

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10241 / October 31, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 79194 / October 31, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17653

	:	ORDER INSTITUTING CEASE-AND-
In the Matter of	:	DESIST PROCEEDINGS PURSUANT TO
	:	SECTION 8A OF THE SECURITIES ACT
MICHAEL L. REGER,	:	OF 1933 AND SECTION 21C OF THE
	:	SECURITIES EXCHANGE ACT OF 1934,
Respondent.	:	MAKING FINDINGS, AND IMPOSING A
	:	CEASE-AND-DESIST ORDER
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I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Michael L. Reger (“Reger” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and 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 Respondent’s Offer, the Commission finds¹ that:

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

Summary

These proceedings arise out of Reger's undisclosed ownership and control of Dakota Plains Holdings, Inc. (OTC: DAKP) ("Dakota Plains"). Dakota Plains was founded in late 2008 by Reger and his then-business partner, Ryan R. Gilbertson ("Gilbertson"). To avoid disclosing the full extent of their control of Dakota Plains, Reger and Gilbertson first named their fathers as figurehead directors and officers and later installed one of their friends as CEO. But despite not having any official roles with Dakota Plains, Reger and Gilbertson controlled the company behind the scenes, and they used their influence to obtain significant financial benefits for themselves. Additionally, at the time Dakota Plains first became public, Reger beneficially owned approximately 21.4% of its stock, but he divided his holdings among ten accounts in different names to avoid the public disclosure requirements of Sections 13(d) and 16(a) of the Exchange Act.

Respondent

1. **Michael L. Reger**, age 40, is a resident of Wayzata, MN. Reger was one of the founders of Dakota Plains.

Background

2. In 2008, Reger and Gilbertson caused Dakota Plains to be incorporated. Reger and Gilbertson caused Dakota Plains to issue them each millions of founder shares and to issue additional founder shares to their friends and family members. Reger made only a nominal capital investment in Dakota Plains, but he lent the company a total of \$120,000 in 2008 and 2009 as partial funding for the acquisition of land in North Dakota for a rail facility. To avoid disclosing the full extent of their involvement with Dakota Plains, Reger and Gilbertson named their fathers as CEO and President, respectively. The fathers, however, were mere figureheads, and Reger and Gilbertson made all material decisions for Dakota Plains.

3. Between March 2009 and December 2011, Reger and Gilbertson caused Dakota Plains to conduct four private placements of its stock, through which the company raised more than \$7 million from investors. Reger personally encouraged some of the investors to purchase stock in the private placements. Among other things, the proceeds of the private placements were used to repay the initial loans Reger made to Dakota Plains, plus 12% interest. None of the offering materials for any of the private placements disclosed any involvement of Reger in the management or control of Dakota Plains or identified him as having loaned any money to the company.

4. In January 2011, Dakota Plains issued \$3.5 million in promissory notes at 12% interest (the "Senior Notes"). The majority of the proceeds of the Senior Notes were used to pay a shareholder dividend, including a \$439,000 dividend to a limited liability company controlled by Reger. Gilbertson and Reger each purchased \$1 million of the Senior Notes, and a foundation they jointly controlled purchased \$100,000 of the Senior Notes. In connection with their purchases of the Senior Notes, Dakota Plains also issued 1,000,000 warrants to Reger, 1,000,000 warrants to Gilbertson, and 100,000 warrants to the foundation. Each warrant permitted the holder to purchase

one share of Dakota Plains stock at a conversion price of \$0.285/share. Although Reger's and Gilbertson's fathers were purportedly the sole directors and officers of Dakota Plains at the time, neither of them had any role in deciding to issue the Senior Notes, selecting the investors, or setting the terms of the Senior Notes. Instead, the decision to issue the notes was made by Gilbertson. Reger was aware of and acceded to the decision to issue the Senior Notes. The offering materials for the private stock placements did not identify the purchasers of the Senior Notes or disclose that the majority of the proceeds of the Senior Notes were used to pay the dividend.

5. In February 2011, Reger and Gilbertson hired one of their friends to replace Reger's father as Dakota Plains' CEO. The new CEO received a salary, stock, and warrants from Dakota Plains. As part of the new CEO's hiring, Reger and Gilbertson also directly provided him with additional benefits in the form of stock in another company Reger and Gilbertson controlled and a loan from a limited liability company controlled by Reger and Gilbertson. The offering materials for the private placements disclosed only the compensation the new CEO received from the company and not the additional benefits provided to him by Reger and Gilbertson. Dakota Plains never publicly disclosed the additional benefits provided to the new CEO by Reger and Gilbertson.

6. Shortly after the new CEO started, he and Reger signed an agreement for Dakota Plains to pay a \$200,000 consulting fee to the same limited liability company Reger and Gilbertson used to make the undisclosed loan to the new CEO. In December 2011, Reger and the new CEO signed another agreement for Dakota Plains to pay an additional \$100,000 consulting fee to Reger's and Gilbertson's limited liability company. Reger's and Gilbertson's limited liability company provided no actual consulting services to Dakota Plains. The consulting fees were not disclosed in any of the offering documents for the private placements.

7. In April 2011, Dakota Plains issued another \$5.5 million in promissory notes at 12% interest (the "Junior Notes"). A limited liability company controlled by Reger purchased \$2 million of the Junior Notes; Gilbertson purchased \$2 million of the Junior Notes; and Reger's and Gilbertson's foundation purchased \$250,000 of the Junior Notes. As was the case with the Senior Notes, Gilbertson decided that Dakota Plains would issue the Junior Notes. Reger was aware of and acceded to the decision to issue the Junior Notes. The new CEO had no substantive involvement in deciding to issue the Junior Notes, selecting the investors, or setting the terms of the Junior Notes.

