

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

95 Civ. \_\_\_\_\_

CERTAIN PURCHASERS OF THE  
COMMON STOCK OF CBI  
INDUSTRIES, INC.

Defendants.

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

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COMPLAINT FOR  
PERMANENT INJUNCTION  
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Plaintiff Securities and Exchange Commission ("Commission")  
for its Complaint alleges:

THE NATURE OF THE ACTION

1. This is an insider trading case involving highly profitable purchases of the common stock of CBI Industries, Inc. ("CBI") -- emanating from overseas accounts -- just days before the first public announcement that Praxair, Inc. ("Praxair") intended to commence a takeover of CBI. The defendants, whose identities are not yet known, effected their purchases of CBI stock through the offices of four foreign financial institutions, three of which are located in Switzerland with the fourth located in Frankfurt, Germany. While in possession of material, nonpublic information concerning Praxair's contemplated takeover, the defendants purchased a total of 84,000 shares of CBI stock during the two trading days immediately preceding the public announcement. Excluding purchases made by Praxair, the defendants' purchases accounted for 16% of the total CBI stock traded during those days. The first trading day after the announcement, the price of CBI

stock rose over 50%, the largest percent gain on the New York Stock Exchange that day. As a result, the defendants stand to realize immediate profits in excess of \$1.3 million.

#### 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~~ of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

4. Certain of the transactions, acts, practices and courses of business alleged herein occurred within the Southern District of New York.

5. Defendants will, unless 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. The defendants are individuals or entities whose identities and addresses are unknown to the Commission at this time (hereinafter "CERTAIN PURCHASERS"). On October 26 and 27, 1995, CERTAIN PURCHASERS effected, or caused to be effected, transactions in CBI common stock through the following accounts:

- A. An account maintained by Nordfinanz Bank Zurich ("Nordfinanz"), a financial institution located in Zurich, Switzerland, at Gruntal & Co., Inc. ("Gruntal"), a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act;
- B. An account maintained by Union Bancaire Privee ("UBP"), a financial institution headquartered in Geneva, Switzerland, at Gruntal;
- C. An account maintained by Bank Leu A.G. ("Bank Leu"), a financial institution located in Zurich, Switzerland, at Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ"), a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act;
- D. An account maintained by Societe Generale Elsaessische ("SGE"), a financial institution located in Frankfurt, Germany, at Commonwealth Associates, a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act; and
- E. An account maintained by SGE at Nesbitt Thomson Fahnestock International ("Fahnestock"), located in Munich, Germany, which cleared through the Pershing Division of DLJ ("Pershing"), a broker-dealer

registered with the Commission pursuant to Section 15(b) of the Exchange Act.

#### OTHER ENTITIES

7. CBI is a Delaware corporation which has its headquarters located in Oak Brook, Illinois. It is a holding company with interests in industrial gases, specialty construction and engineering. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. The stock trades on the New York Stock Exchange, a national securities exchange registered with the Commission pursuant to Section 6(a) of the Exchange Act.

8. Praxair is incorporated in Delaware and headquartered in Danbury, Connecticut. It is the largest industrial gases company in North and South America and one of the largest worldwide.

#### RELEVANT FACTS

##### Praxair's Tender Offer for the Stock of CBI

9. For approximately six months prior to October 20, 1995, Praxair and CBI had engaged in sporadic discussions concerning the possibility of a merger of the two companies. On or about October 20, 1995, CBI advised Praxair that it was discontinuing all discussions concerning such a merger.

10. Thereafter, Praxair continued to consider possible strategies to effect a business combination with CBI. In this connection, Praxair's senior management met with outside legal counsel, investment bankers and public relations advisers in New York to devise a strategy for a merger between Praxair and CBI.

11. On or before Tuesday, October 24, 1995, Credit Suisse's New York office was approached about the possibility of providing financing for Praxair's tender offer. All such financing decisions on the part of Credit Suisse must be approved by company officials in Zurich, Switzerland. In fact, the Zurich offices of Credit Suisse were informed of the proposed transaction on or before Wednesday, October 25, 1995.

12. On or about Wednesday, October 25, 1995, Praxair's senior management decided to pursue the possibility of a tender offer for ~~the~~ the common stock of CBI.

13. On Friday, October 27, 1995, representatives from Credit Suisse informed Praxair's senior management that Credit Suisse would be willing to provide the financing for Praxair's contemplated tender offer for CBI common stock. Later that day, Praxair sent a letter to CBI proposing a merger in a stock or cash transaction that valued CBI stock at \$32.00 per share, an approximately 59% premium over CBI's share price at the close of market that day. In its letter, Praxair reserved the right to commence a tender offer directly to CBI shareholders.

14. On Sunday, October 29, 1995, Praxair issued a press release, publicly announcing the proposed transaction with CBI.

15. During the period from October 20 until the time of its October 29 announcement, while Praxair was considering various strategies to effect a business combination with CBI, Praxair took steps to ensure that information pertaining to the proposed transaction was kept confidential.

16. For at least six months prior to this announcement, there were no rumors published in the press concerning a possible business combination between Praxair and CBI -- or any business combination involving CBI.

17. As a result of Praxair's announcement that it intended to commence a tender offer for CBI stock, on Monday, October 30, 1995, the first day of trading after the announcement, CBI common stock closed at \$30 3/4, which represented a \$10 5/8 per share -- or approximately 53% -- increase over the price at which CBI stock closed the previous trading day, Friday, October 27.

Violative Trading Activity by Certain Purchasers of the  
Common Stock of CBI Industries, Inc.

A. Transactions Effected Through Nordfinanz

18. On Thursday, October 26, 1995, Nordfinanz purchased a total of 30,000 shares of CBI common stock on behalf of certain unknown customers, at prices ranging from \$19 to \$19 3/8. On Friday, October 27, 1995, Nordfinanz purchased an additional 33,000 shares of CBI common stock on behalf of certain unknown customers, at prices ranging from \$19 3/4 to \$20 1/4. Benny Weiss, a Nordfinanz employee, placed the purchase orders for CBI common stock through New York offices of Gruntal.

19. Nordfinanz purchased the CBI common stock in a delivery-versus-payment account at Gruntal. The securities were delivered to a custodial account in the name of Nordfinanz maintained at Chemical Bank, N.A., a financial institution located in New York.

20. On the morning of November 10, 1995 -- after the Commission commenced its investigation -- Nordfinanz placed an

order with Gruntal to sell 25,000 shares of CBI common stock on behalf of the same certain unknown customers. That same day, Nordfinanz placed an order with Dean Witter Reynolds (Lausanne) S.A. to sell an additional 24,000 shares of the CBI common stock it had purchased on behalf of certain unknown customers. Both orders were executed at \$32 1/8 per share, and the latter order cleared through Dean Witter Reynolds, Inc., a broker-dealer located in New York and registered with the Commission pursuant to Section 15(b) of the Exchange Act. These trades will settle on Wednesday, November 15, 1995, with the proceeds available for immediate transfer overseas.

**B. Transactions Effected Through Union Bancaire Privee**

21. On October 27, 1995, UBP purchased 1,000 shares of CBI common stock on behalf of certain unknown customers at a price of \$19 3/4 per share. Rose Eisenring, an employee of UBP and a former colleague of Benny Weiss of Nordfinanz, placed the purchase order through Nordfinanz's broker, Gruntal. The securities were delivered to a custodial account in the name of UBP maintained at Chase Manhattan Bank, N.A., a financial institution located in New York, New York.

