

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

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SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 06-4540
	)	
LORENZ KOHLER and SWISS REAL ESTATE	)	
INTERNATIONAL HOLDING AG,	)	Hon. Eduardo C. Robreno
	)	
Defendants, and	)	
	)	
SACHO TODOROV DERMENDJIEV,	)	
	)	
Relief Defendant.	)	

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**FIRST AMENDED COMPLAINT**

The Securities and Exchange Commission (the "SEC" or "Commission") alleges as follows:

**Nature Of This Action**

1. This case involves insider trading in call options on the common stock of CNS, Inc. ("CNS") in advance of the announcement on October 9, 2006, that CNS would be acquired by GlaxoSmithKline plc. The options were purchased by Lorenz Kohler ("Kohler"), a Swiss citizen, and others associated with him, through accounts in the names of Swiss financial institutions. These options gave the holders the right to acquire 90,500 shares of CNS stock at predetermined prices. When the acquisition of CNS was announced to the public, the price of CNS stock rose by more than 28%. Kohler and his group immediately sold their options, realizing \$499,696 in illicit gains.

2. The Commission alleges on information and belief that defendants Kohler and Swiss Real Estate International Holding AG ("Swiss Real Estate"), which is owned

and controlled by Kohler, purchased the options while in possession of material nonpublic information relating to the proposed acquisition of CNS. By trading on inside information provided to them in breach of a duty of trust and confidentiality, Kohler and Swiss Real Estate knowingly or recklessly used a manipulative or deceptive device, scheme or artifice to defraud.

### **Jurisdiction And Venue**

3. The Court has jurisdiction over this action pursuant to Sections 21(e), 21A, and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(e), 78u-1, and 78aa].

4. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa] because certain acts and transactions constituting the violations occurred in this district.

5. Defendants have directly or indirectly made use of the means or instrumentalities of interstate commerce and/or of the mails in connection with the transactions described in this Complaint.

### **Defendants**

6. Lorenz Kohler ("Kohler"), 60, is a Swiss citizen and a resident of Mels, Switzerland. Kohler holds an MBA and worked in management roles at Swiss banks for approximately 25 years.

7. Swiss Real Estate International Holding AG ("Swiss Real Estate") is a Swiss corporation with headquarters in St. Gallen, Switzerland. Swiss Real Estate purportedly is in the business of building housing developments in Bulgaria, Georgia, Russia, and other countries through subsidiaries in those countries. Kohler is the sole

director and shareholder of Swiss Real Estate. During 2006, Swiss Real Estate maintained banking and trading accounts at Credit Suisse Group ("Credit Suisse") in Switzerland. Kohler controlled the securities transactions and money transfers in these accounts.

#### **Relief Defendant**

8. Sacho Todorov Dermendjiev ("Dermendjiev"), 50, is a Bulgarian citizen and a resident of Sofia, Bulgaria. Dermendjiev is a partner in certain Swiss Real Estate ventures. During late 2006, Dermendjiev was the beneficial owner of banking and securities accounts at Credit Suisse over which Kohler had power of attorney.

#### **Related Parties**

11. Throughout the relevant period in 2006, CNS was a Minnesota-based healthcare products manufacturer. Its shares were registered with the Commission pursuant to Section 12(b) of the Exchange Act, listed on NASDAQ, and traded under the ticker symbol CNXS. Options for CNS shares traded on the Chicago, Philadelphia, and San Francisco options exchanges.

12. GlaxoSmithKline plc ("Glaxo") is a worldwide pharmaceutical company headquartered in the United Kingdom.

13. Throughout the relevant period in 2006, Swiss American Securities, Inc. ("SASI") was a broker-dealer based in New York City. SASI was a wholly-owned subsidiary of Credit Suisse.

**Factual Allegations**

**A. Glaxo's Acquisition Of CNS**

14. In May 2006, CNS's Board of Directors engaged an investment bank, Sawaya Segalas & Co. LLC ("Sawaya"), to explore the sale of CNS. Sawaya approached potential acquirers without identifying CNS by name. Interested parties were required to enter into confidentiality agreements before being informed of CNS's identity.

