

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73034 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16063

<p>In the Matter of</p> <p style="text-align:center">Trinad Management, LLC,</p> <p>Respondent.</p>
--

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 AND CIVIL PENALTY

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 Trinad Management, LLC (“Trinad” 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 and Civil Penalty (“Order”), as set forth below.

III.

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

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.
2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.
3. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.
4. While subject to these reporting requirements, Trinad violated Section 16(a) by failing to timely file multiple required reports of holdings and transactions in the securities of Command Security Corporation ("Command") it executed on behalf of an affiliated fund it managed and violated Section 13(d) by failing to timely file required amendments to the Schedule 13D Respondent filed with respect to its beneficial ownership. Trinad was also a cause of violations of such requirements by Trinad's affiliated entities and control person, which shared beneficial ownership of the relevant securities.

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.

Respondent

5. Trinad, a Delaware limited liability company with its principal place of business in Los Angeles, California, provides investment management services to an affiliated private fund and had beneficial ownership of the securities held by the fund. Trinad's control person, the affiliated fund, and an affiliated entity serving as the fund's general partner (collectively, the "Trinad Affiliates") also each shared direct or indirect beneficial ownership of the securities held by the fund. At all relevant times, Trinad and the Trinad Affiliates were subject to Section 13(d) as greater than 5% beneficial owners of Command's common stock and were subject to Section 16(a) as greater than 10% beneficial owners between 2004 and December 2010 and between November 2011 and February 2012. Trinad took responsibility for making all beneficial ownership filings on behalf of the Trinad Affiliates.

Issuers

6. Command is a New York corporation with its principal place of business in Virginia. Command's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NYSE-MKT (ticker: MOC). Trinad's control person served as director of the company until September 8, 2010.

Applicable Legal Framework

7. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

8. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the

9. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. An acquisition or disposition of 1% or more of a class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

10. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.

11. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

12. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁴ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁵

aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

³ SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

⁴ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)].”); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2,

Respondent Failed To File Required Section 16(a) Reports on a Timely Basis

13. Trinad and the Trinad Affiliates have been subject to the reporting requirements of Exchange Act Section 16(a) as greater than 10% beneficial owners of Command’s common stock from 2004 through December 28, 2010, and from November 30, 2011 through February 13, 2012.

14. Trinad failed to file on a timely basis multiple required Section 16(a) reports with the Commission on behalf of itself and the Trinad Affiliates. Trinad did not file until July 17, 2014 any required reports on Forms 4 with respect to reportable transactions executed on behalf of Trinad’s affiliated private fund on the following dates that were required to be reported within two business days:

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	8/16/2010	8/18/2010	7/17/2014
4	8/17/2010	8/19/2010	7/17/2014
4	9/21/2010	9/23/2010	7/17/2014
4	9/27/2010	9/29/2010	7/17/2014
4	10/11/2010	10/13/2010	7/17/2014
4	10/22/2010	10/26/2010	7/17/2014
4	10/25/2010	10/27/2010	7/17/2014

2002) (“No showing of scienter is required to prove violations of these reporting provisions.”); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.”).

⁵ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation.”); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	10/28/2010	11/1/2010	7/17/2014
4	11/1/2010	11/3/2010	7/17/2014
4	11/3/2010	11/5/2010	7/17/2014
4	11/4/2010	11/8/2010	7/17/2014
4	11/5/2010	11/9/2010	7/17/2014
4	11/8/2010	11/10/2010	7/17/2014
4	11/9/2010	11/12/2010	7/17/2014
4	11/10/2010	11/15/2010	7/17/2014
4	11/11/2010	11/15/2010	7/17/2014
4	12/1/2010	12/3/2010	7/17/2014
4	12/7/2010	12/9/2010	7/17/2014
4	12/8/2010	12/10/2010	7/17/2014
4	12/9/2010	12/13/2010	7/17/2014
4	12/10/2010	12/14/2010	7/17/2014
4	12/14/2010	12/16/2010	7/17/2014
4	12/15/2010	12/17/2010	7/17/2014
4	12/16/2010	12/20/2010	7/17/2014
4	12/17/2010	12/21/2010	7/17/2014
4	12/21/2010	12/23/2010	7/17/2014
4	12/27/2010	12/29/2010	7/17/2014
4	12/28/2010	12/30/2010	7/17/2014

15. These transactions involved open-market purchases with an aggregate market value of approximately \$120,000 and open-market sales with an aggregate market value of approximately \$325,000 that Trinad did not report until after the Commission's enforcement staff contacted Trinad concerning its failure to file in 2014. Trinad also failed to file a required Form 5 to report these transactions in Command's securities that should have been reported on Forms 4 during Command's fiscal year 2010 but were not.

