN in November
- Abstract with first 21 patients
- Will have a booth
- Use it as a launch

- Pilot program to send reps to offices
- Reprinting of Ponticelli paper for ACTH in Europe
- Making him available to other docs
- Visiting lectures
- Thinks it's the right way to do it
- Needs to educate reps
- Tells them to just discuss MN and not NS

Following his Consultation with Doctor 1, Silverman Established a Substantial Position in Questcor

194. Between June 14, 2010 and July 21, 2010, Silverman purchased 58,800 shares of Questcor in the Fund, at an average price of \$9.45 per share, for a total investment of \$565,062.

195. On July 28, 2010, Questcor held its Q2 2010 earnings call and announced that several abstracts regarding Acthar had been submitted to the American Society of Nephrology:

During the second quarter, we have learned that several Acthar related abstracts were submitted for presentation at the American Society of Nephrology Annual Meeting in Denver in November of 2010, and one paper has been submitted to a major nephrology journal for publication early next year. We believe that these initial reports on Acthar and its potential role in nephrotic syndrome will help the nation's 7,000 nephrologists better understand how Acthar might help their patients battling this difficult to treat disease.

196. On the July 28, 2010 call, Questcor's Executive Vice President and Chief Business Officer stated that further Acthar-specific data would help the NS sales effort:

[N]ephrologists readily acknowledged that they are in need of a new treatment for nephrotic syndrome due to the significant shortcomings of current treatments. They are clearly interested in Acthar, but most nephrologists want to see Acthar-specific data from a reputable academic center before prescribing Acthar...

197. Between August 2, 2010 and September 9, 2010, Silverman purchased 27,600 shares of Questcor for the Fund at an average price of \$10.21 per share, for a total investment of \$281,827.

198. On October 20, 2010, ASN announced that the abstracts for the November Renal Week conference presenters were available online and provided the web address.

199. On October 28, 2010, Questcor hosted its Q3 earnings call; during the call the following developments relative to the Acthar abstract were discussed:

We have now confirmed that the new data on Acthar has been accepted for presentation on November 20th at the American Society of Nephrology's annual meeting in Denver. The related abstracts are available on ASN's website www.asn-online.com. The data includes the very first assessment of Acthar treatment in nephrotic syndrome and in diabetic nephropathy.

200. On November 20, 2010, Doctor 1 presented his abstract at ASN's Renal Week.

201. On November 22, 2010, Questcor issued a press release providing the results from Doctor 1's abstract and presentation:

DENVER, Nov. 22, 2010 /PRNewswire/ -- On November 20 at the American Society of Nephrology 43rd Annual Meeting, [Doctor 1], presented results from a patient case series assessing the potential therapeutic value of H.P. Acthar® Gel (repository corticotropin injection) as a treatment for patients with nephrotic syndrome, a kidney disorder characterized by excessive loss of urinary protein. Initial data presented at the meeting revealed that 9 of 11 patients (82%) with nephrotic syndrome due to idiopathic membranous nephropathy (iMN) who were treated with Acthar achieved complete or partial remission of proteinuria. Nephrotic syndrome is a known risk factor for progression to end-stage renal disease (ESRD).

202. Questcor's November 22, 2010, press release went on to quote Doctor 1 discussing the importance of the data.

"This represents the first modern clinical evaluation involving the use of Acthar for the treatment of nephrotic syndrome," said [Doctor 1]. "These early data suggest that Acthar may be a viable treatment option for resistant nephrotic syndrome due to idiopathic membranous nephropathy. We look forward to further study of this promising treatment option."

Silverman Destroyed Notes Regarding Doctor 1's Findings, Which he Believed were Confidential Prior to Producing Them to the Division

203. On October 6, 2010, pursuant to an Examination request, and again on November 29, 2010, pursuant to a Division subpoena, the Division requested copies of Silverman's notes memorializing consultations with Guidepoint Global Expert Consultants.