15. In July 2006, a U.S. subsidiary of a German company ("Bidder A") submitted a non-binding indication of interest in acquiring CNS.

16. On September 1, 2006, Glaxo submitted a non-binding statement of interest with a price range of \$33 to \$35 per share.

17. During September 2006, CNS management met with representatives of Glaxo and Bidder A and requested that binding offers be submitted by September 29. On September 28 Glaxo's Board of Directors authorized the acquisition of CNS and on September 29 Glaxo submitted an offer at \$35 per share. From September 26 to 28, Bidder A's Supervisory Board approved a bid for CNS by circular, and on September 29 submitted an offer at \$30 per share.

18. On October 2, 2006, CNS's Board met to review the offers from Glaxo and Bidder A. That same day CNS requested that Glaxo and Bidder A submit their best and final offers by noon on October 4. On October 4, Glaxo submitted a final offer of \$37.50 per share and Bidder A submitted a final offer of \$33 per share. CNS's Board met telephonically to discuss the offers and then informed Glaxo that it was the winning bidder. CNS's Board of Directors approved the acquisition by Glaxo at \$37.50 on October 8, 2006.



19. On October 9, 2006, before the opening of the New York securities markets, CNS and Glaxo announced that Glaxo would acquire CNS ("Announcement"). The Announcement indicated that CNS shareholders would receive \$37.50 per share, a 31% premium over CNS's closing price of \$28.56 on the last trading day prior to the Announcement. During the year prior to the Announcement, CNS's highest closing stock price was \$29.64.

20. Before the Announcement, information concerning CNS's interest in being acquired, including information relating to the discussions with Glaxo and Bidder A, was confidential, nonpublic information. The individuals and entities involved in these discussions had been advised that all information relating to the potential acquisition was confidential, nonpublic information.

21. Following the Announcement, the price of CNS stock closed at \$36.72 on October 9, 2006. This was an increase of more than 28.5% over CNS's prior closing price.

**B. Purchase Of Options On CNS Stock**

22. In the days leading up to the October 9, 2006, announcement of Glaxo's acquisition of CNS, Kohler and his group bought out-of-the-money call option contracts on more than 90,500 shares of CNS common stock. These purchases were made through an omnibus account with Credit Suisse in Zurich, Switzerland, and were executed through SASI in New York.

23. On September 28, 2006, the day the boards of Glaxo and Bidder A authorized bids for CNS, Kohler bought 270 November out-of-the-money CNS call option contracts at a strike price of \$30 ("November-30 options") for the Swiss Real

Estate account. These purchases represented approximately 67% of the volume in CNS November-30 options on September 28. CNS's stock price closed that day at \$28.49.

24. On September 29, the day Glaxo bid \$35 per share and Bidder A bid \$30 per share, Kohler bought 135 November-30 options for Dermendjiev's account. The same day, Kohler's wife bought 45 November-30 options for her own account. These purchases constituted approximately 74% of the volume in CNS November-30 options on September 29, 2006. CNS closed that day at \$28.23.

25. On October 2, 2006, the day CNS's board met to consider the bids from Glaxo and Bidder A, Swiss Real Estate (acting through Kohler) bought 230 October call option contracts at a strike price of \$30 ("October-30 options"). Also on October 2, Kohler bought 200 October-30 calls for his personal account. The October-30 options were due to expire on October 21, 2006. These purchases constituted approximately 85% of the volume in CNS October-30 options on October 2, 2006. Additionally, on October 2, 2006, Kohler's brother-in-law bought 25 November-30 options for his account. CNS closed that day at \$28.16.

26. In total, Kohler, Swiss Real Estate, Dermendjiev, Kohler's wife, and Kohler's brother-in-law purchased 905 call option contracts on CNS stock before the October 9, 2002 Announcement. These options entitled the holders to purchase a total of 90,500 shares of CNS common stock at \$30 per share. The total cost of these call option contracts was approximately \$113,000.