16. As of November 30, 2011, Trinad and the Trinad Affiliates again became greater than 10% beneficial owners of Command's class of common stock subject to the reporting requirements of Section 16(a). Trinad did not file until February 28, 2012 an initial statement of

beneficial ownership on Form 3 or any of the required reports on Forms 4 for reportable transactions in Command's securities. The late reports relate to transactions executed on behalf of Trinad's affiliated private fund on the following dates that were required to be reported on Form 4 within two business days:

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	12/5/2011	12/7/2011	2/28/2012
4	12/7/2011	12/9/2011	2/28/2012
4	12/12/2011	12/14/2011	2/28/2012
4	12/13/2011	12/15/2011	2/28/2012
4	12/27/2011	12/29/2011	2/28/2012
4	12/28/2011	12/30/2011	2/28/2012
4	12/29/2011	1/3/2012	2/28/2012
4	12/30/2011	1/4/2012	2/28/2012
4	1/3/2012	1/5/2012	2/28/2012
4	1/4/2012	1/6/2012	2/28/2012
4	1/5/2012	1/9/2012	2/28/2012
4	1/6/2012	1/10/2012	2/28/2012
4	1/13/2012	1/18/2012	2/28/2012
4	1/17/2012	1/19/2012	2/28/2012
4	1/18/2012	1/20/2012	2/28/2012
4	1/24/2012	1/26/2012	2/28/2012
4	2/13/2012	2/15/2012	2/28/2012

17. These transactions involved open-market purchases with an aggregate market value of approximately \$260,000 and open-market sales with an aggregate market value of approximately \$565,000.

18. As a result of the conduct described above, Respondent Trinad violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder and was a cause of violations by the Trinad Affiliates of such provisions.

Respondent Failed to Timely File Schedule 13D Amendments

19. Trinad and the Trinad Affiliates have been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of Command common stock in 2004. Trinad filed an initial statement on Schedule 13D on September 4, 2004 on behalf of itself and the Trinad Affiliates.

20. Trinad and the Trinad Affiliates failed to timely file multiple amendments required as a result of material changes to the information set forth previously on Schedule 13D, including:

- The disposition through open-market sales of Command's common stock that constituted more than 1% of the class of outstanding Command common stock during each of the following periods, none of which were reflected in an amendment until May 4, 2011: (i) from November 5, 2010 to December 28, 2010; (ii) from December 28, 2010 to January 12, 2011; (iii) from January 13, 2011 to February 8, 2011; and (iv) from February 9, 2011 to February 25, 2011;
- The acquisition through open-market purchases that constituted more than 1% of the class of outstanding Command common stock from September 15, 2011 to October 15, 2011 and additional purchases also constituting more than 1% of the class between November 1 and 11, 2011, none of which were reflected in an amendment until November 14, 2011;
- The disposition through open-market sales that constituted more than 1% of the class of outstanding Command common stock on February 13, 2012 and on February 21, 2012, neither of which was reflected in an amendment until February 28, 2012; and
- The disposition through open-market sales of all remaining holdings of Command common stock by July 2012, including sales constituting more than 1% of the class of outstanding Command common stock from February 29, 2012 to March 30, 2012, which was not reflected in an amendment until after the Commission's enforcement staff contacted Trinad in 2014 concerning its failure to file any amendments subsequent to the February 28, 2012 amendment.

21. As a result of the conduct described above, Trinad violated Section 13(d) of the Exchange Act and Rule 13d-2 thereunder and was a cause of violations by the Trinad Affiliates of such provisions.

Respondent's Remedial Efforts

22. Trinad has represented that certain of the delinquent filings resulted from the failure of its outside counsel to timely inform it of relevant obligations or to make timely filings

on its behalf. Trinad's reliance on its outside counsel does not excuse the violations because an insider retains legal responsibility for compliance with the filing requirements.⁶ In addition, here, Trinad has not offered adequate evidence of the time period and scope of the engagements of counsel or that Trinad timely provided all relevant information to counsel for the preparation and filing of reports.

23. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

IV.

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

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$95,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. 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;

⁶ See SEC v. Levy, 706 F. Supp. 61, 63-69 (D.D.C. 1989) (defendant asserting that his attorney "misinformed defendant about his obligation to disclose" information on Schedule 13D held liable because scienter is not an element of such violations); see also SEC v. Savoy Indus., Inc., 665 F.2d 1310, 1315 n.28 (D.D.C. 1981) ("Compliance with federal securities laws cannot be avoided simply by retaining outside counsel to prepare required documents."); Bettina Bancroft, 53 SEC Docket 1955, 1993 WL 81744, at *3 (Mar. 23, 1993) ("Although the Commission encourages individuals to obtain professional assistance in meeting their filing obligations, Section 16 of the Exchange Act places the responsibility to report changes in securities ownership on insiders."); SEC Release 34-37260 (May 31, 1996) ("Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made.").

- (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 Trinad Management, LLC 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 Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.

Jill M. Peterson
Assistant Secretary