

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 84315 / September 28, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18858**

**In the Matter of**

**UNAL PATEL,**

**and**

**AMISH PATEL,**

**Respondents.**

**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**

**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 Unal Patel and Amish Patel (“Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent 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 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offers, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves insider trading by Unal Patel and Amish Patel. On February 23, 2016, Unal Patel received material nonpublic information in a late evening telephone call from a close friend working at The Southern Company ("Southern"), regarding Southern's imminent acquisition of PowerSecure International, Inc. ("PowerSecure"). Immediately after the call, Unal shared the confidential information with his cousin and housemate Amish Patel in a face-to-face conversation in their home. The next morning, on February 24, 2016, on the basis of that non-public information, Unal purchased 10 March 10 PowerSecure call options and Amish purchased 21 March 10 PowerSecure call options. At the close of business that same day, Southern announced it would acquire PowerSecure in an all cash transaction valued at \$431 million.

2. On February 25, 2016, Unal Patel sold his 10 March 10 PowerSecure call options and realized \$7,321 in trading profits from the sale.

3. On February 25, 2016, Amish Patel sold his 21 March 10 PowerSecure call options and realized \$15,978 in trading profits from the sale.

4. By virtue of their conduct, Respondents violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### Respondents

5. **Unal Patel**, age 32, is a resident of Atlanta, Georgia. He is a certified public accountant licensed in Georgia. Unal had been employed at Southern as an accounting finance and treasury intern from September 2010 to August 2011.

6. **Amish Patel**, age 43, resides in Atlanta, Georgia. Amish is a medical doctor.

#### Other Relevant Entities

7. **The Southern Company**, headquartered in Atlanta, Georgia, is an energy company serving the Southeastern United States through its subsidiaries.

8. **PowerSecure International, Inc.** (NYSE: POWR), was, at all relevant times, headquartered in Wake Forest, North Carolina, and was a provider of utility and energy technologies to electric utilities and their industrial, institutional and commercial customers. On May 9, 2016, Southern acquired PowerSecure and it became Southern's wholly-owned subsidiary.

---

<sup>1</sup> The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

9. **Southern Company Employee** (“Employee”) was a close friend of Unal Patel and an acquaintance of Amish Patel, and at all relevant times was a financial analyst in Southern’s headquarters office in Atlanta. Employee received training on the company’s prohibition against insider trading and on his duty to maintain the confidentiality of nonpublic company information.

### Facts

10. Throughout the course of their business relationship, PowerSecure and Southern had from time to time engaged in discussions regarding whether there were opportunities to expand their relationship in a manner that would be mutually beneficial for the two companies and their respective customers and stockholders. To that end, on June 1, 2015, Southern Company and PowerSecure executed a confidentiality agreement.

11. Thereafter, on February 10, 2016, Southern delivered a proposal letter to PowerSecure indicating Southern was prepared to acquire PowerSecure in an all-cash transaction, and requesting an exclusivity period of 45 days to conclude due diligence and negotiate a mutually acceptable definitive merger agreement.

12. On February 11, 2016, Southern and PowerSecure agreed to a 10-day period of exclusivity to commence on February 15, 2016. On February 15, 2016, the parties executed the exclusivity agreement.

13. On February 24, 2016, Southern and PowerSecure executed a definitive merger agreement, and later that day issued a joint press release announcing the definitive merger agreement.

14. At 10:54 pm on February 23, 2016, while at home, Unal Patel received a telephone call from his friend, Southern Employee. Unal and Employee are longtime friends. They attended the same graduate school (at different times), share confidences, and socialize frequently together. Employee and Unal had both interned at Southern, and Employee helped Unal get the intern position. Unal was aware that in February 2016, Employee sat near a group of employees in Southern’s mergers and acquisitions group.

15. Employee, using his personal mobile phone, called Unal that evening from his work cubicle at Southern’s offices. During the call, Unal learned that Employee, while sitting in his work cubicle, had just overheard other Southern employees, who worked on mergers and acquisitions, discussing the imminent acquisition of PowerSecure by Southern.

16. Employee did not trade on the information he disclosed to Unal, and expected Unal to keep the information confidential and to refrain from trading on the nonpublic information.

17. Unal had previously worked at Southern as a financial analyst intern from September 2010 to August 2011. Unal knew or was reckless in not knowing that the information he received concerning the upcoming PowerSecure acquisition was material and nonpublic, and

that Employee had expected Unal to hold that nonpublic information in confidence, and to refrain from trading on the basis of and while in possession of the nonpublic information.

18. From his training as a certified public accountant and his prior employment at Southern, Unal knew or was reckless in not knowing that it was inappropriate to trade on the nonpublic information, and to pass on the nonpublic information about Southern to his cousin Amish .

19. Immediately after the call with Employee, Unal shared the nonpublic information concerning the PowerSecure acquisition with Amish in a face-to-face conversation, and told Amish that Employee had overheard the information being discussed in his workplace at Southern by other employees. Amish was reckless in not knowing that the information about the acquisition was confidential and had not been publicly disclosed, and should have known that Unal told him the information in breach of a duty of trust and confidence.

20. Unal and Amish discussed using the nonpublic information to trade in PowerSecure securities for personal gain, and discussed purchasing PowerSecure call options. That night, Amish showed Unal at a computer how to execute the options trade on-line.

21. During the morning of February 24, 2016, on the basis of and while in possession of material nonpublic information concerning the imminent acquisition of PowerSecure by Southern, Respondent Unal Patel purchased 10 March 10 PowerSecure call options for \$1,114 in his on-line brokerage account.

22. During the morning of February 24, 2016, on the basis of and while in possession of material nonpublic information concerning the imminent acquisition of PowerSecure by Southern, Respondent Amish Patel purchased 21 March 10 PowerSecure call options for \$1,714 in his on-line brokerage account.

23. On February 24, 2016, at 4:30 p.m., Southern and PowerSecure announced the definitive merger agreement in a newswire press release. That public announcement impacted the securities market, and increased the value of the PowerSecure call options Respondents had purchased. PowerSecure closed at \$18.54, up \$8.67 (87.84%).

24. On February 25, 2016, Respondent Unal Patel sold his PowerSecure call options for a gain of \$7,321.

25. On February 25, 2016, Respondent Amish Patel sold his PowerSecure call options for a gain of \$15,978.

### **Violations**

26. As a result of the conduct described above, Respondents violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

27. In determining to accept his Offer of Settlement, the Commission considered Respondent Unal Patel's cooperation.

#### IV.

A. In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Offer of Settlement of Unal Patel. Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

1. Unal Patel 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.

2. Unal Patel shall, within 14 days of the entry of this Order, pay disgorgement of \$7,321 and prejudgment interest of \$599.34, 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 is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

3. Unal Patel shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$14,642 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 is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

B. In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Offer of Settlement of Amish Patel. Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

1. Amish Patel cease and desist from committing or causing any violations and future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

2. Amish Patel shall, within 14 days of the entry of this Order, pay disgorgement of \$15,978 and prejudgment interest of \$1,511.36, 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 is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

3. Amish Patel shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$15,978 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 is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

- C. Payments made pursuant to this Order must be made in one of the following ways:
- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
  - (2) Respondents 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) Respondents 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 Unal Patel or Amish Patel 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 Melissa Hodgman, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

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, Respondents agree 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 Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree 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 Respondents 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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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