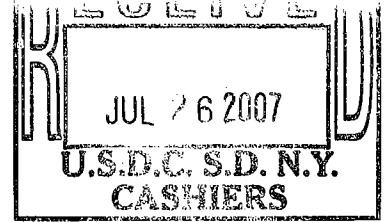


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

No. 98 Civ 7347 (DLC)

v. :

EURO SECURITY FUND, MARIO MERELLO, :  
FABRIZIO PESSINA, COIM SA, FRANCESCO :  
MAROTTA, PICTET & CIE-GENEVA, :  
GIOVANNI PIACITELLI, PIERRE BOTTINELLI, :  
RON SLEEGERS, INTERNATIONAL :  
STRUCTURES CONSULTING B.V., URS :  
HELLER, MRS. URS HELLER, MEINDERT :  
PANAGIOTIS HAKKERT, FRANCK HAKKERT, :  
H.J.M. DE BOER, C.J. BROEKEMA, E.H. VAN :  
GEENEN, HENDRIK MARINUS :  
BOUWMEESTER, HANS P. ROMANESKO, :  
MRS. A. VERKAIK, ALBERTO LINA, :  
SERENELLA LINA, AND ONE OR MORE :  
UNKNOWN PURCHASERS OF COMMON :  
STOCK OF ELSAG BAILEY PROCESS :  
AUTOMATION, N.V., :

**MODIFIED FIRST**  
**AMENDED COMPLAINT**

Defendants. :

Plaintiff Securities and Exchange Commission (the "SEC") alleges:

**NATURE OF THE ACTION**

1. This is an insider trading case involving substantial purchases of call options and common stock of Elsag Bailey Process Automation, N.V. ("Elsag") through multiple foreign accounts over the several weeks before it was announced on October 14, 1998 that ABB Asea Brown Boveri ("ABB") had agreed to make a friendly cash tender offer for all outstanding shares of

Elsag. While in possession of material, nonpublic information concerning the impending announcement of the tender offer, from on or about September 8 through October 13, 1998, the defendants purchased a total of 575 Elsag call options and 450,500 shares of Elsag common stock.

On several days, the percentage of call options purchased by the defendants accounted for the entire volume of Elsag calls in that series. On October 9, 1998, the day ABB submitted its final bid to Elsag, defendant Giovanni Piacitelli, a trader for Schroder & Co. Inc., purchased over \$2.6 million of Elsag stock on behalf of two of his Swiss-based clients, Euro Security Fund and Coim SA, accounting for 80% of the Elsag stock volume on the New York Stock Exchange ("NYSE").

On October 12, 1998, defendants Alberto Lina and Serenella Lina bought 9,700 Elsag shares through an account maintained in the name of Banca Privata Solare & Blum at Merrill Lynch & Co. Inc. in New York. On October 13, 1998, the day before the public announcement, defendant Piacitelli also secretly bought 10,000 shares of Elsag stock at a cost of almost \$200,000 for himself through an account at Banco del Gottardo. On the same day, defendant Pierre Bottinelli, defendant Piacitelli's supervisor at Schroder, bought 5,000 shares of Elsag stock at a cost of \$98,000 for himself. While the SEC has identified certain defendants in The Netherlands and Switzerland, the identities of other defendants are not yet known because these defendants, who bought a total of 22,700 Elsag shares, effected their purchases anonymously through an account maintained in the name of Banca Privata Solare & Blum at Merrill Lynch & Co. Inc. in New York and in the name of ABN Amro Bank N.V. at ABN Amro Inc. in Chicago. The total amount invested in options and stock by all known and unknown defendants is approximately \$9.3 million. On October 14, 1998, ABB announced its cash tender offer for all outstanding common shares of Elsag at \$39.30 per share and for all 5-1/2% preferred securities at \$61.21 per preferred share. On October 15, 1998,

the day after the announcement, Elsag common stock opened at \$36 per share, a gain of almost 90% over its \$19 1/4 closing price the day before the announcement. The defendants would stand to make profits in excess of \$7.4 million through their illegal insider trading.

### **JURISDICTION AND VENUE**

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

3. Defendants, directly or indirectly, have made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

4. This Court properly has venue over this action because all of the securities transactions at issue herein were cleared through United States broker-dealers with offices located in the Southern District of New York and the Elsag common stock was listed and sold through the New York Stock Exchange, located in the Southern District of New York.

