

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 77185 / February 19, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17124**

**In the Matter of**

**NICHOLAS A. PREZIOSO**

**Respondent.**

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

**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 Nicholas A. Prezioso (“Respondent” or “Prezioso”).

**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 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 Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### SUMMARY

This matter involves insider trading by Nicholas A. Prezioso in advance of three public announcements based on material nonpublic information he obtained while serving as Assistant Controller of the Dress Barn subsidiary of Ascena Retail Group, Inc. ("Ascena"). In December 2011, Prezioso became aware of Ascena's strong holiday sales results. In breach of his duty to Ascena's shareholders, he traded Ascena securities in advance of the public release of this information and realized ill-gotten gains of \$114,710. In February 2012, Prezioso became aware of Ascena's positive sales results for its fiscal second quarter. In breach of his duty to Ascena's shareholders, he traded Ascena securities in advance of the public release of this information and realized ill-gotten gains of \$71,334. In March 2012, Prezioso became aware of Ascena's plans to acquire Charming Shoppes, Inc. ("Charming Shoppes"). In breach of his duty to Ascena, he traded Charming Shoppes securities before the public announcement of the transaction and realized ill-gotten gains of \$76,432. By engaging in this conduct, Prezioso violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

#### RESPONDENT

1. **Nicholas A. Prezioso**, age 58, resides in Secaucus, New Jersey. During the relevant time period, Prezioso was the Assistant Controller of the Dress Barn subsidiary of Ascena Retail Group, Inc.

#### OTHER RELEVANT ENTITIES

2. **Ascena Retail Group, Inc.** is a Delaware corporation headquartered in Mahwah, New Jersey engaged in the business of selling clothing, shoes and accessories. The common stock of Ascena is registered under Section 12(b) of the Exchange Act and trades on the NASDAQ Global Select Market under the ticker symbol "ASNA."

3. **Charming Shoppes, Inc.** was a Pennsylvania corporation headquartered in Bensalem, Pennsylvania engaged in the business of selling clothing, shoes, accessories, food and gifts. The common stock of Charming Shoppes was registered under Section 12(b) of the Exchange Act and traded on the NASDAQ Global Select Market under the ticker symbol "CHRS." Ascena acquired Charming Shoppes in 2012 via a tender offer.

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<sup>1</sup> 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.

## FACTS

### **Prezioso Was Subject to His Employer's Insider Trading Policies**

4. As Assistant Controller of the Dress Barn subsidiary of Ascena, Prezioso was subject to the company's code of business conduct, which prohibited employees from "profit[ing] in the stock market(s) from the improper use of material non-public information that [employees] learn during [their] employment." The code required employees to "keep any material non-public information confidential" and further provided that "examples of material information include financial information that has not been released to the public such as Ascena's or a specific brand's monthly, quarterly or annual sales, comp store sales, earnings and trends, news of a planned acquisition or disposition, [etc.] ..." Prezioso signed acknowledgements that he received, read and agreed to comply with this code.

### **Prezioso's Insider Trading in the Securities of Ascena Retail Group, Inc.**

5. In his role as Assistant Controller of Dress Barn, Prezioso accessed Ascena's electronic repository of sales data and retrieved nonpublic sales figures in order to perform analyses to support company projects. For instance, on December 12, 2011, Prezioso sent an email to his supervisor that attached Dress Barn sales data, which indicated a year-over-year increase in sales during the first two fiscal weeks of December 2011.

6. On December 13, 2011, Prezioso purchased 302 short term Ascena call option contracts while he was aware of material nonpublic information concerning Ascena's favorable sales results.<sup>2</sup> Prezioso sold two of these contracts on December 20, 2011, reducing his holdings of Ascena call option contracts to 300.

7. Before the markets opened on January 5, 2012, Ascena issued a press release announcing its "strong holiday sales" and raising its earnings per share guidance. The press release highlighted Ascena's 14% increase in comparable store sales for the fiscal month of December 2011 versus December 2010, including a 12% increase at the Dress Barn subsidiary. Ascena's stock price closed at \$32.60 that day, an increase of \$1.74 or 5.64% above the prior trading day's closing price.