**C. Transactions Effected Through Bank Leu**

22. On October 27, 1995, Bank Leu purchased 15,000 shares of CBI common stock on behalf of certain unknown customers at a price of \$19 3/4 per share. Bank Leu placed this order through DLJ. The shares were sold on October 30, 1995, at an average price of \$30.65



per share. Bank Leu is an affiliate of Credit Suisse, one of the institutions providing financing for the tender offer transaction.

**D. Transactions Effected Through Societe Generale Elsaessische**

23. On October 27, 1995, SGE made two purchases of CBI common stock on behalf of an unidentified foreign institutional investor, totalling 35,000 shares. It placed one order for the purchase of 15,000 shares, which was executed at a price \$19 7/8 per share, through Commonwealth Associates. SGE placed a second order for the purchase of 20,000 shares through Fahnestock. This order was cleared through Pershing, at an average price of \$19.81. On October 31, 1995, SGE placed two orders selling the 35,000 shares. It sold 15,000 shares through Commonwealth Associates at a price of \$30 3/4 per share and 20,000 shares at an average price of \$30.94 per share.

**FIRST CAUSE OF ACTION**

**CERTAIN PURCHASERS'  
Violations of Section 10(b)  
of the Exchange Act [15 U.S.C. § 78j(b)]  
and Rule 10b-5 [17 C.F.R. § 240.10b-5] Promulgated Thereunder**

24. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

25. On October 26 and 27, 1995, CERTAIN PURCHASERS, directly and indirectly, by use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, in connection with the purchase and sale of CBI securities, employed devices, schemes, or artifices to defraud; made untrue statements of material fact, or omitted to

state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and engaged in acts, practices, and courses of business which operated or would operate as a fraud and deceit upon purchasers or sellers of CBI common stock or upon other persons.

26. By reason of the foregoing, CERTAIN PURCHASERS, directly and indirectly, violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

SECOND CAUSE OF ACTION

**CERTAIN PURCHASERS'**  
**Violations of Section 14(e) of the**  
**Exchange Act [15 U.S.C. § 78n(e)] and**  
**Rule 14e-3 [17 C.F.R. § 240.14e-3] Promulgated Thereunder**

27. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

28. By October 26, 1995, Praxair had taken a substantial step or steps to commence its tender offer for the outstanding shares of CBI common stock. All such steps were taken in confidence.

29. On October 26 and 27, 1995, after Praxair had taken a substantial step or steps to commence a tender offer for the common stock of CBI, CERTAIN PURCHASERS, directly and indirectly, engaged in fraudulent, deceptive, or manipulative acts or practices in connection with a tender offer by Praxair for the common stock of CBI, by: (1) purchasing or causing to be purchased the securities of CBI, while in possession of material information relating to the tender offer, which information they knew or had reason to know was nonpublic and which information they knew or had reason to know was

obtained directly or indirectly, from the offering persons, CBI, or a person acting on behalf of the offering persons or CBI; or (2) communicating to others material, nonpublic information relating to the CBI tender offer, under circumstances in which it was reasonably foreseeable that such communications were likely to result in the purchase or sale of the securities of CBI.

30. By reason of the foregoing, CERTAIN PURCHASERS, directly and indirectly, violated Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully requests that this Court:

I.

Grant a Final Judgment as to each of CERTAIN PURCHASERS, permanently enjoining and restraining each of them individually, and each of their agents, officers, servants, employees, and attorneys, and all persons in active concert or participation with each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder, and Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder.

II.

Enter an Order requiring CERTAIN PURCHASERS to disgorge an amount equal to the illegal trading profits from the securities transactions complained of herein, plus prejudgment interest.

III.

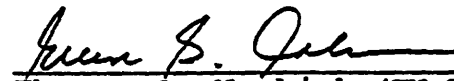
Enter an Order requiring CERTAIN PURCHASERS to pay civil penalties under Section 21A of the Insider Trading and Securities Fraud Enforcement Act of 1988 [15 U.S.C. § 78u-1].

IV.

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

Dated: November 14, 1995

Respectfully submitted,

  
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