

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76194 / October 19, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16384

In the Matter of

Nicholas Toms,

Respondent.

**ORDER MAKING FINDINGS AND
IMPOSING A CEASE-AND-DESIST
ORDER PURSUANT TO SECTION 21C
OF THE SECURITIES EXCHANGE
ACT OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate to enter this Order Making Findings and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Nicholas Toms (“Toms” or “Respondent”).¹

II.

Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for 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, and except as provided herein in Section V, Respondent consents to the entry of this Order Making Findings and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Exchange Act (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds² that:

¹ On February 11, 2015, the Commission instituted a cease-and-desist proceeding against Respondent pursuant to Section 21C of the Exchange Act.

² The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.

A. SUMMARY

1. Toms, while the chairman, chief executive officer (“CEO”), and president of a public company, owned and sold millions of shares of his employer’s stock through a nominee and concealed it from investors. He received proceeds of over \$897,000 from his secret sales.

2. From November 2009 through at least mid-2014, Toms beneficially owned and sold more than 2.3 million shares of his employer’s stock. To do so, he used his long-time secretary as a nominee on an account held by an entity he controlled. He concealed his true stock ownership and sales from his employer, who consequently made materially false filings with the Commission. Toms falsely certified the accuracy of these filings.

3. Toms defrauded investors through these false filings. The filings materially understated Toms’ ownership of his employer’s stock and led investors to believe that he was increasing his stock position when in fact he, the company’s top officer, was selling substantial amounts of the company’s stock.

B. RESPONDENT

4. **Toms**, 66, is a resident of Boca Raton, Florida. From 2003 through mid-2014, Toms was chairman, CEO, and president of DecisionPoint Systems, Inc. (“DecisionPoint”). From 1981 through 1989, Toms was an associate at a prominent New York law firm, where he was then a self-described expert on the federal securities laws. He still remains licensed to practice law in New York. At all times, Toms owned at least 10% of Edwardstone & Co., Inc. (“Edwardstone”), and, until at least June 2009, he was Edwardstone’s CEO. In June 2014, Toms resigned as the chairman of DecisionPoint. On August 15, 2014, he resigned as its CEO and president and as a member of its Board of Directors.

C. OTHER RELEVANT ENTITIES AND INDIVIDUALS

5. **Edwardstone** is a Delaware corporation. Since 2009, it has been located at Toms’ former Manhattan residence. Toms controls Edwardstone and at all times has owned at least 10% of it. From at least 2009 through the present, Edwardstone has had no operations.

6. **DecisionPoint** is a Delaware corporation with its headquarters in Foothill Ranch, California. DecisionPoint’s common stock is currently traded under the symbol DPSI on the OTC market.

7. **Barbara Martorano (“Martorano”)**, age 57, is a resident of Polk City, Florida. From at least 1999 through 2014, she was Toms’ secretary at several different employers.

D. BACKGROUND

8. Since 1989, Toms has been associated with Edwardstone. At all relevant times, Toms has controlled Edwardstone and used it as a vehicle for his personal finances.

9. In 1999, Martorano began working for Toms as his secretary. Toms then worked at Cape Systems, Inc.

10. In April 2009, Toms purchased a majority of the stock of Canusa Systems, Inc. (“Canusa”), a shell company not registered under Section 12.

11. In June 2009, DecisionPoint merged into Canusa. The resulting entity changed its name to DecisionPoint. DecisionPoint voluntarily filed annual reports with the Commission on Form 10-K.

12. In June 2009, Toms became DecisionPoint’s chairman, CEO, and president. Martorano continued to work as Toms’ secretary.

13. In approximately 2009, Toms changed Edwardstone’s address to his townhouse in Manhattan.

E. TOMS USED MARTORANO AS A NOMINEE

14. In October 2009, Toms directed Martorano to open an account in Edwardstone’s name at Broker A, then a registered broker-dealer firm.