204. Prior to producing notes from the June 14th Consultation, Silverman deleted the following notes covering Doctor 1's case study.

- His own patients all patients are showing a response
- Treated 10 with 8 clear responses other 2 just on a couple of months
- Collecting all data from all patients since 2009 (December)
- 7 of first 10 responded well
- Only about 8 docs prescribed
- 21 prescriptions, 9 responded, 7 were membranous responder, 1 could have been called membranous

205. On January 19, 2011, Silverman's counsel informed the Division that Silverman had deleted the notes referenced in paragraph 166 above, as well as the notes described in paragraphs 204 above, and additional documents described below.

Silverman Deleted Email Relative to Ariad After it was Subpoenaed by the Division

206. On November 29, 2010, pursuant to a Division subpoena, the Division requested copies of all of Silverman's e-mails.

207. On January 19, 2011, the Division became aware that Silverman had intentionally deleted e-mails that were subject to the Division's subpoena rather than producing them to the Division. Many of the e-mails Silverman deleted are no longer recoverable.

208. Silverman testified that one area that he focused his deletions upon were e-mails related to Ariad because he feared he "had worried that, hey, maybe I crossed a line on this one . . ."

209. Silverman's e-mail production also reflected a wide discrepancy as to his monthly e-mail usage. For example, Silverman produced 1,888 e-mails from November 2010 and 1,402 e-mails in December. In comparison, Silverman produced 410 e-mails from September 2010 and 16 from January, 2010 and 20 from July, 2009.

Silverman Submitted False Filings to the Division to Mask Books and Records Violations

210. In response to Examination requests Silverman submitted documents under false pretenses.

211. The Division requested to review Risk Reward Capital Management's privacy policy as part of the Examination to gauge Risk Reward's compliance with the Regulations. The document was not available to examiners while on-site.

212. Shortly after the on-site examination, the Division, in a written request for information, requested Risk Reward Capital Management produce certain documents that were unavailable during the on-site portion of the examination, including the privacy policy.

213. Silverman produced a privacy policy pursuant to that request.

214. Silverman admitted in testimony taken September 21, 2010 that he had created the privacy policy and other documents after the date of the Examination and produced them pursuant to the Division's written request.

215. By submitting such documents that did not exist at the point of the examination, Silverman attempted to mislead the Division into believing he was in compliance with the Regulations.

Risk Reward and Silverman Had a Widespread Pattern of Non-Compliance with the Act and the Regulations

216. The Division's books and records review of Risk Reward uncovered a widespread pattern of non-compliance with the Act and the Regulations.

217. The Division noted during the exam, and Silverman has confirmed, that Risk Reward Capital Management maintained custody and exercised discretion with respect to client accounts over a number of years.

218. However, despite maintaining custody and exercising discretion, Risk Reward Capital Management did not maintain a segregated account or a surety bond as required by the minimum financial requirements outlined in the Regulations.
219. Silverman did not properly retain electronic correspondence with investors related to his investment advisory business as required by the Regulations.
220. Silverman has stated that it is his business practice to delete e-mails sporadically, despite admitting there were no space limitations at issue. The Regulations require retention of correspondence with clients.
221. Silverman failed to retain documents as required by the Regulations, and could not produce documents to the Division in a timely manner.
222. Silverman did not maintain client files, including any suitability information or contracts, related to clients.
223. Silverman did not present his Form ADV Part II to clients at the inception of the relationship.
224. Silverman did not annually offer to provide his clients with his Form ADV Part II.
225. Silverman did not send a privacy policy to clients annually.
226. Silverman did not maintain written contracts with his advisory clients.
227. Despite exercising discretion for certain clients Silverman had no written authorization to do so.
228. Risk Reward charged investors in the Fund a performance allocation of 10% of the first 20% of gains, and equal to 20% of gains thereafter, subject to a high water mark.
229. Silverman testified that, with respect to many limited partners, he knew nothing of their financial status or their net worth.

