

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73043 / September 10, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16072**

**In the Matter of**

**Donald A. Nunemaker,**

**Respondent.**

**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 AND CIVIL  
PENALTY**

**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 Donald A. Nunemaker (“Nunemaker” 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 Respondent and the subject matter of these proceedings, which are admitted, Respondent consents 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 and Civil Penalty (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as an officer of Willis Lease Finance Corporation ("Willis Lease"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Willis Lease's securities.

#### **Respondent**

3. Nunemaker, age 65, has served as President of Willis Lease since July 2011. Prior to his appointment as President, he served as Executive Vice President – General Manager Leasing from September 2006 to July 2011 and Chief Operating Officer from March 2001 to September 2006. Respondent is and has been at all relevant times an officer of Willis Lease subject to Section 16(a) of the Exchange Act.

#### **Issuer**

4. Willis Lease is a Delaware corporation with its principal place of business in California. Willis Lease's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: WLFC).

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<sup>1</sup> 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.

## Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”).

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Exchange Act Rule 16a-1(f) defines the term “officer” to include an issuer’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function.

8. Although the Commission has encouraged the practice of many issuers to “help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing,” Section 16 places the responsibility to report changes in securities ownership on insiders.<sup>2</sup>

9. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.<sup>3</sup> The failure to timely file a required report, even if inadvertent, constitutes a violation.<sup>4</sup>

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<sup>2</sup> Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

<sup>3</sup> See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at \*17–18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d)

**Respondent Failed to File Required Section 16(a) Reports on a Timely Basis**

10. As a designated executive officer of Willis Lease since at least March 2001, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) and remains subject to those requirements.

11. Respondent has failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

<b><u>Form Type</u></b>	<b><u>Date of Trans.</u></b>	<b><u>Due Date</u></b>	<b><u>Date Filed</u></b>
4	1/3/2011	1/5/2011	1/18/2011
4	1/4/2011	1/6/2011	1/18/2011
4	1/5/2011	1/7/2011	1/18/2011
4	1/7/2011	1/11/2011	1/18/2011
4	1/10/2011	1/12/2011	1/18/2011
4	1/11/2011	1/13/2011	1/18/2011
4	1/24/2011	1/26/2011	2/4/2011
4	1/28/2011	2/1/2011	2/4/2011
4	2/7/2011	2/9/2011	2/15/2011

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or 16(a)]]; Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at \*50 (Feb. 2, 2002) (“No showing of scienter is required to prove violations of these reporting provisions”); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.”).

<sup>4</sup> Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at \*1–2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at \*7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	2/18/2011	2/23/2011	2/28/2011
4	5/26/2011	5/31/2011	6/3/2011
4	8/11/2011	8/15/2011	8/24/2011
4	2/3/2012	2/7/2012	2/24/2012
4	4/17/2012	4/19/2012	4/26/2012
4	4/18/2012	4/20/2012	4/26/2012
4	4/19/2012	4/23/2012	4/26/2012
4	4/23/2012	4/25/2012	5/8/2012
4	4/24/2012	4/26/2012	5/8/2012
4	4/27/2012	5/1/2012	5/8/2012
4	4/30/2012	5/2/2012	5/16/2012
4	5/1/2012	5/3/2012	5/16/2012
4	5/2/2012	5/4/2012	5/16/2012
4	5/3/2012	5/7/2012	5/16/2012
4	5/4/2012	5/8/2012	5/16/2012
4	5/7/2012	5/9/2012	5/16/2012
4	5/8/2012	5/10/2012	5/16/2012
4	12/13/2012	12/17/2012	12/19/2012
4	1/2/2013	1/4/2013	1/17/2013
4	1/7/2013	1/9/2013	1/17/2013
4	1/9/2013	1/11/2013	2/6/2013
4	1/11/2013	1/15/2013	2/6/2013
4	1/16/2013	1/18/2013	2/6/2013
4	1/17/2013	1/22/2013	2/6/2013
4	1/23/2013	1/25/2013	2/6/2013
4	1/24/2013	1/28/2013	2/6/2013
4	1/31/2013	2/4/2013	2/6/2013
4	2/4/2013	2/6/2013	2/19/2013

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	2/27/2013	3/1/2013	3/20/2013
4	2/28/2013	3/4/2013	3/20/2013
4	3/1/2013	3/5/2013	3/20/2013
4	4/9/2013	4/11/2013	4/17/2013
4	4/24/2013	4/26/2013	5/13/2013
4	5/3/2013	5/7/2013	5/13/2013
4	5/6/2013	5/8/2013	5/13/2013

12. Among Respondent's late-reported transactions since January 2011 are sales of Willis Lease stock made pursuant to pre-arranged "10b5-1 plans" and his receipt of restricted stock grants. More than half of Respondent's stock sales during 2011 and 2012 were reported one or more days late.

13. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

#### **Respondent's Remedial Efforts**

14. Respondent has represented that his delinquent filings resulted from the failure of Willis Lease personnel to make timely filings on his behalf after Respondent provided timely notification of his transactions. Respondent's reliance on Willis Lease does not excuse his violations because an insider retains legal responsibility for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made.<sup>5</sup> In addition, here, Respondent took inadequate and ineffective steps to monitor whether timely and accurate filings were made on his behalf by Willis Lease.

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<sup>5</sup> See Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003) ("[A]n insider is legally responsible for filing regardless of who submits a filing on the insider's behalf"); Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-37260 (May 31, 1996) ("Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made"); see also Bettina Bancroft, 53 SEC Docket 1955, 1993 WL 81744, at \*3 (Mar. 23, 1993) ("Although the Commission encourages individuals to obtain professional assistance in meeting their filing obligations, Section 16 of the Exchange Act places the responsibility to report changes in securities ownership on insiders.").

15. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

#### IV.

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

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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 Donald A. Nunemaker 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. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.

Jill M. Peterson  
Assistant Secretary