

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,
450 Fifth Street, NW
Washington, DC 20549

Plaintiff,

v.

MICHAEL J. MCCLOSKEY,
12392 Driftwood Drive
Demotte, Indiana 46310,

COMPLAINT
CASE NO. 1:04CV01294(D.D.C.)

RANCE C. MILES,
2010 Briscoe
Artesia, New Mexico 88210,

LUIS E. VALLEJO,
16 Calistemon Street
Estancias de Torrimar
Guaynabo, Puerto Rico 00966,

and DANIEL HARRIS,
319 East 95th Street, Apartment 18
New York, New York 10128,

Defendants.

Plaintiff Securities and Exchange Commission (the “SEC” or the “Commission”) alleges:

NATURE OF ACTION

1. This case involves illegal insider trading in advance of the April 5, 2001 public announcement that Suiza Foods Corporation (“Suiza Foods”) would acquire and merge with Dean Foods Company (“Dean Foods”). Michael J. McCloskey and Rance C. Miles, officers of a milk business that had entered into a confidential milk supply contract

with Dean Foods in early 2001, obtained material nonpublic information from Dean Foods which they used to purchase Dean Foods securities. The last piece of material nonpublic information was conveyed to McCloskey and Miles on April 4, 2001. After receiving that information, McCloskey and Miles each purchased large amounts of Dean Foods securities. They also each tipped others, including defendants Luis E. Vallejo and Daniel Harris, who also purchased Dean Foods stock. Following the public announcement of the merger, the defendants sold their Dean Foods securities and realized illegal profits totaling \$113,801.

2. McCloskey purchased 3,000 shares of Dean Foods stock on April 4, 2001, for \$97,500. McCloskey purchased the stock on margin. He sold his stock after the merger announcement was made public the next day, earning illegal profits of \$15,900.

3. Miles purchased 500 shares of Dean Foods stock on April 4, 2001, for \$16,300. Miles also opened an options account on April 4, 2001 and purchased 250 out-of-the-money April expiration Dean Foods call option contracts for approximately \$26,750. Miles sold all of these securities between April 5 and 11, 2001, earning illegal profits of \$60,530.

4. Shortly before placing the order with his broker to purchase Dean Foods stock, McCloskey called his long-time friend Luis Vallejo, and recommended that Vallejo purchase Dean Foods stock. Vallejo acted on McCloskey's tip, purchasing 7,000 shares of Dean Foods stock for \$229,170. Vallejo sold the stock on April 5, 2001, following the merger announcement, and made illegal profits of \$36,830.

5. Harris, Miles' broker, also purchased Dean Foods stock in his own account on April 4, 2001, acting on a tip from Miles. Harris purchased 100 shares for

\$3,259. Harris sold his stock the next day, realizing illegal profits of \$541. Harris also tipped another client, who followed Harris' recommendation and sold short 100 shares of Suiza Foods common stock. That individual closed out his position on April 5, 2001, realizing illegal profits of \$82.

6. McCloskey and Miles each also tipped others with material nonpublic information on April 4, 2001. In total, the illegal profits realized by McCloskey's and Miles' tippees (other than Vallejo and Harris) were \$10,030.65 and \$768.40, respectively.

7. The SEC seeks, against each defendant, a permanent injunction against future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, full disgorgement of their illegal profits, pre-judgment interest, and civil monetary penalties pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1. In addition, the SEC seeks disgorgement from McCloskey and Miles of illegal profits reaped by individuals who were tipped by McCloskey and Miles and prejudgment interest and penalties associated with those tippee profits.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to Sections 21(d)(1), 21(e), 21A and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d)(1) and (e), 78u-1, and 78aa. Defendants directly or indirectly used the means or instrumentalities of interstate commerce or the mails, or the facilities of a national securities exchange, in connection with their illegal conduct.

9. Venue is proper in this District because numerous of the relevant acts occurred here. McCloskey was in this District on April 4, 2001, when he received material nonpublic information from Dean Foods. He was also in this District when he

called Miles to share the nonpublic information, when he called his broker to purchase Dean Foods stock, and when he called Vallejo and others recommending that they purchase Dean Foods stock.