5. Defendants will, unless restrained and enjoined, continue to engage in the acts, practices and courses of business alleged herein, or in transactions, acts, practices and courses of business of similar purport and object.

### **THE DEFENDANTS**

6. Defendant Euro Security Fund is an investment entity that has an account at Schroder, account number W 39-4001440. Its brokerage materials show an address of Via Degli Albrici 6, 6830 Chiasso, Switzerland. As of the date of filing of this Amended Complaint,

defendant Euro Security Fund has failed to respond to the SEC's discovery requests and this Court's November 10, 1998 Order requiring identifying information.

7. Defendant Mario Merello is the portfolio manager and corporate secretary for defendant Euro Security Fund. Merello, a lawyer, is an Italian national living in Switzerland. He placed trades for Euro Security Fund through defendant Piacitelli.

8. Defendant Fabrizio Pessina is the president of defendant Euro Security Fund and thus is responsible for trading in that account. Defendant Pessina, along with defendant Merello, executed the new account documents for Euro Security Fund at Schroder.

9. Defendant Coim SA is an investment entity that opened an account at Schroder on August 28, 1998. Coim traded through account number W 39-4001630, which has an address of Via Nassa 62, 6901 Lugano, Switzerland. As of the date of filing of this Amended Complaint, defendant Coim has failed to respond to the SEC's discovery requests and this Court's November 10, 1998 Order requiring identifying information.

10. Defendant Francesco Marotta is the principal of Coim and one of the people who authorized the trading of Coim in this action. He is an Italian national living in Switzerland. Defendant Marotta has been the managing director general of an Italian trading company called AFV Milla. Pietro Barucci, a member of the Board of Directors of Italy's state-owned holding company called Istituto per la Ricostruzione Industriale ("IRI"), has been a member of the board of directors of AFV Milla. IRI is the parent company of Finmeccanica S.p.A., the majority shareholder of Elsag. As set forth below, by no later than early September 1998, IRI was informed of ABB's interest in a tender offer involving Elsag. See paragraph 45 below.

11. Defendant Pictet is a Swiss financial institution that has an account at Schroder, account number W 39-3001524. The brokerage materials show an address of Case Postale 436, 1211 Geneva 11, Switzerland.

12. Defendant Giovanni Piacitelli, age 42, is an Italian national with residences in Rome, Italy, and Lugano, Switzerland. He is a broker for Schroder in its Geneva and Genolier offices in Switzerland. He traded for himself and is the broker for defendants Euro Security Fund, Coim, and Pictet. Piacitelli participated in the decisions to make the Elsag transactions set forth herein in consultation with, among others, defendants Marelo of Euro Security Fund and Marotta of Coim. However, the order tickets that were prepared by defendant Piacitelli or under his supervision reflect that the trades were unsolicited, *i.e.*, the trades were initiated by Piacitelli's clients, Euro Security Fund, Coim, and Pictet.

13. Defendant Pierre Bottinelli, age 57, is a Swiss-based broker at Schroder and is defendant Piacitelli's supervisor. He has a brokerage account at Banque Cantonale Vaudoise with an address of Place St Francois 14, 1002 Lausanne, Switzerland.

14. Defendant Ron Slegers was a vice president for corporate staff taxes for ABB in Zurich, Switzerland and assisted in the preparation of ABB's tender offer for Elsag. While working on ABB's tender offer for Elsag, and before the October 14, 1998 public announcement, he purchased Elsag securities.

15. Defendant International Structures Consulting is a corporation owned and controlled by Slegers. It is organized and has a mailing address in The Netherlands.

16. Defendant Urs Heller was an employee of ABB in its finance/treasury department in Switzerland.

17. Defendant Mrs. Urs Heller, is married to defendant Urs Heller and bought 20 Elsag call options in late September while Urs Heller worked on ABB's tender offer for Elsag, prior to the public announcement on October 14.

18. Defendant Meindert Panagiotis ("Pan") Hakkert is an account manager at Elsag and resides in The Netherlands.

19. Defendant Franck Hakkert, age 37, resides in Amsterdam, The Netherlands. He is the brother of defendant Pan Hakkert. Franck Hakkert and De Boer, who together bought 110 of the 125 Nov 22.5 calls traded on October 13, are neighbors. Defendant C. J. Broekema is Franck Hakkert's stepfather.

