

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CITY OF DEARBORN HEIGHTS GENERAL) No.
GOVERNMENTAL EMPLOYEES')
RETIREMENT SYSTEM, On Behalf of Itself) CLASS ACTION
and All Others Similarly Situated,)
Plaintiff,) COMPLAINT FOR VIOLATION OF THE
vs.) FEDERAL SECURITIES LAWS
VERTEX PHARMACEUTICALS)
INCORPORATED, JOSHUA S. BOGER,)
VICKI L. SATO, IAN F. SMITH, JOHN J.)
ALAM, M.D., MARK MURCKO, KENNETH)
S. BOGER and ANDREW S. MARKS,)
Defendants.)
DEMAND FOR JURY TRIAL

INTRODUCTION AND OVERVIEW

1. This is a securities class action on behalf of purchasers of the publicly traded securities of Vertex Pharmaceuticals Incorporated (“Vertex” or the “Company”) between March 27, 2000 and September 24, 2001 (the “Class Period”), against Vertex and certain of its officers and directors for violation of the federal securities laws.

2. Vertex is a global biotechnology company focused on the discovery, development and commercialization of breakthrough drugs for a range of serious diseases. Vertex's first approved product is Agenerase®, an HIV protease inhibitor. The Company's most advanced products in development are an HIV protease inhibitor and the oral cytokine inhibitor pralnacasan, which is being developed in parallel for rheumatoid arthritis, osteoarthritis, and other inflammatory diseases. In addition, Vertex is independently driving forward the development of several first-in-class drugs targeting psoriasis, hepatitis C virus, and acute coronary syndromes. Vertex is headquartered in Cambridge, Massachusetts and has major research sites in San Diego, California and Oxford, U.K. The Company employs more than 700 people worldwide.

3. During the Class Period, defendants artificially inflated the price of Vertex stock by concealing critical material information regarding its development of Vertex compound VX-745, an inhibitor of p38 mitogen-activated protein kinase ("MAPK"), which is associated with the on-set and progression of inflammation.

4. The following facts were known by each of the defendants during the Class Period, but were concealed from the investing public:

(a) That enzyme p38 MAPK has a varied tissue distribution and is implicated not only in inflammation and arthritis, but also in cellular models for neuronal differentiation and effects, presenting multiple targets and significant drug design challenges, which defendants knew from well before the beginning of the Class Period;

(b) That small, highly lipophilic molecules designed as inhibitors of p38 MAPK are at great risk of crossing the blood-brain barrier and of causing neuronal effects;

(c) That defendants already knew or should have known what constituted an acceptable absorption, distribution, metabolism and excretion (“ADME”) profile for p38 MAPK inhibitors targeting inflammation and arthritis, as opposed to inhibitor targets for neuronal effects, particularly the desired molecular weight and lipophilicity, as well as the correlation of lipophilicity with the potential for p38 MAPK related neuronal effects;

(d) That defendants knew or should have known, as early as 1998, of the importance of lipophilicity in the design of p38 MAPK inhibitors, since they had designed at least one other class of potential inhibitory molecules targeting p38 MAPK, possessing significantly lower lipophilicity;

(e) That VX-745, a potential p38 MAPK inhibitor intended to target inflammatory disease, asthma, crohn’s disease and rheumatoid arthritis, was exceptionally lipophilic and thus would be predicted to cross the blood-brain barrier and thus to cause neuronal effects;

(f) That once clinical testing of VX-745 had commenced, defendants quietly continued the preclinical testing of VX-745 in secret, despite public assurances that they would complete all preclinical studies prior to commencing clinical development;

(g) That defendants purposefully delayed the announcement of renewed long-term preclinical studies of VX-745 in animals until announcement of study results to avoid connection of the need for the renewed studies with the October 2000 disclosure of defendants’ problems with the Vertex first-generation drug candidate selection process;

(h) That the announcement of the unsuitability of VX-745 as a drug candidate was similarly delayed until two months after completion of the merger with Aurora Biosciences Corp.; and

(i) That the failure to disclose the defective nature of the VX-745 program, including but not limited to physical and chemical properties, ADME profile, tests, experiments and preclinical and clinical studies, would prevent investors and Aurora Biosciences Corp. shareholders from learning the extent of the misrepresentations made to them during the Class Period.

5. The announcement on September 24, 2001 of the termination of the VX-745 drug development program caused Vertex's stock price to drop to as low as \$17.74 from its Class Period high of \$97.25, on record volume of over 9.8 million shares, causing hundreds of millions of dollars in damages to members of the Class.¹

JURISDICTION AND VENUE

6. The claims asserted herein arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5. Jurisdiction is conferred by §27 of the 1934 Act, 15 U.S.C. §78aa. Venue is proper here pursuant to §27 of the 1934 Act. Acts and transactions giving rise to the violations of law complained of occurred here.

THE PARTIES

7. Plaintiff City of Dearborn Heights General Governmental Employees' Retirement System purchased shares of Vertex common stock as described in the attached certification and was damaged thereby.

8. Defendant Vertex is a global biotechnology company focused on the discovery, development and commercialization of breakthrough drugs for a range of serious diseases.

¹ Share and per share amounts have been adjusted to reflect Vertex's August 2000 2-for-1 stock split.

Vertex is headquartered in Cambridge, Massachusetts and has major research sites in San Diego, California and Oxford, U.K.

9. (a) Defendant Vicki L. Sato (“Sato”) was, during the Class Period, President of the Company.

(b) Defendant Joshua S. Boger (“J. Boger”) was, during the Class Period, Chairman of the Board and Chief Executive Officer of the Company.

(c) Defendant Ian F. Smith (“Smith”) was, during the Class Period, Chief Financial Officer of the Company.

(d) Defendant John J. Alam (“Alam”) was, during the Class Period, Senior Vice President, Drug Evaluation and Approval. During the Class Period, Alam sold 6,495 of his Vertex shares for proceeds of \$516,981.

(e) Defendant Mark Murcko (“Murcko”) was, during the Class Period, Chief Technology Officer and Chair of the Scientific Advisory Board of the Company.

(f) Defendant Kenneth S. Boger (“K. Boger”) was, during the Class Period, Senior Vice President and General Counsel of the Company.

(g) Defendant Andrew S. Marks. (“Marks”) was, during the Class Period, Patent Counsel of the Company. During the Class Period, Marks sold 20,900 of his Vertex shares for proceeds of \$476,765.

10. The individuals named in ¶9(a)-(g) are the “Individual Defendants.” They are liable for the false statements pleaded herein at ¶¶33, 35, 37 and 39-40, as those statements were each “group-published” information for which they were collectively responsible. The Individual Defendants, by reason of their stock ownership and positions with Vertex, were

controlling persons of Vertex. Vertex controlled each of the Individual Defendants. These controlling persons are liable under §20(a) of the 1934 Act.

SCIENTER AND SCHEME ALLEGATIONS

Scheme

11. Each defendant is liable for making false statements or for failing to disclose adverse facts and for participating in a fraudulent scheme which operated as a fraud or deceit on purchasers of Vertex publicly traded securities.

12. During the Class Period, the defendants caused the Company to acquire Aurora Biosciences Corp. (“Aurora”), a publicly traded corporation and to exchange 0.62 shares of Vertex stock for every share of outstanding Aurora stock. Aurora is a drug discovery company that uses proprietary advances in biology, chemistry and automation to accelerate the discovery of new medicines. Aurora’s core technologies include a broad portfolio of proprietary fluorescence assay technologies and screening platforms designed to provide an integrated solution for drug discovery.

