

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73044 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16073

In the Matter of

Peter R. Kellogg,

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 Peter R. Kellogg (“Kellogg” 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 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.
3. 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.
4. While subject to these reporting requirements, Respondent violated Section 13(d) by failing to timely file initial statements or required amendments with respect to Respondent's beneficial ownership of the registered common stock of Mercer International Inc. ("Mercer"), TRC Companies, Inc. ("TRC"), Evans & Sutherland Computer Corporation ("Evans"), and MFC Industrial Ltd. ("MFC") and violated Section 16(a) by failing to timely file multiple reports of transactions in Mercer's, TRC's, and Evans' 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. Kellogg, age 71, was subject at all relevant times to Section 13(d) of the Exchange Act as an acquirer of greater than 5% beneficial ownership of registered classes of securities of Mercer, TRC, Evans, and MFC, and was subject at all relevant times to Section 16(a) of the Exchange Act as a greater than 10% beneficial owner of registered classes of securities of Mercer, TRC, and Evans.

Issuers

6. Mercer is a Washington corporation with its principal place of business in Vancouver, Canada. Mercer'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 NASDAQ stock market (ticker: MERC). Kellogg acquired beneficial ownership of more than 5% of Mercer's registered class of common stock in 2003, acquired greater than 10% beneficial ownership in 2004, and acquired beneficial ownership of more than 20% as of 2008. Kellogg most recently reported on July 3, 2014 beneficial ownership of approximately 27.6%.

7. TRC is a Delaware corporation with its principal place of business in Connecticut. TRC'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 New York Stock Exchange (ticker: TRR). Kellogg acquired beneficial ownership of more than 5% of TRC's registered class of common stock in 1998, acquired greater than 10% beneficial ownership in 1999, and acquired beneficial ownership of more than 20% as of December 2010. Kellogg most recently reported on September 21, 2012 beneficial ownership of approximately 20.3%.

8. Evans is a Utah corporation with its principal place of business in Utah. Evans' common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and is quoted on the OTC Bulletin Board (ticker: ESCC). Kellogg acquired beneficial ownership of more than 10% of Evans' common stock in February 2001, and acquired beneficial ownership of more than 20% as of October 26, 2011. Kellogg most recently reported on July 3, 2014 beneficial ownership of approximately 26.3%.

9. MFC is a corporation organized under the laws of the Province of British Columbia, Canada, with its principal place of business in Vancouver, Canada. MFC's Common Share Purchase Rights are and have been at all relevant times been registered with the Commission under Section 12 of the Exchange Act and traded on the New York Stock Exchange (ticker: MIL). MFC is a foreign private issuer that files annual reports on Form 20-F. Kellogg acquired more than 5% of MFC's Common Shares in 1999 and most recently reported on February 10, 2014 beneficial ownership of approximately 33.0%.

Applicable Legal Framework

10. 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.

11. 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

12. 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

13. As an alternative, 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. Under Rule 13d-1(f)(1), a person who has filed a Schedule 13G pursuant to Rule 13d-1(c) must file a Schedule 13D within 10 days after beneficial ownership first equals or exceeds 20 percent of the

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.

class and is prohibited from voting or acquiring additional securities of the class until 10 days after the Schedule 13D is filed.

14. 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”).⁴ 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. 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.⁵ 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).

15. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁶ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁷

⁴ Exchange Act Rule 3a12-3 exempts securities registered by a foreign private issuer from Section 16 of the Exchange Act.

⁵ Pecuniary interest is defined in Exchange Act Rule 16a-1(2)(i) as “the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities.” Under Exchange Act Rule 16a-1(a)(2)(ii), the term indirect pecuniary interest is defined to include securities held in trusts for the benefit of a member of a person’s immediate family for which the person serves as a trustee and securities held by members of a person’s immediate family sharing the same household.

⁶ 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

16. Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) as a greater than 10% beneficial owner of Mercer’s common stock since 2004, as a greater than 10% beneficial owner of TRC’s common stock since 1999, and as a greater than 10% beneficial owner of Evans’ common stock since 2001.⁸

17. Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission to reflect changes in his beneficial ownership of Mercer, TRC, and Evans, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

<u>Issuer</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Mercer	8/4/2010	8/6/2010	8/12/2010
Mercer	8/10/2010	8/12/2010	7/3/2014

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.”).

⁷ 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).

⁸ For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), Respondent has beneficial ownership of securities he holds directly, securities held by entities he controls, and securities held by trusts and foundations he controls. For purposes of reporting holdings and transactions under Section 16(a), Respondent has beneficial ownership of such securities to the extent of his pecuniary interest therein and is deemed to have an indirect pecuniary interest in securities held by his spouse and in trusts for the benefit of a member of his immediate family for which he serves as a trustee.

<u>Issuer</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Mercer	9/16/2010	9/20/2010	10/1/2010
Mercer	9/17/2010	9/21/2010	10/1/2010
TRC	12/1/2010	12/3/2010	7/3/2014
TRC	12/23/2010	12/28/2010	7/3/2014
TRC	9/7/2011	9/9/2011	10/25/2011
Mercer	9/26/2011	9/28/2011	7/3/2014
Mercer	11/14/2011	11/16/2011	11/18/2011
Mercer	1/5/2012	1/9/2012	1/24/2012
Mercer	1/13/2012	1/18/2012	1/24/2012
Mercer	5/3/2012	5/7/2012	7/3/2014
Mercer	7/3/2012	7/6/2012	7/3/2014
Mercer	9/18/2012	9/20/2012	9/24/2012
Mercer	9/26/2012	9/28/2012	7/3/2014
Mercer	9/28/2012	10/2/2012	10/16/2012
Mercer	10/4/2012	10/9/2012	10/16/2012
Mercer	10/5/2012	10/10/2012	10/16/2012
Evans	12/6/2012	12/10/2012	5/1/2014
Mercer	12/20/2012	12/24/2012	7/3/2014
Mercer	12/21/2012	12/26/2012	7/3/2014
Evans	2/11/2013	2/13/2013	5/1/2014
Evans	6/12/2013	6/14/2013	5/1/2014

18. Respondent's late reports with respect to Mercer primarily involved open-market purchases of Mercer common stock, including purchases with an aggregate market value of \$5 million that Respondent did not file until after the Commission's enforcement staff contacted him regarding his failure to file in 2014. Respondent's late reports with respect to TRC and Evans primarily involved open-market purchases or sales.

