

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No.
	)	
ONE OR MORE UNKNOWN PURCHASERS OF CALL OPTIONS FOR THE COMMON STOCK OF CNS, INC.,	)	
	)	
Defendants.	)	
	)	

**COMPLAINT**

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

**NATURE OF THIS ACTION**

1. This is an insider trading case involving purchases of call option contracts for the common stock of CNS, Inc. ("CNS") in advance of the announcement that GlaxoSmithKline plc ("Glaxo") had agreed to acquire CNS. The call options were purchased by unknown purchasers between September 27 and October 2, 2006, through accounts in the name of foreign financial institutions. These options represented the right to acquire 118,600 shares of CNS common stock at a later date, at predetermined prices. When the proposed acquisition of CNS was announced to the public on October 9, 2006, the price of CNS stock rose by more than 28%. Defendants then realized approximately \$651,890 by selling the options.

2. The call option contracts were purchased through accounts maintained in the United States in the names of two Swiss financial institutions, Credit Suisse Group and Zurich Cantonal Bank. These accounts do not identify the beneficial owners who

purchased the call option contracts. Thus, although the option trades and resultant ill-gotten gains have been identified, the identities of the defendants are not yet known.

3. Upon information and belief, the Commission alleges that defendants purchased the call option contracts while in possession of material, nonpublic information relating to the proposed but unannounced acquisition of CNS by Glaxo.

### **JURISDICTION AND VENUE**

4. 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].

5. 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.

6. 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**

7. The defendants ("Unknown Purchasers") are one or more individuals or entities who purchased or caused to be purchased short-term, out-of-the-money call option contracts for the common stock of CNS, Inc. These purchases were made through securities accounts held at Swiss American Securities, Inc. in the name of the Credit Suisse Group and at National Financial Services LLC in the name of Zurich Cantonal Bank.

**RELEVANT ENTITIES**

8. GlaxoSmithKline plc is a worldwide pharmaceutical company headquartered in the United Kingdom. Glaxo American Depository Receipts (“ADR”) are traded on the New York Stock Exchange under the ticker symbol GSK. Glaxo’s ADRs are registered with the Commission pursuant to Section 12(b) of the Exchange Act.

9. CNS, Inc. is a Minnesota-based healthcare products manufacturer. CNS shares are listed on NASDAQ and trade under the ticker symbol CNXS. Options for CNS shares trade on the Chicago, Philadelphia, and San Francisco options exchanges. CNS’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act.

10. Swiss American Securities, Inc. (“SASI”) is a broker-dealer based in New York City. SASI is a member of the New York Stock Exchange, Nasdaq, the NASD, Principal Regional Exchanges, and SIPC. SASI is a wholly-owned subsidiary of Credit Suisse Group, a global financial services company based in Switzerland.

11. National Financial Services LLC (“NFS”) is a broker-dealer based in Boston, Massachusetts. NFS is a member of the New York Stock Exchange and SIPC, and a wholly-owned subsidiary of FMR Corp. (or “Fidelity Investments”).

**FACTUAL ALLEGATIONS**

**A. The Glaxo-CNS Announcement**

12. On October 9, before the opening of the New York securities markets, CNS and Glaxo announced an agreement providing for Glaxo to acquire CNS (“Announcement”). The announcement indicated that CNS shareholders would receive

\$37.50 per share, a 31 percent 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.

13. Before the Announcement, information concerning CNS's interest in being acquired and the potential agreement with Glaxo was confidential, nonpublic information. All individuals and entities involved in negotiation of the Glaxo-CNS agreement had been advised that all information relating to the potential acquisition was confidential, nonpublic information.

14. Following the Announcement, the price of CNS stock increased significantly, closing at \$36.72 on the day of the Announcement, which represented more than a 28.5 percent increase over CNS's prior closing price.

**B. Purchases of CNS Call Options Before the Announcement**

15. The timing, prices, and pattern of the Unknown Purchasers' purchases of CNS call options in the days leading up to the announcement of the Glaxo-CNS acquisition indicate that the purchases were based on material insider information.

**(i) Purchases Through Swiss American Securities**

16. Between September 28 and October 2, 2006, while in possession of material nonpublic information regarding Glaxo's potential acquisition of CNS, certain Unknown Purchasers bought a total of 905 call options for shares of CNS through an account maintained at SASI (hereafter "SASI Unknown Purchasers"). The purchase orders were placed through an omnibus account (numbered 95400221) affiliated with Credit Suisse Zurich, which is located in Switzerland. SASI records do not indicate the beneficial owner of the options.

17. On September 28, 2006, the SASI Unknown Purchasers bought 270 November out-of-the-money call option contracts at a strike price of \$30.00 (“November-30 options”) for approximately \$43,170. Each contract represented the right to purchase 100 shares of CNS common stock at \$30.00 per share. These purchases represented approximately 67 percent of the volume in CNS November-30 options on September 28.

18. On September 29, 2006, the SASI Unknown Purchasers purchased an additional 180 November-30 out-of-the-money options contracts for approximately \$27,435. These purchases represented approximately 74 percent of the volume in CNS November-30 options on September 29.

19. On October 2, 2006, the SASI Unknown Purchasers bought 430 October out-of-the-money call option contracts at a strike price of \$30.00 (“October-30 options”) for approximately \$33,525. Each contract represented the right to purchase 100 shares of CNS common stock at \$30.00 per share. The October-30 options were due to expire on October 21, 2006. These purchases represented approximately 85 percent of the volume in CNS October-30 options on October 2.

20. Additionally, the SASI Unknown Purchasers bought another 25 November-30 options on October 2 for approximately \$3,875, which increased the position in November-30 options to 475 contracts.

21. On October 9 and 10, following the public announcement of the Glaxo-CNS agreement, the SASI Unknown Purchasers sold all of their October-30 and November-30 options, for a net profit of approximately \$505,055. As of the date of this Complaint, the proceeds of those sales are being held in a SASI account.

(ii) Purchases Through National Financial Services

22. Between September 27 and October 2, 2006, while in possession of material nonpublic information regarding the Glaxo's potential acquisition of CNS, certain Unknown Purchasers bought a total of 281 call options for shares of CNS in an account maintained at NFS (hereinafter "NFS Unknown Purchasers"). The purchases were made through an account in the name of Zurich Cantonal Bank, which is located in Switzerland. The available records do not indicate the beneficial owner of these call options.

23. On September 27, the NFS Unknown Purchasers bought 195 October-30 options for approximately \$14,375. These purchases represented approximately 100 percent of the volume in CNS October-30 options that day.

24. Also on September 27, the NFS Unknown Purchasers bought 66 November out-of-the-money call option contracts at a strike price of \$35.00 ("November-35 options") for approximately \$2,260. Each November-35 contract represented the right to purchase 100 shares of CNS common stock at \$35.00 per share before the option expired on November 18, 2006. These purchases represented approximately 87 percent of the volume in CNS November-35 options on September 27.

25. On October 2, the NFS Unknown Purchasers bought 20 November-30 call options for approximately \$3,200. These purchases represented approximately 36 percent of the volume in CNS November-30 options on October 2.

26. On October 9, following the public announcement of the Glaxo-CNS agreement, the NFS Unknown Purchasers sold all of the CNS call options, for a net profit

of approximately \$146,835. As of the date of this Complaint, the proceeds of those sales are being held by NFS.

27. Certain of the option purchases and option sales identified above were executed on the Philadelphia Stock Exchange.

**CLAIM FOR RELIEF**

**Violations of Section 10(b) of the Exchange Act  
and of Rule 10b-5**

28. The Commission incorporates paragraph 1 through 27 with the same force and effect as if set out here.

29. Upon information and belief, at the time the Unknown Purchasers purchased the call option contracts for CNS stock, the Unknown Purchasers were in possession of material, nonpublic information relating to Glaxo's potential acquisition of CNS. The Unknown Purchasers knew, or had reason to know, or recklessly disregarded the fact that, (a) their trading was in breach of fiduciary duties or similar duties of trust and confidence owed to the shareholders of CNS or to the source from whom they received the material nonpublic information, or (b) material nonpublic information about the acquisition had been communicated to them in breach of a fiduciary or similar duty of trust and confidence.

30. The Unknown Purchasers obtained illegal gains through the exercise of the call options and the sale of the CNS shares after the value of those shares rose in response to the public announcement of the Glaxo-CNS acquisition agreement.

31. By reason of the foregoing, the Unknown Purchasers, directly or 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.

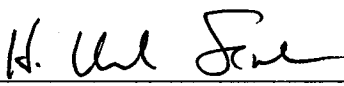
**PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that the Court enter judgment:

- (a) permanently enjoining each of the Unknown Purchasers from violating Section 10(b) of the Exchange Act or Rule 10b-5;
- (b) requiring each of the Unknown Purchasers to disgorge the ill-gotten gains obtained through the violations alleged herein, with prejudgment interest;
- (c) requiring each of the Unknown Purchasers to pay a civil penalty; and
- (d) providing such other relief as may be appropriate.

Dated: October 11, 2006

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