Knowledge

13. The Individual Defendants are each top executives of Vertex. They ran Vertex as “hands-on” managers, dealing with important issues facing Vertex’s business, *i.e.*, the Company’s growth, its merger with Aurora, development of Vertex’s technology and its competitive position.

Motive and Opportunity

14. In addition to having actual knowledge of the falsity of their statements, each of the defendants had the motive and the opportunity to perpetrate the fraudulent scheme and course of business described herein. During the Class Period, defendants sought to complete a stock-for-stock merger with Aurora, valued at approximately \$592 million. Because the merger was critical to the Company's position and continued ability to continue to fund its operations and continue as a "going concern," defendants sought to complete the merger *prior* to the disclosure of the critical material information, to assure the highest Vertex share price possible.

FRAUDULENT SCHEME AND COURSE OF BUSINESS

15. Each defendant is liable for (i) making false statements, or (ii) failing to disclose adverse facts known to him or her about Vertex. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Vertex publicly traded securities was a success, as it (i) deceived the investing public regarding Vertex's prospects and business; (ii) artificially inflated the prices of Vertex publicly traded securities; (iii) allowed Vertex to enter into an agreement to complete its acquisition of Aurora valued at approximately \$592 million using Vertex shares at artificially inflated prices; (iv) allowed certain defendants to sell their own shares at artificially inflated prices for proceeds totaling \$993,746; and (v) caused plaintiff and other members of the Class to purchase Vertex publicly traded securities at inflated prices.

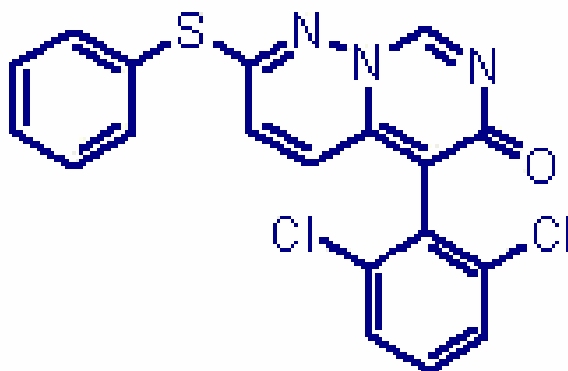
BACKGROUND TO THE CLASS PERIOD

16. Defendant Vertex is a global biotechnology company focused on the discovery, development and commercialization of breakthrough drugs for a range of serious diseases. Vertex's first approved product is Agenerase®, an HIV protease inhibitor. The Company's most advanced products in development are an HIV protease inhibitor and the oral cytokine inhibitor pralnacasan, which is being developed in parallel for rheumatoid arthritis, osteoarthritis, and

other inflammatory diseases. In addition, Vertex is independently driving forward the development of several first-in-class drugs targeting psoriasis, hepatitis C virus, and acute coronary syndromes. Vertex is headquartered in Cambridge, Massachusetts and has major research sites in San Diego, California and Oxford, U.K. The Company employs more than 700 people worldwide.

17. Mitogen-activated protein (“MAP”) kinases are key enzymes involved in signal transduction and the amplification of cellular responses to stimuli. The enzyme p38 MAP kinase (“p38 MAPK”) is a specific member of the MAP kinase family, associated with the onset and progression of inflammation. Defendants discovered the 3-D structure of p38 MAPK in 1996 and computer modeling and testing suggested the design of VX-745 as a potential inhibitor of enzyme p38 MAPK. Defendants then undertook the development of VX-745. At all times during the Class Period, the p38 MAPK inhibitor program was one of defendants’ most important technological programs, critical to the valuation and success of the Company.

18. VX-745 has a molecular weight of 400.28 mass units. VX-745, also known as 5-(2,6-dichlorophenyl)-2-(phenylthio)-6H-pyrimido[1,6-b]pyridazin-6-one, has the following structure:



The Blood-Brain Barrier

19. Unless introduced directly into the central nervous system (“CNS”), the concentration of a given drug in the CNS that results from oral or parenteral administration will often be lower than otherwise found in the blood. The reason for this differential concentration is the blood-brain barrier, a poorly defined but highly effective boundary surrounding the periphery of the brain. This boundary acts as a barrier or filter, restricting the flow of many substances into the CNS from the circulatory system.

20. The blood-brain barrier is a highly lipophilic barrier that significantly impedes entry from blood to brain of virtually all molecules, except for those molecules that are small and lipophilic or those that enter the brain through active transport. Thus, lipid-soluble molecules are at greatest risk of crossing the blood-brain barrier. Lipid-soluble molecules with a molecular weight in the range of 400-600 mass units are transported readily through the blood-brain barrier in vivo owing to lipid-mediated transport.

Lipophilicity and VX-745

21. The design of a target molecule for a desired pharmacologic effect typically requires careful consideration of the desired absorption, distribution, metabolism and excretion (“ADME”) profile. Consideration of an appropriate ADME profile is usually accomplished both in vitro and in animals during the preclinical development stage. In vitro studies include determination of physical properties that affect absorption, such as drug crystal form, particle size, polymorphism, and hydration. Chemical properties, such as the pKa or ionization constant of ionizable functions must also be considered. Of all of the physicochemical properties, lipophilicity is extremely important, since it greatly influences in vivo distribution, metabolism and excretion.

22. The most widely used measure for the lipophilicity of a molecule is the logarithm of the equilibrium concentration of the compound, in a biphasic octanol-water system, also known as pKow. Typically, molecules with pKow values greater than zero demonstrate increased lipophilicity, where the equilibrium concentration of the compound is found to be higher in octanol. Molecules with values less than zero demonstrate hydrophilicity, where the equilibrium concentration of the compound is found to be higher in water.

23. While a variety of other parameters, such as solubility, ionization constants and opportunities for active transport, may be evaluated before making conclusions about the ability of a drug's ability to cross the blood-brain barrier, the determination of pKow represents a rapid, in vitro test of lipophilicity. In cases where the molecular weight of the molecule is in the range of 400-600 mass units, the finding of a high positive value for lipophilicity is predictive of the ability of the molecule to cross the blood-brain barrier.

24. Defendants knew that pharmaceutical scientists on their own staff, trained either in Medicinal Chemistry or Pharmaceutics, can usually make a qualitative prediction of the lipophilicity of a molecule by inspection of the chemical structure. Defendants also knew that quantitative estimations of pKow are also possible, using sophisticated computerized estimation methods. Although not a substitute for experimental determinations, calculated values can be obtained in a few seconds. For example, the US Environmental Protection Agency ("EPA") makes software available for the calculation of pKow, referred to as KowWin. Using the KowWin method employed by the EPA, the calculated pKow for VX-745 is 4.86.

25. An estimated pKow value of 4.86 for VX-745 suggests, at equilibrium concentrations for a biphasic octanol-water system, that for every one molecule of VX-745 found in the aqueous phase, almost ten thousand molecules will be found in the lipid-like octanol

phase. Based on this simple estimation method, it would be reasonable to predict that VX-745 would cross the blood-brain barrier.

The Company and the VX-745 Program

26. On September 11, 1997, the Company issued a press release entitled “Vertex and Kissei Pharmaceutical Sign Agreement to Develop Novel Drugs to Treat Inflammatory and Neurological Diseases.” The press release stated in part:

Vertex Pharmaceuticals Incorporated and Kissei Pharmaceutical Co., Ltd., of Matsumoto-City, Japan, announced today that they have signed an agreement to collaborate on Vertex’s p38 MAP Kinase Program for the development and commercialization of novel, orally active drugs for the treatment of inflammatory and neurological diseases. The agreement focuses on the design and development of inhibitors of the p38 mitogen-activated protein (MAP) kinase, a human enzyme involved with the onset and progression of inflammation and programmed cell death. Under the terms of the agreement, Kissei will provide to Vertex a license fee, research support and milestone payments that could total approximately \$22 million. Kissei will also pay for a proportionate share of worldwide development costs.

