

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73052 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16081

In the Matter of

**Tel-Instrument Electronics
Corp.,**

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 Tel-Instrument Electronics Corp. (“Tel-Instrument” 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 issuer reporting requirements and 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 percent of such class (collectively, "insiders"), 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 to facilitate rapid dissemination to the public.

3. Reporting issuers are required to disclose in the proxy statement for the issuer's annual meeting, or its annual report, Section 16 reporting delinquencies by its insiders. Although insiders remain responsible for the timeliness and accuracy of their required Section 16(a) reports, the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing." Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

4. Respondent is a reporting issuer and its insiders are required to file Section 16(a) reports. On numerous occasions, Respondent's officers and directors violated Section 16(a) by failing to timely file required reports. Respondent failed to comply with its disclosure obligations to report such delinquencies. In addition, Respondent was a cause of certain Section 16(a) violations by its officers and directors as a result of Respondent's negligence in performing certain tasks it voluntarily agreed to undertake in connection with the filing of Section 16(a) reports on their behalf.

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. Tel-Instrument is a New Jersey corporation with its principal place of business in New Jersey. Tel-Instrument'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: TIK). Tel-Instrument files annual reports on Form 10-K pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Applicable Legal Framework

6. 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. 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 reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions). There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.²

7. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rule 13a-1 requires such issuers to file annual reports with the Commission containing specified information. In 1991, the Commission adopted Item 405 of Regulation S-K to help address compliance with Section 16(a) by requiring reporting issuers to disclose in annual

² 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)]"); 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"). 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.").

proxy and information statements or annual reports information regarding delinquent Section 16(a) filings by insiders.³

8. Item 405 requires an issuer to disclose any known late filing or failure by an insider to file a report required by Section 16(a) based on the issuer's review of Forms 3 and 4 filed during the most recent fiscal year, and Forms 5 filed with respect to the most recent fiscal year, by the issuer's insiders. Section 16(a) reports are posted on EDGAR, and thus are readily available to issuers to evaluate their timeliness. A "known" failure to file includes, but is not limited to, a failure to file a Form 3, which is required of all insiders, and a failure to file a Form 5 in the absence of a written representation that no Form 5 is required, unless the issuer otherwise knows that no Form 5 is required. The Item 405 disclosure of any late filings or known failures to file must (i) identify by name each insider who failed to file on a timely basis Forms 3, 4, or 5 during the most recent fiscal year or prior fiscal years and (ii) set forth the number of late reports, the number of late-reported transactions, and any known failure to file. An issuer does not have an obligation under Item 405 to research or make inquiry regarding delinquent Section 16(a) filings beyond the review specified in the item.

9. An issuer that files annual reports with the Commission on Form 10-K, such as Respondent, is required to include the Item 405 disclosure in its Form 10-K, or incorporate by reference to its Form 10-K the Item 405 disclosure made in the issuer's definitive proxy or information statement for its annual meeting of shareholders for the election of directors, if that definitive proxy or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. Materially false or misleading Item 405 disclosures constitute a violation of Section 13(a) of the Exchange Act and Rule 13a-1. No showing of scienter is necessary to establish a violation of Section 13(a).⁴

Respondent's Inaccurate Item 405 Disclosures

10. As an issuer required to file annual reports on Form 10-K, Respondent is and has been at all relevant times required to disclose information concerning delinquent Section 16(a) filings by its insiders to the extent required by Item 405 of Regulation S-K.

11. Respondent made misstatements and failed to disclose, as required, failures to file on a timely basis pursuant to Item 405. These failures include:

a. Item 405 disclosure for Respondent's fiscal year ending March 31, 2011, misstated that "all officers, directors and 10% beneficial owners, known to the Company, had timely filed required forms reporting beneficial ownership of Company securities, based solely

³ Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-28869 (Feb. 21, 1991); 17 C.F.R. § 229.405.