15. Toms directed Martorano to identify herself to Broker A as Edwardstone’s vice president.

16. Martorano faxed account opening documents to Broker A that identified her as Edwardstone’s vice president and the “primary account holder.” Her fax contained instructions for wiring the proceeds of stock sales out of the account. The instructions identified a single recipient of such proceeds: a bank account in Edwardstone’s name (the “Edwardstone Bank Account”). Toms and his wife were the only signatories for that account.

17. Martorano in fact had no decision-making authority for Edwardstone. At all times, Martorano merely followed Toms’ trading instructions in the Edwardstone account and communicated with Broker A on Toms’ behalf. Martorano never took direction from anyone other than Toms as to Edwardstone’s Broker A account.

18. Toms used Edwardstone’s Broker A account only to sell DecisionPoint stock. Broker A sent all proceeds from these sales to the Edwardstone Bank Account.

F. EDWARDSTONE OBTAINED AND SOLD DECISIONPOINT STOCK AT TOMS' DIRECTION AND FOR HIS BENEFIT

19. On June 30, 2009, in connection with DecisionPoint's merger with Canusa, Red Lodge Ltd., a privately-held company Toms controlled, received 1,386,000 shares of DecisionPoint stock from Canusa's minority shareholders. At Toms' direction, Martorano identified herself as Red Lodge's corporate secretary and directed DecisionPoint's transfer agent to transfer 786,000 shares from Red Lodge to Edwardstone. Again at Toms' direction, Martorano subsequently deposited these shares into Edwardstone's Broker A account.

20. On September 29, 2009, Toms sent DecisionPoint's transfer agent a letter requesting that an additional 760,000 DecisionPoint shares then held by Canusa minority shareholders be transferred to Edwardstone and sent to Martorano. On October 7, 2009, at Toms' direction, Martorano sent a letter to DecisionPoint's transfer agent identifying herself as Edwardstone's corporate secretary. Her letter directed the transfer agent to transfer 660,000 of these shares to Edwardstone's Broker A account. The shares were later deposited into the account.

21. In January and April 2010, approximately 554,500 additional DecisionPoint shares were deposited into Edwardstone's Broker A account.

22. On September 17, 2010, DecisionPoint issued 881,512 shares to Toms when he exercised certain DecisionPoint stock options. On September 28, 2010, Toms directed DecisionPoint's transfer agent to transfer these shares to an individual lender as collateral for a \$70,000 loan to Toms. Toms later defaulted on the loan but nevertheless received some DecisionPoint shares back from the lender. On March 11, 2011, Toms had 365,000 of these returned shares deposited into Edwardstone's Broker A account.

23. In total, from June 2009 through March 2011, 2,365,500 shares of DecisionPoint stock passed through Edwardstone's Broker A account.

24. Between November 2009 and March 2011, Toms directed Martorano to sell all of the shares in thirty-four separate transactions. Edwardstone's proceeds from those sales totaled \$898,705.74.

25. After each sale, Toms instructed Martorano to have Broker A wire the proceeds to the Edwardstone Bank Account. In total, Broker A wired virtually all of the proceeds, \$897,593.76, to the Edwardstone Bank Account.

26. Toms controlled the Edwardstone Bank Account and treated it as his personal account.

27. Toms commingled the DecisionPoint stock sale proceeds with other deposits in the Edwardstone Bank Account.

28. Toms spent a substantial portion of the DecisionPoint stock sale proceeds on his own personal expenses. These expenses included transfers to Toms' personal checking account, home utility bills, home repair expenses, medical expenses, pet supplies, contributions for his daughter's trip to Italy, association fees for a club in the Bahamas, designer clothing, shoes, and health club dues.

G. DECISIONPOINT FILED MATERIALLY FALSE ANNUAL REPORTS AND TOMS FALSELY CERTIFIED THEIR ACCURACY

29. On March 31, 2010, DecisionPoint voluntarily filed an annual report on Form 10-K with the Commission for the year that had ended on December 31, 2009 (the "2009 10-K"). The 2009 10-K reported that Toms owned 3,521,170 DecisionPoint shares. It failed to report the additional 1,296,000 DecisionPoint shares Toms beneficially owned through Edwardstone's Broker A account on December 31, 2009. The 2009 10-K therefore underreported Toms' ownership of DecisionPoint shares by over 36%.

