

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60715 / September 24, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13625

In the Matter of

CHRISTOPHER A. BLACK,

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 Christopher A. Black (Black or Respondent).¹

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, 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.

¹ In addition, the Commission has contemporaneously filed a complaint in the United States District Court for the Southern District of Indiana, New Albany Division, charging Black with aiding and abetting American Commercial Lines, Inc.'s violations of Section 13(a) of the Exchange Act and Regulation FD and seeking civil penalties. Without admitting or denying the Commission's allegations, Black has consented to the entry of a final judgment by the Court that would require Black to pay a \$25,000 civil penalty. See SEC v. Christopher A. Black, Case No. 09-CV-0128 (S.D. Ind.)(filed September 24, 2009).

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that:

Respondent

1. Christopher A. Black (Black), age 46, is a resident of Louisville, Kentucky. He served as a senior vice president and the chief financial officer of American Commercial Lines, Inc. (ACL) from February 2005 until April 2008. He has never been licensed as a certified public accountant. Black is not registered with the Commission in any capacity and has no disciplinary history.

Related Party

2. American Commercial Lines, Inc. is a Delaware corporation headquartered in Jeffersonville, Indiana. ACL is a marine transportation and manufacturing company that operates a domestic fleet of barges and tow boats on the U.S. inland waterways, as well as shipping ports and shipyards. Approximately 80% of the company's business involves moving dry and liquid commodities by barge up and down the inland waterways. The other 20% of its business consists of manufacturing barges. ACL became a public company in October 2005, when it conducted an initial public offering of its stock. On October 7, 2005, its stock began trading on the NASDAQ National Market System under the trading symbol ACLI. The company's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act. ACL has no disciplinary history.

Summary

3. On Saturday, June 16, 2007 Black, ACL's former senior vice president and chief financial officer (CFO), caused ACL's violation of Section 13(a) of the Exchange Act and Regulation FD, when he, acting in his capacity as the company's designated investor relations contact, selectively disclosed material, nonpublic information regarding ACL's second quarter 2007 earnings forecast to a limited number of analysts without simultaneously making that information available to the public. ACL did not publicly disclose the information until late in the trading day on Monday, June 18, 2007 when it filed a Form 8-K with the Commission.

Background

4. Black joined ACL in February 2005 as vice-president and CFO.

5. Prior to joining ACL, Black worked at a public company that manufactured semi trailers (Black's "previous employer"). Black served as his previous employer's treasurer.

² 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.

6. Black first became familiar with Regulation FD when he served as an investor relations contact for his previous employer. Black first learned of the requirements of Regulation FD by reviewing a publication on investor relations. As an investor relations contact for his previous employer, Black participated in investor conference calls and fielded questions from the analysts who covered the stock of the company.

7. After ACL conducted an initial public offering of its stock in October 2005, the company designated Black and its chief executive officer (CEO) as the company's investor relations contacts. As an investor relations contact for ACL, Black participated in investor conference calls and maintained a dialogue with analysts. Moreover, Black put together ACL's investor relations policy, which included a section addressing the requirements of Regulation FD.

8. After joining ACL in February 2005, Black received additional guidance regarding the requirements of Regulation FD. On at least two occasions, first in June 2005 and again in April 2007, Black received training from ACL's counsel which included material addressing Regulation FD.

9. After ACL became a public company, it settled on a policy with respect to earnings guidance. The management team, led by Black and ACL's CEO, decided to offer forward-looking, year end guidance only once each year during its February investor conference call.³ The company chose not to provide quarterly earnings guidance because management felt that the seasonal and volatile nature of ACL's business made quarterly earnings too difficult to predict.

10. In accordance with this earnings guidance policy, ACL announced its earnings forecast for year-end 2007 during the company's February 2007 investor conference call. The company projected annual earnings per share (EPS) in the range of \$1.75-\$1.95.

11. By May 2007, however, Black and others within ACL's management realized that the company's earnings for the year likely would be significantly below its publicly announced guidance. Further, in assessing the company's performance through May 2007, management anticipated that ACL would fall far short of analysts' second quarter expectations as well. Analysts expected an EPS of \$0.34 for ACL's second quarter.

12. As a result, ACL, at the direction of Black and ACL's CEO, decided to issue a press release providing both revised annual earnings guidance for 2007 as well as a general forecast for the second quarter. Black played an integral role in preparing the press release and participated in most, if not all, of the management meetings leading up to its release. Black knew that the analysts and the general public were not yet aware of the revised estimates and that the estimates had to be kept confidential until publicly announced.

13. On Monday, June 11, 2007, ACL issued a press release revising its annual earnings guidance for 2007, projecting annual EPS in the range of \$1.45-1.65. Significantly, the press release also included general earnings guidance for the second quarter of 2007, stating that the

³ ACL's fiscal year ends on December 31.

company expected the “2007 second quarter results to look similar to the first quarter.” (Emphasis added). Based on ACL’s first quarter 2007 Form 10-Q, the company’s EPS for the first quarter was \$0.20.⁴

14. After ACL issued the press release, Black and ACL’s CEO traveled together from Tuesday, June 12, 2007 through Thursday, June 14, 2007, on a previously scheduled trip to meet with analysts who covered the company. Throughout the course of the trip Black and ACL’s CEO answered questions about various aspects of ACL’s operations as well as the guidance contained in the June 11, 2007 press release.

15. Upon their return, Black proposed sending an e-mail to all of the analysts summarizing the information discussed in their meetings since they had not had an opportunity to meet with all of the analysts as a single group. ACL’s CEO agreed and asked Black to send the e-mail by close of business on Friday, June 15, 2007. According to ACL’s CEO, he directed Black to provide a draft of the e-mail to outside counsel prior to sending it.

16. Black was unable to finalize the e-mail to the analysts before the end of the day on Friday, June 15, 2007. As a result, he sent a draft of it to his personal e-mail address so that he could finish it from home during the weekend.

17. Sometime before leaving work on June 15, 2007, however, Black received an updated internal analysis indicating that ACL’s EPS for the second quarter could be as low as \$0.13, significantly below ACL’s already reduced projections for the second quarter of 2007 announced in the June 11, 2007 press release.

18. On Saturday, June 16, 2007, Black sent an e-mail from his home only to the eight sell-side analysts who covered the company. Black’s e-mail, titled “ACL Guidance Revision Notes,” stated that he wanted to provide “some additional color” regarding the earnings guidance announced in the June 11, 2007 press release. In the e-mail, among other things, Black provided additional details about the statement in the June 11, 2007 press release concerning “weakness in the spot grain markets over first quarter levels.” Black explained that the company expected the second quarter “to be significantly impacted by the 40% reduction in grain volume during the first two months of the second quarter and the double digit pricing grain rate reduction compared to the second quarter of last year.” Most significantly, Black explained that the company expected the “EPS for the second quarter will likely be in the neighborhood of about a dime below that of the first quarter based on this pressure.” (Emphasis added). Since ACL’s first quarter EPS was \$0.20, Black’s e-mail to analysts suggested that ACL’s second quarter EPS would be around \$0.10.

19. Black’s June 16, 2007 e-mail represented a significant departure from ACL’s second quarter guidance in its June 11, 2007 press release, when the company stated that the second quarter would “look similar to the first quarter.” Black never provided his June 16, 2007 e-mail to anyone else at ACL, or to counsel, prior to sending it to analysts.

⁴ The \$0.20 EPS figure is based on ACL’s diluted shares of common stock and excludes a significant debt retirement expense taken during the quarter.

20. At the time Black sent the June 16, 2007 e-mail on behalf of ACL, Black understood the requirements of Regulation FD and was aware that Regulation FD governed his communications with analysts and investors on behalf of ACL. Black knew that Regulation FD prohibited selective disclosure of material nonpublic information about ACL.

21. Black also knew that information regarding ACL's earnings guidance was material information. Black put together ACL's investor relations policy. The policy included a section addressing the requirements of Regulation FD and stated, "unless, after consultation with counsel, there is reason to believe otherwise, information regarding the following topics should always be assumed to be 'material' (i) earnings, . . ."

22. Black also knew that the analysts who received the e-mail had no duty of confidentiality regarding the information Black provided.

23. Black's June 16, 2007 e-mail and the resulting analysts reports triggered a significant drop in the price of ACL's stock. On Monday, June 18, 2007, the first trading day after Black's e-mail, ACL's stock price dropped 9.7% on unusually heavy volume. Specifically, the stock price dropped from \$27.13 at the close of trading on Friday, June 15, 2007 to \$24.50 at the close of trading on Monday, June 18, 2007. The trading volume in ACL on June 18, 2007 was approximately 10.4 million shares, which represented a nearly 300% increase from the average daily trading volume in ACL's stock up to that point in the month of June.

24. ACL's CEO learned of Black's e-mail on the morning of Monday, June 18, 2007. ACL publicly disclosed the content of Black's e-mail by filing a Form 8-K at the end of the trading day on June 18, 2007.

25. As a result of the conduct described above, Black caused ACL's violation of Section 13(a) of the Exchange Act and Regulation FD, which prohibit selective disclosure of material nonpublic information about an issuer.

Black's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Black and cooperation afforded the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Black cease and desist from causing any violations and any future violations of Section 13(a) of the Exchange Act and Regulation FD.

By the Commission.

Elizabeth M. Murphy
Secretary