20. Defendant H.J.M. De Boer, age 50, is defendant Franck Hakkert's neighbor in Amsterdam.

21. Defendant C.J. Broekema, age 78, resides in Amsterdam and is defendant Franck Hakkert's stepfather. Broekema bought 2,500 shares of Elsag stock for almost \$50,000 the day before the public announcement.

22. Defendant E.H. van Geenen resides in Amsterdam. He bought 6 Elsag calls the day before the public announcement.

23. Defendant Hendrik Marinus Bouwmeester is a sales engineer for Elsag in The Netherlands.

24. Defendant Hans P. Romanesko is a former Elsag employee who resides in The Netherlands. Defendants Pan Hakkert, Bouwmeester, and Romanesko bought 3 calls each on October 13, 1998, the day before the public announcement, through defendant Van Geenen's account.

25. Defendant Mrs. A. Verkaik, age 32, resides in The Netherlands.

26. Defendants Alberto Lina and Mrs. Serenella Lina together purchased 9,700 shares of Elsag stock through Banca Privata's account number 180-04B94 at Merrill Lynch on October 12, 1998. The brokerage materials for this account show an address of Via Ginevra 2, Lugano 6901, Switzerland.

27. Defendant certain unknown purchasers through ABN Amro's account number 737-50001 at ABN Amro Inc. have still not identified themselves. The brokerage materials for this account show an address of Beethovenstrasse 33, PO Box 5239, CH-8022, Zurich, Switzerland.

### **STATEMENT OF FACTS**

#### **a. The Background to the Tender Offer**

28. Elsag is a Netherlands corporation, with headquarters located in Schiphol, The Netherlands and a regional office in Wickliffe, Ohio. It is a worldwide provider of automation systems, process instrumentation, analytical measurement products, and professional technological services. Its common stock is registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"). Elsag's stock trades on the New York Stock Exchange. Options on the stock of Elsag trade on the Pacific Exchange. Such options started trading in late July 1998.

29. Elsag is majority owned by Finmeccanica, Italy's state-controlled aerospace, defense, and engineering company. Finmeccanica is in turn controlled by IRI, an Italian state-owned holding company that includes interests in defense, aerospace, shipbuilding, shipping, broadcasting, toll road operations, and an airline. Finmeccanica owns approximately 53% of Elsag's outstanding equity and is based in Rome, Italy. Finmeccanica entered into a separate

agreement with ABB to tender all of its holdings in Elsag to ABB. The duties of trust and confidentiality of Finmeccanica, IRI, and their respective officers, directors, employees, and agents, (including but not limited to Alberto Lina), as to the events leading up to ABB's tender offer for Elsag, are the same as Elsag's, as set forth below.

30. ABB's headquarters are in Zurich, Switzerland. It is reportedly the world's largest electrical-engineering company, providing power generation, transmission, and distribution; automation; oil, gas, and petrochemicals; industrial products and contracting; financial services; and rail transportation worldwide.

31. On May 28, 1998, Elsag publicly announced that its controlling shareholders, including Finmeccanica, had decided to sell their Elsag stock.

32. On June 4, 1998, Elsag announced that it was launching a process to seek offers for the purchase of the entire company, including Finmeccanica's holdings. Merrill Lynch International was appointed as financial advisor to assist Elsag's Supervisory Board in the sale process, which was to begin immediately. In the June 4 announcement, Elsag cautioned that, "[u]ntil a definitive agreement with a potential purchaser, there can be no assurance as to whether a sale will in fact be consummated or as to what form any transaction, if concluded, might take."

33. As part of this process, Elsag's Board appointed a three-member Transaction Advisory Committee to give advice to the Board and keep it informed as to the sale process. Elsag considered information about the sale process to be highly confidential. One of the reasons Elsag's Board appointed this Committee was to limit the number of people to whom confidential information about the sale process was disclosed. In addition, Merrill Lynch International solicited



preliminary indications of interest from potential buyers, and began preparing a confidential offering memorandum.

34. Potential buyers signed confidentiality agreements with the company requiring, among other things, that they keep the offering memorandum and information about the sale process strictly confidential. A letter agreement was signed by the potential buyers which acknowledged that they were aware, and would so advise their "directors, officers, employees, agents, representatives, lenders and other sources of financing who are informed as to the matters which are the subject of this letter, that the United States securities laws prohibit any person who has received from an issuer any material, non-public information from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities."

35. ABB entered into such a confidentiality agreement with Eltag dated July 2, 1998. ABB had reviewed and revised the confidentiality agreement along with Credit Suisse First Boston ("CSFB") several days before it was executed.

36. On July 9, 1998, ABB formally appointed CSFB as its financial advisor.

37. On July 17, 1998, Merrill Lynch International delivered a copy of a July 1998 confidential offering memorandum regarding Eltag for ABB's review, together with a letter inviting ABB to provide a preliminary indicative bid letter for Eltag by August 7.

38. On July 29, 1998, Eltag issued a press release announcing its second quarter results in which a managing director and chief executive officer of Eltag described the status of the previously announced sale process as follows:

We have been very pleased with the extent and level of interest shown so far by many parties. These parties span a range of strategic and financial interests and geographic regions. Our Board and a core management team are focused on effectively pursuing the sale process.

39. Elsag required that all initial bids for the purchase of the company be made by August 7, 1998. On August 7, 1998, ABB delivered to Merrill Lynch International an initial bid expressing ABB's interest in acquiring all Elsag shares subject to, among other things, a detailed due diligence review of Elsag. Merrill Lynch International assessed the initial bids and recommended to Elsag's Board that certain of the initial bidders be invited to participate in the second phase of the sale process (the "Remaining Bidders"). On or about August 12, 1998, the Board approved Merrill Lynch International's recommendation.

40. On August 13, 1998, ABB received a letter from Merrill Lynch International inviting ABB to participate in the next phase of the sale process, including management presentations and due diligence. On August 12 or 13, 1998, defendant Slegers was informed about the potential transaction, then called "Project Latino." Around this time, ABB informed the accounting firm Ernst & Young of a possible tender offer for Elsag.

41. On August 17, 1998, defendant Slegers of ABB attended a "kick-off" meeting in Zurich for the anticipated due diligence process.

42. On August 28, 1998, defendant Coim opened an account at Schroder through defendant Piacitelli.

43. Beginning on or about August 31, 1998, Elsag's management made presentations to the Remaining Bidders in London. On September 1, 1998, Elsag's management made a presentation to ABB in London.

44. On September 2, 1998, defendant Urs Heller was informed about the potential transaction in connection with his review of Elsag materials in the data room. Defendant Urs Heller of ABB signed an internal ABB confidentiality agreement at that time.

45. On Friday, September 4, 1998, a director of CSFB's Italian group met with the managing director of IRI, and discussed, among other things, ABB's interest in the tender offer for Elsag.

46. Beginning on or about September 6, 1998, Elsag opened "data rooms" at the offices of Elsag's outside counsel, in Frankfurt, Germany and Philadelphia, Pennsylvania, for the Remaining Bidders to conduct due diligence in preparing their final bids for the company. One of the reasons the data rooms were set up at the offices of outside counsel (rather than at the company's offices), was to maintain the confidentiality about the bid process.

**b. Defendants' Trading Begins**

47. Defendant Euro Security Fund had begun trading in Elsag stock through defendant Piacitelli in April 1998. However, Euro Security Fund held no Elsag shares from June 8, 1998, until September 8, 1998. On that day, the first trading day after the September 4, 1998 meeting referred to above in paragraph 45, defendant Euro Security Fund bought 20,000 Elsag shares through defendant Piacitelli for \$445,376. Euro Security Fund's purchase on September 8, 1998 comprised almost 21% of the Elsag volume on the NYSE on that day. On September 9, Euro Security Fund bought 30,000 Elsag shares through defendant Piacitelli for \$669,600. This purchase comprised 18% of the Elsag volume on the NYSE on that day. Euro Security fund sold 2,300 Elsag shares on September 18.

48. On September 9, 1998, defendant Slegers of ABB bought 2,000 shares of Elsag stock for about \$40,000.

49. On September 10, 1998, defendant Slegers bought 150 November 30 Elsag calls in an account in the name of his mother for \$18,750; this transaction comprised 100% of the volume in that series of options on that day.

