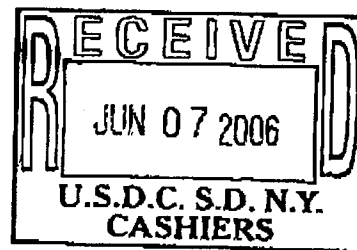


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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRADY SCHOFIELD,

Defendant.

06 CV 4273

Civil Action No.

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") for its Complaint against Defendant Brady M. Schofield ("Schofield") alleges as follows:

SUMMARY

1. This case arises out of insider trading in the securities of U.S. Foodservice, Inc. ("USF") by Schofield during the period February through March 2000 after he acquired material, nonpublic information concerning a proposed tender offer for USF by Royal Ahold (Koninklijke Ahold, N.V.) ("Ahold"). In addition, this case involves Schofield's aiding and abetting

violations of the securities laws by signing audit confirmation letters pertaining to USF that Schofield knew, or was reckless in not knowing, were materially false.

2. During the period February 14, 2000 through March 6, 2000, after learning from a senior USF executive, Timothy J. Lee of Ahold's firm intention to acquire USF at approximately \$24 to \$26 per share, Schofield purchased 28,000 shares of USF common stock at an average price of \$15.14 per share. In response to the public announcement of the tender offer on March 7, 2000, the price of USF closed at 24.375, up 6.125 from its close on March 6, 2000. Schofield sold his shares at an average price of \$25.29 per share shortly after the tender offer was announced. As a result of his trading, Schofield made illegal profits of approximately \$299,206.40.

3. On or about October 17, 2003, Ahold filed its Form 20-F for the fiscal year ended December 29, 2002, which contained restatements for the fiscal years 2000 and 2001, corrected accounting adjustments for fiscal year 2002, and restated amounts for fiscal years 1998 and 1999 included in the five-year summary data. The restatements indicate that, in its original SEC filings and other public statements, Ahold had overstated: (a) net income by approximately 17.6%, 32.6%, and 88.1% for the fiscal years 2000, 2001 and first three quarters of 2002, respectively; (b) operating income by approximately 28.1%, 29.4%, and 51.3% for the fiscal years 2000, 2001 and first three quarters of 2002, respectively; and (c) net sales by approximately 20.8%, 18.6%, and 13.8% for the fiscal years 2000, 2001 and 2002, respectively. Accordingly, Ahold made materially false and misleading statements in SEC filings and in other public statements for at least fiscal years 2000 and 2001, as well as for the first three quarters of 2002.

4. One reason for these misstatements was a large-scale fraud at Ahold's subsidiary, USF, a foodservice and distribution company with headquarters in Columbia, Maryland. The majority of USF's operating income was based on payments by its vendors (referred to herein as "promotional allowances"). USF executives engaged in a scheme that materially inflated the amount of promotional allowances recorded by USF and reflected in operating income on USF's financial statements, which were included in Ahold's Commission filings and other public statements.

5. USF executives also provided their independent auditors with false and misleading information and personnel at many of USF's major vendors falsely confirmed overstated promotional allowances to the auditors in connection with year-end audits. Schofield provided substantial assistance in this process by signing materially false audit confirmation letters.

6. The overstated promotional allowances aggregated at least \$700 million for fiscal years 2001 and 2002 and caused Ahold to report materially false operating and net income for those and other periods.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction and venue over this action pursuant to Sections 21(d), 21(e), 21A(a)(1) and 27 of the Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e), 78u-1(a)(1) and 78aa].

8. Defendant Schofield directly or indirectly made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein. Certain transactions, acts, practices and courses of business that are the subject of this

action occurred within this District, including all of Schofield's securities transactions at issue herein, which were affected in this District through First Republic Group, LLC, a New York based broker/dealer registered with the Commission. Accordingly, venue is proper pursuant to Section 22(a) of the Securities Act of 1933 and Section 27 of the Exchange Act.