“This agreement is another endorsement of our approach to drug discovery and in particular recognizes the value created to date by our research to design inhibitors of p38 MAP kinase,” commented Dr. Joshua Boger, Chief Executive Officer of Vertex. “The expansion of our relationship with Kissei is a reflection of Kissei’s strength as a development and marketing partner in the Far East as well as the success of our continuing collaboration in HIV protease inhibitors.”

Dr. Mutsuo Kanzawa, CEO of Kissei, said, “We are excited about partnering again with Vertex, which has a leading scientific position in the field, and a proven ability to bring promising drug candidates into development. Inhibitors of p38 MAP kinase have the potential to be important new drugs to treat inflammatory and neurological diseases.”

Under the terms of the agreement, Kissei will play an active role in a three-year research collaboration with Vertex to identify and extensively evaluate compounds that target p38 MAP kinase. Kissei will develop and commercialize these compounds in its licensed territories. Kissei has exclusive rights to p38 MAP kinase compounds in Japan and certain Southeast Asian countries and semi-

exclusive rights in China, Taiwan and South Korea. Vertex retains exclusive marketing rights in the United States, Canada, Europe, and the rest of the world. In addition, Vertex will supply bulk drug material to Kissei for sale in its territory, and will receive royalties and drug supply payments on product sales.

Richard H. Aldrich, Senior Vice President and Chief Business Officer at Vertex added, "This collaboration allows Vertex to access significant pharmaceutical markets in Japan and the Far East while preserving our flexibility for developing and marketing p38 MAP kinase inhibitors in the rest of the world."

Vertex has established a leading position in drug discovery research to design novel anti-inflammatory drugs based on small molecule inhibitors of p38 MAP kinase. In 1996, Vertex researchers were first to report the high resolution crystal structure of p38 MAP kinase. Structural information is a key driver of Vertex's research to design compounds that are selective inhibitors of p38 MAP kinase.

The p38 MAP kinase is a member of a family of structurally-related human enzymes involved in intracellular signaling pathways that enable cells to respond to their environment. Selective inhibitors of p38 MAP kinase block production of interleukin-1 (IL-1) and tumor necrosis factor (TNF), cytokines that play a central role in the body's inflammatory response. Excess levels of IL-1 and TNF are associated with a broad range of acute and chronic inflammatory diseases such as rheumatoid arthritis, osteoarthritis, osteoporosis, inflammatory bowel disease, asthma, atherosclerosis, and cachexia. IL-1 and TNF also play an important role in programmed cell death associated with ischemia and stroke, and in neurodegenerative diseases such as Alzheimer's and Parkinson's disease.

27. On February 18, 1998, defendants caused to be filed with the U.S. Patent and Trademark Office an application for a patent entitled "Methods for Designing Inhibitors of Serine/Threonine-Kinases and Tyrosine Kinases." Within the patent, defendants disclose the structure of compounds of the pyridinyl-imidazole class, dissimilar in structure to VX-745, one of which, designated SB 202190, having significant hydrophilic substituents, pointing to defendants' knowledge and control of less lipophilic p38 MAPK inhibitor candidates.

28. On July 7, 1998, the Company issued a press release entitled "Vertex and Kissei Select VX-745 as Lead p38 MAP Kinase Inhibitor Targeting Inflammatory and Neurological Diseases; Vertex Receives \$2.0 Million Milestone Payment from Kissei." The press release stated in part:

Vertex Pharmaceuticals Incorporated and Kissei Pharmaceutical Co., Ltd. of Matsumoto-City, Japan, announced today that they have selected VX-745 as a lead drug development candidate targeting p38 mitogen-activated protein (MAP) kinase, a human enzyme involved with the progression of inflammation. VX-745, now in preclinical development, has the potential to treat inflammatory diseases and neurological diseases. Selection of VX-745 triggers a \$2.0 million milestone payment in the third quarter for Vertex from Kissei as part of an ongoing research and development collaboration between the two companies.

MAP kinases are a family of structurally related enzymes that mediate intracellular signaling pathways, and play an important role in the regulation of proinflammatory cytokines. p38 MAP kinase is a specific enzyme that regulates the production of both interleukin-1 (IL-1) and tumor necrosis factor (TNF) as part of acute and chronic inflammatory responses. In preclinical studies, VX-745 has been shown to block disease progression in animal models of rheumatoid arthritis and stroke.

“We are excited about the prospects for p38 MAP kinase inhibitors in the treatment of inflammatory and neurological diseases, based on the results we have seen in animal models,” commented Dr. Vicki Sato, Senior Vice President and Chief Scientific Officer of Vertex. “Our collaboration with Kissei has been very productive, and has helped to accelerate the p38 discovery program.”

Vertex and Kissei plan to begin clinical development of VX-745 in 1999, following successful completion of preclinical studies. Vertex started its p38 MAP kinase discovery program in 1996, leveraging proprietary structural information of the p38 enzyme and performing cluster-based screening of compound libraries to generate potential drug leads. Detailed analysis of enzyme-inhibitor complexes with X-ray crystallography and protein nuclear magnetic resonance (NMR) spectroscopy enabled Vertex and Kissei to complete design and optimization of a lead candidate approximately 18 months after the p38 MAP kinase structure was solved.

“We have steadily built a development pipeline based on innovation and market opportunity,” added Dr. Joshua Boger, Chairman, President and CEO of Vertex. “The addition of VX-745 to our pipeline reflects the power of our integrated technology platform to establish quickly lead candidates in highly competitive, novel areas.”

Kissei and Vertex entered into a collaboration in 1997 to design, develop and commercialize novel, orally active p38 MAP kinase inhibitors. Kissei agreed to provide up to \$22 million in license fees, research support and milestone payments over three years, and agreed to pay a proportionate share of worldwide development costs. Under terms of the agreement, Kissei has exclusive rights to p38 MAP kinase compounds in Japan and certain Southeast Asian countries and

semi-exclusive rights in China, Taiwan, and South Korea. Vertex retains exclusive marketing rights in the rest of the world, including North America.

29. On March 9, 1999, the Company issued a press release entitled “Vertex Announces Start of Clinical Trial with VX-745 as New Drug Candidate Targeting Inflammatory and Neurological Diseases.” The press release stated in part:

Vertex Pharmaceuticals Incorporated announced today the initiation of a Phase I clinical trial with VX-745, a novel, orally administered investigational drug targeting p38 mitogen-activated protein (MAP) kinase, a human enzyme involved in the regulation of inflammatory responses. VX-745 has the potential to treat inflammatory diseases such as asthma, Crohn’s disease and rheumatoid arthritis, and neurological diseases such as stroke. Vertex plans to develop VX-745 in the United States and Europe, and Vertex’s partner Kissei Pharmaceutical Co., Ltd. of Matsumoto-City, Japan will develop the compound in Japan and certain Asian countries.

“The rapid development of VX-745 from discovery to Phase I clinical trial initiation reflects Vertex’s accelerated drug design approach as well as the strength of our collaboration with Kissei,” commented Dr. Vicki Sato, Senior Vice President and Chief Scientific Officer of Vertex. “The Phase I trial is the first step in what we expect will be a series of clinical trials for VX-745 in inflammatory diseases. This trial will assess the compound’s safety and help to determine the dose range for subsequent studies.”

