

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	
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Plaintiff,	:	Civil Action No.
	:	
v.	:	
	:	04 CV 5853 (RO)
KENNETH F. KRYZDA,	:	
	:	
Defendant.	:	
	:	
	:	
	:	
	:	

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**COMPLAINT**

Plaintiff, United Securities and Exchange Commission (“Commission”), for its Complaint alleges as follows:

**SUMMARY**

1. This case involves insider trading in advance of the December 23, 2002, public announcement that Coca-Cola FEMSA S.A. de C.V. (“Coca-Cola FEMSA”) had agreed to acquire Panamerican Beverages, Inc. (“Panamerican”).
2. Kenneth F. Kryzda (“Kryzda”), a former Managing Director and investment banker in the Mexico City, Mexico, office of JP Morgan Chase Bank (“JP Morgan”), learned in the course of his employment that Coca-Cola FEMSA was planning to acquire Panamerican.
3. Kryzda misappropriated material, nonpublic information from JP Morgan regarding this potential acquisition and purchased a total of 7,100 shares of Panamerican prior to the public announcement that Coca-Cola FEMSA had agreed to acquire Panamerican.

4. Kryzda made illegal profits of \$78,944 by purchasing shares of Panamerican in advance of the public announcement and then selling the shares after the announcement.

5. By engaging in the conduct alleged herein, Kryzda violated the antifraud provisions of the federal securities laws. Unless enjoined, he is likely to engage in similar violations in the future.

### **JURISDICTION AND VENUE**

6. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1] to permanently restrain and enjoin Kryzda from engaging in the acts, practices, and transactions stated herein.

7. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa]. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

8. Kryzda, directly or indirectly, has made use of the means and instrumentalities of interstate commerce or the mails, or of the facilities of a national securities exchange, in connection with the acts, practices, and transactions alleged herein, certain of which occurred within the Southern District of New York.

### **DEFENDANT**

9. Kryzda, age 46, was a Managing Director and investment banker at JP Morgan in Mexico City until at least November 30, 2002, when JP Morgan downsized the office and terminated Kryzda. He had worked in investment banking in Latin America since approximately 1982. Kryzda is a citizen of the United States and Mexico and a resident of Mexico City, Mexico.

## **RELEVANT ENTITIES**

10. Panamerican Beverages, Inc., a Panamanian corporation, was a soft drink bottler with operations in Latin America and its principal corporate offices in Miami. Panamerican produced and distributed its own proprietary brands as well as those of The Coca-Cola Company. Panamerican's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange ("NYSE") until October 17, 2003. Panamerican's name thereafter changed to Corporacion Interamericana de Bebidas, S.A. de C.V., and it is now a wholly-owned subsidiary of Coca-Cola FEMSA.

11. Coca-Cola FEMSA S.A. de C.V., a Mexican corporation, is a Coca-Cola bottler. Its operations are focused on Mexico and Argentina. Coca-Cola FEMSA's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NYSE.

## **FACTS**

### **Kryzda Acquires and Trades on Material, Nonpublic Information about Coca-Cola FEMSA's Potential Acquisition of Panamerican**

12. In the course of his employment at JP Morgan in 2002, Kryzda acquired material, nonpublic information regarding a potential acquisition of Panamerican by Coca-Cola FEMSA.

13. As early as the end of April 2002, Kryzda was a key member of a JP Morgan investment banking team in Mexico that sought to convince Coca-Cola FEMSA to hire JP Morgan to finance an acquisition of Panamerican.

14. During the summer of 2002, Kryzda learned in the course of his employment that Coca-Cola FEMSA had made an unsolicited offer to acquire Panamerican.

15. Kryzda assisted in drafting an underwriting proposal during the summer of 2002 for JP Morgan to finance Coca-Cola FEMSA's acquisition of Panamerican. Kryzda knew that on August 16, 2002, this proposal was submitted to JP Morgan's underwriting committee to obtain approval for JP Morgan to solicit Coca-Cola FEMSA for the underwriting business. Kryzda later participated in the meeting where the committee considered the underwriting proposal.

16. In September 2002, Kryzda and other members of the JP Morgan Mexico team met with the Chief Financial Officer of Fomento Económico Mexicano, S.A. de C.V. ("FEMSA"), the parent company of Coca-Cola FEMSA, to discuss possible financing for the Panamerican acquisition. By at least this time, Kryzda also had learned that JP Morgan in New York was separately advising Panamerican on whether to sell to Coca-Cola FEMSA.

17. Kryzda stopped working on the Coca-Cola FEMSA financing project in mid-October 2002, because JP Morgan had notified him that he was being terminated as part of a downsizing. Nevertheless, Kryzda had communications with members of the Coca-Cola FEMSA financing team until at least the end of October.

18. On November 20, 2002, Kryzda purchased 1,000 shares of Panamerican at \$8.80 per share in an account held at Citicorp Investment Services ("Citicorp") in New York, New York.