#### **THE DEFENDANT**

9. During the relevant period, Brady M. Schofield, age 39, was a resident of Newport, Rhode Island and was president of the following vendors that did business with USF and USF controlled entities: Cross Valley Produce, Inc.; Frozen Farms, Inc.; Seafood Marketing Specialists, Inc.; and Specialty Supply and Marketing, Inc. Schofield currently resides in Naples, Florida.

#### **RELATED ENTITIES**

10. USF was, prior to its acquisition by Ahold, a publicly traded company engaged in the food distribution business. USF was headquartered in Columbia, Maryland. The common stock of USF was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed for trading on the New York Stock Exchange. USF is currently a wholly-owned subsidiary of Ahold.

11. Ahold, an international retail and wholesale food provider, is a publicly-held company organized in The Netherlands with securities registered with the Commission pursuant to Section 12(b) of the Exchange Act. Ahold's securities trade on the New York Stock Exchange and are evidenced by American Depositary Receipts.

## STATEMENT OF FACTS

### Insider Trading

12. On February 7, 2000, after various confidential discussions among the parties, Ahold presented a preliminary proposal to USF whereby Ahold would acquire USF at a price of \$26 per share. On that date, the price of USF stock closed at \$12 3/8.

13. On March 6, 2000, following additional confidential discussions and related activity, USF's Board of Directors unanimously approved the terms and conditions of a merger agreement with Ahold and on March 7, 2000, the two companies publicly announced Ahold's tender offer for the outstanding shares of USF at \$26 a share.

14. Throughout the discussions and negotiations concerning the contemplated acquisition, Ahold and USF took steps to ensure that the contemplated acquisition remained confidential.

15. On or before February 14, 2000, Timothy J. Lee, an executive in USF's purchasing department, informed Schofield, in substance and in part, that Ahold was planning to acquire USF, and that the purchase price for each share of USF stock was to be \$24 to \$26 per share. Schofield knew at the time that neither Ahold nor USF had yet publicly announced Ahold's proposed acquisition of USF. Schofield also knew at the time that this information was material and nonpublic and that Lee owed a duty of trust and confidence to USF not to disclose the information.

16. On February 14, 2000, after learning from Lee that Ahold was planning to acquire USF, and that the purchase price of each share of USF stock was to be \$24 to \$26 per share, Schofield began purchasing USF acquiring a total 28,000 shares at an average price of \$15.79 per share.

17. The following chart reflects Schofield's trading in USF:

<u>Date</u>	<u>B/S</u>	<u>Account Name</u>	<u>Shares</u>	<u>Price</u>	<u>Total</u>
02/14/00	BUY	Brady M. Schofield	10,000	12.37500	-123,750.00
02/25/00	BUY	Brady M. Schofield	13,000	15.00500	-195,065.00
03/06/00	BUY	Brady M. Schofield	5,000	18.03540	-90,177.00
03/07/00	SELL	Brady M. Schofield	-28,000	25.29280	708,198.40
				NET	299,206.40

18. Prior to Schofield's purchases, the information concerning the tender offer for USF shares had not been publicly disclosed.

19. On March 7, 2000, before the market opened, Ahold and USF publicly announced Ahold's tender offer for USF at \$26 per share. In response to the announcement, the price of USF increased closing at 24.375, up \$6.125 from its close on March 6, 2000.

20. Following the public announcement on March 7, 2000, Schofield sold his 28,000 shares of USF stock at an average price of \$25.29280 per share.

21. Schofield made illegal profits of approximately \$299,206.40 by his trading in USF stock.

#### False Audit Confirmation Letters

22. USF engaged in a scheme to report earnings equal to or greater than its targets, regardless of the company's true performance. The primary method used to carry out this fraudulent scheme was to improperly inflate USF's promotional allowance income and record completely fictitious promotional allowances sufficient to cover any shortfall from budgeted earnings.

