

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102227 / January 17, 2025

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4559 / January 17, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22429

In the Matter of

CELSIUS HOLDINGS, INC.

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 Celsius Holdings, Inc. (“Celsius” 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 (“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

1. From at least late-2019 to mid-2023, fitness drink seller Celsius Holdings, Inc. engaged in SEC reporting, books and records, internal accounting controls, and disclosure controls and procedures violations.

2. Specifically, in 2021, Celsius improperly accounted for stock-based compensation expenses when the company modified the terms of stock awards for six departing employees and retiring board members. In quarterly reports for the second and third quarters of 2021 and certain current reports, Celsius issued financial statements that were materially inaccurate and misleading because they understated general and administrative expenses and were not in accordance with generally accepted accounting principles (“GAAP”). The improper accounting resulted in inaccurate books and records. Celsius also failed to devise and maintain internal accounting controls to address modifications to stock awards.

3. In 2022, the company corrected certain previously reported financial information to reflect stock-based compensation expenses for the second and third quarters of 2021 in accordance with GAAP, which caused Celsius’ previously reported net income to become a net loss for the three- and nine-month periods ended September 30, 2021.

4. In addition, from at least September 2019 to August 2023, Celsius failed to maintain disclosure controls and procedures designed to ensure that non-financial information required to be disclosed in the company’s Exchange Act filings was timely reported. During this period, the company did not have established or written controls or procedures relating to non-financial disclosures.

5. By engaging in the conduct described herein, Celsius violated the issuer reporting provisions of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11, and 13a-13 thereunder, the books and records and internal accounting controls provisions of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and the disclosure controls and procedures provision of Rule 13a-15 under the Exchange Act.

Respondent

6. **Celsius**, a Nevada corporation headquartered in Boca Raton, Florida, is a developer and seller of fitness energy drinks whose stock trades on the NASDAQ Capital Market under the ticker “CELH.” Celsius’s common stock is currently registered with the Commission pursuant to Section 12(b) of the Exchange Act. From at least 2016, Celsius has been required to file with the Commission annual reports on Forms 10-K and quarterly reports on Forms 10-Q pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

Facts

A. Improper Accounting for Stock-Based Compensation Expenses

7. As a general matter, when an employee or a board member left Celsius, any stock awards that had not vested would be forfeited. However, in the second and third quarters of 2021, Celsius made an exception to its normal stock award vesting provisions for six departing employees and retiring board members. Specifically, Celsius accelerated the vesting periods or allowed vesting to continue past their departure date, so the stock awards to these individuals would not be forfeited or cancelled upon their departure.

8. These vesting changes are considered modifications in accordance with ASC Topic No. 718 *Compensation – Stock Compensation* (ASC 718) of GAAP. ASC 718 requires companies to re-value the respective stock awards as of the date of the modification and record any additional value of the modified award over the fair value of the original award as incremental compensation costs over the remaining service period.

9. Re-valuing the stock awards for the six departing employees and board members would have resulted in an increased value for these stock awards and material increases in the company's stock-based compensation expenses. Celsius, however, failed to recognize and record the incremental compensation costs as required in accordance with ASC 718 and, therefore, reported materially understated general and administrative expenses. Celsius issued materially misstated financial statements in quarterly reports on Forms 10-Q for the second and third quarters of 2021 and materially misstated financial information in its earnings releases furnished in Forms 8-K on August 12, 2021, and November 12, 2021. The improper accounting also resulted in inaccurate books and records.

10. The company filed annual and quarterly reports which stated that the company followed ASC 718 to measure compensation costs for stock-based payments.

11. No one at the company consulted ASC 718 or took other steps to ensure the accounting for the modified stock awards for the departing employees and board members was in accordance with GAAP. In addition, the company had engaged a stock-based compensation vendor to help manage Celsius's stock compensation program; however, the agreement with the vendor, explicitly excluded accounting for modified stock awards. Celsius failed to devise and maintain internal accounting controls to provide reasonable assurance that modifications to stock awards were properly accounted for to facilitate preparation of financial statements in accordance with GAAP.

12. As noted above, for the second and third quarters of 2021, the company filed materially misstated financial statements in two quarterly reports and misstated financial information in two Forms 8-K.

13. On March 1, 2022, Celsius filed a current report on Form 8-K disclosing that its stock-based compensation expenses in the second and third quarters of 2021 had been materially understated. As a result of these material understatements, Celsius had overstated net income by approximately 400% for the three months' ended June 30, 2021, and understated net loss by approximately 130% for the three months' ended September 30, 2021.

14. On March 16, 2022, the company filed its 2021 annual report on Form 10-K that included certain restated financial information for the periods ended June 30, 2021, and September 30, 2021. The corrections caused Celsius's previously reported net income to become a net loss for the three- and nine-month periods ended September 30, 2021.

B. Compensation and Stock Sales

15. After Celsius filed quarterly reports for the second and third quarters of 2021 with misstated financial statements that were required to be restated, the company's CEO sold 20,000 Celsius shares on December 27, 2021, for a profit of \$1,493,200. The CEO subsequently reimbursed that amount to Celsius.

16. On January 1, 2022, the company granted the CEO 18,000 restricted stock units each. Of the 18,000 total restricted stock units granted to the CEO, 12,000 had vested by January 2024. Celsius's CEO returned these 12,000 shares to Celsius. Celsius also cancelled the remaining 6,000 restricted stock units granted to the CEO before they would have vested in 2025.

C. Disclosure Controls and Procedures Statutory and Regulatory Framework

17. Exchange Act Rule 13a-15(a) requires issuers such as Celsius that have a class of securities registered pursuant to Section 12 of the Exchange Act to maintain disclosure controls and procedures. Defined in Rule 13a-15(e), disclosure controls and procedures are "controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the [Exchange] Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms."

18. Disclosure controls and procedures "are intended to cover a broader range of information than is covered by an issuer's internal controls related to financial reporting" and "should capture information that is relevant to an assessment of the need to disclose developments and risks that pertain to the issuer's businesses." *Certification of Disclosure in Companies' Quarterly & Annual Reports Final Rule Adopting Release*, Release No. 33-8124 (Aug. 29, 2002).

D. Celsius's Disclosure Controls and Procedures Failures

19. From at least September 2019 until August 2023, Celsius failed to maintain disclosure controls and procedures designed to ensure that non-financial information required to be disclosed in the company's reports was recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms. During this period, Celsius did not

have established or written controls or procedures relating to the company's non-financial disclosures.

Violations

20. Section 13(a) of the Exchange Act and Rules 13a-11, 13a-13, and 12b-20 thereunder require issuers with securities registered pursuant to Section 12 of the Exchange Act to file with the Commission accurate quarterly and current reports, which include such further material information as may be necessary to make the required statements not misleading. Celsius violated these provisions by issuing materially inaccurate and misleading financial statements in quarterly reports on Form 10-Q and financial information in its earnings releases furnished on Form 8-K relating to the second and third quarters of 2021.

21. Section 13(b)(2)(A) of the Exchange Act requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets of the issuer. Celsius violated Section 13(b)(2)(A) of the Exchange Act by improperly recording understated expenses in the company's books and records associated with modified vesting terms in 2021 for stock awards for former employees and directors.

22. Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP. Celsius violated Section 13(b)(2)(B) by failing to devise and maintain a system of internal accounting controls that provided reasonable assurance that its stock-based compensation expense was recorded in accordance with GAAP.

23. Exchange Act Rule 13a-15(a) requires issuers of securities registered pursuant to Section 12 of the Exchange Act, such as Celsius, to maintain disclosure controls and procedures designed to ensure that information required to be disclosed by an issuer in reports it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms. Celsius violated Rule 13a-15(a) by not maintaining disclosure controls and procedures to ensure non-financial information was disclosed, as required.

Celsius's Remedial Efforts

24. In determining to accept Respondent's Offer, the Commission considered remedial acts undertaken by Celsius after learning of the Commission staff's investigation, including retaining external legal counsel to advise on reporting and disclosure issues; developing enhanced controls to address the evaluation and application of modifications to stock-based compensation awards; creating an internal audit function; establishing a disclosure committee; hiring a new CFO; hiring a Chief Legal Officer; and hiring a communications executive to review the company's filings.

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 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-11, 13a-13, and 13a-15 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$3,000,000.00 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 is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

C. The foregoing 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 Celsius 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 Stacy Bogert, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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, they shall not argue that they are entitled to, nor shall they 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 they 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.

By the Commission.

Vanessa A. Countryman
Secretary