MAP kinases are a family of structurally related enzymes that mediate intracellular signaling pathways, and play an important role in the regulation of proinflammatory cytokines. P38 MAP kinase is a specific enzyme that regulates the production of interleukin-1 (IL-1), interleukin-6 (IL-6) and tumor necrosis factor alpha (TNF-alpha) as part of acute and chronic inflammatory responses. VX-745 has been shown to slow disease progression in animal models of immune-mediated arthritis.

The Phase I randomized, blinded clinical trial is designed to test the pharmacokinetics and tolerability of VX-745 in escalating single doses in healthy volunteers. As part of the study, researchers will analyze blood samples to determine the ability of different doses of VX-745 to inhibit experimentally induced TNF-alpha production using specific biochemical assays. The study is being conducted in Europe. Following completion of the study, Vertex may conduct additional single or multidose trials of VX-745 later this year.

“Vertex has demonstrated its ability to integrate information on innovative molecular targets for the rapid discovery and advancement of lead drug development candidates such as VX-745. At Vertex, the average time from

project initiation to selection of a lead drug development candidate has been a little more than three years, which is faster than pharmaceutical industry averages,” stated Dr. Joshua Boger, Chairman, President and CEO of Vertex. “This track record gives us confidence that we can maintain a stream of innovative drug candidates going into the clinic.”

30. Through the combined July 7, 1998 and March 9, 1999 press releases, Vertex assured investors that it had completed all preclinical animal studies associated with VX-745 and that the study of the compound had now progressed into the clinic. Nowhere within the March 9th press release did Vertex advise investors that certain additional preclinical studies were deficient or certain new preclinical studies needed to be performed. Instead, defendant J. Boger assured investors of Vertex’s *rapid and sophisticated approach to drug discovery and advancement of candidates into the clinic*. By heralding the Vertex approach as unique within the industry, the implication was that Vertex had appropriately dealt with the preclinical testing phase for VX-745 and had eliminated potential risks, concealing the need for further preclinical studies thereby.

31. On November 2, 1999, the Company issued a press release entitled “Vertex Begins Pilot Phase II Clinical Trial of VX-745, p38 MAP Kinase Inhibitor for the Treatment of Inflammatory Disease.” The press release stated in part:

Vertex Pharmaceuticals Incorporated announced today that it has begun an exploratory Phase II trial of the investigational drug VX-745, the Company’s orally administered p38 mitogen-activated protein (MAP) kinase inhibitor, in patients with rheumatoid arthritis. VX-745 is being developed by Vertex Pharmaceuticals in the United States and Europe for the treatment of inflammatory diseases. Vertex’s partner Kissei Pharmaceutical Co., Ltd. of Matsumoto-City, Japan will develop the compound in Japan and certain Asian countries.

“This trial will provide further information about the potential for VX-745 in the treatment of rheumatoid arthritis, and help us to design larger studies aimed at evaluating the safety and efficacy of the drug,” said Dr. Vicki Sato, Senior Vice President of Research and Development and Chief Scientific Officer of Vertex. “With VX-745 entering Phase II, we now have six drug candidates in Phase II

clinical development targeting a range of medically under-served diseases. We look forward to further developing and advancing our product pipeline.”

MAP kinases are a family of structurally related enzymes that mediate intracellular signaling pathways, and play an important role in the regulation of proinflammatory cytokines. P38 MAP kinase is a specific enzyme that regulates the production of interleukin-1 beta (IL-1 beta), interleukin-6 (IL-6) and tumor necrosis factor alpha (TNF alpha) as part of acute and chronic inflammatory responses. VX-745 has been shown to slow disease progression in animal models of immune-mediated arthritis.

The exploratory Phase II trial announced today is a 28-day study designed to test the tolerability and pharmacokinetics of VX-745 in ten patients with rheumatoid arthritis. The study is being conducted in Europe. The trial will also assess the pharmacodynamic activity of VX-745, and clinical disease activity markers will be monitored.

Vertex Pharmaceuticals Incorporated discovers, develops and markets small molecule drugs that address major unmet medical needs. The Company has nine drug candidates in clinical development to treat viral diseases, inflammation, cancer, autoimmune diseases and neurological disorders. Vertex has created its pipeline using a proprietary approach, information-driven drug design, that integrates multiple technologies in biology, chemistry and biophysics aimed at increasing the speed and success rate of drug discovery. Vertex’s first approved product is Agenerase(TM) (amprenavir), an HIV protease inhibitor, which Vertex co-promotes with Glaxo Wellcome.

32. By the time of the November 2, 1999 press release, defendants signaled that, not only had preclinical work for VX-745 been successfully completed and the associated risks minimized as a result, but that the VX-745 had now quickly progressed to the Phase II milestone. While the defendants pointed to the need for clinical assessment of tolerability and pharmacodynamics, at no point did they discuss the need to revisit the preclinical phase. Indeed, defendants instead pointed to the virtues of their drug development model, stating that ***“Vertex has created its pipeline using a proprietary approach, information-driven drug design, that integrates multiple technologies in biology, chemistry and biophysics aimed at increasing the speed and success rate of drug discovery.”***

FALSE AND MISLEADING STATEMENTS ISSUED DURING THE CLASS PERIOD

33. On Monday, March 27, 2000, defendant Murcko caused to be published at the 219th National Meeting of the American Chemical Society an abstract of his presentation entitled “Role of informatics and computational tools in optimizing ADME/Tox properties” (“Murcko Presentation”):

3:35 — 24. Role of informatics and computational tools in optimizing ADME/Tox properties
Mark A. Murcko, Vertex Pharmaceuticals, Cambridge, MA 02139, fax: 617-577-6680, murcko@vpharm.com

Recent work from several labs suggests that computational methods, such as expert systems, may be able to make reasonable predictions on the physical and pharmacokinetic properties of drug candidates. *This capability holds the potential to have a huge impact on the overall efficiency of drug discovery. We will describe some of these early efforts, point out the current limitations of “in silico” predictions, and suggest future directions for the field.* In particular, the importance of having access to much larger databases of experimental data with which to parameterize and validate the computational methods will be discussed.

34. Defendant Murcko’s presentation was intended to suggest how, *going forward*, Vertex and other firms might correct deficiencies in the drug candidate selection process, specifically improvement in the ADME and toxicological profiles, using information-based, computational (“in silico”) methods, while avoiding discussion of deficiencies with the design of Vertex’s “first generation drug candidates,” including VX-745. Defendant Murcko’s admission of the then-current deficiencies of the information-driven computational (“in-silico”) methods of drug design points to the concealment of serious problems with the reliability and validity of defendants’ design methods for VX-745, “using a proprietary approach, *information-driven drug design*, that integrates multiple technologies in biology, chemistry and biophysics aimed at increasing the speed and success rate of drug discovery.”

35. On October 23, 2000, the Company issued a press release entitled “Vertex Expands Product Pipeline with Selection of Four New Drug Candidates Targeting Viral Infections, Autoimmune and Inflammatory Diseases, and Cardiovascular Disorders.” The press release stated in part:

Vertex Pharmaceuticals Incorporated announced today the expansion of its product pipeline with the selection of four new drug candidates with the potential to treat viral infections, autoimmune diseases, cardiovascular disorders and inflammation. The selection of these candidates reflects the successful completion of Vertex research programs focused on the discovery of second-generation, small molecule inhibitors of IMPDH, p38 MAP kinase, and interleukin-1 beta converting enzyme (ICE). Each drug candidate that has been selected is now undergoing formal preclinical development in preparation for the start of clinical studies. Two or more of the newly selected drug candidates are expected to enter Phase I clinical studies in 2001.

“These new drug candidates are strong evidence of the productivity gains we have been able to achieve in drug discovery,” said Joshua Boger, Ph.D, Chairman, President, and CEO of Vertex. “They represent the leading edge of our accelerated research output from our integrated drug discovery platform and our chemogenomics approach. We believe that our increased speed and success in translating genomic discoveries into product candidates will create enhanced commercial and business development opportunities for Vertex, allowing us to expand our pipeline and create value for shareholders.”

