

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73036 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16065

In the Matter of

Sankaty Advisors, 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 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 Sankaty Advisors, LLC (“Sankaty Advisors” 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. 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.

2. While subject to the reporting requirements of Section 13(d), Respondent failed to timely file initial statements or required amendments with respect to Respondent's beneficial ownership of the securities of Accuride Corporation ("Accuride"), Swift Transportation Corp. ("Swift"), and PAETEC Holding Corp. ("PAETEC") and was a cause of violations of such requirements by a reporting group of Respondent's affiliated entities and control persons (the "Sankaty Affiliates") that shared direct or indirect beneficial ownership of the relevant securities.

Respondent

3. Sankaty Advisors, a Delaware limited liability company headquartered in Boston, Massachusetts, has been registered with the Commission as an investment adviser since April 2008. The Sankaty Affiliates consist of certain private investment funds structured as limited partnerships to which Sankaty Advisors provides investment advisory services, the ultimate general partners of the private funds, and the control person of Sankaty Advisors and the funds' ultimate general partners. Sankaty Advisors and certain Sankaty Affiliates acquired direct or indirect beneficial ownership of more than 5% of (i) Accuride's common stock as of February 26, 2010; (ii) PAETEC's common stock as of September 7, 2010; and (iii) Swift's Class A common stock as of December 16, 2010.

Issuers

4. Accuride is a Delaware corporation with its principal place of business in Indiana. At all relevant times, Accuride's common stock was registered with the Commission under Section 12 of the Exchange Act and traded on the NYSE (ticker: ACW).

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.

5. PAETEC was a Delaware corporation with its principal place of business in New York. At all relevant times, PAETEC's common stock was registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ (ticker: PAET).

6. Swift is a Delaware corporation with its principal place of business in Arizona. At all relevant times, Swift's Class A common stock was registered with the Commission under Section 12 of the Exchange Act and traded on the NYSE (ticker: SWFT).

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 in Section 13(d) and Exchange Act Rule 13d-3 to encompass "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

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

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

³ SEC Release No. 34-39538, at n. 14.

10. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person “has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect,” and is not directly or indirectly the beneficial owner of 20% or more of the class of securities.

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

Respondent Failed to Timely File on Schedule 13D

12. Sankaty Advisors and certain Sankaty Affiliates have been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of Accuride’s common stock as of February 26, 2010, and remained subject to those requirements until May 2, 2014. The initial Schedule 13D statement filed by certain Sankaty Affiliates on March 12, 2010 did not comply with the 10-day filing deadline imposed by Exchange Act Section 13(d)(1) and Rule 13d-1(a). That Schedule 13D statement reported

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, 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 See 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 also 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). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19-20 (Jan. 19, 2001) (“[N]egligence is sufficient to establish ‘causing’ liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to ‘cause’ a primary violation that does not require scienter.”).

beneficial ownership in the aggregate of approximately 21.1% of Accuride's class of common stock calculated in accordance with the requirements of Rule 13d-3(d).

13. Sankaty Advisors and the Sankaty Affiliates also failed to timely file multiple amendments required as a result of material changes to the information set forth previously on the Schedule 13D filed with respect to Accuride, including:

- The substantial decrease in Sankaty Advisors' and the Sankaty Affiliates' beneficial ownership percentages, from an aggregate of approximately 21.1% to 8.7%, that occurred on November 29, 2010, which was not reported until March 9, 2012. This decrease resulted from holders of Accuride convertible notes, including the Sankaty Affiliates, exercising the conversion of such notes into shares of common stock on that date;
- The disposition of more than 1% of the class of outstanding Accuride common stock through open-market sales by Sankaty Affiliates from June 2, 2011 to June 7, 2011, which was not reflected in an amendment until March 9, 2012;
- The disposition of more than 1% of the class of outstanding Accuride common stock through open-market sales by Sankaty Affiliates from June 8, 2011 to July 25, 2011, which was not reflected in an amendment until March 9, 2012;
- The disposition of more than 1% of the class of outstanding Accuride common stock through open-market sales by Sankaty Affiliates from July 26, 2011 to September 27, 2011, which was not reflected in an amendment until March 9, 2012; and
- The acquisition of 2,000,000 shares (constituting more than 4% of the class of outstanding Accuride common stock) through open-market purchases by Sankaty Affiliates on November 2 and 5, 2012, which was not reflected in an amendment until February 14, 2013.

14. As a result of the conduct described above, Sankaty Advisors violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder and was a cause of violations by the Sankaty Affiliates of such provisions.

Respondent Failed to Timely File Schedule 13G Statements

15. Sankaty Advisors and certain Sankaty Affiliates became subject to the reporting requirements of Exchange Act Section 13(d) after acquiring beneficial ownership of more than 5% of Swift Transportation's Class A common stock on December 16, 2010. The initial Schedule 13G statement filed by Sankaty Affiliates on June 30, 2011 pursuant to Rule 13d-1(c) did not comply with the 10-day filing deadline.

16. Sankaty Advisors and certain Sankaty Affiliates became subject to the reporting requirements of Exchange Act Section 13(d) after acquiring beneficial ownership of more than 5% of PAETEC Holding common stock on September 7, 2010. The initial Schedule 13G statement filed by Sankaty Affiliates on October 20, 2010 pursuant to Rule 13d-1(c) did not comply with the filing deadline imposed by Exchange Act Rule 13d-1(c).

17. As a result of the conduct described above, Sankaty Advisors violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder and was a cause of violations by the Sankaty Affiliates of such provisions.

Respondent's Remedial Efforts

18. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent 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 Sankaty Advisors' 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 Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$68,000 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;
- (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 Sankaty Advisors, 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 Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.

Jill M. Peterson
Assistant Secretary