

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71270 / January 9, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15675

In the Matter of

Marcus S. Spillson,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND 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 Marcus S. Spillson (“Respondent” or “Spillson”).

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 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 finds¹ that:

Summary

1. This matter involves insider trading by Spillson in the securities of Petrohawk Energy Corporation ("Petrohawk") in advance of the July 14, 2011 announcement that BHP Billiton Limited ("BHP") had agreed to acquire Petrohawk.

2. During the weeks leading up to the announcement, Spillson received material nonpublic information about the proposed acquisition of Petrohawk from Individual A, a Petrohawk employee, and then traded on the basis of that information. As a result of his improper use of the insider information, Spillson generated trading profits of \$154,821.91.

3. By virtue of his conduct, Spillson violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

Respondent

4. *Spillson*, age 32, resides in Houston, Texas. He is employed as a landman and has worked professionally in the oil and gas industry since 2003.

Other Relevant Persons

5. *Petrohawk Energy Corporation*, an independent oil and natural gas company, was during the relevant time period headquartered in Houston, Texas. Its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act until after it was acquired by BHP. Petrohawk's common stock traded on the New York Stock Exchange ("NYSE") (former ticker symbol HK) and options on Petrohawk's stock traded on multiple U.S. options exchanges.

6. *Individual A*, age 32, resides in Houston, Texas. During the relevant time period, Individual A was employed by Petrohawk and worked and resided in Tulsa, Oklahoma. Spillson and Individual A attended college together and have been close personal friends for more than ten years. The two worked together previously and have been business partners in the oil and gas industry.

Facts

7. On May 26, 2011, representatives of BHP contacted Petrohawk to inquire about the possibility of a meeting to discuss potential business opportunities. Meetings

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.

were held over the course of the next few weeks, and by June 14, 2011, BHP had made it known that it was interested in acquiring Petrohawk. Over the next several weeks, the companies held preliminary discussions, which involved the Board of Directors of both companies as well as outside legal and financial advisors. These discussions culminated in the execution of confidentiality and exclusivity agreements on June 23, 2011.

8. Immediately thereafter, and continuing through July 14, 2011, BHP's representatives conducted a due diligence investigation of Petrohawk's business. As part of the due diligence process, representatives of Petrohawk made available certain nonpublic technical information about Petrohawk's operations to BHP. During the time of BHP's due diligence investigation, several senior managers in Petrohawk's Tulsa, Oklahoma office first became involved in the proposed acquisition. One of the managers, a vice president in charge of Petrohawk's land operations, was a supervisor of Individual A and head of the department in which Individual A worked.

9. During the period of BHP's due diligence, Individual A came to learn material nonpublic information that Petrohawk had been approached regarding a potential acquisition. In particular, Individual A's supervisor was actively involved in responding to requests for information from BHP regarding Petrohawk's land operations. The supervisor sought the assistance of Individual A in compiling information to be provided to BHP. During the period of BHP's due diligence, Individual A also worked in close proximity to senior managers in Petrohawk's Tulsa, Oklahoma office, who were, by late June 2011, all aware of the proposed acquisition of Petrohawk by BHP. More generally, during the period of BHP's due diligence, Individual A was in regular contact (including multiple times per day) with senior managers in Petrohawk's Tulsa, Oklahoma office, who were all aware of the proposed acquisition of Petrohawk by BHP.

10. In the evening of June 28, 2011, days after the start of BHP's due diligence investigation, and on the same day that Individual A was asked to respond to requests for information from his supervisor, Spillson and Individual A had several telephone conversations and exchanged text messages. Shortly after the last telephone call and text message of the day, Spillson logged into a retirement trading account, in which he had conducted limited trading activity several years earlier.

11. The next morning, on June 29, 2011, Spillson opened a new brokerage account and funded it with a substantial cash deposit.

12. On July 6, 2011, Spillson purchased 75 Petrohawk September 2011 call option contracts with a \$31 strike price and 250 Petrohawk September 2011 call option contracts with a \$35 strike price. A few days later, on July 12, 2011, Spillson purchased an additional 25 Petrohawk September 2011 call option contracts with a \$31 strike price.

