

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92305 / June 30, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20382

In the Matter of

Mounir N. Gad,

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

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 Mounir N. Gad (“Gad” 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, Respondent admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter involves insider trading by Mounir N. Gad and Nathan E. Guido. Gad worked at a Northern California-based bank (the "Bank") in the Bank's group that assisted private equity firms in financing acquisitions of other companies. Gad tipped Guido on three occasions in 2015 and 2016 using material, nonpublic information about upcoming acquisitions, two of which involved tender offers, that Gad learned about in the course of his employment. Guido then bought stock in the target companies based on those tips, and sold after the acquisitions were announced, resulting in illegal gains of \$51,700. Guido shared \$11,000 of these gains with Gad.

Respondent

2. Mounir N. Gad, age 34, resides in Los Gatos, California. From 2008 to 2019, he worked at the Bank. During the period relevant to the conduct described below ("Relevant Period"), Gad was a vice president in the Bank's sponsor finance group, which serviced the Bank's private equity clients.

Other Relevant Person and Entities

3. Nathan E. Guido, age 37, resides in San Jose, California and works for a real estate management company. He has never held securities licenses or been registered with the Commission in any capacity.

4. Procera Networks, Inc. ("Procera") is a Delaware corporation that was headquartered in Fremont, California until it was acquired by a private equity firm in a 2015 tender offer. Procera is a provider of computer network equipment. Before the 2015 acquisition, its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the NASDAQ Global Select Market. In connection with the acquisition, Procera's stock was delisted from the NASDAQ and deregistered with the Commission.

5. Imprivata, Inc. ("Imprivata") is a Delaware corporation that was headquartered in Lexington, Massachusetts until it was acquired by a private equity firm in 2016. Imprivata provides information technology security and identity solutions for the healthcare industry. Before the 2016 acquisition, its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange. In connection with the

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.

acquisition, Imprivata's stock was delisted from the New York Stock Exchange and deregistered with the Commission.

6. Sizmek, Inc. ("Sizmek") is a Delaware corporation that was headquartered in Austin, Texas until it was acquired by a private equity firm in a 2016 tender offer. Sizmek is a digital advertising company. Before the 2016 acquisition, its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the NASDAQ Global Select Market. In connection with the acquisition, Sizmek's stock was delisted from the NASDAQ and deregistered with the Commission.

Background

7. At the time of the trading described in this Order, Gad and Guido had known each other for several years. Around early 2009, they met and became friends. They had mutual friends, shared interests, had attended the same high school, frequently socialized together and vacationed together. The two texted each other frequently, sometimes on a weekly basis. Gad considered Guido to be a good friend and discussed sensitive personal matters with him, including personal and financial problems that Gad began experiencing in early 2015.

8. As part of his job at the Bank, Gad worked on confidential transactions involving publicly traded companies, including acquisitions, and had access to confidential information about potential acquisitions even when he was not directly working on them. When he started at the Bank, he signed an agreement promising to keep information he learned during his employment confidential, and to not use such information except for the benefit of the Bank and its clients.

The Procera Trades

9. On September 29, 2014, Procera entered into a confidentiality agreement with a technology-focused private equity firm based in San Francisco ("PE Firm A"), relating to a possible transaction between the two. On October 22, 2014, Procera engaged a financial adviser, which in early December 2015 conducted a private outreach process with third parties to determine interest in a possible transaction with Procera. On February 26, 2015, PE Firm A submitted an indication of interest to acquire Procera, subject to the completion of due diligence and other conditions. On March 5, 2015, PE Firm A was given access to diligence materials concerning Procera's business and operations. PE Firm A and Procera began negotiating a merger agreement on March 11, 2015.

10. On or around March 28, 2015, Gad learned confidential information that Procera was to be acquired. He learned this through his employment at the Bank, which provided debt financing for the eventual acquisition. Gad knew, or had reason to know, that the information was nonpublic and that it came from Procera, a potential acquirer of Procera, or someone acting on behalf of Procera or a potential acquirer.

11. Gad shared the nonpublic information with his good friend Guido, intending that Guido would then buy Procera stock. Guido knew that Gad worked for the Bank, which often

served as an adviser to acquirers and targets in acquisitions and, as part of Gad's job, Gad learned nonpublic information relating to potential acquisitions. Guido knew, or had reason to know, that the information was nonpublic and that Gad gained the information through his position within the Bank. On April 6, 2015, Guido purchased Procera stock. Gad later texted Guido about Procera on April 12, 2015, referring to the company by the first initial of its name and encouraging Guido to buy Procera stock, writing "Did u buy p? It's time/ BIG time/ BIG." Guido then purchased additional Procera shares on April 13 and 16, 2015, buying a total of 1,250 shares for \$12,101.

12. Before the market opened on April 22, 2015, Procera and PE Firm A announced that PE Firm A would acquire Procera in a tender offer. Following the announcement, Procera's stock price closed at \$11.42 per share, representing an increase of 20 percent over the previous day's closing price of \$9.51 per share, and the value of Guido's Procera shares increased by \$2,174.

The Imprivata Trades

13. On March 9, 2016, a San Francisco-based private equity firm ("PE Firm B") approached Imprivata about possibly acquiring the company. Imprivata then engaged a financial adviser, which contacted additional parties about a possible acquisition. On June 9, 2016, PE Firm B and two other entities (all three of which were clients of the Bank) submitted indications of interest to acquire Imprivata.

14. Shortly thereafter, on June 13 and 14, 2016, Guido purchased Imprivata stock after receiving nonpublic information from Gad that Imprivata was going to be acquired, which Gad had learned in the course of his employment. When Gad provided this information to Guido, the two agreed that Guido would share the profits of his Imprivata trades with Gad.

15. On June 16, 2016, Gad sent a text to Guido asking "You never got back to me. Did we pull the trigger." Subsequently, Guido bought additional Imprivata shares on June 20 and 23, 2016. In total, Guido purchased 4,419 Imprivata shares for \$61,450.

16. Before the market opened on July 13, 2016, Imprivata and PE Firm B announced that PE Firm B had agreed to acquire Imprivata. The next morning, Gad texted Guido and instructed him to sell the Imprivata stock. Less than an hour later, Guido sold all of his Imprivata shares for \$19 per share, which was a 31 percent increase over the closing price the day before the acquisition announcement. Guido realized a gain of \$22,509 on the Imprivata trades.

17. Several days later, Gad and Guido arranged to meet so that Guido could share the Imprivata profits with Gad. On July 22, 2016, Guido withdrew \$5,000 from his checking account, gave all, or nearly all, of the cash to Gad, and kept the remaining Imprivata profits.

The Sizmek Trades

18. In March 2016, a financial adviser to Sizmek contacted a private equity firm based in San Francisco (“PE Firm C”) about PE Firm C possibly acquiring Sizmek. PE Firm C signed a confidentiality agreement with Sizmek on March 23, 2016 and started conducting due diligence shortly thereafter. On July 22, 2016, PE Firm C submitted a proposal to acquire all of the outstanding shares of Sizmek. On or about July 26, 2016, Gad became aware through his employment at the Bank that PE Firm C was planning to acquire Sizmek (the Bank was working with PE Firm C on the proposed transaction). Gad knew, or had reason to know, that the information was nonpublic and that it came from Sizmek, a potential acquirer of Sizmek, or someone acting on behalf of Sizmek or a potential acquirer.

19. On July 28 and 29, 2016, Gad sent Guido text messages suggesting that the two communicate using the WhatsApp messaging application because it was “encrypted.”

20. In a WhatsApp exchange on Friday, July 29, 2016, Gad gave Guido Sizmek’s ticker symbol using a code phrase and urged him to buy the stock soon, noting “[a]nnouncement could come as early as 8/3,” referring to August 3, 2016, the date the PE Firm C-Sizmek tender offer would eventually be announced. Responding by WhatsApp, Guido agreed to share the profits of his planned Sizmek trades with Gad. Guido knew, or had reason to know, that the information was nonpublic and that Gad gained the information through his position within the Bank.

21. The following Monday, August 1, 2016, Guido purchased 26,022 shares of Sizmek for \$73,406. On August 3, 2016 before the market opened, Sizmek announced that it was being acquired by PE Firm C in a tender offer. That day, Guido sold the 26,022 shares of Sizmek for \$3.86 per share, which was a 45 percent increase over the closing price the day before the tender offer was announced. Guido realized a \$27,017 gain from the Sizmek trading.

22. A week later, on August 12, 2016, Guido withdrew \$6,000 from his checking account, gave all, or nearly all, of the cash to Gad, and kept the remaining Sizmek profits.

23. The next day, at Guido’s request, Gad sent Guido a WhatsApp message listing 11 companies with profiles similar to the ones about which he had tipped Guido, so that Guido could make “decoy” trades in his brokerage account in order to make the improper trades more difficult to detect. Over the next several months, Guido traded in the stock of three of these companies.

24. Gad knew or was reckless in not knowing when he provided nonpublic information about Procera, Imprivata and Sizmek to Guido that he was not permitted to share the information and was breaching a duty of trust and confidence.

Violations

25. As a result of the conduct described above, Respondent 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.

26. As a result of the conduct described above, Respondent violated Section 14(e) of the Exchange Act and Rule 14e-3 thereunder, which prohibit fraudulent, deceptive, or manipulative acts or practices in connection with any tender offer.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

B. Respondent shall pay a civil money penalty of \$51,700 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:

1. \$12,925 within 14 days following the entry of this Order;
2. \$2,155 within 60 days of entry of this Order and \$2,155 every 60 days thereafter;
and
3. Final payment of \$2,140 plus remaining post-order interest due 1,080 days from the date of entry of this Order.

Payments shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

C. 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, Oklahoma 73169

Payments by check or money order must be accompanied by a cover letter identifying Mounir N. Gad as the 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 Jeremy E. Pendrey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104-4802.

D. 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, 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.

Vanessa A. Countryman
Secretary