DEFENDANTS

10. Michael J. McCloskey, age 52, is a resident of Indiana and is a United States citizen. McCloskey is the co-founder and, at the relevant time, was CEO of Select Milk Producers (“Select Milk”), a dairy cooperative headquartered in New Mexico.

11. Rance C. Miles, age 45, is a resident of New Mexico and is a United States citizen. Miles, at the relevant time, was CFO of Select Milk.

12. Luis E. Vallejo, age 51, is a resident of Puerto Rico and is a United States citizen. Vallejo and McCloskey are close friends who met in Puerto Rico and have known each other for more than 30 years.

13. Daniel Harris, age 25, is a resident of New York and is a citizen of the United Kingdom. Harris, at the relevant time, was Miles’ stock broker.

OTHER RELEVANT ENTITIES

14. Dean Foods was, at the relevant time, a Delaware corporation with its principal offices located in Franklin Park, Illinois. During the relevant period, the common stock of Dean Foods was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange.

15. Suiza Foods was, at the relevant time, a Delaware corporation with its principal offices located in Dallas, Texas. Suiza Foods effected its business primarily through two business segments -- Suiza Dairy Group and Morningstar Foods. Suiza Foods, at the relevant time, reported the results of each of these business segments

separately. During the relevant period, the common stock of Suiza Foods was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange.

16. Select Milk is a milk cooperative business with its headquarters in Artesia, New Mexico.

17. Dairy Farmers of America (“DFA”) is one of the largest milk cooperatives in the United States and has its headquarters in Kansas City, Missouri. At the relevant time, DFA owned approximately 33.8% of Suiza Dairy Group. In connection with the merger, Suiza Foods agreed to purchase DFA’s interest in its dairy operations.

DEAN FOODS’ DEALINGS WITH SELECT MILK

18. In 1996, Select Milk was awarded a major contract to supply milk to Dean Foods in its Southwest region. The supply contract constituted approximately 35-40% of Select’s business. Select Milk performed under the contract until 1998, when Dean Foods informed Select Milk, through McCloskey, that it was terminating the supply contract. Dean Foods at that time awarded the supply contract to DFA.

19. After the contract was lost to DFA in 1998, McCloskey and Miles attempted to regain the business from Dean Foods. In particular, McCloskey periodically contacted Dean Foods’ Vice President of Governmental and Dairy Industry Relations (“Dairy VP”) in an effort to regain the business.

20. In early 2000, Dean Foods decided to terminate DFA as its milk supplier. Consequently, in April 2000, Dean Foods provided DFA the required one-year termination notice under their milk supply agreement, indicating the agreement would not

be renewed and thus would end effective April 15, 2001. DFA did not know definitively that its contract with Dean Foods would not be renewed.

**DEAN FOODS AWARDS
SUPPLY CONTRACT TO SELECT MILK**

21. In January 2001, Dean Foods decided to award the milk supply contract for the Southwest region back to Select Milk. The Dairy VP received authorization from the Dean Foods CEO to award the contract to Select Milk, but only on the condition that the contract award would be kept strictly confidential. Dean Foods senior management did not want DFA to learn definitively that its contract with Dean Foods would not be renewed in April 2001 because confidential merger discussions between Dean Foods and Suiza Foods had begun. Dean Foods senior management knew that, because DFA owned 33.8% of Suiza Dairy Group, DFA was in a position to interfere with a proposed business combination between Dean Foods and Suiza Foods.

22. The Dairy VP called McCloskey in early February 2001 to inform him that Select Milk had been awarded the contract and was to begin operating under it on April 16, 2001. The Dairy VP also conveyed to McCloskey the strict confidentiality terms of the contract award. McCloskey was told that he was not permitted to inform anyone at Select Milk, including the Board, or anyone outside of Select Milk of the contract award other than someone (if it was not to be McCloskey) who would be tasked with finalizing the written contract. The Dairy VP explained that the confidentiality requirement would be in place a relatively short time, and that he would notify McCloskey when the requirement was lifted.

23. McCloskey agreed to the confidentiality terms placed upon him and Select Milk, but thought that the requirement was unusual. In his experience, he had never been asked to keep a contract confidential after the contract had been awarded.