23. The audit confirmation process at USF was systematically corrupted to help keep the fraud from being discovered. To hide the truth from the auditors, who attempted to confirm with the vendors the promotional allowance amounts paid and owed, USF convinced vendors

like Schofield to sign audit confirmation letters even though the vendors knew, or were reckless in not knowing, that the letters were false.

24. The promotional monies earned, paid and receivable stated in the confirmations were grossly inflated and in many cases were simply fictitious, having no relationship to the actual promotional allowances earned, paid or receivable.

25. USF personnel contacted vendors and urged them to sign and return the false confirmation letters. In some cases, USF personnel pressured the vendor by, for example, falsely representing that the confirmation was just "an internal number" and that USF did not consider the receivable reflected in the confirmation to be an actual debt that it would seek to collect. In other instances, USF personnel sent side letters to vendors, assuring them that they did not, in fact, owe USF amounts reflected as outstanding in the confirmation letters.

26. Schofield knowingly provided substantial assistance to USF executives by signing and sending to USF's independent auditors materially false confirmation letters. For example, for the audit of the year ending December 28, 2002, Schofield received a confirmation letter from USF stating, in part:

In connection with the audit of our financial statements of U.S. Foodservice, Inc. (USF) for the year ended December 28, 2002, please confirm directly with our auditors, Deloitte & Touche, LLP, 100 South Charles Street, 12<sup>th</sup> Floor, Baltimore, Maryland 21201, the following with respect to Marketing and Merchandising Allowances offered by you to U.S. Foodservice as of December 28, 2002:

Balance due to USF at December 29, 2001:	\$ 7,062,815
Less: Payments/Deductions made/allowed during 2002	(10,975,671)
Plus: Allowances earned during 2002	6,409,409
Ending Balance due to USF at December 28, 2002	\$ 2,496,553

At the end of the letter, and directly underneath the sentence "THE ABOVE INFORMATION IS CORRECT AS OF DECEMBER 28, 2002, except as noted below:" Schofield signed the letter without noting any exception and returned the letter to USF's independent auditors.

27. The amounts reflected as "Allowances earned during 2002," "Ending Balance due to USF at December 28, 2002" and other amounts in the letter were materially misstated.

28. When Schofield signed the 2002 audit confirmation letter, he knew the information he was confirming in the letter was materially false.

29. As another example, for the audit of the year ending December 29, 2001, Schofield received a confirmation letter from USF. It stated, in part:

In connection with the audit of our financial statements of U.S. Foodservice, Inc. (USF) for the year ended December 29, 2001, please confirm directly with our auditors, Deloitte & Touche, LLP, 100 South Charles Street, 12<sup>th</sup> Floor, Baltimore, Maryland 21201, the following with respect to Marketing and Merchandising Allowances offered by you to U.S. Foodservice as of December 29, 2001:

Balance due to USF at December 30, 2000:	\$ 0
Less: Payments/Deductions made/allowed during 2001	(1,963,456)
Plus: Allowances earned during 2001	9,026,272
Ending Balance due to USF at December 29, 2001	\$ 7,062,816

At the end of the letter, and directly underneath the sentence "THE ABOVE INFORMATION IS CORRECT AS OF DECEMBER 29, 2001, except as noted below:" Schofield signed the letter without noting any exception and returned the letter to USF's independent auditors.

30. The amounts reflected as "Allowances earned during 2001," "Ending Balance due to USF at December 29, 2001" and other amounts in the letter were materially misstated.

31. When Schofield signed the 2001 audit confirmation letter, he knew that the information he was confirming in the letter was materially false.



32. By signing the materially false audit confirmation letters, Schofield knowingly provided substantial assistance to the fraud at USF and helped conceal the fraud from the company's auditors.

33. As a result of the schemes described above, USF materially overstated its operating income during at least fiscal years 2001 and 2002 and made false and misleading statements in filings with the Commission and other public statements.

