

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85079 / February 8, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-18993

In the Matter of

DANIEL J. CALLAHAN,

Respondent.

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 Respondent Daniel J. Callahan (“Respondent” or “Callahan”).

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 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 Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings concern insider trading by Callahan, an outside legal counsel to Monster Beverage Corporation ("Monster"), in advance of an August 2014 announcement regarding Monster's partnership with the Coca-Cola Company ("Coke"). In the course of his representation of Monster, Callahan became aware of material, nonpublic information that the deal between Monster and Coke was nearly finalized. Less than two months before the announcement, Monster consulted Callahan's law firm in connection with due diligence efforts regarding the deal with Coke, in light of the law firm's representation of Monster in certain ongoing litigation matters. On June 30, 2014, one week after a due diligence call in which his law firm participated, Callahan directed the purchase of a total of 850 shares of Monster common stock in two accounts he controlled on the basis of material, nonpublic information about the pending deal. On August 14, 2014, after the close of the market, Monster and Coke publicly announced the strategic partnership, and the next day, Monster's stock price closed up 30 percent and the trading volume increased 101 percent. As a result of the price increase, Callahan made profits totaling \$19,386.97.

Respondent

2. Callahan resides in Dana Point, California. He is licensed as an attorney in California, and is the founding partner of the law firm Callahan & Blaine.

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. As an attorney, Callahan owes his clients a duty of trust and confidence with respect to his clients' confidential and privileged information.

5. As Callahan and Blaine's founding partner, Callahan was responsible for implementing and overseeing the law firm's practices with respect to protecting its clients' privileged and confidential information.

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.

6. On or about 2009, Monster became a client of Callahan & Blaine. Between 2009 and 2014, the firm represented Monster in multiple litigation matters.

7. As Monster's counsel, Callahan owed a duty of trust and confidence to the company and its shareholders. Callahan and his firm had a history of representing the company as its counsel, during which representation he was entrusted with privileged and confidential information about the company. Callahan was the lead attorney on several of the matters that his law firm handled for Monster, and had supervisory responsibilities for all of the firm's matters on behalf of Monster.

8. In February 2013, Callahan sought to trade in Monster stock during the course of Callahan & Blaine's representation of the company in connection with products liability litigation. Callahan requested that his brokerage firm place a purchase for Monster shares in a trust account he controlled as trustee. The brokerage firm discouraged the trading because of Callahan's "role to the company," and ultimately the trading did not take place.

9. In June 2014, Callahan & Blaine was representing Monster in a separate, high profile products liability litigation matter, which was scheduled for trial in the upcoming months. Callahan was the lead attorney for Monster on the matter.

10. On June 23, 2014, Callahan's partner at Callahan & Blaine participated in a call with representatives from Monster and Coke in connection with the companies' due diligence in anticipation of the deal. The partner briefed the representatives from the two companies regarding the products liability litigation.

11. During the three days leading up to the due diligence call, Callahan & Blaine received a series of documents from Monster related to the proposed deal, which were designated "privileged and confidential" and "highly confidential—do not share." The documents reflected the code names Monster assigned to the deal and to the names of the parties to preserve the confidentiality. Monster considered the information regarding the deal to be privileged and confidential, and expected Callahan & Blaine to have a duty to prevent this information from being disseminated outside of the firm.

12. Between June 23 and June 30, 2014, Callahan and his partner spent multiple hours together in preparation for the products liability trial on behalf of Monster. This included multiple in-person meetings preparing for a mediation and court hearing, traveling to the mediation and court hearing by airplane and car, and participating in the mediation and court hearing.

13. During the period between June 23 and June 30, 2014, Callahan learned material, nonpublic information regarding the pending Monster-Coke deal.

14. On the basis of this material, nonpublic information and in breach of his duty to Monster and its shareholders, on June 30, 2014, Callahan directed the purchase of a total of 850 shares of Monster stock in two accounts he controlled. He directed the purchase of 710 shares for \$50,176.98 in the trust account he controlled as trustee. This was the only individual stock trade in

this account any time during 2013 or 2014. He also directed the purchase of 140 shares for \$9,894.05 of Monster stock in another account over which he exercised trading authority. This was the first individual stock trade ever made in this account since it was opened in January 2014.

15. 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.

16. Following the news, on August 15, 2014, Monster's stock price closed at \$93.49 per share, 30 percent higher than the previous day's closing price, and the trading volume increased 101 percent from the previous day.

17. As a result of the price increase, Callahan made profits of \$19,386.97. Callahan directly received the profits from this trading.

18. The Commission finds that Respondent's conduct described above 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's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent 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 Callahan shall, within 14 days, pay disgorgement of \$19,386.97 and prejudgment interest of \$3,291.62 and a civil money penalty of \$19,386.97 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 Callahan 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.

C. 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