24. McCloskey was concerned about the timing involved with the confidentiality requirement because Select Milk needed a substantial lead-time to arrange for the transition of the milk supply. Under normal circumstances, one to two months were needed to arrange for the transition.

25. After McCloskey learned that Dean Foods had awarded the business to Select Milk, he told only Rance Miles, Select Milk's CFO, about the award because Miles was to finalize the written contract with Dean Foods. McCloskey conveyed to Miles that Dean Foods required Select Milk to keep its contract confidential. Miles agreed to keep the contract award confidential. On February 9, 2001, Miles sent to the Dairy VP a proposed milk contract. After drafts were exchanged between Miles, McCloskey and Dean Foods personnel, the final, confidential supply agreement was signed in early March 2001.

DEAN FOODS SIGNALS POSSIBLE SALE OF COMPANY, MERGER SPECULATION ENSUES

26. Within days of signing the confidential supply agreement with Select Milk, Dean Foods, on March 9, 2001, issued a press release announcing that its earnings for the period would be below analysts' expectations. In the release, Dean Foods also announced the fact that it was "working with Goldman, Sachs & Co. to explore strategic and financial alternatives." The next day, various media publications ran articles interpreting the statement as an indication that Dean Foods could be exploring a sale of

all or part of the company. Some articles named Suiza Foods, among other companies, as a likely acquirer.

27. McCloskey and Miles both became aware of Dean Foods' March 9, 2001 announcement and the ensuing Dean Foods merger speculation. McCloskey and Miles both discussed specifically that Suiza Foods was a potential merger candidate.

DEAN FOODS CONTINUES TO DELAY MAKING SELECT MILK'S CONTRACT PUBLIC

28. According to the signed confidential supply contract, Select Milk was to begin supplying milk to Dean Foods on April 16, 2001. However, there were numerous arrangements that had to be made by both Select Milk and Dean Foods to effect the transition from DFA to Select Milk as the milk supplier. According to the Dairy VP, this transition lead-time, under normal circumstances, was approximately 2 months. However, Select Milk was not permitted, under the confidentiality conditions, to begin arranging for the transition until notified by Dean Foods that it could make the contract public.

29. As of late March 2001, because merger negotiations between Dean Foods and Suiza Foods were still ongoing, Dean Foods would not allow Select Milk to make the supply contract public. Despite McCloskey's calls to Dean Foods informing the Dairy VP that he was "desperate" to begin arranging the transition of supply from DFA, Dean Foods refused to make the contract public.

POSSESSING MATERIAL NONPUBLIC INFORMATION, MCCLOSKEY AND MILES SUSPECT MERGER IS LIKELY

30. By late March 2001, McCloskey and Miles were in possession of material nonpublic information that greatly assisted them to understand that the speculation about

a potential merger between Dean Foods and Suiza Foods was not idle rumor. McCloskey and Miles had material nonpublic information regarding the existence and status of their contract with Dean Foods. In combination with the public rumors about the possibility of a Dean Foods merger and the fact that DFA was a substantial owner of Suiza Foods, McCloskey and Miles concluded that Dean Foods was delaying the implementation and announcement of Select Milk's contract due to merger negotiations between Suiza Foods and Dean Foods.

**DEAN FOODS GIVES SELECT “GREEN LIGHT” AFTER
ADDITIONAL 48-HOUR DELAY; MCCLOSKEY AND MILES DETERMINE
MERGER IS IMMINENT**

31. On April 4, 2001, the day before the Dean Foods-Suiza Foods merger was announced publicly, the Dairy VP spoke with McCloskey and informed him that Select Milk could begin to make internal preparations for the supply contract transition from DFA to Select Milk and, in 48 hours, Select Milk could make its contract public.

32. McCloskey immediately concluded that the 48-hour window, after which he could make the Select Milk contract public, indicated that a Dean Foods merger announcement was forthcoming in that time period.

33. McCloskey acted promptly on this information. In the ninety minutes following his discussion with the Dairy VP, McCloskey made a series of phone calls – notifying Vallejo and others about the “green light” and recommending that they buy Dean Foods stock. McCloskey also contacted his broker in that time frame, placing a large purchase order for 3,000 shares of Dean Foods stock for which he paid \$97,500.

MCCLOSKEY TIPS LUIS VALLEJO

34. Immediately following his conversation with the Dairy VP, McCloskey called his best friend, Luis Vallejo, with whom he had previously discussed Select Milk's contract with Dean Foods. In this conversation, McCloskey told Vallejo that he had learned from Dean Foods he had gotten the "green light" on the milk supply contract, but that he was supposed to keep that fact confidential for an additional 48 hours.

35. McCloskey told Vallejo that he believed the "green light" was a sign that the Dean Foods-Suiza Foods merger was "coming down" and that, consequently, McCloskey recommended that Vallejo purchase Dean Foods stock. McCloskey also told Vallejo that he planned to buy stock himself.

36. Vallejo, knowing well that McCloskey was in the milk business and trusting his advice, called his broker shortly after McCloskey's call on April 4, 2001 and purchased 7,000 shares of Dean Foods stock for \$229,170. Vallejo purchased the stock on margin.

MCCLOSKEY INFORMS MILES OF "GREEN LIGHT" AND MILES TRADES ON INFORMATION AND TIPS HARRIS AND OTHERS

37. Shortly after calling Vallejo, and still only minutes after his conversation with the Dairy VP, McCloskey called Miles to inform him that Dean Foods had given Select Milk the "green light" to make its contract public, but not for an additional 48 hours. McCloskey told Miles he could tell Select Milk personnel to begin preparing for that event but that no one outside the company should know of the contract at that time.

38. Following this conversation, Miles promptly acted on the inside information. Miles called his broker, Daniel Harris, and purchased 500 shares of Dean Foods stock for \$16,300. Miles also sought to purchase 250 Dean Foods April

expiration, out-of-the-money call options. Because Miles had never purchased options through Harris before, he needed approval from the brokerage firm to open an option account. Miles worked with Harris on April 4, 2001, to complete the necessary paperwork to open the option account and to place the order for the 250 out-of-the-money call options.

39. The brokerage firm, however, thought Miles' option order was unusual and speculative. As a result, the firm refused to execute the trade unless Miles would sign a statement indicating that the firm and Harris had not solicited the trade. Miles agreed, signed the statement, and purchased the 250 Dean Foods call options for \$26,750. To pay for this purchase, Miles was required to, and did, wire funds on April 4, 2001, to the brokerage account because the options could not be purchased on margin.

40. In addition to his own trading, Miles also tipped Harris in the course of placing his order for Dean Foods stock and options. Harris acted on Miles' tip, purchasing 100 shares of Dean Foods stock in his own account on April 4, 2001 for \$3,259. Harris also planned to purchase the same Dean Foods call options purchased by Miles, but was advised against doing so by his compliance officer. Harris, the same day, also tipped another client of his. Harris recommended that this client sell short 100 shares of Suiza Foods common stock on April 4, 2001. The client followed Harris' advice, and sold short the Suiza Foods stock.

41. In addition to Harris, Miles tipped another individual who also acted on the information, purchasing 130 shares of Dean Foods stock on April 4, 2001, for \$4,222.40.

**MCCLOSKEY TIPS OTHERS
AND ALSO TRADES ON “GREEN LIGHT” NOTICE**

42. In addition to Miles and Vallejo, McCloskey also informed two other individuals on April 4, 2001 that Select Milk had received the green light on the supply contract from Dean Foods and that McCloskey thought this notice indicated the Dean Foods merger was going to be announced. The first individual acted on McCloskey’s tip, purchasing 1,600 shares of Dean Foods stock for \$52,420. That tipped individual also tipped someone else, who purchased 300 shares of Dean Foods stock for \$9,840. The second individual tipped by McCloskey did not trade on the information, but instead tipped someone else who did trade. That second-tier tippee purchased 83 shares of Dean Foods stock for \$2,705.80.

43. After McCloskey had tipped these two individuals, he called his own broker and purchased 3,000 shares of Dean Foods stock for \$97,500. McCloskey purchased the stock on margin. This transaction was the largest single purchase of publicly traded stock McCloskey had ever made, and the purchase was made in an account in which he had not executed any trades for nearly two years.