### **FIRST CLAIM FOR RELIEF**

#### **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] Thereunder**

34. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. As set forth above, Schofield purchased 28,000 shares of USF common stock after learning that USF was the target of a proposed acquisition that valued USF at approximately \$24 to \$26 a share.

36. When he purchased these shares, Schofield knew, or was reckless in not knowing, that the information he possessed concerning the proposed acquisition of USF was material and nonpublic and that it had been communicated to him directly or indirectly in breach of a duty of trust and confidence.

37. By reason of the foregoing, Schofield, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase of securities: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were

made, not misleading; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon other persons.

38. By reason of the foregoing, Schofield violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

### **SECOND CLAIM FOR RELIEF**

#### **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] Thereunder**

39. Paragraphs 1 through 38 are realleged and incorporated herein by reference.

40. As set forth above, by February 14, 2000, Ahold had taken substantial steps towards commencing its tender offer for the securities of USF by, among other things, holding several confidential meetings and discussions with representatives of USF and by communicating to USF prices at which it was prepared to acquire USF.

41. Schofield purchased USF stock, as described above, while he possessed material information relating to a tender offer for USF stock by Ahold. At the time that he purchased the USF stock, Schofield knew, was reckless in not knowing, or had reason to know, that the information he possessed concerning the tender offer was nonpublic and had been acquired directly or indirectly from USF.

42. By reason of the foregoing, Schofield violated Section 14(e) of the Exchange Act and Rule 14e-3 promulgated thereunder.

### **THIRD CLAIM FOR RELIEF**

#### **Aiding and Abetting Violations of 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]**

43. Paragraphs 1 through 42 are re-alleged and incorporated by reference.

44. By reason of the foregoing, defendant knowingly provided substantial assistance to another who directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase of securities: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon other persons.

45. By reason of the foregoing, defendant aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### **FOURTH CLAIM FOR RELIEF**

##### **Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)]**

46. Paragraphs 1 through 45 are re-alleged and incorporated by reference.

47. The Exchange Act and rules promulgated thereunder require every issuer of a registered security to file reports with the SEC that accurately reflect the issuer's financial performance and provide other true and accurate information to the public.

48. By reason of the foregoing, defendant aided and abetted violations of Section 13(a) of the Exchange Act.

#### **FIFTH CLAIM FOR RELIEF**

##### **Aiding and Abetting Violations of Sections 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B), and 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] Thereunder**

49. Paragraphs 1 through 48 are re-alleged and incorporated by reference.

50. The Exchange Act and rules promulgated thereunder require each issuer of registered securities to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the business of the issuer and to devise and maintain a system of internal controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements and to maintain the accountability of accounts.

51. By reason of the foregoing, defendant aided and abetted violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder.

**PRAYER FOR RELIEF**

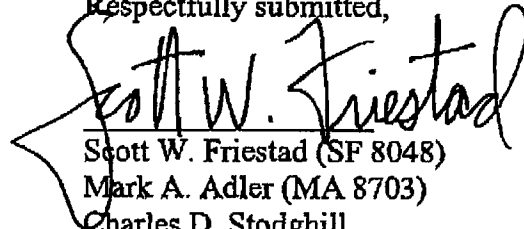
WHEREFORE, the SEC respectfully requests that this Court enter a judgment:

- a. permanently enjoining Schofield from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder;
- b. permanently enjoining Schofield from aiding and abetting any violations of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Exchange Act Rules 10b-5 and 13b2-1 thereunder;
- c. ordering Schofield to disgorge all illegal profits attributable to his unlawful conduct, including the trading profits he caused by recommending others to purchase as set forth herein, together with prejudgment interest thereon;
- d. ordering Schofield to pay a civil money penalty pursuant to Section 21A of the Exchange Act;
- e. ordering defendant to pay civil monetary penalties pursuant to Section 21(d)(3) of the Exchange Act;

- f. retaining jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court; and
- g. granting such other relief as this Court may deem just and appropriate.

Dated: June 6, 2006

Respectfully submitted,



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