8. In October 2011, Gilbertson directed Dakota Plains to consolidate the Senior Notes and Junior Notes into a single series of Consolidated Notes. Reger was aware of and acceded to the decision. Reger and his LLC then transferred their \$3 million of Consolidated Notes to Reger's two minor children. Although Reger named his brother as custodian for the minor children, in reality Reger maintained control over his children's Consolidated Notes.

9. Gilbertson directed Dakota Plains to include an "additional payment" provision in the Consolidated Notes. Under that provision, the noteholders would receive bonus payments based on the average price of Dakota Plains' stock in its first 20 days of public trading. The noteholders would receive bonus payments if the average price exceeded \$2.50, and the amount of

the bonus payments increased as the average stock price increased. Reger was aware of and acceded to the inclusion of the “additional payment” provision.

10. Gilbertson caused Dakota Plains to become a public company as a result of a reverse merger on March 22, 2012. Reger was aware of and acceded to the effort to take Dakota Plains public through a reverse merger. Upon becoming publicly traded, the price of Dakota Plains stock almost immediately jumped to \$12, and it stayed between \$11 and \$12 for almost exactly 20 days. Trading during that 20-day period was extremely light, with the volume after the opening day never exceeding 2,300 shares per day.

11. On the first day of public trading, Reger notified Dakota Plains he was converting all 1,000,000 warrants he received with the Senior Notes. Those warrants contained a cashless conversion feature based on a reference date three days after the notice of conversion. As a result of Dakota Plains stock closing at \$11.01 on the reference date, Reger received 974,114 shares in the conversion.

12. On May 15, 2012, Dakota Plains filed a Form 10-Q disclosing that, as a result of the average stock price in the first 20 days, the holders of the Consolidated Notes were entitled to receive notes or stock worth \$32,851,800 pursuant to the additional payment provision. Reger elected to have his children take their additional payment in the form of \$10,950,600 of new promissory notes (the “Additional Payment Notes”). Following shareholder complaints, the additional payment was reduced and converted to equity in two restructurings. As a result of the restructurings, Reger’s children received 2,245,344 shares of Dakota Plains for their additional payment. Dakota Plains also paid Reger’s children \$1,659,133 in interest under the Consolidated Notes and Additional Payment Notes.

13. After the 20-day period ended, Dakota Plains’ stock price never again approached \$12 and soon traded at or below the last privately offered price.

14. Reger transferred shares he controlled to his children and a family foundation. At the time Dakota Plains went public, Reger held Dakota Plains shares and warrants under ten different names. He held 1,000,000 warrants in his own name, 776,700 shares in a family foundation he and his wife controlled, and 6,511,580 shares in the names of his two minor children. Reger was the beneficial owner of all of these shares and warrants.

15. The minor children’s shares were divided into eight separate accounts, with four different family member custodians purportedly controlling the two children’s shares. The custodians, however, did not control the children’s shares. Reger made all of the investment and voting decisions for all eight of the children’s accounts. At times he stamped, signed, or caused to be stamped or signed the custodians’ signatures on documents to vote the children’s shares or effectuate transactions in their accounts.

16. Reger purposefully structured his Dakota Plains holdings so that no one account held more than 5% of Dakota Plains’ stock. Reger never filed any public statements with the

Commission disclosing his beneficial ownership of Dakota Plains stock pursuant to Section 13(d) of the Exchange Act or Section 16(a) of the Exchange Act.

17. Reger acted negligently in failing to disclose his ownership and control of Dakota Plains, which allowed him to approve the Senior, Junior and Consolidated Notes so that he could personally profit from the favorable terms of those Notes, and to cause Dakota Plains to use money raised from investors in the private placements to pay him dividends, interest at a favorable rate and fees for consulting services he never provided.

18. As a result of the conduct described above, Reger violated Section 17(a)(2) of the Securities Act, which makes it unlawful for a person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly to obtain money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

19. Also as a result of the conduct described above, Reger violated Section 17(a)(3) of the Securities Act, which makes it unlawful for a person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

20. Also as a result of the conduct described above, Reger violated Section 13(d) of the Exchange Act, which requires any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act, and is directly or indirectly the beneficial owner of more than 5% of such class to file a statement with the Commission within ten days after such acquisition.

21. Finally, as a result of the conduct described above, Reger violated Section 16(a) of the Exchange Act, which requires every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to Section 12 of the Exchange Act, or who is a director or officer of the issuer of such security, to file statements with the Commission: at the time of the registration of such security; within 10 days after he or she becomes such beneficial owner, director, or officer; and if there has been a change in such ownership.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Reger's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Reger cease and desist from committing or causing any violations and any future

violations of Section 17(a)(2) of the Securities Act, Section 17(a)(3) of the Securities Act, Section 13(d) of the Exchange Act, and Section 16(a) of the Exchange Act.

B. Respondent Reger shall pay disgorgement of \$6,500,000, prejudgment interest of \$669,365.85, and a civil money penalty in the amount of \$750,000 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: First Installment: disgorgement of \$2,166,666.67, prejudgment interest of \$223,121.95, and a civil money penalty of \$250,000 is due within 14 days of the entry of this Order; Second Installment: disgorgement of \$2,166,666.67, prejudgment interest of \$223,121.95, and a civil money penalty of \$250,000 is due within 6 months of the entry of this Order; Final Installment: disgorgement of \$2,166,666.66, prejudgment interest of \$223,121.95, and a civil money penalty of \$250,000 is due within 12 months of the entry of this Order. 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 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) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent 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) Respondent 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 Michael L. Reger 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 Robert J. Burson, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604.

C. 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, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any

award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he 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 Respondent 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.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$750,000 based upon his cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

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 Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 Respondent 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