

JUDGE CROTTY

08 CIV 8104

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

vs.

MATTHEW R. ZACHOWSKI

Defendant.

08 -- CV --  
ECF CASE  
COMPLAINT  
SEP 19 2008  
U.S.D.C. S.D. N.Y.  
CASHIERS

Plaintiff United States Securities and Exchange Commission ("Commission")  
alleges:

**SUMMARY OF THE ACTION**

1. This is an insider trading case involving illegal trading by defendant Matthew R. Zachowski in the common stock of International Securities Exchange Holdings, Inc. ("ISE") in advance of the April 30, 2007 announcement that Eurex Frankfurt AG ("Eurex") had agreed to acquire ISE through a \$2.8 billion cash merger. Defendant Zachowski is the co-founder and former Chief Executive Officer of a public relations firm headquartered in Manhattan (hereinafter "the PR firm").

2. On or about April 23, 2007, Eurex engaged the PR firm to assist it with the announcement of its agreement to acquire ISE. Eurex had previously entered into a confidentiality agreement with the PR firm—an agreement that imposed restrictions on the use, for purposes of securities trading and otherwise, of confidential information that Eurex entrusted to the PR firm. Zachowski was aware of these restrictions.

3. Between April 23, 2007, when Eurex engaged the PR firm to assist with the ISE acquisition announcement, and the morning of April 27, 2007, when Zachowski began placing orders to purchase ISE common stock, Zachowski learned material, non-

public information concerning the ISE acquisition announcement. Zachowski learned this information through the access he enjoyed—as CEO of the PR firm and administrator of its computer system—to details of the PR firm’s engagements.

4. By the close of trading on Friday, April 27, 2007—the last trading day before the public announcement of Eurex’s agreement to acquire ISE—Zachowski had purchased 10,000 shares of ISE common stock, at a cost of approximately \$456,000. He had never traded in ISE securities before.

5. On Monday, April 30, 2007—before the market opened—Eurex’s agreement to acquire ISE was announced. ISE’s stock price climbed to a 52-week high of \$67.45, before closing at \$66.69—up \$20.97 per share, or 46 percent, from its previous trading day’s close of \$45.72—on more than sixteen times its average daily trading volume. On that same day, Zachowski sold all 10,000 of the ISE common stock that he had purchased the previous trading day, realizing profits totaling \$194,365.04.

6. In connection with his ISE trading, Zachowski breached his duties of trust and loyalty as a principal of the PR firm both to the PR firm and to its client, Eurex, by misappropriating material, non-public information concerning the ISE acquisition announcement and using it to trade securities. By his conduct, Zachowski violated Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78j (b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5], and will continue to do so unless restrained or enjoined by this Court.

7. The SEC seeks a permanent injunction enjoining the defendant from further violations of the federal securities laws, disgorgement of his unlawful trading profits with prejudgment interest, civil monetary penalties, and any additional relief that the Court deems appropriate.

#### **JURISDICTION AND VENUE**

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

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

10. Venue in this district is proper under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because a substantial portion of the conduct alleged in this complaint occurred within the bounds of the Southern District of New York. The PR firm is located in the Southern District; Eurex and the PR firm engaged in communications concerning the acquisition announcement in the Southern District; and ISE's common stock was listed for trading on an exchange located in the Southern District.

#### **DEFENDANT**

11. Defendant Zachowski, age 55, resides in New Canaan, Connecticut. He co-founded the PR firm, which is headquartered in Manhattan, and served as its CEO until July 2008. Zachowski's office at the PR firm was, at all relevant times, located within its Manhattan headquarters. Zachowski served, at all relevant times, as "administrator" of the PR firm's computer system—a role that gave him unfettered access, including remote access, to the email of all the PR firm's personnel.

#### **OTHER ENTITIES**

12. ISE was at all relevant times a Delaware corporation headquartered in New York, New York. Prior to its acquisition by Eurex, ISE's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was listed on the New York Stock Exchange.

13. Eurex is a company organized under the laws of the Federal Republic of Germany. Begun in 1998, Eurex is today the world's largest derivatives market. ISE operated—and now Eurex, through an independent wholly owned subsidiary operates—International Securities Exchange, LLC, an options exchange registered with the SEC.

## **FACTS**

### **Zachowski Knew of His Duty Not to Misuse PR Firm Client Information**

14. Eurex first became a client of the PR firm as early as the summer of 2003. Eurex and the PR firm entered into a confidentiality agreement governing all of the PR firm's work for Eurex. This agreement provided that the PR firm (i) could not use confidential information learned in the course of its work for Eurex for a purpose other than the performance of its obligations; (ii) could not disclose such information to any person except with Eurex's prior written consent; and (iii) would make efforts to prevent the use or disclosure of such confidential information.

15. The terms of the PR firm's confidentiality agreement with Eurex were consistent with those that the PR firm routinely entered into with its public relations clients. Through his long and high-level association with the PR firm, and through his having worked directly on many of its engagements, Zachowski was familiar with these agreements and with the restrictions they imposed.