⁴ SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978).

on review of Filed Forms 3 and 4 furnished to the Company.” (Tel-Instrument Form 10-K filed on June 29, 2011.) In fact, during such fiscal year, multiple Tel-Instrument insiders filed numerous untimely Section 16(a) reports that Respondent was required to disclose pursuant to Item 405. Respondent was required to review the forms filed and identify by name each such insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do.

b. Item 405 disclosure for Respondent’s fiscal year ending March 31, 2012 misstated that “all officers, directors and 10% beneficial owners, known to the Company, had timely filed required forms reporting beneficial ownership of Company securities, based solely on review of Filed Forms 3 and 4 furnished to the Company.” (Tel-Instrument Form 10-K filed on July 16, 2012). In fact, during such fiscal year, multiple Tel-Instrument insiders filed numerous untimely Section 16(a) reports that Respondent was required to disclose pursuant to Item 405. Respondent was required to review the forms filed and identify by name each such insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do.

c. Item 405 disclosure for Respondent’s fiscal year ending March 31, 2013 misstated that “all officers, directors and 10% beneficial owners, known to the Company, had timely filed required forms reporting beneficial ownership of Company securities, based solely on review of Filed Forms 3 and 4 furnished to the Company.” (Tel-Instrument Form 10-K filed on July 16, 2013.) In fact, during such fiscal year, multiple Tel-Instrument insiders filed numerous untimely Section 16(a) reports that Respondent was required to disclose pursuant to Item 405. Respondent was required to review the forms filed and identify by name each such insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do.

12. Respondent failed to comply with its disclosure obligation to the extent required by Item 405 and each of the above-referenced statements in paragraphs 11a through 11c was materially false or misleading. As a result of the conduct described above, Respondent violated Section 13(a) of the Exchange Act and Rule 13a-1 promulgated thereunder.

Respondent Was a Cause of Certain Violations of Section 16(a) by its Insiders

13. Although the Commission encourages the practice of many issuers to assist insiders in complying with Section 16(a) filing requirements, issuers who voluntarily accept certain responsibilities and then act negligently in the performance of those tasks may be liable as a cause of Section 16(a) violations by insiders.

14. Since at least 2010, Respondent has voluntarily agreed with its officers and directors to perform certain tasks in connection with the filing of Section 16(a) reports on their behalf, including the preparation and filing of all such reports for which Respondent had timely notification of the required information concerning the transactions. However, Respondent repeatedly failed to perform on a timely basis the tasks Respondent had agreed to perform. The

procedures employed by Respondent were insufficient to the extent that those practices resulted in the recurrent failure to meet the two-business day filing deadline.

15. For example, Section 16(a) reports that Respondent had agreed to file for four insiders were not filed on a timely basis for reportable transactions on more than 35 dates between August 2010 and July 2013. Although Respondent had agreed to perform all tasks in connection with preparing and filing such reports and had access to the requisite information, the reports were not timely filed due to Respondent's negligent procedures.

16. As a result of the conduct described above, Respondent was a cause of certain violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by Respondent's insiders.

Respondent's Remedial Efforts

17. In determining to accept the 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 Tel-Instrument'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(a) and 16(a) of the Exchange Act and Rules 13a-1 and 16a-3 promulgated thereunder.

B. Respondent shall pay a civil money penalty in the amount of \$75,000, plus post judgment interest, to the Securities and Exchange Commission, for transmission to the United States Treasury. Payment shall be made in the following installments: (i) \$2,100 within 14 days of the entry of this Order; (ii) \$2,100 on the first day of each month, beginning the first month immediately following the initial payment; and (iii) a final payment of \$1,500, plus any remaining balance, within 36 months of the entry of this Order. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues pursuant to 31 U.S.C. §3717 on any unpaid amounts due after 14 days of the issuance of this Order. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the additional amount due for the final payment. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in the Order are

true and admitted by Respondent, and further, any debt for civil penalty, post judgment interest, or other amounts due by Respondent under this Order is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). 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 Tel-Instrument Electronics Corp 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