

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77257 / March 1, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17141

In the Matter of

**PATRICIA ZAJICK
METZLER, DANIEL P.
METZLER, and DONALD C.
ZAJICK**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Patricia Zajick Metzler (“Patricia”), Daniel P. Metzler (“Daniel”), and Donald C. Zajick (“Zajick”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. This matter involves insider trading by Respondents in the securities of GSI Commerce, Inc. ("GSI") in advance of the March 28, 2011 announcement that eBay, Inc. ("EBAY") had agreed to acquire GSI.

2. In the months prior to the March 28, 2011 announcement, Patricia misappropriated information about the acquisition of GSI from her friend, Individual A, who was married to a GSI employee at the time. Individual A provided Patricia with material nonpublic information in the context of their relationship of trust and confidence. Patricia then tipped others who traded based on the information including her husband, Daniel, her father, Zajick, and her good friend, Individual B. Daniel then also tipped his good friend, Individual C, about the upcoming acquisition of GSI and Individual C traded on the basis of that information.

3. As a result of Patricia's improper use of the insider information misappropriated from Individual A, Respondents and the additional tippees of Patricia and Daniel Metzler garnered trading profits of \$161,111.

4. By virtue of this conduct, Respondents violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondents

5. *Patricia Zajick Metzler*, age 44 resides in Phoenixville, PA. During the relevant time period, Patricia was a principal at a recruiting firm in Wayne, PA and married to Daniel Metzler. Patricia is also the daughter of Donald Zajick.

6. *Daniel P. Metzler*, age 44, resides in Phoenixville, PA. During the relevant time period, Daniel was Vice President of Sales and Marketing at a consulting firm in the medical education industry in Conshohocken, PA.

7. *Donald C. Zajick*, age 64, resides in Collegeville, PA. During the relevant time period, Zajick owned a machinery equipment rental company in Conshohocken, PA.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Other Relevant Parties

8. *GSI Commerce, Inc.*, an e-commerce company, was during the relevant time period headquartered in King of Prussia, PA. Its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act until after it was acquired by EBAY. GSI's common stock traded on the NASDAQ (former ticker symbol GSIC) and options on GSI's stock traded on multiple U.S. options exchanges.

9. *Individual A* resides in the Commonwealth of Pennsylvania. Individual A was married to a GSI employee and resided in Pennsylvania during the relevant time period.

10. *Individual B* resides in Philadelphia, PA. During the relevant time period, Individual B was a good friend of Patricia Metzler.

11. *Individual C* resides in Plymouth Meeting, PA. During the relevant time period, Individual C was a good friend of Daniel Metzler.

Facts

12. Individual A first learned of the possible acquisition of GSI by EBAY from Individual A's spouse, a GSI employee who possessed material nonpublic information concerning GSI's operations and management, on or about January 30, 2011. Individual A knew that the information about the possible acquisition of GSI by EBAY was material and nonpublic, and that Individual A had an obligation to maintain the confidentiality of the information.

13. Individual A and Patricia have a long-standing relationship of trust and confidence built on years of sharing personal and professional confidences about their lives which they understood were to be maintained confidentially. Patricia and her husband, Daniel, had also been friends with Individual A's husband for many years prior to 2011 and knew of GSI.

14. During conversations on or around February 21, 2011, Individual A told Patricia in confidence about the upcoming acquisition of GSI. Patricia understood as Individual A's friend that the information she received from Individual A was confidential.

15. Following her conversations with Individual A, Patricia shared the material nonpublic information regarding the upcoming GSI acquisition, and the fact that she had learned that information from Individual A, with her husband, Daniel, her father, Zajick, and her good friend, Individual B, with the expectation that they would trade based on it and obtained a personal benefit.

16. On March 7, 2011, Zajick purchased 10,000 shares of GSI in his brokerage account on the basis of the material nonpublic information about the acquisition that Patricia had communicated to him.

17. On March 8, 2011, Daniel and Patricia purchased 5,000 shares of GSI in a jointly owned brokerage account on the basis of the material nonpublic information about the acquisition that Patricia had learned from Individual A.

18. On March 15, 2011, Individual B purchased 100 shares of GSI in his brokerage account on the basis of the material nonpublic information about the acquisition that Patricia had communicated to him.

19. On or about March 24, 2011, Daniel told his good friend, Individual C, about the upcoming acquisition of GSI with the expectation that Individual C would trade based on it. Daniel intentionally tipped that information to Individual C and obtained a personal benefit.

20. On March 25, 2011, Individual C purchased 975 shares of GSI in his brokerage account on the basis of the material nonpublic information about the acquisition that Daniel had communicated to him.

21. At 10:05 a.m. on March 28, 2011, GSI and EBAY announced that the companies had entered into a definitive agreement to merge, whereby EBAY would acquire GSI for \$29.25 per share. The closing last sale price of GSI on the day of the announcement was \$29.20, an increase of approximately 50.6% over the prior day's close.

22. Following the announcement on March 28, 2011, Daniel and Patricia sold their 5,000 GSI shares for a profit of \$53,037.

23. Zajick sold his 10,000 GSI shares following the announcement on March 28, 2011 for a profit of \$97,500.

24. Individual C also sold his GSI shares on March 28, 2011 following the announcement for a profit of \$9,491.

25. Individual B allowed his GSI shares to convert to cash at the close of the deal on June 21, 2011 for a profit of \$1,083.

26. As a result of the conduct described above, Respondents violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondents Patricia Metzler and Daniel Metzler shall pay, jointly and severally, disgorgement of \$53,037, prejudgment interest of \$7,791, and a civil money penalty in the amount of \$107,224 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments:

- (i) \$60,828 due 10 days from entry of this Order
- (ii) \$35,750 due July 1, 2016
- (iii) \$35,750 due November 1, 2016
- (iv) Remaining balance due February 1, 2017

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and/or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Patricia Metzler and Daniel Metzler as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

C. Respondent Donald Zajick shall, within 10 days of the entry of this Order, pay disgorgement of \$97,500, prejudgment interest of \$4,322, and a civil money penalty in the amount of \$97,500 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the ways described in Section IV.B. Payments by check or money order must be accompanied by a cover letter identifying Donald Zajick as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any of the Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary