

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 105360 / May 4, 2026

ADMINISTRATIVE PROCEEDING

File No. 3-22634

In the Matter of

ACM-CPC, LLC

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 ACM-CPC, LLC (“CPC” 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 it 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 finds that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 13(d) of the Exchange Act and Rule 13d-1 thereunder together require that any person who directly or indirectly acquires beneficial ownership of more than five percent of certain equity securities to file a statement with the Commission disclosing information relating to such beneficial ownership. Section 13(d) is a regulatory provision that allows shareholders and potential investors to evaluate substantial shareholdings and the implications of such shareholding for their own investment in the class of securities. Beneficial owners can comply with this requirement by filing a Schedule 13D with the Commission within five business days after the date that they acquired the requisite amount of beneficial ownership. Schedule 13D, among other things, requires beneficial owners to “[d]escribe any plans or proposals which the reporting persons may have which relate to or would result in [] [a]ny change in the present board of directors....” Whenever a material change occurred to the facts set forth in any Schedule 13D, the filing must be amended to reflect that material change and filed within two business days after the date the change occurred.

2. In December 2023, CPC began purchasing shares of XWELL, Inc. (“XWELL”). By no later than mid-May 2024, CPC had developed a plan to submit a slate of four new independent director nominees to XWELL's five-member board of directors, thus effectively changing control of the company, and began to reach out to individuals to serve as potential directors. On June 10, 2024, CPC crossed the five percent threshold and timely filed its Schedule 13D on June 17, 2024 but did not disclose its proposal regarding the new slate of directors. Also on June 17, 2024, CPC sent a letter to XWELL management proposing its new slate of four directors.

3. Over the next few weeks, CPC made offers, which were rejected, to nominate the four individuals to the board, and entered into a mutual non-disclosure agreement in an attempt to resolve the dispute. This ultimately led CPC to file a lawsuit against XWELL on July 19, 2024. On July 22, 2024, CPC amended its Schedule 13D to disclose for the first time the proposals and rejections, the non-disclosure agreement, and the lawsuit. As set forth below, the amendment was not timely filed.

Respondent

4. CPC, a Delaware limited liability corporation based in Burlington, Massachusetts, is the managing member of CPC Pain & Wellness, SPV, LLC, a special purpose vehicle created to effectuate a potential transaction between CPC and XWELL.

Issuer

5. XWELL is a Delaware corporation with its principal place of business in New York, New York. XWELL is a wellness company operating multiple brands and focused on

bringing restorative, regenerative and reinvigorating products and services to travelers. XWELL's common stock is registered under Section 12(b) of the Exchange Act and trades on The Nasdaq Stock Market LLC. XWELL is required to file periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

Legal Framework

6. Section 13(d)(1) of the Exchange Act and Rule 13d-1 thereunder together require any person who has directly or indirectly acquired beneficial ownership of more than five percent of any voting class of equity security registered under Section 12 of the Exchange Act to file a statement with the Commission disclosing certain information. Individuals or entities can comply with this requirement by filing a Schedule 13D with the Commission within five business days after the date on which they acquired the requisite beneficial ownership.

7. Schedule 13D requires disclosure of, among other things: (1) the identity of the acquirer, including beneficial owners; (2) the aggregate amount beneficially owned by each reporting person and the percent of class represented by such amount; (3) a description, in Item 4, of the purpose(s) of the acquisition, including any "plans or proposals" concerning "any change in the present board of directors or management of the issuer"; (4) the interest of all persons making the filings; and (5) a description, in Item 6, of all "contracts, arrangements, understandings or relationships" with respect to securities of the issuer. A duty to file under Section 13(d) and Rule 13d-1 creates the duty to make truthful and complete disclosures. *SEC v. Savoy Indus.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979).

8. Section 13(d)(2) of the Exchange Act and Rule 13d-2 together require a filer to amend the filer's Schedule 13D when a material change occurs to the facts previously reported. This would include information disclosed under Item 4 such as plans and proposals for changing the board of the issuer. The term "material," when used to qualify a requirement for furnishing information as to any subject, limits the information required to matters where there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell securities. *See* 17 CFR § 240.12b-2. To the extent a material change occurs "in the facts set forth in the Schedule 13D," the beneficial owner is required to disclose "that change." *See* Rule 13d-2. An amendment, reflecting such material changes, is required to be filed within two business days after the date of such change. *Id.*

9. Scierter is not required to establish a violation of Section 13(d). *Savoy*, 587 F.2d at 1167; *SEC v. Levy*, 706 F.Supp. 61, 69 (D.D.C. 1989). The failure to file a timely report, even if inadvertent, constitutes a violation. *Cf. Oppenheimer & Co. Inc.*, 47 S.E.C. 286, 1980 WL 26901, at *1-2 (May 19, 1980) (Commission opinion); *Herbert Moskowitz*, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) and Rules 13d-1 and 13d-2 have occurred).

CPC's XWELL Stock Purchases and Beneficial Ownership Filings

10. CPC began purchasing shares of XWELL in December 2023 and continued acquiring shares through mid-March 2024. During this time, CPC did not cross the five percent reporting threshold and was not required to file a Schedule 13D.

11. In March 2024, a representative for CPC reached out to XWELL to ask whether there was a deadline for stockholder proposals for director nominees. CPC was later informed that XWELL's bylaws did not establish a deadline by which stockholder proposals for director nominees must be submitted or received.

12. By mid-May, CPC had developed a general strategy and timeline concerning its investment in XWELL. The strategy involved "propos[ing a] new slate of Directors" and meeting with the CEO of XWELL to discuss, among other things, "options to compel the current board to resign so it doesn't have to go to vote."

13. No later than June 4, 2024, CPC began reaching out to potential board members. CPC reached out to at least five individuals, sometimes through a third party, before ultimately deciding on the four members it intended to nominate to XWELL's board. On June 5, 2024, CPC began purchasing shares in XWELL again, crossing the five percent threshold on June 10, 2024.

14. On June 17, 2024, CPC filed its Schedule 13D disclosing a 9.42% beneficial ownership in XWELL. Under Item 4, which requires disclosure of any "plans or proposals" the reporting person "may have" concerning "any change in the present board of directors or management of the issuer," CPC represented:

The Reporting Persons are concerned with the Issuer's long-term underperformance and believe shareholder representation on the Board of Directors of the Issuer . . . and a change in the composition of the Board is necessary to drive significant improvements to the Issuer's governance, capital allocation and operations, and to explore strategic alternatives. The Reporting Persons believe there are significant growth opportunities at the Issuer and *remains available and ready to engage directly with the Board and management* to discuss such opportunities."

Depending on various factors including, without limitation, the Issuer's financial position and investment strategy, the price levels of the Common Stock, conditions in the securities markets and general economic and industry conditions, the Reporting Persons *may in the future* take such actions with respect to their investment in the Issuer as they deem appropriate including . . . making proposals to the Issuer concerning changes to . . . Board structure (including board composition).... (*Emphasis added.*)

15. In its Schedule 13D, CPC further represented that it “do[es] not have any present plan or proposal which would relate to or result in any of the matters set forth in subparagraphs (a)-(j) of Item 4 of Schedule 13D except as set forth herein or such as would occur upon or in connection with completion of, or following, any of the actions discussed herein.”

16. Also on June 17, 2024, CPC sent a letter to XWELL outlining its proposal to replace four of the five total members of XWELL’s board with its own nominees.

17. CPC did not disclose in its Schedule 13D that it had a plan or proposal to replace four of the five members of XWELL’s board which culminated with CPC sending the letter to XWELL the same day it filed its Schedule 13D.

18. On June 21, 2024, XWELL’s management sent a letter to CPC identifying deficiencies in CPC’s proposal and rejecting its nomination of directors. On June 23, 2024, CPC sent a second proposal revising its initial proposal in an effort to cure the deficiencies with its initial proposal. On June 29, 2024, XWELL rejected CPC’s second proposal. On July 8, 2024, XWELL and CPC entered into a mutual non-disclosure agreement and the parties began settlement discussions concerning CPC’s proposal to nominate board members. On July 19, 2024, after settlement discussions were unsuccessful, CPC filed a lawsuit in the Delaware Court of Chancery against XWELL and five members of the board of directors.

19. After filing the lawsuit, on July 22, 2024, CPC amended its original Schedule 13D and disclosed, for the first time, the events as described in paragraph 18 above, reflecting material changes to the information CPC had disclosed in its June 17, 2024 Schedule 13D. This amendment, which was made more than two business days after the date that a material change occurred to the facts previously reported in CPC’s Schedule 13D, was not timely filed.

Violations

20. As a result of the conduct described above, CPC violated Sections 13(d)(1) and 13(d)(2) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder.

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 CPC cease and desist from committing or causing any violations and any future violations of Sections 13(d)(1) and 13(d)(2) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder.

B. Respondent shall, within 14 days of entry of this Order, pay a civil money penalty in the amount of \$100,000 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). 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 ACM-CPC, LLC as 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 D. Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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, it shall not argue that it is entitled to, nor shall it 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 it 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