

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

**SECURITIES EXCHANGE ACT OF 1934  
Release No. 86521 / July 31, 2019**

**ADMINISTRATIVE PROCEEDING  
File No. 3-19293**

**In the Matter of**

**JAMES W. HOLDEN,**

**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 James W. Holden (“Holden” 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<sup>1</sup> that:

**Summary**

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<sup>1</sup> 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.

These proceedings arise out of insider trading by James Holden in the securities of Real Goods Solar Inc. (“Real Goods”), a publicly-traded solar energy company. In September 2017, while at lunch with a close friend who was a member of Real Goods’ Board of Directors, Holden learned about a significant joint venture that was likely moving forward between Real Goods and The Dow Chemical Company (“Dow”), a subsidiary of a large publicly-traded chemical corporation. On the next trading day after the lunch, Holden misappropriated the confidential information he learned from his close friend by purchasing 12,500 shares of Real Goods stock. When Real Goods and Dow publicly announced the joint venture the morning of October 4, 2017, Real Goods’ stock price increased over 194% from \$.82 per share to \$2.37 per share at the close of the market that day. From October 4, 2017 through October 6, 2017, Holden sold all of his Real Goods shares, obtaining illegal profits of \$18,527.18.

### **Respondent**

1. James Holden, age 75, resides in Lakeport, California. Holden is a psychologist.

### **Other Relevant Entities**

2. Real Goods Solar Inc. is a solar energy company based in Denver, Colorado. At all relevant times, Real Goods’ common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and quoted on NASDAQ under the symbol “RGSE.”

3. The Dow Chemical Company (“Dow”) was a publicly-traded chemical company until August 31, 2017, when it became a subsidiary of DowDuPont Inc., a large publicly-traded chemical company. DowDuPont Inc.’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was quoted on the NYSE under the symbol “DWDP.” In April 2019, Dow became a subsidiary of Dow Inc., which is quoted on the NYSE under the symbol “DOW.”

### **Facts**

4. In May 2017, in his capacity as a member of the Board of Directors of Real Goods, “Board Member” learned that Dow was seeking to enter into a joint venture with Real Goods pursuant to which Dow would grant an exclusive license to Real Goods to manage all of Dow’s domestic and international commercial activity for a solar shingle system it had developed.

5. By June 2017, Board Member became aware that Dow had submitted to Real Goods a draft memorandum of understanding about the deal. Board Member knew that the potential deal was material nonpublic information, and that he had a duty to refrain from trading on it while in possession of such information, and a duty to refrain from sharing that information with others who might trade on the information.

6. On August 30, 2017, Real Goods’ Board met and agreed to enter into the deal with Dow and move forward with due diligence to finalize the deal. Board Member attended the meeting and knew about the Board’s decision to move forward with the deal.

7. On Friday, September 1, 2017, Holden and Board Member met for lunch, which they had done regularly for years. During lunch, Board Member told Holden that Real Goods was discussing a joint venture with Dow and that Board Member was optimistic about the potential deal.

Board Member expected Holden to keep this information confidential and not trade on any material nonpublic information regarding Real Goods.

8. On Tuesday, September 5, 2017, the next trading day after the September 1 lunch (Monday was the Labor Day holiday), Holden sold approximately one-third of the investments in his brokerage account and used the proceeds to purchase 12,500 Real Goods shares at an average price of \$.80. Holden's purchase of Real Goods stock was unusual, because Holden typically held more conservative investments in his brokerage account, including mutual funds. In fact, the stated investment objective of Holden's brokerage account was income with capital preservation, the brokerage firm's most conservative option for an investment objective. Also, Holden had not previously held any Real Goods stock.

9. After the close of the market on October 3, 2017, Real Goods publicly announced its exclusive licensing deal with Dow to lead all of Dow's commercial activity for a solar shingle system it had developed. The announcement highlighted that the global market for such products was expected to grow from \$2.5 billion in 2016 to \$4.3 billion by 2021. In response, Real Goods stock rose over 194% from the prior day close to a \$2.37 close the next day.

10. From October 4, 2017 to October 6, 2017, Holden sold all of his Real Goods shares for a total profit of \$18,527.18. He used the proceeds to buy mutual funds and exchange-traded funds, including some of the same mutual funds he had owned before purchasing and selling shares of Real Goods stock.

11. During the relevant time period, Holden and Board Member had a close, personal relationship. Holden and Board Member communicated regularly, both in person and over the telephone. They had a history, pattern, and practice of sharing intimate and confidential details about their personal and professional lives. They relied on each other for support. They had a mutual understanding to maintain in confidence sensitive information shared with each other, including details about health and medical issues, personal relationships, and private family matters. For instance, Board Member told Holden sensitive information about his marriage and other personal relationships. At the same time, Holden shared with Board Member private information about his health and other personal topics. Holden and Board Member also travelled together from time to time and were involved in a joint business investment together.

12. At the time Holden purchased Real Goods shares, he knew that Board Member was a member of the board of directors of Real Goods. At all relevant times, Holden knew, or was reckless in not knowing, that Board Member expected him to maintain in confidence any material nonpublic information regarding Real Goods, including information regarding the pending deal with Dow.

13. Holden's Real Goods trades were based on material, nonpublic information misappropriated from, and in violation of duties of trust and confidence owed to, Board Member. Holden violated a duty of trust and confidence owed to Board Member by using material nonpublic information learned from Board Member to trade in Real Goods.

## **Violation**

14. As a result of the conduct described above, Holden 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'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 \$18,527.18 and prejudgment interest of \$1,348.32 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.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$18,527.18 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.

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 James W. Holden 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 Erin Schneider, Regional Director, Division

of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

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, 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