19. On November 21, 2002, Kryzda purchased 2,000 shares of Panamerican at \$8.88 per share in the same account.

20. On November 30, 2002, Kryzda signed a severance agreement with JP Morgan.

21. On December 18, 2002, a Coca-Cola FEMSA official told Kryzda that JP Morgan was likely to be participating in the financing of the acquisition of Panamerican.

22. On December 19, 2002, Kryzda attempted to discuss the potential acquisition with two JP Morgan investment bankers, who he knew had been working on the proposed financing of the transaction. They each told Kryzda that the information was confidential and that they could not discuss anything about the transaction with him.

23. On December 19, 2002, Kryzda bought 1,100 Panamerican shares at \$9.81 per share.

24. The next day, December 20, 2002, Kryzda bought 3,000 shares of Panamerican at \$10.11 per share.

**Kryzda Knew that JP Morgan's Policies Prohibited Insider Trading**

**While in Possession of Material, Nonpublic Information**

25. During his employment at JP Morgan, Kryzda knew that the firm had policies prohibiting insider trading.

26. On June 18, 2002, Kryzda confirmed in a JP Morgan "electronic affirmation" that he had received the firm's "Worldwide Rules of Conduct" for employees, which, among other things, prohibited employees from trading in securities while in possession of "inside information."

27. The JP Morgan "Worldwide Rules of Conduct" that Kryzda had received specifically stated that employees should not "abuse or misuse any confidential information." The rules also stated that an employee "should not invest in any securities of a client with which you have or recently had significant dealings or responsibility on behalf of JP Morgan Chase if such investment could be perceived as based on confidential information."

28. Kryzda also received, prior to trading in Panamerican common stock, JP Morgan's "Global Personal Trading Policy and Procedure – Investment Bank and Private Bank," which provided, in part, that "[w]hile in possession of material, nonpublic information about the

issuer of any securities or the securities themselves, you may never buy, sell or recommend the purchase or sale of such securities for your account or the account of others, regardless of whether you have obtained the information through the scope of your employment or elsewhere.”

29. In addition, Kryzda knew from the outset of his work on the potential Coca-Cola FEMSA/Panamerican transaction that the matter was highly confidential.

30. Finally, Kryzda’s November 30, 2002 severance agreement, which he signed, stated that Kryzda understood that he continued to be bound by portions of JP Morgan’s Worldwide Rules and that he would “continue to discharge [his] duty of confidentiality with respect to all . . . confidential and proprietary information [he] received by virtue of [his] employment at [JP Morgan].”

**Coca-Cola FEMSA and Panamerican Announce the Acquisition  
and Kryzda Sells His Shares**

31. On December 23, 2002, Coca-Cola FEMSA and Panamerican publicly announced that Coca-Cola FEMSA would be acquiring Panamerican. Following that announcement, Panamerican’s stock opened for trading on the NYSE at \$21, up 108% from its closing price on the previous trading day, December 20<sup>th</sup>. The stock traded as high as \$21.10 on December 23<sup>rd</sup> and closed at \$20.59.

32. On December 30, 2002, seven days after the merger announcement, Kryzda liquidated his entire Panamerican position, selling all 7,100 shares at \$20.65 per share. He made profits of \$78,944.

**CLAIM FOR RELIEF**

**Kryzda Violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]**

**and Exchange Act Rule 10b-5[17 C.F.R. § 240.10b-5]**

33. Paragraphs 1 through 32 are re-alleged and incorporated herein by reference.

34. Kryzda purchased securities of Panamerican in November and December 2002, while in possession of material, nonpublic information regarding Coca-Cola FEMSA's potential acquisition of Panamerican. Kryzda misappropriated this information in breach of a fiduciary or other duty of trust or confidence he owed to his employer, JP Morgan.

35. By reason of the foregoing, defendant Kryzda, directly or indirectly, violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

**I.**

Issue a Final Judgment of Permanent Injunction and Other Relief permanently restraining and enjoining Kryzda and his agents, servants, employees, attorneys, and all persons in active concert or participation with them from, directly or indirectly, violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

**II.**

Issue an Order requiring Kryzda to disgorge all ill-gotten gains from each illegal trade in Panamerican stock in accounts that he controlled or exercised influence over, plus prejudgment interest.

**III.**

Issue an Order requiring Kryzda to pay civil money penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

**IV.**

Grant such other relief as this Court may deem necessary and appropriate.

Dated: Washington, D.C.  
July \_\_, 2004

Respectfully submitted,

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Robert B. Blackburn, Esq. (RB 1545)  
Local Counsel for Plaintiff

SECURITIES AND EXCHANGE COMMISSION  
233 Broadway, 11<sup>th</sup> Floor  
New York, NY 10279  
(646) 428-1610  
(646) 428-1979 (fax)

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Russell D. Duncan  
Assistant Chief Litigation Counsel  
District of Columbia Bar No. 366888

Christopher R. Conte, Assistant Director  
Noel A. Gittens, Branch Chief  
Barbara J. Katz, Senior Counsel

Attorneys for Plaintiff  
SECURITIES AND EXCHANGE  
COMMISSION  
Mail Stop 9-11  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0911  
(202) 942-7303 (Duncan)  
(202) 942-9581 (fax)