

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84305 / September 27, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 5052 / September 27, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18848

In the Matter of

GARY BERNARD ROSS,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Gary Bernard Ross (“Ross” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, 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 finds¹ that:

Summary

1. These proceedings concern insider trading by investment adviser Ross, who misappropriated material non-public information from his client Thomas Earl Hayden, II (the "Advisory Client") about an impending partnership between Monster Beverage Corporation ("Monster") and the Coca-Cola Company ("Coke"). On August 11, 2014, three days before the partnership was publicly announced, the Advisory Client—an employee at Monster—called Ross about purchasing Monster common stock, during which Ross learned non-public information about the deal. On the basis of that information, on August 12, 2014, Ross bought a total of 4,419 Monster shares in two brokerage accounts for \$310,781.78. Following the announcement, Monster's stock price increased 30 percent and its trading volume increased 101 percent from the previous day. Ross's trading resulted in realized profits totaling \$86,117.82.

Respondent

2. Ross resides in Laguna Niguel, California. He has completed the Series 65 investment advisers law examination and is the principal of California-registered investment adviser IRI Investment Advisers, LLC ("IRI"). He also is licensed as an attorney and the principal of Gary Ross Law Corporation.

Relevant Entity

3. Monster is a beverage company headquartered in Corona, California focused on developing and marketing energy drinks. Monster's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on NASDAQ under the symbol "MNST."

Facts

4. The Advisory Client has been an advisory client of Ross for nearly two decades. During that time, Ross has managed the Advisory Client's investment portfolio for which he earns an annual advisory fee of 1.5 percent. Ross, who has discretionary authority over the Advisory Client's account, invested his Advisory Client in mutual funds rather than individual stocks.

5. Ross owed the Advisory Client fiduciary duties. IRI's operative management agreement with the Advisory Client stated: "All information and recommendations furnished by either party to the other shall, at all times, be treated in strict confidence." IRI also had policies that stated: "The legal prohibitions against 'insider trading' and our professional responsibility

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.

forbid the use or disclosure by all directors, officers and associated persons of Adviser, for direct or indirect personal gain or profit, of ‘insider information’ received in connection with the business of IRI Investment Advisors, LLC or from any source.” The policies defined “material” to include the “purchase or sale of substantial assets.”

6. Ross knew the Advisory Client became a Monster employee in 2013, in part because when the Advisory Client was offered the position, he asked Ross for Ross’s views about the job.

7. On August 11, 2014, the Advisory Client contacted Ross about purchasing shares of Monster stock in his brokerage account. The Advisory Client had never invested in an individual stock before, and the two had not previously discussed investing in individual stocks in this account. During the call, the Advisory Client told Ross non-public information about the impending Monster-Coke deal. Ross recommended how much the Advisory Client should invest, and told the Advisory Client he would arrange to sell some of the Advisory Client’s holdings to fund the purchase of Monster stock. Ross also advised the Advisory Client to mull the investment decision overnight.

8. That evening, before the Advisory Client confirmed he wanted to proceed with the trade, Ross placed an order to purchase 3,000 shares on margin in his own brokerage retirement account, designating that the purchase be executed at the open of trading the following morning.

9. On August 12, the Advisory Client called Ross to confirm he wanted to trade. That day, Ross purchased Monster stock on behalf of the Advisory Client, and then purchased an additional 1,419 shares in another of his own accounts. In total, Ross bought 4,419 Monster shares in his two brokerage accounts for \$310,781.78. Ross never told the Advisory Client that he also had traded in Monster stock.

10. On August 14, 2014, after the close of the market, Monster and Coke announced the strategic partnership, whereby Coke agreed to purchase a 16.7 percent equity stake in Monster and to make Monster its exclusive energy drink provider.

11. Ross liquidated the entirety of his Monster shares between August 15 and August 22.

12. Ross’s trading was based on non-public information about the Monster-Coke deal that Ross misappropriated from the Advisory Client in breach of fiduciary duties he owed the Advisory Client.

13. As a result of his trading, Ross realized profits totaling \$86,117.82.

14. The Commission finds that Respondent’s conduct described above 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, in the public interest, to impose the sanctions agreed to in the Offer. Accordingly, pursuant to Section 21C of the Exchange Act and Section 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Ross 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. Respondent Ross be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Ross shall, within 14 days, pay disgorgement of \$86,117.82 and prejudgment interest of \$12,864.41 and a civil money penalty of \$86,117.82 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 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 Ross 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 Associate Regional Director John W. Berry, Division of Enforcement, Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

E. 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