19. Respondent also failed to file required Forms 5: (i) to report transactions in Mercer's securities that should have been reported on Forms 4 during Mercer's fiscal years 2010, 2011 and 2012, but were not; (ii) to report transactions in TRC's securities that should have been reported on Forms 4 during TRC's fiscal year 2011, but were not; and (iii) to report transactions in Evans'

securities that should have been reported on Forms 4 during Evans' fiscal years 2011, 2012, and 2013, but were not.

20. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File Schedule 13D Statements and Amendments

21. At all relevant times, Respondent is and has been subject to the reporting requirements of Exchange Act Section 13(d) as a beneficial owner of more than 5% of a class of registered equity securities of Mercer, TRC, Evans and MFC.

22. Respondent filed an initial statement on Schedule 13G pursuant to Rule 13d-1(c) on February 15, 2006 with respect to his beneficial ownership of Mercer's class of common stock. By August 2008, Respondent was no longer eligible to file on Schedule 13G because Respondent's beneficial ownership exceeded 20%. As a result, Respondent was required to file a Schedule 13D within 10 days of the date on which Respondent's beneficial ownership equaled or exceeded 20% and was prohibited from the time of the acquisition of 20% or more of the class until the expiration of the tenth day from the date of the filing of the Schedule from voting the securities or acquiring additional beneficial ownership under Rule 13d-1(f). Respondent did not file a Schedule 13D until March 25, 2010 and acquired beneficial ownership of additional Mercer securities while prohibited from doing so. Subsequently, Respondent thereafter failed to timely file multiple amendments required as a result of material changes to the information set forth previously on Schedule 13D, including:

- Respondent's acquisition through purchases of Mercer's common stock or purchases of Mercer securities convertible into shares of Mercer's common stock that constituted more than 1% of the class of outstanding Mercer common stock during each of the following periods, none of which were reflected in an amendment until December 29, 2010: (i) from August 4 to August 9, 2010; (ii) from August 10, 2010 to August 12, 2010; (iii) from August 16 to August 17, 2010; and (iv) August 20, 2010; and
- Respondent's acquisition through open market purchases of Mercer's common stock constituting more than 1% of the class of outstanding Mercer common stock between September 2011 and September 2012, which was not reflected in an amendment until February 11, 2013.

23. Respondent filed an initial statement on Schedule 13G pursuant to Rule 13d-1(c) on January 8, 1999 with respect to his beneficial ownership of TRC's class of common stock. By December 1, 2010, Respondent was no longer eligible to file on Schedule 13G because Respondent's beneficial ownership exceeded 20%. As a result, Respondent was required to file a Schedule 13D within 10 days of the date on which Respondent's beneficial ownership equaled

or exceeded 20% under Rule 13d-1(f). Respondent did not file a Schedule 13D until September 21, 2012. Respondent's transactions also triggered the requirement that Respondent file multiple amendments during this time period.

24. Respondent filed an initial statement on Schedule 13G pursuant to Rule 13d-1(c) on February 9, 2001 with respect to his beneficial ownership of Evans' class of common stock. By October 26, 2011, Respondent was no longer eligible to file on Schedule 13G because Respondent's beneficial ownership exceeded 20%. As a result, Respondent was required to file a Schedule 13D within 10 days of the date on which Respondent's beneficial ownership equaled or exceeded 20% and was prohibited from the time of the acquisition of 20% or more of the class until the expiration of the tenth day from the date of the filing of the Schedule from voting the securities or acquiring additional beneficial ownership under Rule 13d-1(f). Respondent did not file a Schedule 13D until September 21, 2012 and acquired beneficial ownership of additional Evans securities while prohibited from doing so. Subsequently, Respondent also failed to timely file amendments required as a result of material changes to the information set forth previously on to the Schedule 13D, including Respondent's purchase of 1.9 million shares on February 11, 2013, constituting an acquisition of more than 10% of Evans' outstanding class of common stock, which was not reflected in an amendment until July 3, 2014.

25. Respondent filed an initial statement on Schedule 13D on October 4, 2000 with respect to his beneficial ownership of MFC's class of common shares. Respondent did not file any amendment to the Schedule 13D until January 4, 2013. During this more than 12 year period, Respondent failed to file multiple amendments required as a result of material changes to the information set forth previously on Schedule 13D, including to report numerous acquisitions through open-market purchases constituting more than 1% of the class of outstanding class of common shares. For example:

- Respondent's open market purchases constituting more than 1% of the class of MFC's outstanding common shares between October 19, 2011 and October 26, 2011;
- Respondent's open market purchases constituting more than 1% of the class of MFC's outstanding common shares between December 22, 2011 and January 5, 2012;
- Respondent's acquisition of over of over 2 million of MFC's common shares in August 2012, constituting more than 3% of the class of outstanding MFC common shares; and
- Respondent's acquisition of over of over 600,000 of MFC's common shares in October 2012, constituting more than 1% of the class of outstanding MFC common shares.

26. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 promulgated thereunder.

Respondent's Remedial Efforts

27. 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 Kellogg'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-1, 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 \$100,000 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 Peter R. Kellogg 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