13. Spillson's purchase of Petrohawk call options was highly unusual. Spillson had not previously traded in options nor had he traded in Petrohawk securities. His purchase of Petrohawk options was his largest securities purchase ever, and his first significant securities purchase in three years. Spillson also purchased substantially out-of-

the money call options set to expire in two months; during the preceding two years, Petrohawk's stock had never traded higher than \$28.18. Spillson's call option purchases further accounted for a significant percentage of the option series trade volume on the dates in question (including 100% in two instances), as reflected in the following chart:

Trade Date	HK Option Series	Series Trade Volume %
July 6, 2011	Buy 75 HK Sep \$31 Calls	100%
July 6, 2011	Buy 250 HK Sep \$35 Calls	79.37%
July 12, 2011	Buy 25 HK Sep \$31 Calls	100%

14. Between the time that Spillson opened his brokerage account on June 29, 2011 and the date of his last trade on July 12, 2011, Spillson and Individual A were in regular contact via telephone and text message. During this period, BHP's due diligence investigation of Petrohawk's business was on-going. During this same period, Spillson logged into his brokerage account on numerous occasions, often multiple times per day.

15. On July 14, 2011, Petrohawk and BHP executed the merger agreement and issued a press release announcing the transaction. Under the agreement, BHP agreed to pay \$38.75 per share in cash to acquire Petrohawk in a deal valued at \$12.1 billion. The market reacted significantly to the news. On July 15, 2011, the first day of trading after the announcement, Petrohawk's share price closed at \$38.17, an increase of 62.5% from the previous day's closing price.

16. On July 15, 2011, Spillson sold his Petrohawk securities for profits of \$154,821.91.

17. Subsequently, on July 25, 2011, BHP commenced a tender offer for all outstanding shares of Petrohawk common stock.

18. Spillson's purchase of Petrohawk options on July 6 and July 12, 2011 was on the basis of material, nonpublic information about the proposed acquisition of Petrohawk unlawfully tipped by Individual A. Individual A tipped that information to Spillson in breach of a fiduciary duty owed to Petrohawk and obtained a personal benefit. Spillson knew or had reason to know that the information tipped to him by Individual A was in breach of a duty owed to Petrohawk.

19. Spillson's purchase of Petrohawk options on July 6 and July 12, 2011 was also on the basis of material, nonpublic information communicated to him by Individual A relating to a tender offer, after a substantial step or steps to commence a tender offer had been taken, which information Spillson knew or had reason to know was nonpublic and had been acquired from an employee of Petrohawk.

20. As a result of the conduct described above, Spillson violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the purchase or sale of securities, and further violated Section 14(e) of the Exchange Act and Rule 14e-3 thereunder, which prohibit any 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 Spillson's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Spillson shall 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. Spillson shall pay to the United States Treasury disgorgement of \$154,821.91, prejudgment interest of \$10,635.57, and a civil money penalty of 154,821.91, for a total of \$320,279.39. Payment shall be made in the following installments: \$100,000 within ten (10) days of the entry of this Order; and the remaining balance shall be paid in installments over the following five years, in quarterly payments of \$11,013.97, due on January 1, April 1, July 1, and October 1 respectively, until paid in full. No post-order interest is imposed if the Respondent makes payment in accordance with the foregoing schedule. If any payment is not made by the date payment is required or in the amount required by this Order, the entire outstanding balance, plus any additional post-order interest accrued pursuant to 31 U.S.C. § 3717 and Rule 600 of the Commission's Rules of Practice, shall be due and payable immediately. 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
- (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 Marcus S. Spillson 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 Stephen

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, Respondent must make payments pursuant to option (2) or (3) above.

L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

C. Based upon Respondent's sworn representations in his Statement of Financial Condition dated September 5, 2013 and other documents submitted to the Commission, the Commission is permitting Respondent to make payment of disgorgement, prejudgment interest, and a civil penalty on the payment schedule outlined above.

D. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary