

about the pending acquisition by a USF vendor (“Vendor A”) who had been tipped by USF executive Timothy J. Lee. Lee subsequently met with Bailin and confirmed this information in substance and in part. On March 7, 2000, Ahold and USF publicly announced Ahold's tender offer for USF at \$26 per share. Bailin sold his shares at an average price of \$25.16 shortly after the tender offer was announced. As a result of his trading, Bailin made illegal profits of approximately \$1,144,794. Bailin also recommended the purchase of USF to six other traders who purchased a total of 88,650 shares prior to the announcement of the tender offer. All six sold their USF shares shortly after the tender offer was announced for a combined profit of \$1,079,653. When he purchased the USF shares and caused the purchase of USF shares by others, Bailin knew or acted in reckless disregard of the fact that the information he possessed concerning the then contemplated tender offer for USF was material nonpublic information that had been communicated to him directly or indirectly in breach of a duty of trust and confidence by an insider of USF.

JURISDICTION AND VENUE

3. This Court has jurisdiction and venue over this action pursuant to Sections 21(e), 21A(a)(1) and 27 of the Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(e), 78u-1(a)(1) and 78aa]. All of the securities transactions at issue herein were effected in this District through the facilities of the New York Stock Exchange through a broker-dealer registered with the Commission and this Court properly has venue over this action.

4. Defendant Bailin engaged in acts, practices and courses of business that violate Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(e)], and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§240.10b-5 and 240.14e-3], through the means or

instrumentalities of interstate commerce, the mails, or the facilities of a national securities exchange.

5. The Commission seeks a judgment permanently enjoining Bailin from future violations and directing disgorgement of his illegal profits, pursuant to Sections 21(d)(1) and (e) of the Exchange Act [15 U.S.C. §§78u(d)(1) and (e)]. Unless enjoined, Bailin will continue to engage in transactions, acts, practices, and courses of business that violate the provisions of the Exchange Act at issue. The Commission also seeks an award of civil penalties, pursuant to Section 21A of the Exchange Act [15 U.S.C. §§78u-1].

THE DEFENDANT

6. Mark A. Bailin, age 49, resides in Lisle, Illinois. During the relevant period, Bailin was president of a seafood supply company, Rymer International Seafood, Inc., whose customers included USF and USF controlled entities.

RELATED ENTITIES

7. U.S. Foodservice, Inc. 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.

8. 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.

FACTS

BACKGROUND OF AHOLD'S TENDER OFFER FOR USF STOCK

9. On September 7, 1999, the Chief Executive Officers of USF and Ahold met at a social outing and discussed potential business opportunities involving the two companies.

10. On December 14, 1999, following additional discussions between the two companies and their representatives, USF's management informed its Board of Directors of the possibility of a business combination involving USF and Ahold. That same day, USF's Board of Directors authorized the company's management to engage financial and legal advisors to assist the company in pursuing a possible business combination.

11. On January 21, 2000, investment bankers for the companies met to discuss valuation issues and possible synergies from a potential business combination.

12. On January 25, 2000, senior executives from the companies met to discuss an overview of their operations and potential synergies as well as potential administrative, procurement, distribution, equipment and supplies savings, and implementation issues.

13. On February 7, 2000, after various 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.

14. On March 6, 2000, following additional 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.

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

**BAILIN LEARNS OF THE CONTEMPLATED TENDER
OFFER AND BUYS USF SHARES**

16. On or before February 1, 2000, Defendant Bailin spoke with Vendor A who had been tipped by Timothy J. Lee, an executive in USF's purchasing department. Prior to their conversation, Vendor A had learned, directly or indirectly from Lee, that USF was the target of a contemplated but unannounced acquisition and that the acquisition price for USF stock would be approximately \$24 to \$26 per share. On or before February 1, 2000, Vendor A informed Defendant Bailin, in substance and in part, that an overseas company was going to acquire USF, and that the purchase price of each share of USF stock was to be in the mid-twenties. Defendant Bailin knew at the time that neither Ahold nor USF had yet publicly announced Ahold's proposed acquisition of USF's common stock. Defendant Bailin also knew at the time, and had reason to know, that the information related to Bailin by Vendor A regarding the acquisition of USF originated from Lee. In addition, prior to March 2, 2000, Lee communicated to Bailin, in substance and in part, that USF was to be acquired by another company. This information was material and nonpublic and Lee directly or indirectly owed a duty of trust and confidence to USF not to disclose it. Lee told Vendor A, in breach of his duty of trust and confidence, that USF was the target of a contemplated but unannounced acquisition and that the acquisition price for USF stock would be approximately \$24 to \$26 per share. Bailin subsequently confirmed this information in substance and in part with Lee.

17. On February 1, 2000, after learning from Vendor A that USF was the target of a proposed acquisition and that the acquisition valued USF at approximately \$24 to \$26 per share, Defendant Bailin commenced purchasing USF common stock.

18. During the period February 1, 2000 through March 2, 2000, Defendant Bailin purchased 100,000 shares of USF common stock at an average price of \$13.72 per share in a joint account with his wife. The account was maintained at a broker dealer registered with the Commission.

19. Bailin's trading included the following purchases:

<u>Date</u>	<u>B/S</u>	<u>Account Name</u>	<u>Shares</u>	<u>Price</u>	<u>Total</u>
02/01/00	BUY	Mr. Mark Bailin & Mrs. Gayle Bailin	5,000	13.87500	-69,375.00
02/15/00	BUY	Mr. Mark Bailin & Mrs. Gayle Bailin	15,000	12.43750	-186,562.50
02/17/00	BUY	Mr. Mark Bailin & Mrs. Gayle Bailin	7,500	11.43750	-85,781.25
02/17/00	BUY	Mr. Mark Bailin & Mrs. Gayle Bailin	32,500	11.50000	-373,750.00
02/25/00	BUY	Mr. Mark Bailin & Mrs. Gayle Bailin	10,000	15.50000	-155,000.00
03/02/00	BUY	Mr. Mark Bailin & Mrs. Gayle Bailin	3,300	16.37500	-54,037.50
03/02/00	BUY	Mr. Mark Bailin & Mrs. Gayle Bailin	10,200	16.93750	-172,762.50
03/02/00	BUY	Mr. Mark Bailin & Mrs. Gayle Bailin	9,800	16.87500	-165,375.00
03/02/00	BUY	Mr. Mark Bailin & Mrs. Gayle Bailin	6,700	16.25000	-108,875.00

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

THE TENDER OFFER IS ANNOUNCED AND BAILIN SELLS HIS USF STOCK FOR ILLEGAL PROFITS OF APPROXIMATELY \$1,144,794

21. On March 7, 2000, before the market opened, Ahold and USF publicly announced Ahold's tender offer for USF at \$26 per share.

22. Following the public announcement on March 7, 2000, Bailin sold his 100,000 shares of USF stock at an average price of \$25.16 per share as follows:

<u>Date</u>	<u>B/S</u>	<u>Account Name</u>	<u>Shares</u>	<u>Price</u>	<u>Total</u>
03/07/00	SELL	Mr. Mark Bailin & Mrs. Gayle Bailin	-79,000	25.12500	1,984,875.00
03/07/00	SELL	Mr. Mark Bailin & Mrs. Gayle Bailin	-20,000	25.31250	506,250.00
03/10/00	SELL	Mr. Mark Bailin & Mrs. Gayle Bailin	-1,000	25.18750	25,187.50

23. Bailin made illegal profits of approximately \$1,144,794 by his trading in USF stock.

BAILIN CAUSES SIX OTHER TRADERS TO PURCHASE UFS PRIOR TO THE ANNOUNCEMENT OF THE TENDER OFFER

24. After receiving the information of the contemplated tender offer as described above, Bailin recommended the purchase of USF to six individuals based upon the material, nonpublic confidential information he received from Vendor A and Lee. These six individuals purchased a total of 88,650 shares prior to the announcement of the tender offer for a profit of \$1,079,653.

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

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. As set forth above, Bailin purchased 100,000 shares of USF common stock after learning from Vendor A and Lee that USF was the target of a proposed acquisition that valued USF at approximately \$24 to \$26 a share. When he purchased these shares, Bailin 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. When Bailin recommended the purchase of USF to others, as alleged above, he knew or was reckless in not knowing that those to whom he made the recommendation would purchase USF securities.

27. By reason of the foregoing, Bailin, 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.

28. By reason of the foregoing, Bailin 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].

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

29. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

30. As set forth above, by February 1, 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.

31. Bailin 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, Bailin 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. When Bailin recommended the purchase of USF to others, as alleged above, he knew or was reckless in not knowing that those to whom he made the recommendation would purchase USF securities.

32. By reason of the foregoing, Bailin violated Section 14(e) of the Exchange Act [15 U.S.C. § 78(e)], and Rule 14e-3 [17 C.F.R. §240.14e-3], promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

- a. Permanently enjoin Bailin from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.
- b. Order Bailin to disgorge jointly and severally all illegal gains from his unlawful conduct, gained directly or indirectly from the transactions complained of herein, including without limitation the trading profits he caused by recommending others to purchase as set forth herein, together with prejudgment interest thereon.
- c. Order Bailin to pay a civil money penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].
- d. Retain 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.
- e. Grant such other and further relief as this Court may determine to be just and necessary.

Dated: January _____, 2005

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