230. Risk Reward did not have a reasonable basis to believe that such clients were “qualified clients” as that term is understood under Rule 205-3 of the Investment Adviser’s Act of 1940.

231. Such performance fees were calculated, in part, based upon the profits gained from the improper trading as discussed herein.

232. Examiners witnessed a disorderly office appearance during the on-site Examination. In addition to leaving client documents including sensitive financial information laying about on tables, chairs, sofas and floors, the Division discovered that the office doors did not lock, leaving client data vulnerable.

VII. VIOLATIONS OF LAW

Count I – Violation of M.G.L. c. 110A § 101(1)

233. Section 101(1) of the Act provides:

(a) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

(1) to employ any device, scheme or artifice to defraud.

234. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 232 above.

235. The conduct of Respondents, as described above, constitutes a violation of M.G.L. c. 110A, § 101(1).

Count II – Violation of M.G.L. c. 110A § 101(3)

236. Section 101 (3) of the Act provides:

(a) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

237. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 232 above.

238. The conduct of Respondents, as described above, constitutes a violation of M.G.L. c. 110A, § 101(3).

Count III – Violation of M.G.L. c. 110A § 102(1)

239. Section 102(1) of the Act provides:

It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise

(1) to employ any device, scheme, or artifice to defraud the other person or to engage in any act, practice, or course of business which operates would operate as a fraud or deceit upon the other person

240. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 232 above.

241. The conduct of Respondents, as described above, constitutes a violation of M.G.L. c. 110A, § 102(1).

Count IV– Violation of M.G.L. c. 110A § 102(3)

242. Section 102(3) of the Act provides:

It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

243. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 232 above.

244. The conduct of Respondents, as described above, constitutes a violation of M.G.L. c. 110A, § 102(3).

Count V – Violation of M.G.L. c. 110A § 204(a)(2)(G)

245. Section 204(a)(2)(G) of the Act provides in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

G. has engaged in any unethical or dishonest conduct or practices in the securities, commodities, or insurance business.

246. Without limiting the generality of the foregoing, the conduct of the Respondents, as set forth above, constitute, *inter alia*, violations of the following provisions of the Regulations contained in 950 CMR 12.205:

950 CMR 12.205(9)(c): The following practices are a non-exclusive list of practices by an adviser which shall be deemed “dishonest or unethical conduct or practices in the securities business” for purposes of M.G.L. c. 110A § 204(a)(2)(G):

- (1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client’s overall portfolio, investment objectives, financial situation and needs, investment experience and any other information known or acquired by the adviser after reasonable examination of the client’s records as may be provided to the adviser.
- (2) Placing an order to purchase or sell a security for the account of a client without authority to do so.
- (4) Exercising any discretionary power in placing an order for the purchase or sale of securities without first obtaining written discretionary authority

(10) Charging a client an advisory fee that is unreasonable in light of the fees charged by other investment advisers providing essentially the same services.

(14) Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing . . .

247. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 232 above.

248. The conduct of Respondents, as described above, constitute violations of M.G.L. c. 110A § 204(a)(2)(G).

Count VI – Violation of M.G.L. c. 110A § 204(a)(2)(B)

249. Section 204(a)(2)(B) of the Act provides in pertinent part:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant

(B) has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor chapter or any rule or order under this chapter or a predecessor chapter.

250. Without limiting the generality of the foregoing, the conduct of the Respondents Risk Reward, as set forth above, constitute, *inter alia*, violations of the following Regulations: 950 CMR 12.205(5) (Minimum Financial Requirements), 950 CMR (12.205)(6) (Post-Registration/Post-Notice Filing Requirements) 950 CMR 12.205(7) (Record Keeping Requirements), 950 CMR 12.205(8) (Disclosure Requirements), and 950 CMR 12.205(9) (Fraudulent Practices/Dishonest or Unethical Practices).

251. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 232 above.

