



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

and

**IN THE MATTER OF
SHANE SUMAN and MONIE RAHMAN**

**FURTHER AMENDED STATEMENT OF ALLEGATIONS OF THE
ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Commission”) make the following allegations:

The Respondents

1. Shane Suman is a resident of Ontario and is a former employee of MDS Sciex (“Sciex”), a division of MDS Inc. (MDS). MDS is listed on the Toronto Stock Exchange and the New York Stock Exchange.
2. Monie Rahman was resident in the United States and is Suman’s spouse. Rahman has an on-line securities trading account at E*Trade Canada Inc. (“E*Trade Account”). Both Suman and Rahman have the E*Trade Account password and traded in securities using the account.

Overview

3. On January 29, 2007, MDS publicly announced that it would be acquiring Molecular Devices Corporation (“MDCC”), a United States corporation listed on the NASDAQ (the

“Announcement”). The Announcement confirmed that MDS planned to create a new business unit combining the business of MDCC with the business of Sciex.

4. MDCC accepted MDS’ bid on Sunday, January 21, 2007. Prior to the acceptance, MDS and MDCC were in negotiations and performing due diligence. That project was code-named “Project Monument”.

5. The nature of the project was strictly confidential and was not communicated to any MDS or Sciex employees, other than those who were involved in the potential acquisition of MDCC and in due diligence sessions leading up to the Announcement. Suman was not a member of Project Monument.

6. Prior to the Announcement, the share price for MDCC (as at the close of January 26, 2007) was \$23.88. At the close of business on January 29, 2007, the share price rose to \$35.07, for an approximate increase in price of 46%. All amounts described herein, unless otherwise stated, are in US dollars.

7. The fact of the accepted MDS bid to acquire MDCC was a material fact as defined by the *Securities Act*.

8. Leading up to and at the time of the Announcement, Suman was an employee in the IT department of Sciex and had access to the confidential email traffic of individuals (at both MDS and Sciex) who were in a special relationship with MDS and he had access to material, non-public, information about the MDS bid and the Announcement.

9. Suman became aware of the MDS bid and the Announcement in the course of his employment, before there was a general public disclosure by MDS. He conveyed the substance of the material non-public information respecting the proposed acquisition, later described in the Announcement, to his wife, Rahman.

10. In the days immediately prior to the Announcement, 900 option contracts and 12,000 shares of MDCC were purchased by Suman and Rahman in the E*Trade account. Suman and Rahman had online/internet access to place trades in the Account via a shared password.

Knowledge of Suman of the Material Information

11. During the due diligence process, prior to the MDS decision described in the Announcement, MDS executives (and others within MDS and Sciex who were participating in the project's due diligence process) were given access to a secure electronic data room. This data room was an electronic repository for documents related to the due diligence activities of entities interested in acquiring MDCC. Any time information was added to the data room, an email notification was sent out to a predetermined email list, which included MDS and Sciex employees.

12. During the operation of the data room a significant number of notification emails were sent to the mailing list. Each notification email showed the sender to be Molecular Devices. In addition, the subject line for a number of the emails contained the words "Project Monument".

13. Within the IT department at Sciex, Suman was responsible for overseeing the email (or "spam") filter system (the "NT Filter"). In this capacity, Suman had access to a queue of emails entering the Sciex email system. This queue of emails included emails originating from the data room and emails containing Monument in the subject line and Molecular Devices in the sent line, which identifiers were visible to Suman. Suman had full access to the setting and deletion of rules with respect to the treatment of any incoming or outgoing email. Suman could have set a rule to isolate or delay any Project Monument email.

14. Suman also had direct access to information contained on the Blackberry of a member of the MDS due diligence team. Meeting requests for the due diligence exercise for Project Monument along with emails that the team member had received from the data room were viewable by Suman, including emails relating to MDS' proposed bid price for MDCC.

15. Suman had set up one of his computers at his Sciex work-station to connect with the same MDS team member's computer on September 15, 2006 through the Connected TLM laptop back-up system in use at MDS. This connection was ongoing, performing back-ups of the MDS team member's computer onto Suman's computer, throughout the due diligence phase up to the Announcement. On January 22, 2007, Suman received information from the Connected

application on his computer relating to Project Monument belonging to the same MDS team member.

16. Suman also had administrator access to log into and have access to the email and calendars of every MDS employee, including Project Monument team members. Suman viewed calendar entries for Sciex's president and its in-house counsel relating to Project Monument.

17. On January 23, 2007, Suman also became aware of a confidential draft communication being prepared for Sciex's president respecting the Announcement, entitled "Andy monument message", which related to the code-name "Project Monument". Shortly thereafter, Suman conducted internet searches for "monument inc." for the first time and 8 minutes later visited the website of Molecular for the first time.

Chronology of Key Events in Advance of the Subject Tipping and Trading

18. i) November, 2006

- MDS begins to consider a takeover of Molecular.
- Suman became a full-time employee at MDS/Sciex after working as a contract employee for approximately three years. His areas of responsibility included email administration and high-level help desk /support functions.

ii) Sunday, January 21, 2007

- After approximately one month of negotiations, an agreement is reached for MDS to acquire MDCC. The final bid letter to be sent by MDS was approved by the MDS board on January 19, 2007. That bid was accepted by MDCC on January 21, 2007 and a timetable to closing was delivered. The Announcement and the timeline for closing the transaction was set out in an email dated that day confirming the acquisition.

iii) Monday, January 22, 2007

- The Sciex Communications Officer began to draft a confidential public release relating to the Announcement.

iv) Tuesday, January 23, 2007

- The Sciex communications officer's computer crashed, and the confidential press release relating to the Announcement was lost to her. The Officer sought assistance from Sciex IT staff to recover the document. Sometime late that morning, Suman attempted, unsuccessfully, to recover the letter. Suman was provided with the electronic file name, "andy monument message," and told that, it was urgent the file be recovered. He was told that it was so sensitive that he could not view the document once it was recovered.
- Beginning at 1:57 pm Suman queried the stock symbol "mddc"¹ followed immediately by a query for "monument inc." At 2:00 pm Suman began searching on-line for information relating to Molecular. Suman visited the Molecular website for the first time at 2:05 pm. He viewed this information on-line until approximately 2:29 pm.
- At 6:57 Suman again called up stock market information on-line for Molecular and again searched for information on Monument Inc. At 7:29 he reviewed a 5-day stock chart for MDCC.
- Suman contacted his wife, Rahman, in Utah, at 7:40 pm and they spoke for approximately 100 minutes.

The Purchase of MDCC Call Option Contracts and Shares

19. At approximately 9:34 a.m. on Wednesday, January 24, 2007, Rahman and Suman began purchasing shares and options in MDCC.

20. On January 24, 2007 12,000 MDCC shares and 340 call option contracts were purchased online in the E*Trade Account. On January 25, 260 call option contracts were purchased online in the E*Trade Account. On January 26, a further 300 call option contracts were purchased online in the E*Trade Account.

21. The transactions in the Account were carried out using internet access. The trades made by Suman were made using a computer located at Sciex.

¹ "mddc" is not known to be a currently used stock symbol however "mdcc" is the stock-symbol for Molecular Devices.

Post-Announcement Actions

22. On February 1, 2007, Staff first contacted Suman in relation to trading in MDCC securities, at which time Suman denied purchasing MDCC securities. Suman installed a data-deletion program called Window Washer on two of his MDS computers on Saturday, February 3, 2007 and subsequently deleted information.

Profit Made

23. The Respondent's personal assets and liabilities in their E*Trade brokerage accounts at the time immediately prior to making the trades was approximately \$182,310 (USD) and \$48,000 (CAN). They also had approximately \$20,000 (CAN) in available cash.

24. The total cost of the option contracts purchased by the Respondents in the Account was \$103,524. The total cost of the shares purchased by the Respondents was \$287,759.

25. The MDCC securities in the account were liquidated by March 16, 2007, for a profit of \$954,938.

Breach of Act and Conduct Contrary to the Public Interest

26. The Respondent Suman, as an employee of MDS was a person in a special relationship with MDS in accordance with s.76(5) of the *Act* at the time of MDS' bid and its acceptance, at the time of the subject trading, and at the time of the Announcement.

27. The Respondent Suman:

- a) Traded in the securities of MDCC (a US issuer) with knowledge of material undisclosed information respecting it (being the proposed acquisition of MDCC by MDS), thereby acting contrary to the public interest;
- b) Advised his wife, Rahman, of the proposed acquisition of MDCC by MDS, thereby breaching s.76(2) of the *Act* which prohibits the informing of another person (unless in the necessary course of business) of a material fact in respect of

a reporting issuer before that material fact has been generally disclosed, and also thereby acted contrary to the public interest.

28. The Respondent Rahman traded in MDCC securities with the knowledge of a material undisclosed fact, being the proposed acquisition of MDCC by MDS, having acquired the knowledge from her husband (known by her to be an employee of MDS) and thereby acted contrary to the public interest.

29. Such additional allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 20th day of January, 2009.