27. The Commission alleges on information and belief that when Kohler purchased call options on CNS stock on September 28 and 29 and October 2, 2006, for his own account and for the accounts of Swiss Real Estate and Dermendjiev (i) he was in

possession of material non-public information relating to the acquisition of CNS, (ii) the material non-public information held by Kohler was conveyed to him in breach of a duty of trust or confidence, and (iii) he knew or was reckless in not knowing that this material non-public information had been conveyed to him in breach of a duty of trust or confidence.

28. Information and evidence identifying the material non-public information possessed by Kohler on September 28 and 29 and October 2, 2006, is particularly within Kohler's knowledge and control. Similarly, information and evidence identifying the source of that material non-public information is particularly within Kohler's knowledge and control.

29. On September 28 or 29, 2006, Kohler informed his wife that he had purchased November-30 options on CNS stock. When he passed this information to his wife, Kohler knew that she typically made trades for her own account that matched his trades and that she was likely to do so with regard to the call options on CNS stock. After learning of her husband's purchase of November-30 options on CNS stock, Kohler's wife purchased November-30 call options for her own account on September 29, 2006.

30. Between September 28 and October 2, 2006, Kohler informed his brother-in-law that he had purchased November-30 options on CNS stock. At the time he passed this information to his brother-in-law, Kohler knew that his brother-in-law typically made trades for his own account that matched Kohler's trades and that he was likely to do so with regard to the call options on CNS stock. After learning of Kohler's

purchase of November-30 options on CNS stock, Kohler's brother-in-law purchased November-30 call options for his own account on October 2, 2006.

31. The purchases of call options on CNS stock by Kohler, Swiss Real Estate, Dermendjiev, Kohler's wife, and Kohler's brother-in-law were executed in part on the Philadelphia Stock Exchange.

**C. Sale Of The CNS Options**

32. In announcing its intent to acquire CNS, Glaxo stated on October 9, 2006, that CNS shares would be purchased at \$37.50 per share. This greatly increased the value of the \$30 call option contracts held by Kohler, Swiss Real Estate, Dermendjiev, Kohler's wife, and Kohler's brother-in-law.

33. Following the Announcement, Kohler on October 9, 2006, sold a portion of the CNS options in his account and in the account of Swiss Real Estate, as well as all of the CNS options in Dermendjiev's account.

34. Also on October 9, 2006, Kohler informed his wife and his brother-in-law that he had sold his CNS options, knowing that they typically traded as he did. On the same day they both sold all of their CNS options.

35. On October 10, 2006, Kohler sold the remainder of the CNS options in his account and in the account of Swiss Real Estate.

36. The sales of the CNS call options held by Kohler, Swiss Real Estate, Dermendjiev, Kohler's wife, and Kohler's brother-in-law were executed in part on the Philadelphia Stock Exchange.

37. Total proceeds from these sales of call options on CNS stock were approximately \$613,000.



38. These sales of call options on CNS stock generated \$499,696 in profit. The individual profit figures were as follows: Kohler \$110,626; Swiss Real Estate \$276,940; Dermendjiev \$74,655; Kohler's wife \$23,850, and Kohler's brother-in-law \$13,625.

39. Kohler subsequently disbursed over \$185,000 obtained from the sale of Swiss Real Estate's call options to accounts held in the name of Swiss Real Estate subsidiaries in Georgia and Lithuania.

**D. Pattern Of Trading In Advance of Other Public Announcements**

40. Kohler and his group also engaged in highly suspicious trading in advance of five other acquisitions or earnings announcements in 2006, each involving a German company. In total, Kohler and his group realized over \$5 million in profits on these trades.

41. **Engelhard Corp.**: On January 3, 2006, BASF AG, a German chemical company, announced a hostile tender offer for Engelhard Corp. ("Engelhard"), a specialty chemical company headquartered in New Jersey. The tender offer was at \$37 per share.

42. Approximately two weeks before this acquisition, on December 15, 2005, Swiss Real Estate (through Kohler), Kohler's daughter's boyfriend, and Kohler's brother-in-law purchased a total of 2,530 Engelhard January \$30 call options. On December 27, Kohler bought 610 such options for another company he owned with Dermendjiev and for Dermendjiev's account. On December 30, Kohler's daughter's boyfriend bought 300 February \$35 options. Most of these call options were out-of-the-money, meaning that the exercise price of the options was above the closing price of Engelhard's common stock on the date of purchase.

43. Immediately after announcement of the acquisition of Engelhard on January 3, 2006, Kohler and these other purchasers sold their options. Collectively, they made close to \$2.4 million on their Engelhard options trading.

44. **Schering AG**: On March 13, 2006, Merck KGaA, a German pharmaceutical company, announced an offer to acquire Schering AG ("Schering") for € 77 per share. Four days before this announcement, on March 9, 2006, Kohler purchased 295 Schering April €66 calls and 575 April €70 calls for the Swiss Real Estate account. On March 10, 2006, Kohler bought 55 Schering April €70 calls for his personal account. All of these call options were out-of-the-money.

45. When the Merck KGaA offer was announced on March 13, 2006, Kohler immediately sold his 55 April €70 call options, for a profit of approximately \$68,376. Over the next four days he sold the Schering options in the Swiss Real Estate account for a profit of approximately \$1,387,098.

46. **Allianz SE**: After the market closed on August 3, 2006, Allianz SE ("Allianz"), a German insurance and finance company, announced that it was raising its full-year guidance and reporting better than expected quarterly results. The next day the price of Allianz stock increased significantly, closing at €127.93.

47. Approximately a week before the Allianz announcement, on July 28, 2006, Kohler purchased 580 Allianz August €125 call options for the Swiss Real Estate account. On July 31, Swiss Real Estate and Kohler's wife purchased a total of 2,300 such options. On August 3, Swiss Real Estate and Kohler's wife purchased 4,350 additional August € 125 options, while Kohler, Swiss Real Estate, and Kohler's wife

Kohler purchased 7,700 August € 130 options. All of these call options were out-of-the-money.

48. Shortly after the Allianz earnings announcement, Kohler, his wife, and Swiss Real Estate sold their Allianz options for total profits of approximately \$127,000.

49. **Serono SA**: On September 21, 2006, Merck KGaA announced an offer to acquire Serono SA ("Serono"), a biotechnology company headquartered in Switzerland, at CHF 1,100 per share.

50. Six days prior to that announcement, on September 15, 2006, Kohler bought 800 Serono October CHF 960 calls for the Swiss Real Estate account. The day before the Serono announcement, the Swiss Real Estate account sold 200 of these options at a profit. The next day, after the Serono announcement, the Swiss Real Estate account sold its remaining 600 call options for a profit approximately \$549,728. All of these call options were out-of-the-money.

51. **Techem AG**: On Sunday, October 22, 2006, a subsidiary of Australian bank Macquarie Bank Ltd. announced a hostile bid for Techem, a German water and energy devices maker. On Monday, October 23, Techem stock rose dramatically and closed at €49.31.

52. On the Friday immediately preceding this announcement, Kohler purchased 140,000 warrants to purchase Techem stock, which was then trading at €42.25. On October 23, following the announcement, Kohler sold his Techem warrants for a profit of approximately \$29,600.

**First Claim For Relief**  
**(Lorenz Kohler)**

53. The Commission incorporates paragraph 1 through 52 with the same force and effect as if set out here.

54. Kohler purchased call option contracts on CNS stock for his own account and for the accounts of Swiss Real Estate and Demendjiev on the basis of material non-public information regarding the acquisition of CNS when he knew or was reckless in not knowing that this material non-public information had been provided to him in breach of a duty of trust and confidence.

55. Kohler realized illicit gains of approximately \$110,626 through the sale of call options on CNS stock purchased for his own account.

