

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87934 / January 10, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5431 / January 10, 2020

INVESTMENT COMPANY ACT OF 1940
Release No. 33744 / January 10, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19645

In the Matter of

MICHAEL MINDLIN,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTION 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY
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”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Michael Mindlin (“Mindlin” 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 Administrative and Cease-and-Desist Proceedings

Pursuant to Section 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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 arise out of Mindlin’s insider trading in the securities of HCA Holdings, Inc. (“HCA”) in advance of HCA’s positive earnings announcement on July 16, 2014.

2. In June 2014, Mindlin, then a healthcare analyst at a New York-based investment adviser that managed multiple hedge funds (“Adviser A”), learned material nonpublic information about HCA’s financial performance from a close friend who at that time worked as an executive at HCA (the “HCA Executive”). In connection with his duties at HCA, the HCA Executive had reviewed internal reports that indicated that the Affordable Care Act (“ACA”) was having a more positive than previously expected impact on HCA’s earnings for that quarter, and that it also appeared likely to have a more positive than previously expected impact on HCA’s earnings for the entire year. The HCA Executive, who had a history of sharing confidences with Mindlin, then communicated the positive expectation, which was material nonpublic information, to Mindlin, and Mindlin misappropriated it by causing Adviser A to purchase a total of 717,500 shares of HCA stock on June 26 and 27, 2014.

3. After HCA announced its quarterly earnings and revised upward its annual earnings guidance on July 16, 2014, HCA’s stock price increased by over 10 percent. The same day, Adviser A sold its entire position of HCA stock and realized gains of over \$3.3 million.

Respondent

4. **Mindlin**, age 39, was, during the relevant time, a resident of New York, New York. Between approximately January 2009 and March 2016, Mindlin was employed as a healthcare analyst at Adviser A, an investment adviser registered with the Commission. Mindlin’s annual compensation at Adviser A depended, among other things, on the overall performance of the hedge funds managed by Adviser A and Mindlin’s contributions to that performance during each year.

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.

Other Relevant Entities and Individual

5. **HCA**, a Delaware corporation headquartered in Nashville, Tennessee, was at all relevant times one of the largest healthcare companies in the United States, with its business focused on operation of hospitals and surgical centers. At all relevant times, HCA's common stock was listed on the New York Stock Exchange and traded under the symbol "HCA."

6. **Adviser A** was at all relevant times registered with the Commission as an investment adviser. It was headquartered in New York, New York, and advised three hedge funds.

7. **The HCA Executive** at all relevant times resided in Nashville, Tennessee, and worked at HCA's Nashville headquarters, focusing on HCA's contractual arrangements with various healthcare insurance companies. In connection with his job responsibilities, the HCA Executive had access to and reviewed various internal reports relating to HCA's financial performance, including detailed revenue reports and projections.

Background

8. Mindlin and the HCA Executive met approximately in 2005 in a work-related setting and, in the years that followed, became close personal friends. They frequently spoke on the phone and exchanged email and text messages. They also occasionally saw each other in person during their respective work travel and took vacations together. Mindlin also from time to time offered the HCA Executive investment advice.

9. As part of their friendship, Mindlin and the HCA Executive confided in each other about personal matters, including family health concerns and personal relationships. They also discussed various developments and trends in the healthcare industry, including, in 2014, the impact of the ACA on various aspects of that industry.

10. By early June 2014, the HCA Executive had learned through internal HCA reports he was reviewing and through communications with his work colleagues that the positive impact of the ACA on HCA's financial performance would likely be stronger than HCA had announced to investors through its prior earnings guidance. The HCA Executive then mentioned the positive expectation, which was material nonpublic information, during one of his telephone conversations with Mindlin. Then, on June 25, 2014, in the context of discussing a newspaper article on the positive impact of the ACA on the healthcare industry, the HCA Executive forwarded to Mindlin an internal HCA email chain in which the HCA Executive had commented on HCA's rising revenues.

11. While in knowing possession and on the basis of this material nonpublic information obtained from the HCA Executive, Mindlin caused Adviser A to purchase 717,500 shares of HCA stock on June 26 and 27, 2014. By using the information he had obtained from

the HCA Executive in this manner, Mindlin breached a duty of trust or confidence that he owed to the HCA Executive.

12. Mindlin knew or was reckless in not knowing that the information he had obtained from the HCA Executive was material and nonpublic, and that by using it to cause Adviser A to invest in HCA stock he was breaching a duty of trust or confidence. Mindlin knew or reasonably should have known, in light of his and the HCA Executive's history, pattern, and practice of sharing confidences, that the HCA Executive communicated the information to Mindlin with an expectation of confidentiality.

13. On July 16, 2014, HCA issued a press release and filed a Form 8-K with the Commission, pre-announcing higher than anticipated quarterly earnings for the second quarter of 2014 and revising upward its earnings guidance for the entire year from \$6.60-6.85 billion in EBIDTA to \$7.00-7.15 billion in EBITDA. The announcement expressly attributed some of those increases to the impact of the ACA on HCA's financial performance.

14. On the day of the announcement, HCA stock price increased by over 10 percent compared to the prior trading day's closing price, the largest single day price move for that stock in 2014. The trading volume of the stock was the highest for the entire year, with over 14 million shares traded, compared to under 2 million shares traded the preceding trading day.

15. The same day, July 16, 2014, Adviser A sold its entire position of HCA stock, realizing profits of over \$3.3 million.

Violations

16. As a result of the conduct described above, Mindlin 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 Mindlin's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Mindlin 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. Mindlin 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; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

with the right to apply for reentry after three (3) 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, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) 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 (e) 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. Mindlin shall, within thirty (30) days of the entry of this Order, pay to the Securities and Exchange Commission disgorgement of \$60,482, representing the performance-based compensation he received in 2014 as a result of Adviser A's purchase of HCA stock on June 26 and 27, 2014, prejudgment interest of \$13,122, and a civil money penalty in the amount of \$60,482, for a total payment of \$134,086, 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 and 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 Mindlin 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 Joseph G. Sansone, Chief, Market Abuse Unit, Division of Enforcement, 200 Vesey Street, Suite 400, New York, NY 10281.

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 will 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