New Drug Candidates Targeting IMPDH

Vertex announced today the selection of VX-944 as a new drug development candidate from the Company’s IMPDH research program. Earlier in 2000, Vertex advanced another IMPDH inhibitor, VX-148, into preclinical development. Clinical development of VX-148 is expected to begin in early 2001. Vertex’s most advanced IMPDH inhibitor, VX-497, is in Phase II clinical development in combination with interferon alpha for the treatment of hepatitis C virus infection. All three compounds are potent inhibitors of IMPDH (inosine monophosphate dehydrogenase), a cellular enzyme that is essential for production of guanine nucleotides, one of the building blocks of RNA and DNA. Blocking IMPDH may be an effective strategy for blocking the proliferation (growth) of certain cell types, such as lymphocytes, and the replication of viruses, since both lymphocytes and viruses depend on nucleotide synthesis for replication. Vertex’s IMPDH inhibitors have the potential to treat viral infections, autoimmune diseases, and prevent organ transplant rejection. Vertex has retained all development and commercial rights to drug candidates in its IMPDH program.

New Drug Candidates Targeting p38 MAP Kinase

Vertex announced today the selection of VX-954 and VX-702 as new drug development candidates from the Company's p38 MAP kinase research program. P38 MAP kinase is an enzyme that regulates the production of interleukin-1 beta, interleukin-6 (IL-6) and tumor necrosis factor alpha, which are involved in acute and chronic inflammatory response. Inhibition of p38 MAP kinase may be an effective strategy for slowing the progression of acute and chronic inflammatory reactions. As part of a collaboration with Vertex, Kissei Pharmaceutical Co., Ltd. holds an option to develop VX-954 and VX-702 in Japan and other Far East countries. Vertex's p38 MAP kinase inhibitors have the potential to treat a range of inflammatory and cardiovascular diseases. Vertex's most advanced p38 MAP kinase inhibitor, VX-745, is in Phase II clinical development in collaboration with Kissei for the treatment of rheumatoid arthritis.

New Drug Candidate Targeting ICE

Vertex announced today the selection of VX-765 as a new drug development candidate from the Company's ICE research program. ICE is an enzyme that regulates the production of IL-1 and IFN gamma, intercellular mediators that initiate and sustain the process of inflammation. Inhibiting ICE may be an effective strategy for curtailing damaging inflammatory processes common to a number of acute and chronic conditions. Vertex's most advanced ICE inhibitor, VX-740, is in Phase II clinical development for the treatment of rheumatoid arthritis as part of a worldwide collaboration with Aventis S.A. Vertex's ICE inhibitors have the potential to treat a range of inflammatory, cardiovascular, and neurological diseases. Vertex retains development and commercial rights to VX-765 and other drug candidates that may be selected from the Company's second-generation ICE research program.

The drug candidates announced today represent classes of compounds that are distinct from first-generation inhibitors designed by Vertex that are now in clinical development. Each was chosen from among several lead candidates that met stringent criteria for selection, including potency, bioavailability, half-life, ease-of-synthesis, and preclinical indicators of safety. Each drug candidate has demonstrated a therapeutic effect in two or more models of disease activity.

"The five drug candidates we have advanced this year reflect a sustained ramp-up in drug discovery productivity, and provide us the opportunity to pursue multiple indications based on common mechanisms of action," said Vicki Sato, Ph.D., Senior Vice President of Research and Development and Chief Scientific Officer. "In 2001, we anticipate the selection of new drug development candidates targeting caspases, bacterial gyrase, hepatitis C protease, neurophilins, and kinases. This puts Vertex on track to double the size of our product

development pipeline, increasing the number of products in development from eight to approximately 16 by the end of next year.”

Vertex Pharmaceuticals Incorporated discovers, develops and markets small molecule drugs that address major unmet medical needs. Vertex now has 12 drug candidates in development to treat viral diseases, inflammation, cancer, autoimmune diseases and cardiovascular and neurological disorders. Vertex has created its pipeline using a proprietary, information-intensive approach to drug design that integrates multiple technologies in biology, chemistry and biophysics, aimed at increasing the speed and success rate of drug discovery. Vertex’s first approved product is Agenerase(TM) (amprenavir), an HIV protease inhibitor, which Vertex co-promotes with Glaxo Wellcome.

36. Rather than admit to the serious deficiencies in the methods Vertex used to design its first-generation drug development candidates, defendant Sato sought to conceal the defective nature of one or more of the Company’s first-generation drug targets and highlighted the “sustained ramp-up in drug discovery productivity.” Vertex explained that its second-generation compounds were actually of a better design, as judged by criteria including “potency, bioavailability, half-life, ease-of-synthesis,” and most importantly, “preclinical indicators of safety.” The impression of a pipeline loaded with additional new and improved compounds coupled with communication of the application of more stringent selection criteria was carefully orchestrated to suggest that corrections for past “fast-track” approaches had been made, while concealing the impact of the prior flawed selection methods on VX-745 or the other first-generation target compounds under development.

37. On January 4, 2001, the Company issued a press release entitled “Vertex Pharmaceuticals Announces Start of Phase II Clinical Trial of VX-745 for Rheumatoid Arthritis.” The press release stated in part:

Vertex Pharmaceuticals Incorporated announced today the commencement of a dose-ranging Phase II clinical trial with VX-745, a small molecule inhibitor of p38 MAP kinase, in patients with rheumatoid arthritis. Vertex is a leader in the discovery and clinical development of p38 MAP kinase inhibitors, which have the

potential to be a powerful new class of oral anti-inflammatory medicines that reduce cytokine activity through a novel mechanism of action.

“The study announced today is designed to allow us to evaluate the clinical activity of a p38 MAP kinase inhibitor over a three-month dosing period,” said John J. Alam, M.D., Senior Vice President for Drug Evaluation and Approval. “Recent advancements in the treatment of rheumatoid arthritis, which demonstrate that TNF alpha inhibition is an important strategy for controlling disease progression, indicate significant potential for a well-tolerated, oral p38 MAP kinase inhibitor.”

P38 MAP kinase regulates the production of two cytokines, TNF alpha and IL-1, which have been implicated in a range of inflammatory diseases. In addition to rheumatoid arthritis, p38 MAP kinase inhibitors may play a future role in the treatment of heart failure, stroke, and other diseases. In tandem with the development of VX-745 as a lead clinical candidate for the treatment of rheumatoid arthritis, Vertex significantly broadened its p38 MAP kinase program in 2000 by advancing two additional, distinct p38 MAP kinase inhibitors, VX-954 and VX-702, into preclinical development. Vertex Pharmaceuticals holds development and commercial rights in the United States and Europe for its p38 MAP kinase inhibitors. Kissei Pharmaceutical Co., Ltd. of Matsumoto-City, Japan is Vertex’s partner for developing p38 MAP kinase inhibitors in Japan and certain Asian countries. In December 2000, Kissei made a \$1 million milestone payment to Vertex related to the start of preclinical testing of VX-702.

The randomized, double-blind, placebo-controlled trial announced today will test two different doses of VX-745 in a total of approximately 135 adult patients. The trial will explore the clinical activity and tolerability of escalating doses of VX-745 when given as monotherapy for three months. The trial will enroll patients who have active rheumatoid arthritis and are not responding adequately to their current therapy. The trial will evaluate objective clinical response rates, self-reported patient health assessments, and pharmacodynamic markers of drug activity.

