

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83602 / July 6, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 4954 / July 6, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33150 / July 6, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18574

In the Matter of

MICHAEL JOHNSON

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTION 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY ACT
OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Michael Johnson (“Respondent” or “Johnson”).

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 Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Section 203(f) of the

Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:¹

Summary

1. This matter involves insider trading by Michael Johnson, a former registered representative, in advance of the November 17, 2015 public announcement that Airgas, Inc. (“Airgas”) had entered into a definitive agreement to be acquired by Air Liquide, S.A. (“Air Liquide”) for approximately \$10.3 billion, or \$143 per share. In October and November of 2015, Johnson misappropriated material nonpublic information about the proposed acquisition from his relative (“Individual A”), a certified public accountant who was providing personal tax accounting services to a senior officer at Airgas with access to material nonpublic information (the “Senior Officer”) during the time of the merger negotiations. Johnson owed a duty of trust or confidence to Individual A and understood that the information obtained from Individual A was confidential and that he should not trade on it. However, in breach of a duty of trust or confidence owed to Individual A, Johnson misappropriated the information by purchasing shares of Airgas in advance of the public announcement of the merger. Johnson realized illegal profits of \$88,699. By engaging in this conduct, Johnson violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondent

2. **Michael Johnson**, age 61, is a resident of Chester County, Pennsylvania and former registered representative. From at least August 1987 to November 2016, Johnson was a registered representative associated with several broker-dealers and/or investment advisers registered with the Commission. On October 14, 2016, Johnson submitted a Letter of Acceptance, Waiver and Consent to the Financial Industry Regulatory Authority (“FINRA”) arising out of the same conduct described in this Order in which he consented to the imposition of a bar from associating with any FINRA member in all capacities.

Other Relevant Entities and Individual

3. **Air Liquide, S.A.**, headquartered in Paris, France, is an international supplier of industrial and medical gases, technologies, and services.

4. **Airgas, Inc.**, formerly headquartered in Radnor, Pennsylvania, was a supplier of industrial, medical and specialty gases. The company’s stock was registered under Section 12(b)

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.

of the Exchange Act and was traded on the New York Stock Exchange under the ticker symbol “ARG” until May 23, 2016, when it was acquired by Air Liquide.

Facts

5. In March 2015, Airgas and Air Liquide began preliminary discussions concerning a potential business combination. By mid-October, 2015, Airgas and Air Liquide had entered into a non-disclosure agreement and Airgas made due diligence materials available to Air Liquide.

6. On the morning of October 29, 2015, Air Liquide proposed to acquire Airgas for a price not to exceed \$143 per share.

7. On November 17, 2015, Airgas’s board of directors voted to approve the merger agreement and accept Air Liquide’s offer. That afternoon, Airgas and Air Liquide issued a joint press release announcing the merger agreement.

8. During the period leading up to and during the merger negotiations, Individual A, through Individual A’s accounting firm (the “Accounting Firm”), was retained by the Senior Officer to provide tax preparation and planning services to the Senior Officer. In Individual A’s professional capacity as the Senior Officer’s accountant, Individual A owed a duty of trust or confidence to the Senior Officer. In turn, Johnson owed a duty of trust or confidence to Individual A based on their history, pattern, and practice of sharing and keeping confidences with each other, including confidential personal and work related information.

9. On the afternoon of October 29, 2015, the Senior Officer shared material nonpublic information with Individual A about the proposed acquisition while seeking tax advice about the Senior Officer’s future sale of Airgas stock.

10. Following Individual A’s conversation with the Senior Officer on October 29, 2015, Individual A relayed material nonpublic information about the proposed acquisition to Johnson. Individual A expected that Johnson would maintain the confidentiality of the material nonpublic information. Johnson knew that the information Individual A disclosed to him about the proposed acquisition was confidential and that he should not trade on the information.

11. However, based upon the material nonpublic information he received from Individual A, Johnson purchased 1,375 shares of ARG at an average price of \$97.12 per share. Johnson did not inform Individual A of his purchases of ARG, and, at the time, Individual A was not aware of Johnson’s purchases of ARG.

12. Thereafter, on November 11, 2015, Johnson, unknown to Individual A, accessed Individual A’s smartphone and reviewed an email from the Senior Officer to Individual A. Johnson understood the email to confirm that Airgas would be acquired.

13. Johnson understood that Individual A received communications from Individual A's Accounting Firm's clients on Individual A's smartphone and that those communications were confidential and that he should not trade on that information.

14. Nevertheless, the following day, on November 12, 2015, Johnson purchased 712 shares of ARG at an average price of \$95.02 per share. Johnson did not inform Individual A of his purchases of ARG, and, at the time, Individual A was not aware of Johnson's purchases of ARG.

15. By purchasing Airgas securities based on the material nonpublic information he misappropriated from Individual A, Johnson breached a duty of trust or confidence he owed to Individual A. Others who traded in Airgas securities at the same time as Johnson were harmed by the advantageous market position Johnson gained through his use of material nonpublic information. At the time of his purchases, Johnson was associated with a dually-registered broker dealer and investment adviser.

16. Johnson knew or was reckless in not knowing that his purchases of Airgas common stock were in breach of the duty of trust or confidence that he owed to Individual A.

17. On November 17, 2015, Airgas and Air Liquide jointly announced a definitive agreement in which Airgas agreed to be acquired by Air Liquide. The following day, Airgas's stock price closed at \$138.93 per share, a 30.26 percent increase from the closing price of \$106.18 per share on the day before the public announcement.

18. Johnson realized illegal profits from his purchase of Airgas securities of \$88,699.

Findings

19. Based on the foregoing, the Commission finds that Johnson willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer. Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent be, and hereby is:

- (1) barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;
- (2) prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and
- (3) barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall, within 10 days of entry of this Order, pay disgorgement of \$88,699, prejudgment interest thereon of \$6,721, and a civil money penalty of \$88,699, for a total of \$184,119 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). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of a civil money penalty 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 Michael Johnson 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 Kelly L. Gibson, Associate Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Boulevard, Suite 520, Philadelphia, Pennsylvania 19103.

E. 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.

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