### **The Firm's Work on the Acquisition**

16. On Monday, April 23, 2007, Eurex engaged the PR firm to assist in preparing the ISE acquisition announcement. The PR firm's Managing Partner, along with three other PR firm employees, worked on this engagement. Although he was working in the PR firm's offices on April 23, 2007—the day the PR firm commenced work on the ISE acquisition announcement—Zachowski was not among the PR firm personnel who worked on this engagement for Eurex.

17. Shortly after Eurex engaged the PR firm to assist with the ISE acquisition announcement, the PR firm's Managing Partner informed Zachowski, without identifying ISE, that Eurex had retained the PR firm to assist with the announcement of a transaction.

18. On Tuesday, April 24, 2007, a day on which Zachowski was also present in the PR firm's offices, the two senior members of the PR firm's team assisting with the ISE acquisition announcement received, via email from Eurex, a draft press release

regarding the acquisition. Zachowski's office was in close proximity to the two persons who received this email, and he shared the use of a printer with them.

19. The draft press release used a codeword to refer to the company being acquired, but included details sufficient to enable it to be identified as ISE. These details included (i) the name of the company's CEO; (ii) the fact that it was the world's largest equity options exchange; and (iii) the fact that it was created in May 2000.

20. The draft press release did not contain the price-per-share of the acquisition because it was still being negotiated at the time. The draft release did, however, indicate that the acquisition would be a cash deal in excess of \$1 billion.

21. Later on April 24th, one of the senior members of the PR firm's acquisition team edited the draft press release and e-mailed his comments to the PR firm's Managing Partner. Later that same day, the PR firm's Managing Partner e-mailed a revised press release to Eurex personnel.

22. Throughout the remainder of the week—Wednesday April 25, 2007 through Friday April 27, 2007—additional documents regarding the deal were circulated, including by email, between Eurex and the PR firm's personnel.

#### **Zachowski Learns of the ISE Acquisition and Trades in ISE**

23. Between Monday, April 23, 2007—when Eurex engaged the PR firm to work on the ISE acquisition announcement—and Friday, April 27, 2007—when Zachowski began placing orders to buy ISE common stock—Zachowski learned material, non-public information concerning the ISE acquisition announcement. Zachowski learned this information through his position and roles with the PR firm and the access they afforded him to details of the PR firm's engagements. Zachowski learned this information either in person, at the PR firm's offices, or through reviewing documents he obtained from the PR firm's offices, or through utilization of his access, including remote access, to the email of PR firm personnel.

24. On Friday April 27, 2007—the last trading day before the acquisition announcement—Zachowski used the material, non-public information he had learned about the ISE acquisition by investing a total of approximately \$456,000 in ISE common stock. At the time, Zachowski had never traded ISE securities before.

25. Using his home computer in Connecticut, Zachowski placed limit orders on the morning of April 27, 2007, to purchase a total of 10,000 shares of ISE common stock. By 3 p.m. that day, however, none of Zachowski's orders had been filled because ISE had traded all day at prices above Zachowski's limit prices. Zachowski then cancelled his earlier orders and replaced them with orders to purchase a total of 10,000 shares of ISE common stock at higher limit prices; all of those orders were filled.

26. On April 30, 2007, Eurex publicly announced its \$67.50-per-share cash offer for ISE, and by the market close, ISE's stock price had increased 20 points, for an almost 47 percent gain. On that same day, Zachowski sold his 10,000 shares of ISE common stock, realizing profits totaling \$194,365.04.

**CLAIM**

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

27. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 26 above.

28. Matthew R. Zachowski breached his duties of trust and loyalty as a principal of the PR firm both to the PR firm and to its client, Eurex, by misappropriating material, non-public information and using it to trade securities.

29. As a result, on or about April 27, 2007, defendant, directly or indirectly, in connection with trades in ISE common stock, by use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange: (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material facts, or omitted to state material facts necessary in order to make the statements made, in

light of the circumstances in which they were made, not misleading; or (3) engaged in acts, practices or transactions which operated as a fraud or deceit upon purchasers or sellers of securities or upon other persons, in connection with the purchase or sale of securities.

30. By reason of the foregoing acts, practices, and transactions, defendant 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] thereunder.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

**I.**

Grant a Final Judgment of Permanent Injunction restraining and enjoining defendant and his agents, servants, employees, attorneys-in-fact, and assigns and those persons in active concert or participation with him, and 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;

**II.**

Order Zachowski to disgorge his illegal trading profits plus prejudgment interest thereon;

**III.**

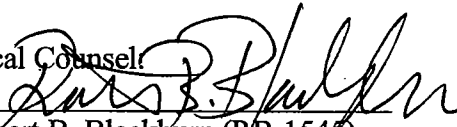
Order Zachowski to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

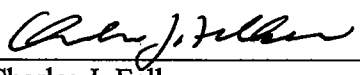
IV.

Grant such other and further relief as this Court may deem just, equitable, and necessary.

Dated: 9/19/08

Respectfully submitted:

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