50. From September 14-18, 1998, ABB reviewed materials regarding Elsag contained in a data room in Frankfurt, and was given an opportunity to visit certain facilities of Elsag from September 14-23, 1998. ABB was also given an opportunity to participate in "break-out" sessions with management of Elsag on specific due diligence issues from September 14-18, 1998. In the course of this process, drafts of the Acquisition Agreement and the Shareholders' Agreement were also provided by Elsag and Finnmeccanica to ABB.

51. On September 14-16, 1998, defendant Slegers was in the Frankfurt data room.

52. On September 14, 1998, Coim bought 5,000 Elsag shares through defendant Piacitelli. Coim sold these shares for a profit on September 16, 1998.

53. On September 15, 1998, Banca Privata, where the Linas had an account, opened its account at Merrill Lynch.

54. On September 16-17, 1998, defendant Urs Heller was in the Frankfurt data room.

55. On September 17, 1998, defendant Slegers participated in a break-out session on taxes, and defendant Urs Heller participated in a break-out session on treasury and finance.

56. On September 21, 1998, defendants Slegers and Urs Heller participated in internal ABB meetings concerning taxes, finance, and treasury issues in Zurich.

57. Around September 22, 1998, ABB formally retained outside counsel.

58. On September 28, 1998, ABB's board of directors met in Beijing and formally approved the tender offer for Elsag.

59. On September 29, 1998, the Remaining Bidders were advised by letter that final bids were due by October 9, 1998 at 5:00 p.m. London time.

60. In late September 1998, defendant Mrs. Urs Heller bought 20 Elsag calls.

61. On October 2, 1998, defendants Slegers of ABB and his company International Structures bought 50 November 20 calls and 50 November 25 calls for \$29,375; these transactions accounted for 100% of the volume in those series of calls on that day.

62. On October 5, 1998, defendant Mrs. Verkaik executed RaboBank's option account form and bought 25 Nov 20 calls for \$10,000 (100% of the volume in that series of calls on that day).

63. On October 6, 1998, defendant Mrs. Verkaik bought 25 Nov 20 calls for \$22,500. Also on October 6, defendant Mrs. Verkaik bought 5 Nov 25 calls for \$937.50 (25% of the volume in that series of calls that day).

64. On October 7, 1998, defendant Mrs. Verkaik bought 45 Nov 25 calls and 75 Nov 22.5 calls for \$31,500 (100%, and 99% of the volume in those series of calls on those days, respectively).

65. On October 8, 1998, defendant Euro Security Fund bought 32,300 Elsag shares through defendant Piacitelli for \$659,100. On the same day, Coim bought 11,000 Elsag shares through defendant Piacitelli for \$224,618. Together, these Elsag purchases by defendants Euro Security Fund and Coim comprised 49% of the Elsag stock volume on the NYSE on October 8, 1998.

66. On October 8, 1998, defendant unknown purchasers through ABN Amro bought 8,000 shares of Elsag for \$165,000. Together with the trading by Euro Security Fund and Coim on this day, these purchases by unknown purchasers through ABN Amro comprised almost 60% of the Elsag stock volume on the NYSE.

67. On Friday, October 9, 1998, ABB submitted a bid for Elsag, which was conveyed confidentially to, among others, Alberto Lina.

68. On that day, defendant Euro Security Fund bought 90,000 shares of Elsag through defendant Piacitelli for \$1.8 million, and defendant Coim bought 40,000 shares of Elsag through defendant Piacitelli for \$815,908. Together, these Elsag purchases by defendants Euro Security Fund and Coim comprised 80% of the Elsag stock volume on the NYSE on October 9, 1998.

69. Also on October 9, 1998, defendant unknown purchasers through ABN Amro bought 5,000 Elsag shares for \$103,000.

70. On Saturday, October 10, 1998, ABB was selected as preferred bidder and was given the right to negotiate exclusively with Elsag for a limited period of time in London.

71. On Sunday, October 11, 1998, ABB had internal pre-negotiation meetings in London, and on that evening, met with Elsag and its counsel, as well as Italian counsel for Finmeccanica.

