

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83889 / August 20, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3960 / August 20, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18652

In the Matter of

Joseph Jennings, CPA,

Respondent.

**CORRECTED ORDER INSTITUTING
PUBLICADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 4C AND 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934 AND RULE 102(e) OF THE
COMMISSION’S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Joseph Jennings, CPA (“Respondent” or “Jennings”) pursuant to Sections 4C¹ and 21C of the Securities

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others; (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

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 Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, 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 finds³ that:

A. SUMMARY

1. These proceedings involve insider trading by Jennings, a certified public accountant (“CPA”), who was employed as a director in the New York office of a major accounting and auditing firm (the “Firm”). In March 2015, through his work at the Firm, Jennings learned that the Firm’s clients H.J. Heinz Company (“Heinz”) and Kraft Foods Group, Inc. (“Kraft”) planned to enter into a merger agreement. On March 23, 2015, while in possession of this material nonpublic information, and in breach of his duty of trust and confidence to the Firm, Jennings purchased 100 Kraft call options (with a strike price of \$67.50 and an expiration date of June 19, 2015) in a close relative’s online brokerage account for approximately \$5,500. On March 25, 2015, before the market opened, Heinz and Kraft issued a joint press release announcing their agreement to form The Kraft Heinz Company (“Kraft Heinz”), one of the world’s largest food and beverage companies (the “Announcement”). After the Announcement, Kraft’s stock price increased by approximately 35%, from the previous trading day’s closing price of \$61.33 per share to the

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ 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.

Announcement day's closing price of \$83.17 per share. Following the Announcement, the value of the Kraft options that Jennings had purchased in his close relative's account increased by approximately \$150,500. Jennings did not sell or exercise the Kraft options following the Announcement. Later, in June 2015, Jennings and his relative who owned the account contacted the brokerage firm where the account was held to instruct the brokerage firm to allow the Kraft options to expire without being exercised. As a result, the options Jennings had purchased expired without being exercised or sold.

B. RESPONDENT

2. Jennings, age 35, resides in New York, New York, and is a CPA licensed since 2007 in the state of Illinois and since 2013 in the state of New York. Until March 2018, Jennings was a director at the Firm, where he provided the Firm's clients with a variety of services, including annual audits of public companies' financial statements and accounting advisory services.

C. RELEVANT ENTITIES

3. Kraft was an Illinois-based international food and beverage company. Kraft's common stock traded on NASDAQ under the symbol "KRFT" until July 6, 2015, when Kraft completed its merger with Heinz. During the relevant period, Kraft was an audit client of the Firm.

4. Heinz was a Pennsylvania-based international food company. Heinz was a private company until July 6, 2015, when it merged with Kraft to form Kraft Heinz. During the relevant period, Heinz was an audit client of the Firm.

D. FACTS

5. Jennings owed a duty of trust and confidence to his employer, the Firm, and his misuse of information he learned in the course of his employment was a violation of that duty. Jennings's employment agreement prohibited him from using or sharing nonpublic information that he obtained during the course of his work for the Firm, for his personal gain or for the personal gain or advantage of anyone with whom he improperly shared the information. Jennings was also subject to the Firm's Insider Trading Policy, which prohibited him from using inside information that he obtained at work to buy or sell securities. Jennings signed annual acknowledgments indicating that he read, understood, and agreed to comply with these policies.

6. In mid-March 2015, through his work at the Firm, Jennings learned that the Firm's clients Heinz and Kraft planned to enter into a merger agreement. This information was material and nonpublic.

7. After the market closed on March 23, 2015, while in possession of the material nonpublic information, Jennings logged into a close relative's online brokerage account, which Jennings controlled, and entered an order to purchase 100 Kraft call options, with a strike price of

\$67.50 and an expiration date of June 19, 2015. The order executed the next day, March 24, 2015, at a cost of approximately \$5,500.

8. Jennings knew, or was reckless in not knowing, that his purchase of Kraft options was in breach of his duty to his employer and in violation of the Firm's policies prohibiting insider trading.

9. On March 25, 2015, before the market opened, Heinz and Kraft issued a joint press release announcing their agreement to merge and form Kraft Heinz.

10. On March 25, 2015, Kraft's stock closed at \$83.17 per share, an increase of approximately 35% over the prior day's closing price of \$61.33 per share. As a result, the value of the Kraft options that Jennings had purchased in his relative's account increased by approximately \$150,500.

11. In early June 2015, both Jennings and his relative who owned the account contacted the brokerage firm where the account was held to instruct the brokerage firm to allow the Kraft options to expire without being exercised. As a result, the options Jennings had purchased expired without being exercised or sold.

12. In July 2015, the Firm received an inquiry from the Financial Industry Regulatory Authority ("FINRA") requesting that any employee with prior knowledge of the Kraft Heinz merger review an enclosed list of individuals and entities and that such employees identify individuals or entities on the list who were known to them. Jennings's relative's name was on that list. Although Jennings acknowledged his relationship with his relative in connection with the FINRA inquiry, he did not inform the Firm that he controlled the relative's brokerage account, or that he had traded in Kraft securities in that account in advance of the Announcement.

Findings

13. Based on the foregoing, the Commission finds that Jennings willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Jennings shall 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. Jennings is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After two years from the date of this order, Jennings may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Jennings's work in his practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or
2. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or
3. an independent accountant.

Such an application must satisfy the Commission that:

- (a) Jennings, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
- (b) Jennings, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that Jennings will not receive appropriate supervision;
- (c) Jennings has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

- (d) Jennings acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Jennings to resume appearing or practicing before the Commission provided that his state CPA license(s) is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Jennings's character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

E. Respondent shall pay a civil money penalty in the amount of \$150,500 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). Payment shall be made in the following installments: (1) \$50,000 within 10 days of the entry of the Order; (2) \$40,500 within one year of the entry of the Order; (3) \$30,000 within two years of the entry of the Order; and (4) the balance of \$30,000 within three years of the entry of the Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of the penalty, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application.

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 Joseph Jennings 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 Joseph G. Sansone, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281-1022.

G. 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