DEAN FOODS ANNOUNCES MERGER ON APRIL 5, 2001

44. On April 5, 2001, Dean Foods and Suiza Foods announced that Suiza Foods would acquire Dean Foods. In the transaction, Dean Foods shareholders were to receive \$40.29 per share of Dean Foods stock, in the form of \$21.00 in cash and .429 shares of Suiza Foods stock. News of the acquisition caused the price of Dean Foods stock to jump from its April 4, 2001 close of \$32.50 to as high as \$38.80 on April 5, 2001, or a 19% increase.

MCCLOSKEY, MILES, VALLEJO, AND HARRIS CASH OUT

45. On April 5, 2001, after the merger announcement was public, McCloskey sold his 3,000 shares of Dean Foods stock, earning illegal profits of \$15,900.

46. On April 5, 6 and 11, 2001, after the merger announcement was public, Miles sold the Dean Foods stock and options he had purchased, earning illegal profits of \$60,530.

47. On April 5, 2001, after the merger announcement was public, Vallejo sold the 7,000 shares of Dean Foods stock he had purchased, earning illegal profits of \$36,830.

48. On April 5, 2001, after the merger announcement was public, Harris sold the shares of Dean Foods stock he had purchased, earning illegal profits of \$541.

MCCLOSKEY AND MILES' TIPPEES ALSO REAP PROFITS

49. Following the public merger announcement, the individuals tipped directly and indirectly by McCloskey (in addition to Vallejo) earned illegal profits on their purchases of stock made on April 4, 2001. In total, the illegal profits were \$10,030.65.

50. In addition, the individuals tipped directly and indirectly by Miles also earned illegal profits on their purchase of Dean Foods stock and short sale of Suiza Foods stock made on April 4, 2001. In total, the illegal profits were \$768.40.

COUNT I (Violations of Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5)

51. Plaintiff SEC repeats and realleges Paragraphs 1 through 50 above.

52. Michael McCloskey purchased Dean Foods stock as outlined above while he knew, should have known, or was reckless in not knowing that he was in possession of

material nonpublic information misappropriated in breach of a duty owed to the source of the information. McCloskey also knowingly or recklessly tipped others to trade on the same misappropriated material nonpublic information. Consequently, McCloskey violated, and unless enjoined will again violate, 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.

53. Rance Miles purchased Dean Foods stock and options as outlined above while he knew, should have known, or was reckless in not knowing that he was in possession of material nonpublic information misappropriated in breach of a duty owed to the source of the information. Miles also knowingly or recklessly tipped others to trade on the same misappropriated material nonpublic information. Consequently, Miles violated, and unless enjoined will again violate, 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.

54. Luis Vallejo purchased Dean Foods stock as outlined above while he knew, should have known, or was reckless in not knowing that he was in possession of material nonpublic information improperly obtained in breach of a duty owed to the source of the information. Consequently, Vallejo violated, and unless enjoined will again violate, 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.

55. Daniel Harris purchased Dean Foods stock as outlined above while he knew, should have known, or was reckless in not knowing that he was in possession of material nonpublic information misappropriated in breach of a duty owed to the source of the information. Harris also knowingly or recklessly tipped another to trade on the same misappropriated material nonpublic information. Consequently, Harris violated, and

unless enjoined will again violate, 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.

RELIEF SOUGHT

Plaintiff Securities and Exchange and Commission requests judgment:

- (i) permanently enjoining defendants Michael McCloskey, Rance Miles, Luis Vallejo, and Daniel Harris from violating 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;
- (ii) ordering defendants Michael McCloskey, Rance Miles, Luis Vallejo and Daniel Harris to disgorge all profits realized from the unlawful trading described above, together with prejudgment interest;
- (iii) ordering defendants Michael McCloskey, Rance Miles, and Daniel Harris to disgorge all profits earned by individuals they tipped, directly or indirectly, with the misappropriated material nonpublic information;
- (iv) ordering defendants Michael McCloskey, Rance Miles, Luis Vallejo, and Daniel Harris to pay civil monetary penalties pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1; and
- (v) granting such other relief as the Court may deem just and appropriate.

Dated: August 2, 2004
Washington, D.C.

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