The Company is in the final stages of providing clinical trial material for approximately 35 clinical centers in the United States that are scheduled to begin screening and enrolling patients. The trial is expected to be completed in 2001. In 2000, Vertex completed a one-month, pilot Phase II clinical trial in patients with rheumatoid arthritis.

38. Despite the apparent progression of VX-745 beyond the Phase II pilot study and into a “dose-ranging Phase II study,” defendants remained steadfast in their intentions to rapidly progress the “second generation” p38 MAPK inhibitor candidates, VX-702 and VX-954, as

quickly as possible. They knew but continued to conceal the fact that the efforts made to design VX-745 were fundamentally flawed, that the molecule was far too lipophilic and that the VX-745 program would need to be terminated once one of the properly designed candidates had completed the preclinical testing stage. Since defendants had failed to progress the other inhibitor candidates beyond the preclinical phase, and since an active p38 MAPK program was critical to the success of the Company, defendants had no choice but to continue to conceal their concerns regarding VX-745.

39. On April 30, 2001, the Company issued a press release entitled “Vertex to Integrate Aurora’s Core Strengths in Cell Assay Development and Ultra High Throughput Screening to Accelerate Drug Discovery in Gene Families.” The press release stated in part:

Vertex Pharmaceuticals Incorporated and Aurora Biosciences Corporation announced today that they have signed a definitive agreement whereby Vertex will acquire Aurora in a stock-for-stock transaction. The fully-diluted equity value of the transaction is approximately \$592 million. The agreement will unite Aurora’s industry-leading assay development, screening and cell biology capabilities with Vertex’s integrated drug discovery expertise, creating a comprehensive, scalable platform for systematically accelerating drug candidate output in target-rich gene families. The combination of Vertex’s and Aurora’s technology and expertise is expected to:

- * increase the flow of novel drug candidates into development,
- * accelerate the creation of a broad intellectual property estate, and
- * provide enhanced opportunities for major drug discovery, development and commercial alliances.

Under the terms of the agreement, which have been approved by the Boards of Directors of both Vertex and Aurora, each share of Aurora will convert into shares of newly issued Vertex common stock at a fixed ratio of 0.62 shares of Vertex common stock for each share of Aurora common stock. Based on the closing price of Vertex stock of \$39.25 on April 27, 2001, the fixed exchange ratio implies a price of \$24.34 per Aurora share, a 44 percent premium to the closing price of \$16.85 on April 27, 2001. Vertex will be obligated to issue a total of approximately 14.0 million shares of common stock in exchange for Aurora’s outstanding common stock, and Aurora options will be equitably converted to Vertex options. The transaction will be structured as a tax-free share exchange and is intended to be accounted for as a pooling-of-interests. Directors

and officers of both companies have agreed to vote their shares in favor of the merger. The merger is subject to approval by both Vertex's and Aurora's shareholders, regulatory approval and other closing conditions, and is expected to close in the third quarter of 2001. The transaction, excluding merger-related expenses, is not expected to materially affect Vertex's previously announced net operating results projections for 2001. As of December 31, 2000, Aurora had approximately \$100 million in net cash.

After the merger, Aurora will operate as a wholly-owned subsidiary of Vertex Pharmaceuticals and will continue to carry the Aurora name. Aurora will continue to pursue its strategy of collaborating with new and existing partners in all capacities. Harry Stylli, Ph.D., Aurora's Senior Vice President of Commercial Development, will be president of the Aurora subsidiary.

"Aurora has developed a compelling suite of technologies that has the potential to accelerate target selection, lead generation and optimization, drug candidate selection and establishment of clinical proof-of-concept across multiple gene families," said Joshua Boger, Ph.D., Vertex's Chairman and CEO. "By integrating Aurora's capabilities within Vertex's chemogenomics platform, we believe we will be able to rapidly expand research into major new gene families, as well as enhance our existing multi-target research programs in the kinase and caspase gene families. In addition, we believe that Aurora's proteomics and assay development expertise are broadly applicable in our clinical programs, and will enable us to more rapidly establish the therapeutic profile of our development-stage drug candidates."

"This merger fulfills a near term goal that we have emphasized over the past six months in our public communications and guidance to the financial community, which is to extend our leadership position in gene family-based drug discovery through internal expansion and complementary acquisitions," added Dr. Boger.

"Our core strengths in assay development and ultra high throughput screening are an excellent strategic fit with Vertex's chemogenomics platform," said Stuart J.M. Collinson, Ph.D., Aurora's Chairman, CEO and President, who will join Vertex's Board of Directors when the merger closes. "The agreement with Vertex significantly accelerates our comprehensive drug discovery initiatives and creates new and enhanced partnership opportunities in the years ahead. Together with Vertex, we believe that we can immediately and systematically boost our collective research output in multiple gene families, creating near and long-term value for shareholders."

Vertex and Aurora: Drug Discovery Advantages in Multiple Major Gene Families

The combined company will have one drug on the market, the HIV protease inhibitor Agenerase(R), and 12 drug candidates in clinical development targeting the treatment of viral diseases, cancer, autoimmune and inflammatory diseases, and neurological diseases. The combined company's integrated technology platform will be supported by more than 25 collaborative and licensing agreements with research institutions and major pharmaceutical companies, including American Home Products, Aventis, Bristol-Myers Squibb, GlaxoSmithKline, Eli Lilly, Johnson & Johnson, Merck, Novartis, Pfizer, Pharmacia and Roche.

Vertex has extensive efforts underway to discover and develop small molecule inhibitors for specific targets in the kinase and caspase gene families, and the merger is expected to significantly enhance Vertex's drug discovery capabilities in these and other major gene families and target classes. The merger enables Vertex to integrate Aurora's industry-leading capabilities in the development of cell-based assays and screening instrumentation for use in drug discovery directed at ion channels, g-protein coupled receptors (GPCRs), kinases, proteases and phosphatases, and for use in target validation in a wide range of gene families. Vertex's ongoing drug discovery efforts will also benefit from Aurora's predictive pharmacology and proteomics technologies, which use high-throughput assessments of toxicology and metabolic markers to establish therapeutic proof-of-concept and safety of drug candidates in early clinical testing. Aurora's recent acquisition of PanVera, a specialty supplier of high quality recombinant proteins, provides a further, valuable asset in drug discovery.

Based on the companies' combined drug discovery advantages in gene families, Vertex and Aurora foresee enhanced business development and commercial opportunities. This expectation is based on enhanced productivity in discovery and development, leading to an increased output in proprietary new small molecule drug candidates. Existing and new corporate collaborations will continue to be important sources of revenue for the combined company.

First-quarter financial results for Aurora are expected to be consistent with previous guidance. Further information regarding Aurora's first-quarter results will be disclosed on May 3, 2001.

Vertex was advised by Merrill Lynch and Aurora was advised by Goldman Sachs.

40. On July 18, 2001, the Company issued a press release entitled "Vertex Pharmaceuticals Announces the Completion of its Acquisition of Aurora Biosciences." The press release stated in part:

Vertex Pharmaceuticals Incorporated today announced the completion of its acquisition of Aurora Biosciences Corporation. The transaction was completed today after Vertex and Aurora shareholders voted to approve the merger agreement at special meetings held at Vertex's and Aurora's headquarters.

The merger is a tax-free stock-for-stock exchange. As a result of the acquisition, Aurora shareholders will receive 0.62 shares of Vertex common stock for each share of Aurora common stock. Cash will be provided for fractional shares. Letters of transmittal regarding the procedures to exchange Aurora common stock for Vertex common stock will be sent to former Aurora stockholders in the near future. Aurora will deregister its common stock with the Securities and Exchange Commission and delist its common stock from the Nasdaq Stock Market.