72. On Monday, October 12, 1998, ABB and Elsag engaged in negotiations in London concerning the final terms of ABB's offer.

73. On the same day, defendant Euro Security Fund bought 75,000 Elsag shares through defendant Piacitelli for \$1.5 million. Defendants Alberto and Serenella Lina through Banca Privata also bought 9,700 Elsag shares for \$196,425 on this day. Together, the Elsag stock purchases by

Alberto and Serenella Lina through Banca Privata and Euro Security Fund accounted for 29% of the Eltag stock volume on the NYSE on October 12.

74. On October 13, 1998, negotiations between ABB and Eltag continued in London, and a final price was determined on that day.

75. On October 13, 1998, the day before the subject public announcement, defendant Euro Security Fund bought 55,000 Eltag shares through defendant Piacitelli for just over \$1 million; defendant Coim bought 50,000 Eltag shares through defendant Piacitelli for \$996,875; and defendant Pictet bought 5,000 Eltag shares through defendant Piacitelli for its own account for \$99,375.

76. On the same day, Piacitelli also purchased 10,000 shares of Eltag in his personal account at a cost of almost \$200,000. Rather than purchasing these shares in an account at Schroder in Switzerland, defendant Piacitelli secretly effected this purchase for himself in account number W 39-3998281 in the name of Banco Del Gottardo. The brokerage materials show an address for this account of 6 Ave Marie Therese, L-2032 Luxembourg. Piacitelli did not disclose his interest in this account to Schroder despite Schroder's policy requiring him to do so. On October 13, 1998, defendant Piacitelli had a conversation with Schroder's New York floor trader named Mario regarding Eltag stock during which Piacitelli told Mario to "buy some for yourself ... don't do anything for 15 days ... we never talked about it ... or else we won't make it."

77. Also on October 13, 1998, defendant Bottinelli (defendant Piacitelli's supervisor) bought 5,000 shares of Eltag for over \$98,000 for himself.

78. All of the defendants' purchases of Eltag stock on October 13 accounted for 41% of the volume for Eltag stock on the NYSE on that day.

79. On October 13, 1998, defendant Franck Hakkert bought 20 Nov 22.5 calls; defendant H.J.M. De Boer bought 90 Nov 22.5 calls; defendant Pan Hakkert bought 3 Nov 22.5 calls; defendant Bouwmeester bought 3 Nov 22.5 calls; defendant Romanesko bought 3 Nov 22.5 calls; E.H. van Geenen bought 6 Nov 22.5 calls; and Defendant C.J. Broekema bought 2,500 shares of Elsag stock.

80. De Boer bought his calls at defendant Franck Hakkert's suggestion. De Boer was aware that defendant Hakkert's brother worked at Elsag. This purchase was defendant De Boer's first ever options purchase.

81. Van Geenen's brokerage documents show deposits from an "M.P. Hakkert," an "DHR Bouwmeester," and an "H.P. Romanesko" on October 13, 1998, and each of them bought 3 Elsag calls through van Geenen. The full names of these individuals are Meindert Panagiotis Hakkert, Hendrik Marinus Bouwmeester, and Hans P. Romanesko, each of whom is a current or former Elsag employee. The call purchases by defendants Pan Hakkert, Franck Hakkert, De Boer, van Geenen, Bouwmeester, and Romanesko comprised 100% of the volume in the Elsag Nov 22.5 options on the Pacific Exchange on October 13, 1998.

82. On October 14, 1998, ABB and Elsag signed a definitive Acquisition Agreement. Trading in Elsag stock was halted on the New York Stock Exchange the entire day of October 14. Elsag publicly announced the agreement at the close of the European markets on October 14. News of the agreement appeared on wire services in the United States at 3:04 p.m. on October 14.

83. As announced, the Acquisition Agreement provides for ABB to begin a cash tender offer for all outstanding common shares of Elsag at \$39.30 per share (more than double the pre-announcement market price of Elsag stock of about \$19 per share) and for all 5-1/2% preferred



securities at \$61.21 per preferred share, within five business days of the announcement. The total consideration payable to holders of such securities under the tender offer, as well as to holders of options held by Elsag employees and directors, is approximately \$1.5 billion, and will be financed from ABB's own resources. The announcement also stated that Finmeccanica (Lina's employer) entered into a separate, definitive agreement with ABB to tender all of its holdings in Elsag common and preferred shares concurrent with the tender offer.

84. Subsequent to Elsag's statement in its July 29, 1998 release, the company made no other public announcement concerning the ABB tender offer until October 14, 1998.

**c. Summary of Defendants' Insider Trading in Elsag Securities**

85. The following table summarizes defendants' trading and profits during the period leading up to the October 14 announcement:

Date	Defendant	Quantity & Security	Gross Cost	Profit
9/8/98	Euro Security Fund	20,000 shares	\$445,376.00	\$274,624.00 <sup>1</sup>
9/9/98	Sleegers	2,000 shares	\$40,000.00	\$32,000.00
	Euro Security Fund	30,000 shares	\$669,600.00	\$357,666.77 <sup>2</sup>
9/10/98	Sleegers/account in his mother's name	150 Nov 30 calls	\$18,750.00	\$58,125.00
9/98	Mrs. Heller	20 calls	unknown	\$17,000.00
10/2/98	Sleegers/International Structures	50 Nov 20 calls	\$20,000.00	\$58,125.00
		50 Nov 25 calls	\$9,375.00	\$41,875.00
10/5/98	Mrs. A. Verkaik	25 Nov 20 calls	\$10,000.00	\$29,062.50
10/6/98	Mrs. A. Verkaik	5 Nov 25 calls	\$937.50	\$4,187.50
10/7/98	Mrs. A. Verkaik	50 Nov 20 calls	\$22,500.00	\$55,625.00
		45 Nov 25 calls	\$9,000.00	\$37,125.00

<sup>1</sup> These profit figures represent imputed profits calculated by using the opening price of Elsag stock on October 15, 1998, the day after the public announcement, which was \$36 per share.

<sup>2</sup> This figure accounts for the sale of 2,300 shares on September 18, 1998 for \$52,783.23.

Date	Defendant	Quantity & Security	Gross Cost	Profit
		75 Nov 22.5 calls	\$22,500.00	\$76,875.00
10/8/98	Euro Security Fund	32,300 shares	\$659,100.88	\$503,699.12
	Coim	11,000 shares	\$224,618.50	\$171,381.50
	unknown purchasers through ABN Amro	8,000 shares	\$165,000.00	\$123,000
10/9/98	Euro Security Fund	90,000 shares	\$1,831,590.00	\$1,408,410.00
	Coim	40,000 shares	\$815,908.00	\$624,092.00
	unknown purchasers through ABN Amro	5,000 shares	\$103,000.00	\$77,000.00
10/12/98	Euro Security Fund	75,000 shares	\$1,509,060.00	\$1,190,940.00
	Alberto and Serenella Lina	9,700 shares	\$196,425.00	\$152,775.00
10/13/98	Euro Security Fund	55,000 shares	\$1,083,179.50	\$896,820.50
	Coim	50,000 shares	\$996,875.00	\$803,125.00
	Pictet & Cie	5,000 shares	\$99,375.00	\$80,625.00
	Giovanni Piacitelli	10,000 shares	\$195,625.00	\$164,375.00
	Pierre Botinneli	5,000 shares	\$98,062.50	\$81,937.50
	Pan Hakkert	3 Nov 22.5 calls	\$712.50	\$3,236.00 <sup>3</sup>
	F. Hakkert	20 Nov 22.5 calls	\$4,750.00	\$21,572.00
	H.J.M. De Boer	90 Nov 22.5 calls	\$21,375.00	\$97,075.00
	E.H. van Geenen	6 Nov 22.5 calls	\$1,425.00	\$6,472.50
	Bouwmeester	3 Nov 22.5 calls	\$712.50	\$3,236.00
	Romanesko	3 Nov 22.5 calls	\$712.50	\$3,236.00
	C.J. Broekema	2,500 shares	\$49,843.75	\$40,156.25
<b>TOTAL</b>			<b>\$9,325,389.13</b>	<b>\$7,495,455.14</b>

<sup>3</sup> The profits for the purchases by defendants Pan Hakkert, Franck Hakkert, De Boer, Van Geenen, Bouwmeester, and Romanesko, were calculated using an average cost per options contract of \$237.50 and an average profit per contract of \$1,078.62.

