

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 86268 / July 1, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19234**

**In the Matter of**

**TORY J. R.**  
**SCHALKLE,**

**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 Tory J. R. Schalkle (“Schalkle” or “Respondent”).

**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 a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds that:

**Summary**

1. These proceedings involve insider trading by Schalkle, a former employee of Consulting Company A, a world-wide consulting firm. From December 4, 2017 through January

12, 2018, Consulting Company A was jointly engaged by two publicly traded companies, Essendant, Inc. (“Essendant”) and Genuine Parts Company (“Genuine Parts”), to consult on a potential merger between the two companies (“Deal”). Schalkle was a manager at Consulting Company A and was a member of the team assigned to conduct due diligence on the Deal. In March 2018, Schalkle purchased 5,275 shares of Essendant while in possession of material nonpublic information about the Deal. On April 12<sup>th</sup> and 17<sup>th</sup>, Schalkle sold all of his Essendant shares for realized profits of \$11,315 after the April 12<sup>th</sup> public announcement of the Deal.

### **Respondent**

2. Schalkle, age 33, is a resident of Wayzata, Minnesota and from June 2014 through July 2018, Schalkle was employed at Consulting Company A.

### **Facts**

3. Consulting Company A hired Schalkle as an associate in August 2015 and promoted him to manager in January 2018.

4. As an employee of Consulting Company A, Schalkle was bound by its Personal Investments Policy.

5. Consulting Company A’s Personal Investments Policy prohibited employees from purchasing or selling any security while in possession of material nonpublic information and employees or family members from purchasing or selling any publicly traded securities of any client of Consulting Company A. The policy also required employees and family members to pre-clear all purchases and sales of publicly traded securities.

6. In December 2016 and January 2018, Schalkle certified that he received Consulting Company A’s Personal Investments Policy.

7. On December 4, 2017, Consulting Company A was jointly retained by Essendant and Genuine Parts to provide services in connection with the potential Deal between the two companies. As part of the engagement, Consulting Company A and its employees entered into a confidentiality agreement to keep Deal information nonpublic.

8. On December 4, 2017, Schalkle was assigned to the team conducting due diligence for the potential Deal. The scope of Schalkle’s work included: data collection, synergy analysis and refinement, sharing analysis results with joint management of both companies, and a final “read out” to senior executives of both companies. While working on the assignment, Schalkle obtained material nonpublic information regarding the proposed merger. Among other things, Schalkle obtained information that the two companies intended to proceed with Deal negotiations, and announce a Deal in early April 2018. Schalkle’s work on the potential Deal ended on January 12, 2018.

9. Between March 5, 2018 and March 22, 2018, Schalkle bought 5,275 Essendant shares while in possession of material nonpublic information about the Deal.

10. The Deal was announced on April 12, 2018, before the market opened. As a result of the announcement, Essendant's stock price closed 16% higher from the prior day.

11. On April 12, after the announcement, Schalkle sold 3,908 Essendant shares and on April 17, 2018, he sold an additional 1,367 Essendant shares. In total, Schalkle realized a gain of \$11,315.

12. Had he sold all of the shares on April 12, 2018, his profits would have been \$12,193.

13. Schalkle resigned from Consulting Company A in July of 2018.

#### **Violation**

14. As a result of the conduct described above, Schalkle violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Schalkle'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 shall, within 14 days of the entry of this Order, pay disgorgement of \$12,193, prejudgment interest of \$362.58, and a civil money penalty in the amount of \$12,193 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 the disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and if timely payment of the civil monetary 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 Tory J. R. Schalkle 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 Kathryn A. Pyszka, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 1450, Chicago, IL 60604.

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.

Vanessa A. Countryman  
Secretary