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<sup>2</sup> A stock option, commonly referred to as an "option," gives its purchaser-holder the option to buy or sell shares of an underlying stock at a specified price (the "strike" price) prior to the expiration date. Options generally are sold in "contracts," which give the option holder the opportunity to buy or sell 100 shares of an underlying stock. A "call" option gives the purchaser-holder of the option the right, but not the obligation, to purchase a specified amount of an underlying security at a specified strike price within a specific time period. Generally, the buyer of a call option anticipates that the price of the underlying security will increase during a specified amount of time.

8. After Ascena's January 5, 2012 press release was issued, Prezioso sold his 300 Ascena call option contracts, realizing profits of \$114,710.

9. Prior to February 22, 2012, Prezioso again became aware that Ascena would be announcing favorable sales results for its fiscal second quarter and six months ended January 28, 2012. Prezioso learned this information while performing his employment duties, which included accessing Ascena's electronic repository of sales data. On the morning of February 22, 2012, shortly after Ascena issued a press release detailing the timing of its upcoming earnings release, Prezioso bought 300 short term Ascena call option contracts. Immediately before the market closed on March 1, 2012, Prezioso bought 50 additional short term Ascena call option contracts.

10. After the market closed on March 1, 2012, Ascena released its earnings for its fiscal second quarter and six months ended January 28, 2012. The company reported, among other things, a 15% increase of net sales over the previous year's second quarter and an 11% increase compared to the prior year's first six months, including an increase in net sales and comparable store sales at Dress Barn.

11. On March 2, 2012, the first trading day after its earnings were announced, Ascena's stock price closed at \$41.09, an increase of \$2.14 or 5.55% over the prior trading day's close.

12. After the publication of Ascena's March 1, 2012 earnings release, Prezioso sold his 350 Ascena call option contracts, realizing profits of \$71,334.

13. By purchasing Ascena securities on the basis of material nonpublic information concerning Ascena's sales results before the two above-referenced announcements, Prezioso breached the duty he owed to Ascena's shareholders.

14. Prezioso knew or was reckless in not knowing that these securities transactions were in breach of the duty he owed to Ascena's shareholders.

#### **Prezioso's Insider Trading in the Securities of Charming Shoppes, Inc.**

15. By March 16, 2012, Ascena had taken substantial steps in furtherance of a cash tender offer for all of the outstanding shares of Charming Shoppes common stock. For instance, Ascena had entered into a confidentiality agreement with Charming Shoppes, retained lawyers and financial advisors, conducted significant due diligence related to the transaction, and notified the board of directors of Charming Shoppes of its interest in acquiring the company for cash at a purchase price of \$6.25 per share.

16. On or before March 16, 2012, during the course of his employment at Ascena, Prezioso became aware of confidential information concerning Ascena's plans to acquire Charming Shoppes that convinced him the transaction was imminent.

17. Between March 16 and May 1, 2012, on the basis of material nonpublic information concerning Ascena's plans to acquire Charming Shoppes, and in violation of Ascena's policies, Prezioso purchased a total of 46,300 shares of Charming Shoppes common stock.

18. Prezioso knew or was reckless in not knowing that these securities transactions were in breach of the duty of trust or confidence he owed to Ascena.

19. Before the markets opened on May 2, 2012, Ascena announced its agreement to acquire Charming Shoppes via a tender offer for \$7.35 per share of Charming Shoppes common stock. That day, the price of Charming Shoppes common stock closed at \$7.31 per share, an increase of \$1.41 or 24% above the prior trading day's closing price.

20. After the May 2, 2012 public announcement of the tender offer, Prezioso sold his Charming Shoppes common stock, realizing profits of \$76,432.

21. On May 15, 2012, Ascena, through an affiliate, commenced a tender offer for all outstanding shares of Charming Shoppes common stock.

22. Prezioso knew that the information he learned through his employment concerning the impending acquisition was material and nonpublic. By purchasing Charming Shoppes securities on the basis of that information, and in violation of Ascena's policies, Prezioso misappropriated the information and breached a duty of trust or confidence that he owed to Ascena.

23. As a result of the conduct described above, Prezioso violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

#### **IV.**

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Prezioso cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

B. Respondent Prezioso is prohibited 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 10 days of the entry of this Order, pay disgorgement of \$262,476, prejudgment interest thereon of \$26,955, and a civil money penalty of \$131,238, for a total of \$420,669 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of a civil money penalty 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 Nicholas A. Prezioso 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 G. Jeffrey Boujoukos, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Philadelphia Regional Office, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a

private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

**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