86. On the day after the October 14 public announcement, Elsag's stock, which was trading in the range of \$19-\$21 per share during the two weeks leading up to the announcement, opened at \$36 per share, an increase of almost \$17 per share or almost 90% from its closing price of \$19 1/4 per share on October 13, the last trading day before the public announcement. As a result of their illegal Elsag purchases alleged herein, defendants' realized and imputed profits exceed \$7.4 million.

### **CLAIMS FOR RELIEF**

#### **Count One**

#### **Violations of Exchange Act Section 10(b) and Rule 10b-5 Promulgated Thereunder**

87. Plaintiff repeats and realleges paragraphs 1 through 86.

88. On October 14, 1998, ABB and Elsag jointly announced an agreement for ABB to make a recommended tender offer for all outstanding shares of Elsag. Prior to the public announcement, ABB and Elsag undertook efforts to maintain the confidentiality of information relating to the proposed tender offer and instructed those employees and agents working on the matter to hold such information in confidence.

89. On October 15, 1998, the day after the public announcement, the price of Elsag common stock opened at \$36 per share, representing a nearly 90% increase over the closing price the previous day.

90. As set forth above, the defendants had made substantial purchases of Elsag call options and common stock in the several weeks leading up to the announcement of the ABB tender offer on October 14, 1998.

91. At the time the defendants purchased, or caused to be purchased, the call options and common stock described above, they were in possession of material, nonpublic information about the impending ABB tender offer for Elsag. These defendants knew, had reason to know, or recklessly disregarded the fact (1) that their trading was in breach of fiduciary or similar duties of trust and confidence they owed to the shareholders of Elsag or to the source from which they received material nonpublic information or (2) that material nonpublic information about the tender offer had been communicated to them in breach of fiduciary or similar duties of trust and confidence.

92. By reason of the foregoing, defendants, directly and indirectly, 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 are likely to commit such violations in the future unless enjoined from doing so.

### **Count Two**

#### **Fraud in Connection With a Tender Offer in Violation of Exchange Act §14(e) and Rule 14e-3**

93. Plaintiff repeats and realleges Paragraphs 1 through 92 above.

94. Defendants knew or had reason to know the fact that the information they possessed concerning the tender offer by ABB for Elsag, as described above, constituted material nonpublic information in connection with a tender offer or request or invitation for tenders.

95. Defendants, while in possession of such information, and knowing or having reason to know the fact that such information had been acquired directly or indirectly from ABB and/or Elsag, purchased Elsag call options and common stock, as set forth above.

96. By the dates on which defendants began their respective trading in Eltag securities, ABB had taken substantial steps toward commencing its tender offer for Eltag securities, including but not limited to the facts set forth above in paragraphs 35-75.

97. By the conduct described above, defendants violated Section 14(e) of the Exchange Act and Rule 14e-3 promulgated thereunder.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff SEC respectfully requests that this Court enter a judgment:

- (i) permanently enjoining the defendants from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder;
- (ii) finding that defendants have engaged in the conduct described above, and that in so doing, they have violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
- (iii) finding that defendants have engaged in the conduct described above, and that in so doing, they have violated Section 14(e) of the Exchange Act and Rule 14e-3 thereunder;
- (iv) ordering the defendants to disgorge all profits realized from the unlawful trading alleged herein, with prejudgment interest;

(v) ordering defendants to pay civil penalties under Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

(vi) granting such other relief as this Court may deem just and appropriate.

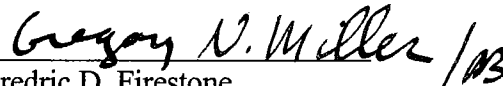
Dated: July 25, 2007.

Respectfully submitted,



Robert B. Blackburn (RB 1545)

Local Counsel for Plaintiff  
Securities and Exchange Commission  
3 World Financial Center (Room 4300)  
New York, NY 10281-1022  
212.336.1050  
212.336.1317 (Fax)



Fredric D. Firestone  
Gregory N. Miller (GM-5922)  
Kenneth R. Lench  
Douglas C. McAllister  
Rosemary A. Filou (RF-2127)

Attorneys for Plaintiff  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-4030A  
202.551.4469 (Miller)  
202.772.9245 (Fax-Miller)