30. Toms certified the accuracy of the 2009 10-K, while knowing it falsely underreported his beneficial ownership of DecisionPoint shares.

31. On March 16, 2011, DecisionPoint voluntarily filed a Form 10-K with the Commission for the year that ended on March 15, 2011 (the "2010 10-K"). The 2010 10-K reported that Toms owned 3,684,899 DecisionPoint shares. It failed to report the additional 524,512 shares that Toms beneficially owned through Edwardstone's Broker A account on March 15, 2011. The 2010 10-K therefore underreported Toms' ownership of DecisionPoint shares by over 14%.

32. Toms certified the accuracy of the 2010 10-K, while knowing it falsely underreported his beneficial ownership of DecisionPoint shares.

33. On December 22, 2011, DecisionPoint filed a Form 10-K-A amendment with the Commission for the year that ended on March 15, 2011 (the "2010 10-K-A"). Like the 2010 10-K, the 2010 10-K-A reported that Toms owned 3,684,899 DecisionPoint shares, when in fact he beneficially owned an additional 524,512 shares through Edwardstone's Broker A account on March 15, 2011. The 2010 10-K-A therefore underreported Toms' ownership of DecisionPoint shares by over 14%.

34. Toms certified the accuracy of the 2010 10-K-A, while knowing it falsely underreported his beneficial ownership of DecisionPoint shares.

35. The disclosures in the 2009 and 2010 10-Ks and the 2010 10-K-A not only materially understated Toms' beneficial ownership of DecisionPoint shares but also materially misrepresented that Toms had increased his holdings of DecisionPoint shares. In fact, he had significantly reduced them.

H. TOMS CONTINUED TO TRADE THROUGH A NOMINEE IN A SECOND EDWARDSTONE BROKERAGE ACCOUNT

36. In June 2011, Broker A sold its brokerage business to Broker B, another registered broker-dealer firm. Broker A transferred the Edwardstone brokerage account to Broker B. At the time, the account held 17,400 shares of DecisionPoint stock.

37. On June 16, 2011, the DecisionPoint shares in the new Broker B account were canceled pursuant to a reverse stock split and replaced with 2,175 new DecisionPoint shares.

38. Martorano continued serving as Edwardstone's nominal officer and taking direction from Toms on the Broker B account. At Toms' direction, Martorano placed Edwardstone's orders and directed Broker B to wire Edwardstone's DecisionPoint stock sale proceeds to the Edwardstone Bank Account.

39. On August 18 and October 21, 2011, Edwardstone sold 2000 and 160 shares, respectively, of DecisionPoint stock at Toms' direction.

40. On May 10, 2013, Edwardstone sold 10,000 shares of DecisionPoint stock, again at Toms' direction.

41. As of June 30, 2014, Edwardstone's Broker B account held 7,745 shares of DecisionPoint stock, worth approximately \$3,500.

I. VIOLATIONS

42. As a result of the conduct described above, Toms violated, and Toms caused DecisionPoint's violation of, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful for any person, directly or indirectly, to employ any device, scheme, or artifice to defraud, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Toms cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Pursuant to Section 21C(f) of the Exchange Act, Respondent Toms be, and hereby is prohibited, for five years following the date of this Order, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

C. Respondent shall, within ten days of the entry of this Order, pay disgorgement of \$85,918, which represents profits gained as a result of the conduct described herein, and prejudgment interest of \$16,953.40 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 Nicholas Toms 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 Andrew Calamari, Regional Director, Securities and Exchange Commission, Brookfield Place, 200 Vesey St., New York, NY 10281.

D. Respondent shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$175,000 to the Securities and Exchange Commission. 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:

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V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, 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).

By the Commission.

Brent J. Fields
Secretary