account

SEC has a lot to sort out in the H.J. Heinz Co. investigation

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April 07 — The Securities and Exchange Commission moved with speed when it filed a lawsuit over suspicious trading that happened just before the Feb. 14 announcement that Pittsburgh food company H.J. Heinz Co. was going to be acquired.

By Feb. 15, the regulatory agency had gotten an emergency court order to freeze assets in a Swiss trading account that the SEC said reaped more than $1.7 million by purchasing call options the "very day" before Heinz and its would-be buyers went public with their plans.

That's a three-day turnaround between the actual trading and the lawsuit.

It could take a lot longer to find out exactly what happened in the case and for the legal consequences to play out, said Jeffrey E. McFadden, the head of the securities litigation and enforcement practice at Washington, D.C., law firm Steptoe & Johnson.

"These things take time," said Mr. McFadden, who is not involved in the Heinz case. "They will go on sometimes for years."

And that's without international issues, an added layer of complication present in this case. The Swiss Financial Market Supervisory Authority has to work with the SEC if the owners of the Goldman Sachs & Co. account who bought 2,533 Heinz options Feb. 13 are to be fully investigated.

But any insider trading case can set off rounds of subpoenas, testimony and even

Del Monte Foods Co. with insider trading for buying stock in advance of the San Francisco company's November 2010 announcement that it was going to be bought by an investor group. The company has an administrative office on Pittsburgh's North Shore.

Juan Carlos Bertini didn't have to go far for the inside information. He worked on the buyout deal, according to the SEC complaint filed in the U.S. District Court for the Northern District of California. Using information learned while doing his job, he was responsible for the purchase of 8,000 shares of Del Monte stock in his mother's brokerage account. The "illicit profits" were estimated at $16,035.

Mr. Bertini didn't admit or deny the allegations but agreed to a settlement that requires him to pay back the gains, plus interest and a civil penalty. If the court approves the deal, he also will not be allowed to serve as an officer or director of a public company for five years, according to the SEC.

In its announcement about the Del Monte case, the SEC specifically thanked the office of fraud detection and market intelligence at the Financial Industry Regulatory Authority, a nongovernmental regulator for securities firms in the U.S. FINRA, as it is known, has programs that closely track trading activity and look for potential problems.

Last year, FINRA's fraud detection office sent 347 insider trading referrals to the SEC and other federal or state law enforcement agencies, according to the authority's year-in-review report. The office looks for things like suspicious trades around company news or a concentration of trades from the same geographical area.

"That is one of the main tools of surveillance," Mr. McFadden said. "I would say it's frighteningly effective."

But in an increasingly interconnected world, he noted, the authorities have a lot of

that person knew or should have known if that information was not public," Mr. McFadden said.

Someone overhearing useful information in a restaurant might not have any obvious limitations on trading around a company because they don't work there or have other connections. But that doesn't mean they are off the hook. The government could argue they essentially stole or misappropriated confidential information.

Over the past three years, the SEC reports it has filed more insider trading actions than in any similar period in the past. There were 168 actions filed against nearly 400 individuals and entities, with about $600 million at stake, according to the agency's website.

There are probably times when an astute investor believes a deal may be going down and acts on the hunch, sort of like the lottery player who claims to have been feeling lucky. But the SEC might take a close look anyway to make sure it wasn't really a tip from a roommate, as in the case of a Connecticut broker-dealer charged with insider trading in November, or an assist from a golfing partner, as in the case of a former director of a North Carolina insurance company accused in September of sharing merger news with a friend who then tipped a golfing buddy.

Also in November, a Brazilian ex-banker agreed to pay $5.1 million to settle SEC charges that he and his firm made more than $1.68 million by trading Burger King options using confidential information ahead of the 2010 announcement the company was being bought by 3G Capital, the same New York private equity firm involved in the Heinz deal.

According to the SEC, Igor Cornelsen sought information from his Wells Fargo broker, who regulators say was stealing information from another customer involved in the Burger King deal.

“He sought inside information from his broker Waldyr Da Silva Prado Neto by

citizens. “Foreign investors who access the U.S. capital markets must play by the rules and not rig the market in their favor, otherwise they face getting caught by the SEC and paying a hefty price as Cornelsen is here,” he said in the announcement of the settlement with Mr. Cornelsen.

In the Heinz case, investigators need to figure out if there was a similar leak or otherwise prove that confidential information about the planned acquisition spurred the suspicious trading.

“That’s the hard thing that would be necessary to figure out — to trace the chain of communication that came to these traders,” said Steven Huddart, an accounting professor at Penn State University whose research includes insider trading issues.

He noted the SEC can only pursue civil matters. If criminal activity is suspected, other authorities have to get involved. In the Heinz case, the FBI has confirmed it is also looking at the suspicious trading activity.

While the SEC case specifically addresses call options, some observers have also noted trading volume in Heinz stock rose to almost 3.5 million on Feb. 13, the day before the announcement. In the weeks before that, the levels had generally been between 1 million and 2 million shares changing hands.

The highest level before that came Dec. 21, with 2.9 million shares traded. That was three days after Heinz chairman, president and CEO Bill Johnson first met over dinner with executives from 3G Capital, according to the company’s regulatory filings.

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