252. The conduct of Respondents, as described above, constitute violations of M.G.L. c. 110A § 204(a)(2)(B).

Count VII – Violation of M.G.L. c. 110A § 404

253. Section 404 of the Act provides in pertinent part:

It is unlawful for any person to make or cause to be made, in any document filed with the secretary or in any proceeding under this chapter, any statement which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.

254. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 232 above.

255. The conduct of Respondents, as described above, constitutes a violation of M.G.L. c. 110A, § 404.

VIII. STATUTORY BASIS FOR RELIEF

256. Section 204(a) of the Act provides in pertinent part:

Denial, Revocation, Suspension, Cancellation, and Withdrawal of Registration

(a) The secretary may by order impose an administrative fine or . . . revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

B. has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor chapter or any rule or order under this chapter or a predecessor chapter.

G. has engaged in any unethical or dishonest conduct or practices in the securities, commodities, or insurance business.

257. Section 407(A) of the Act provides in pertinent part:

Violations, Cease and Desist Orders and Costs

(a) If the secretary determines, after notice and opportunity for a hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take affirmative action, including the imposition of an administrative fine, the issuance of an order for accounting, disgorgement or rescission or any other relief as in his judgment may be necessary to carry out the purposes of [the Act].

258. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 232 above.

259. Respondents directly and indirectly engaged in the acts, practices, and courses of business as set forth in this Complaint above and it is the Enforcement Section's belief that Respondents will continue to engage in acts and practices similar in subject and purpose that constitute violations if not ordered to cease and desist.

IX. PUBLIC INTEREST

260. For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors to: 1) order Respondents to cease and desist from further violations of the Act; 2) order the Respondents to provide an accounting of all proceeds which Respondents received as a result of the alleged wrongdoing; 3) order the Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 4) order the revocation of Respondent Risk Reward Capital Management's registration as a registered investment adviser; 5) order the revocation of Respondent Silverman's registration as an investment adviser representative; 6) enjoin Respondent Silverman from performing investment advisory services for compensation on behalf of any person or entity within the Commonwealth; 7) impose an administrative fine on the Respondents in such amount and upon such terms and

conditions as the Director or Hearing Officer may determine; and 8) take any other appropriate actions against the Respondents, which may be in the public interest and necessary for the protection of Massachusetts investors.

X. RELIEF REQUESTED

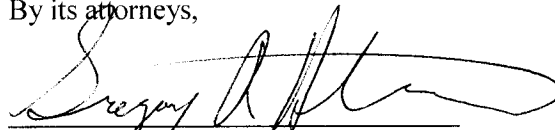
Wherefore, the Enforcement Section of the Division requests that the Director or Hearing Officer take the following actions:

- A) Find that all the sanctions and remedies as detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- B) Find as fact the allegations set forth in paragraphs 1 through 232, inclusive, of the Complaint;
- C) Order Respondents to cease and desist from further violations of the Act;
- D) Order the Respondents to provide an accounting of all proceeds which Respondents received as a result of the alleged wrongdoing;
- E) Order the Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- F) Order the revocation of Respondent Risk Reward Capital Management's registration as a registered investment adviser;
- G) Order the revocation of Respondent Silverman's registration as an investment adviser representative;
- H) Enjoin Respondent Silverman from performing any investment advisory services for compensation on behalf of any person or entity within the Commonwealth;
- I) Impose an administrative fine on the Respondents in such amount and upon such terms and conditions as the Director or Hearing Officer may determine; and

J) Take any other appropriate actions against the Respondents, which may be in the public interest and necessary for the protection of Massachusetts investors.

MASSACHUSETTS SECURITIES DIVISION

By its attorneys,

A handwritten signature in black ink, appearing to read "Gregory R. Abram", is written over a horizontal line.

Gregory R. Abram, Esq.

Trevor Perkins, Esq.

Patrick Ahearn, Esq., Chief of Enforcement

Massachusetts Securities Division

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(617) 727-3548

Dated: March 9, 2011