SEC probes Biogen options trades

Mar 12, 2005 (The Boston Globe - Knight Ridder/Tribune Business News via COMTEX) -- The Securities and Exchange Commission is investigating a tremendous surge in options trading in shares of Biogen Idec that occurred nearly three weeks before the company temporarily suspended sales of its multiple sclerosis drug Tysabri, according to a lawyer who has been briefed on the matter.

Trading in options for Biogen Idec stock spiked to record levels Feb. 9, two days after a doctor reportedly said he informed company officials that a patient taking Tysabri had developed an unexpected complication.

More than 86,000 option contracts were traded that day, the highest level by far since the company was formed in November 2003 by the merger of Biogen Inc. and Idec Pharmaceuticals Corp.

The Securities and Exchange Commission is also investigating individual stock sales by Biogen Idec officials in the weeks leading up to the company's Feb. 28 decision to pull Tysabri off the market.

Biogen Idec and its partner Elan Corp. PLC have been rocked since Feb. 28 when they suspended sales of Tysabri, the first new MS treatment in nearly a decade that had just received approval from the Food and Drug Administration in November. The companies also discontinued treating patients with Tysabri in ongoing clinical trials.

Both companies' shares had soared in the year leading up to Tysabri's approval. The news decimated the stocks. Biogen Idec's shares lost more than 40 percent in a single day. Elan's shares shed more than 70 percent of their value.

Options are a way to control large numbers of shares with a relatively small investment, creating leverage that can generate enormous profits when stock prices move dramatically, as they did for Biogen Idec and Elan.

On Wednesday, Biogen Idec's top lawyer, Thomas Bucknum, resigned. Bucknum had sold 89,700 shares on Feb. 18, earning gross profits of about $1.9 million, according to filings with the SEC. The transactions did not involve options contracts such as those being investigated by the SEC.

Bucknum's lawyer said he had done nothing wrong and would cooperate with any official inquiry. The timing of those sales raised questions because Feb. 18 was the day the company said it informed senior management of the rare brain infections, called PML, in two patients undergoing long-term treatment with Tysabri and a second Biogen Idec drug, Avonex.

A Biogen spokesman, Tim Hunt, declined to comment on the options trading yesterday. "Our senior management learned of the one confirmed and one suspected case of PML on the 18th," he said. He said Biogen Idec and Elan were providing information to the SEC "in connection with the voluntary suspension in the marketing of Tysabri."

Two patients in long-term trials had developed progressive multifocal leukoencephalopathy, a rare, often fatal brain disease usually seen in AIDs patients and others with compromised immune systems. In approving Tysabri, the FDA had noted the possibility patients might develop opportunistic infections and urged researchers to stay on the lookout for those diseases. But nothing like PML had previously surfaced among the 3,000 patients in clinical trials or the 5,000 patients who had received the drug after it was approved.

A doctor at the University of California, San Francisco Medical Center told The New York Times he reported a patient taking Tysabri had been admitted to the hospital Feb. 7 and he informed Biogen. The diagnosis of PML may not have been complete, however. A spokeswoman for the medical center declined to say when the patient was admitted or what the patient's condition was at the time. Hunt declined to comment on the timing of events in the withdrawal prior to Feb. 18.

Options are financial instruments that give their owners the right to buy or sell shares of stock in a company, at a set price, within a certain time period. An option to buy shares is a call, and an option to sell shares is a put. Each option represents 100 shares of the underlying stock.

Financial regulators often look at options trading just before companies reveal mergers or other corporate events that can greatly impact share price. Though the spike in option trading occurred 19 days before Biogen Idec and Elan suspended Tysabri, the information of the infection may have circulated beyond the initial physicians who treated the patient.

"The SEC monitors the activity in the listed options market as actively as the larger stock markets," said Ron Egalka, president and chief executive of Rampart Investment Management in Boston, a firm that devises option strategies for institutions, mutual funds and high net worth individuals. "Anybody looking to exploit inside information may very well be inviting an SEC investigation."

Still, the spike in options trading on Feb. 9 is far from conclusive. Biogen Idec released fourth quarter and year-end results on Feb. 7. Though the results weren't dramatic or unexpected, they might have accounted for some of the option trading activity later in the week.

In addition, the trading spike on Feb. 9 was almost evenly matched between calls and puts -- options to buy shares and options to sell shares. Irregular trading on nonpublic information might have resulted in more one-sided options trading, according to Phil Erlanger, chief executive of Phil Erlanger Research Co. of Acton, a stock research firm. "If both puts and calls were high, from a technical point of view, it's not much of a smoking gun," said Erlanger.