As a result of the merger, Aurora will operate as a wholly owned subsidiary of Vertex and will continue to carry the Aurora name. Aurora will continue to pursue its strategy of collaborating with new and existing partners in all capacities.

"Vertex is a leader in small molecule drug discovery. This merger represents a significant step in our strategy to enhance and accelerate the design and development of major new drugs," stated Joshua Boger, Ph.D., Chairman and CEO of Vertex Pharmaceuticals. "By integrating Aurora's capabilities into Vertex's chemogenomics platform, we will be able to rapidly expand research into major new gene families, as well as enhance our existing multi-target gene family research program in the kinase, caspase and protease gene families. Vertex has a strong track record of creating drug candidates targeting significant unmet medical needs, and the technologies and capabilities gained from this merger will increase our ability to create medically important drugs."

THE TRUTH EMERGES

41. On September 24, 2001, the Company issued a press release entitled "Vertex Moves to Re-allocate Resources from VX-745 in p38 MAP Kinase Program to Accelerate Development of Second Generation Drug Candidates VX-702 and VX-850." The press release stated in part:

Vertex Pharmaceuticals Incorporated announced today that the Company has made a commercial decision to re-allocate its development resources in its small molecule p38 MAP kinase inhibitor program targeting inflammatory disease. ***As part of this decision, Vertex is suspending current clinical development of its lead orally active p38 MAP kinase inhibitor VX-745.*** Concurrently, in an analysis of clinical data of VX-745 in the treatment of rheumatoid arthritis,

Vertex has obtained “proof of principle” correlating inhibition of p38 MAP kinase with a significant anti-inflammatory effect. Based on this encouraging finding, Vertex is accelerating the development of its second generation oral p38 MAP kinase inhibitors VX-702 and VX-850. Vertex intends to initiate clinical studies with one or both of these second generation p38 MAP kinase inhibitors in the first half of 2002.

The decision to suspend clinical development of VX-745 is based directly on adverse effect findings within nonclinical (animal) tests. In one of two animal species receiving high-dose VX-745 exposure, adverse effect findings within the central nervous system (CNS) were noted. The tests were conducted as part of standard nonclinical safety evaluations in support of long term human clinical studies. The blood levels of VX-745 that were associated with neurological effects in animals were approximately ten times higher than the blood levels obtained in human clinical trials to date. Nonclinical tests have indicated that VX-745 crosses from the blood into the CNS. No neurological side effects associated with the drug have been observed in clinical trials of VX-745 to date.

“Vertex’s strategy focuses on the discovery of multiple drug candidates, representing distinct chemical classes, for each novel protein target,” said Dr. Joshua Boger, Chairman and CEO of Vertex. ***“In our p38 MAP kinase program, we have two second generation drug candidates which do not cross from the bloodstream into the CNS, VX-702 and VX-850, one or both of which we can move into clinical development quite rapidly.*** Based on the clinical data we have gathered to date, Vertex remains committed to maintaining our leadership position in exploring the clinical and commercial opportunity of p38 MAP kinase inhibitors.”

Vertex intends to present the clinical data from the Phase II clinical study in rheumatoid arthritis in a peer-reviewed forum in 2002. In January 2001, Vertex began a 12-week, randomized, placebo-controlled clinical trial of VX-745 in rheumatoid arthritis patients. The objective of the study was to assess the safety, pharmacokinetics and clinical activity of VX-745 at two dose levels. Vertex has completed the treatment and preliminary evaluation of the first (lower dose) cohort of patients in the study. In this study, VX-745 was generally well-tolerated and no CNS adverse events were observed. Vertex also obtained confirmatory evidence that inhibition of the p38 MAP kinase mechanism with an orally active drug can produce a significant clinical effect, based on the study’s primary endpoint of ACR 20 response in patients dosed with VX-745 compared to placebo. ACR 20 is a standard measure of response to treatment in rheumatoid arthritis patients, and represents improvement in a variety of clinically relevant signs and symptoms of disease.

Based on the CNS effects observed in ongoing nonclinical (animal) toxicology testing, Vertex voluntarily made the decision to not proceed with

enrollment of patients in the higher-dose cohort of the rheumatoid arthritis study and to suspend the trial. In addition, an ongoing trial of VX-745 in myelodysplastic syndrome has also been stopped. The Company does not anticipate any material financial effect in 2001 related to the change in focus for the p38 MAP kinase program. The potential for further clinical development of VX-745 will be evaluated following a full analysis of clinical and nonclinical data, as well as possible additional nonclinical tests.

“Based on the ‘proof of principle’ clinical and safety data we have generated to date, we remain highly confident that we can develop and commercialize p38 MAP kinase inhibitors that will provide a major clinical advance in inflammatory diseases such as rheumatoid arthritis,” said John Alam, M.D., Senior Vice President of Drug Evaluation and Approval at Vertex. “Although clinical data provided support for continued development of VX-745, at this time we believe the prudent action is to refocus our development efforts on second generation p38 inhibitors. We intend to initiate clinical studies with our second generation p38 inhibitors in the first half of 2002.”

“Vertex is well-positioned as a leader in small molecule drug discovery and development,” said Dr. Boger. “Vertex has one drug on the market, more than ten drug candidates in development addressing multiple areas of significant unmet medical need, a strong cash position and more than 25 collaborations with pharmaceutical and biotechnology companies. We look forward to continued advancement of our pipeline and the addition of new drug candidates into development in the months ahead.”

About VX-702, VX-850 and P38 MAP Kinase inhibitors

Vertex is accelerating development of its two second generation p38 MAP kinase inhibitor drug candidates, VX-702 and VX-850. These drug candidates, which were brought forward into development by Vertex in 2000, are oral, potent, selective and chemically distinct from VX-745. These drug candidates also possess unique properties that distinguish them from VX-745 and from each other. Vertex’s preclinical studies of these compounds demonstrate that VX-702 and VX-850 do not cross the blood-brain barrier to penetrate into CNS tissues. Vertex anticipates initiating clinical studies with one or both of these drug candidates in the first half of 2002. In addition, both compounds have a favorable preclinical pharmacokinetic profile for development in rheumatoid arthritis, with demonstrated bioavailability upon oral administration, no penetration into the CNS, and encouraging formulation characteristics.

Vertex has led the discovery and development of p38 MAP kinase inhibitors, which have the potential to be a powerful new class of oral anti-inflammatory medicines that reduce cytokine activity through a novel mechanism of action. P38 MAP kinase regulates the production of two proinflammatory

cytokines, TNF alpha and IL-1, which have been implicated in a range of inflammatory diseases. In addition to rheumatoid arthritis, p38 MAP kinase inhibitors may play a future role in the treatment of other inflammatory diseases as well as heart failure and other diseases. Vertex holds development and commercial rights in the United States and Europe for its p38 MAP kinase inhibitors. Kissei Pharmaceutical Co., Ltd. holds development and commercial rights in Japan and certain Asian countries for VX-745 and VX-702, and holds an option to develop and commercialize VX-850.

42. As a result of the defendants' shocking revelations regarding the cancellation of the VX-745 development program, and the ill-advised concealment of certain of its preclinical studies, the price of Vertex shares plummeted 24.4%, from a share price of \$23.47 to \$17.74, only two months after completion of the merger with Aurora.