56. As the sole stockholder of Swiss Real Estate, Kohler realized illicit gains of approximately \$276,940 through the sale of the call options on CNS stock purchased for the account of Swiss Real Estate.

57. By engaging in the conduct described above, Kohler, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, in connection with the purchase or sale of securities, and with knowledge or recklessness: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

58. By reason of the foregoing, Kohler violated Section 10(b) of the Exchange



Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and is likely to commit such violations in the future unless enjoined from doing so.

**Second Claim For Relief**  
**(Swiss Real Estate)**

59. The Commission incorporates paragraph 1 through 58 with the same force and effect as if set out here.

60. Swiss Real Estate, acting through Kohler in his capacity as sole director and shareholder, purchased call option contracts on CNS stock on the basis of material non-public information regarding the acquisition of CNS when it knew or was reckless in not knowing that this material non-public information had been provided in breach of a duty of trust and confidence.

61. Swiss Real Estate realized illicit gains of approximately \$276,940 through the sale of its call options on CNS stock.

62. By engaging in the conduct described above, Swiss Real Estate, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, in connection with the purchase or sale of securities, and with knowledge or recklessness: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

63. By reason of the foregoing, Swiss Real Estate violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-

5] and is likely to commit such violations in the future unless enjoined from doing so.

**Third Claim For Relief**  
**(Lorenz Kohler)**

64. The Commission incorporates paragraph 1 through 63 with the same force and effect as if set out here.

65. Kohler knew or was reckless in not knowing that the material non-public information regarding the potential acquisition of CNS that was the basis for his tips to his wife and brother-in-law had been provided to him in breach of a duty of trust and confidence. Kohler also knew that his wife and brother-in-law routinely made trades for their own accounts that matched his trades and that they were likely to do so with regard to the options in CNS stock. Kohler's tips to his wife and his brother-in-law breached his duty of trust and confidence and he received a financial, reputational, or social benefit from each of these tips.

66. Kohler's wife realized illicit gains of \$23,850 on the sale of the options she purchased as a result of the tip from Kohler.

67. Kohler's brother-in-law realized illicit gains of \$13,625 on the sale of the options he purchased as a result of the tip from Kohler.

68. By engaging in the conduct described above, Kohler, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, in connection with the purchase or sale of securities, and with knowledge or recklessness: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts,

practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

69. By reason of the foregoing, Kohler violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and is likely to commit such violations in the future unless enjoined from doing so.

**Claim As To Relief Defendant**  
**(Sacho Todorov Dermendjiev)**

70. The Commission incorporates paragraph 1 through 69 with the same force and effect as if set out here.

71. As a result of Kohler's purchase of call option contracts on CNS stock for Dermendjiev's account on September 29, 2006, and the sale of those options on October 9, 2006, Dermendjiev realized illicit gains of \$74,655.

72. Dermendjiev obtained these profits solely as a result of Kohler's securities violations and under circumstances in which it would be unjust and inequitable for Dermendjiev to retain these funds. Dermendjiev has no legitimate claim to these funds and has been unjustly enriched in the amount of \$74,655.

**Prayer For Relief**

WHEREFORE, the Commission requests that the Court enter judgment:

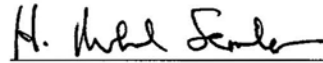
- (a) permanently enjoining Kohler and Swiss Real Estate from violating Section 10(b) of the Exchange Act or Rule 10b-5;
- (b) requiring Kohler and Swiss Real Estate to disgorge the ill-gotten gains they generated through the violations alleged herein, including for Kohler the illicit profits obtained by his wife and brother-in-law, with prejudgment interest;
- (c) requiring Kohler and Swiss Real Estate to pay civil penalties;

(d) requiring relief defendant Dermendjiev to disgorge the amount by which he has been unjustly enriched as a consequence of the violations alleged herein, with prejudgment interest; and

(e) providing such other relief as may be appropriate.

Dated: June 5, 2009

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