

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88274 / February 24, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19708

In the Matter of

Charles F. Kerwin,

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 Charles F. Kerwin (“Kerwin” or “Respondent”).

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 finds that:

Summary

1. This matter involves insider trading by Kerwin, an employee of Cisco Systems, Inc. (“Cisco”), a Silicon Valley-based networking technology company. While in possession of material nonpublic information that he learned in the course of his employment, Kerwin

purchased call options and common stock of Acacia Communications, Inc. (“Acacia”), a Massachusetts-based communications technology company, in advance of a July 9, 2019 announcement that Cisco had agreed to buy Acacia. Following the announcement, Acacia’s stock price increased by approximately 35%. As a result of his trading ahead of the announcement, Kerwin obtained illicit profits of \$94,860.55. Two days after the acquisition was announced, Kerwin voluntarily self-reported his Acacia securities trading to the Commission staff.

Respondent

2. Charles F. Kerwin, age 41, currently resides in Cary, North Carolina and is employed by Cisco. From 2007 through July 2019, Kerwin resided in San Jose, California and worked at Cisco’s San Jose, California headquarters. Since June 2016, Kerwin has served as Cisco’s Supply Chain Acquisition Integration Manager. Kerwin’s responsibilities include a limited role in conducting supply chain integration due diligence relating to companies that Cisco expects to acquire.

Relevant Entities

3. Cisco is a California corporation headquartered in San Jose, California. Cisco is a networking technology company. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ Global Select Market under the ticker symbol “CSCO.”

4. Acacia is a Delaware corporation with its principal executive offices in Maynard, Massachusetts. Acacia is a communications technology company. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ Global Select Market under the ticker symbol “ACIA.”

Facts

5. Over the course of his employment at Cisco, Kerwin has participated in trainings regarding Cisco’s insider trading policy. At all relevant times, Kerwin knew that he was prohibited from trading on the basis of material nonpublic information that he learned in the course of his employment, including confidential information about mergers and acquisitions involving Cisco.

6. In the first half of 2019, Cisco confidentially explored a potential acquisition of Acacia. During this period, Cisco and Acacia entered into a mutual confidentiality agreement, and Cisco made multiple non-public offers to acquire Acacia. On June 18, 2019, Cisco increased its offer price to \$65.50 per share from its prior offer. On June 19, 2019, Acacia informed Cisco that its Board was willing to accept Cisco’s offer price and negotiate final terms of the proposed acquisition.

7. Kerwin learned of a potential acquisition on or about June 19, 2019, upon signing a nondisclosure agreement in which he specifically agreed to maintain the confidentiality of

information about the deal. At the time of signing or soon thereafter, Kerwin learned that the deal was for the acquisition of Acacia and was tasked with performing supply chain due diligence.

8. During late June and early July 2019, Kerwin participated in meetings and discussions concerning supply chain due diligence for the deal. Through these meetings and discussions, Kerwin learned, among other things, that Cisco and Acacia had proceeded with completing the due diligence process and that Cisco anticipated receiving approval from its Board on July 8, 2019 with a target date of July 9 or July 10 for the signing of the definitive agreement and acquisition announcement.

9. Kerwin knew or was reckless in not knowing that information about the acquisition was material and nonpublic. Kerwin also knew or was reckless in not knowing that he owed a duty of trust and confidence to Cisco to refrain from trading in Acacia securities while in possession of the confidential information about the acquisition that he had learned in the course of his employment.

10. Between July 2 and July 5, 2019, while in possession of material nonpublic information regarding the Acacia acquisition, Kerwin placed a series of bullish trades in Acacia securities. On July 2, while Acacia stock was trading between \$49.02 and \$50.58 per share, Kerwin purchased 90 Acacia call option contracts with a strike price of \$55 per share and an expiration date of July 19, 2019. On July 5, while Acacia stock was trading between \$47.89 and \$49.37, Kerwin purchased five Acacia call options with a strike price of \$55 per share and an expiration date of November 15, 2019. Also on July 5, Kerwin purchased 50 shares of Acacia common stock through another account.

11. On July 9, 2019, before the market opened, Cisco and Acacia announced to the public that Cisco had entered into a definitive agreement to acquire Acacia for \$70 per share. The day of the announcement, Acacia stock closed at \$64.91 per share, a 35% increase from its \$48.06 closing price on the previous trading day.

12. On July 11, 2019, two days after the acquisition was announced, Kerwin voluntarily reported his Acacia securities trading to the Commission staff and thereafter provided the staff with additional information requested.

13. As a result of his trading in Acacia call options and common stock in advance of the July 9 announcement, Kerwin realized illicit profits of \$94,860.55.

14. As a result of the conduct described above, Kerwin 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.

Respondent's Cooperation

In determining to accept the Offer, the Commission considered Respondent's cooperation afforded the Commission staff.

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

B. Respondent Kerwin shall, within 14 days, pay disgorgement of \$94,860.55 and a civil money penalty of \$47,430.27 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 is not made, interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of the civil money penalty is not made, 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 Charles F. Kerwin 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 Director Monique Winkler, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

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.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$47,430.27, based on his cooperation in a Commission investigation and related enforcement proceeding. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether he knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

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