43. In fact, defendants had no choice but to disclose the cancellation of the VX-745 program, since (i) defendants had completed their merger with Aurora, obviating the need to conceal adverse material facts to preserve the deal; (ii) to continue the concealment would have put additional patients at risk of exposure to a potent and highly lipophilic p38 MAPK inhibitor that could be expected to cross the blood-brain barrier and thus cause neuronal effects; (iii) the VX-745 development program had reached a point where the cost of the resources necessary to continue the concealment was outweighed by the advantages of making a correcting disclosure, including the significantly reduced risks associated with development of the identified second-generation p38 MAPK inhibitors VX-702 and VX-850; (iv) ultimately, VX-745, for reasons related to its poor design, particularly its ability to cross the blood-brain barrier, would not stand a reasonable chance for drug approval; and (v) many Vertex employees had become aware of the concealed issues with VX-745, such that it was no longer possible to continue in that concealment for any reason.

44. On December 3, 2002, the SEC released the following notice regarding charges against defendant Marks, former Patent Counsel at Vertex:

SEC CHARGES HIGH-RANKING ATTORNEY AT CAMBRIDGE BIOTECH COMPANY WITH INSIDER TRADING

The Commission announced today that it has filed insider trading charges against Andrew S. Marks, of Wayland, Massachusetts, in connection with his September 2001 sale of stock in Vertex Pharmaceuticals, Inc., a Cambridge-based biotechnology company. The Commission's complaint alleges that Marks, who at the time was Vertex's highest-ranking attorney, learned on September 20, 2001 that Vertex planned to announce the suspension of clinical trials of one of its promising drugs on September 24. According to the Commission's complaint, on September 21, Marks liquidated all of his Vertex stock despite having previously acknowledged in writing that the impending release would not be viewed favorably by Wall Street and that he should not sell his Vertex shares. The Commission's complaint alleges that, by selling his holdings prior to the company's public announcement on September 24, Marks avoided a loss of \$105,999.

According to the Commission's complaint, at the time he traded, Marks was the designated attorney for employees to consult regarding compliance with Vertex's employee securities trading policy. In that capacity, the complaint alleges, Marks wrote Vertex's CEO an email on September 20, advising him to make sure that an employee who had requested permission to trade had no knowledge of the impending press release. According to the Commission's complaint, Marks' email went on to say:

I guess that I am troubled about any employee trading prior to that release because it is likely to have an effect on the stock (looks like I can't sell any shares) and, depending on the degree of that effect, could create the perception of insider trading.

The Commission's complaint alleges that, on Sept. 21, less than 24 hours after writing this email to the CEO, Marks sold 20,900 shares of Vertex at an average price of \$22.81 per share, receiving \$476,765. According to the Commission's complaint, Vertex announced its decision to terminate clinical trials at approximately 7:10 a.m. on September 24. Vertex's shares closed that day at \$17.74, down \$5.33 from the previous close on volume of 9.8 million shares

The Complaint alleges that Marks traded in breach of a fiduciary duty to Vertex and its shareholders not to trade in the Company's stock while in possession of material, nonpublic information about the Company. As a result of the conduct described in the Complaint, the Commission has charged Marks with violations of the antifraud provisions of federal securities laws. The Commission's Complaint seeks injunctive relief, disgorgement, plus prejudgment interest, and civil penalties and seeks an order barring Marks from acting as an officer or director of any publicly-traded company.

The Commission staff acknowledges the assistance of the NASD Regulation, Inc., in connection with this investigation.

45. The SEC's complaint pointed to the unlawful selling of Vertex shares by Marks, based on insider information regarding the termination of the VX-745 program. Additionally, the SEC's complaint *points to the concealed preclinical testing activities, as well as the interests of one or more Vertex employees interested in selling the stock*, following the internal decision to suspend the VX-745 program, but preceding the public announcement of September 24, 2001.

46. Indeed, the SEC's complaint offers clear evidence of the fact that, despite defendants' assurances that they would not commence clinical development of VX-745 until all preclinical studies were completed, defendants quietly continued the preclinical testing of VX-745 in secret, withholding any announcements related to the same to avoid any connection of them with the October 2000 disclosure of defendants' problems with the Vertex first-generation drug candidate selection process.

47. The true facts, which were known by each of the defendants during the Class Period, but were concealed from the investing public, were as follows:

(a) That p38 MAPK has a varied tissue distribution and is implicated not only in inflammation and arthritis, but also in cellular models for neuronal differentiation and effects, presenting multiple targets and significant drug design challenges, which defendants knew from well before the beginning of the Class Period;

(b) That small, highly lipophilic molecules designed as inhibitors of p38 MAPK are at great risk of crossing the blood-brain barrier and of causing neuronal effects;

(c) That defendants already knew or should have known what constituted an acceptable ADME profile for p38 MAPK inhibitors targeting inflammation and arthritis, as

opposed to inhibitor targets for neuronal effects, particularly the desired molecular weight and lipophilicity, as well as the correlation of lipophilicity with the potential for p38 MAPK related neuronal effects;

(d) That defendants knew or should have known, as early as 1998, of the importance of lipophilicity in the design of p38 MAPK inhibitors, since they had designed at least one other class of potential inhibitory molecules targeting p38 MAPK possessing significantly lower lipophilicity;

(e) That VX-745, a potential p38 MAPK inhibitor, intended to target inflammatory disease, asthma, crohn's disease and rheumatoid arthritis, was exceptionally lipophilic and thus would be predicted to cross the blood-brain barrier and thus to cause neuronal effects;

(f) That once clinical testing of VX-745 had commenced, defendants quietly continued the preclinical testing of VX-745 in secret, despite public assurances that they would not commence clinical development until all preclinical studies were completed;

(g) That defendants purposefully delayed the announcement of renewed long-term preclinical studies of VX-745 in animals until announcement of study results to avoid connection of the need for the renewed studies with the October 2000 disclosure of defendants' problems with the Vertex first-generation drug candidate selection process;

(h) That the announcement of the unsuitability of the VX-745 as a drug candidate was similarly delayed until two months after completion of the merger with Aurora;
and

(i) That the failure to disclose the defective nature of the VX-745 program, including but not limited to physical and chemical properties, ADME profile, tests, experiments

and preclinical and clinical studies, would prevent investors and Aurora shareholders from learning the extent of the misrepresentations made to them during the Class Period.

FIRST CLAIM FOR RELIEF

For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants

48. Plaintiff incorporates ¶¶1-47 by reference.

49. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

50. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Vertex publicly traded securities during the Class Period.

51. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Vertex publicly traded securities. Plaintiff and the Class would not have purchased Vertex publicly traded securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

52. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of Vertex publicly traded securities during the Class Period.

SECOND CLAIM FOR RELIEF

For Violation of §20(a) of the 1934 Act Against All Defendants

53. Plaintiff incorporates ¶¶1-52 by reference.

54. The Individual Defendants acted as controlling persons of Vertex within the meaning of §20(a) of the 1934 Act. By reason of their positions as officers and/or directors of Vertex, and their ownership of Vertex stock, the Individual Defendants had the power and authority to cause Vertex to engage in the wrongful conduct complained of herein. Vertex controlled each of the Individual Defendants and all of its employees. By reason of such conduct, the Individual Defendants and Vertex are liable pursuant to §20(a) of the 1934 Act.

CLASS ACTION ALLEGATIONS

55. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased Vertex publicly traded securities (the "Class") on the open market during the Class Period. Excluded from the Class are defendants.

56. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. During the Class Period, Vertex had more than 59 million shares of stock outstanding, owned by hundreds if not thousands of persons.

57. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) Whether the 1934 Act was violated by defendants;
- (b) Whether defendants omitted and/or misrepresented material facts;
- (c) Whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) Whether the prices of Vertex publicly traded securities were artificially inflated; and
- (f) The extent of damage sustained by Class members and the appropriate measure of damages.

58. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

59. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

60. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to FRCP 23;

- B. Awarding plaintiff and the members of the Class damages, interest and costs; and
- C. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: September __, 2003

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