

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89914 / September 17, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20020

In the Matter of

WCAS Management Corporation,

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 WCAS Management Corporation (“Welsh Carson” 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 it and the subject matter of these proceedings, which are admitted, 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:

A. Introduction

1. This matter concerns violations of the reporting provisions of Section 13(d) of the Exchange Act by five private funds operating under the name Welsh, Carson, Anderson & Stowe ("the WC Funds"). Section 13(d)(2), together with Rule 13d-2 thereunder, require persons who have filed a Schedule 13D (commonly known as a beneficial ownership report) to publicly disclose any material change to facts reported within the schedule by promptly filing an amendment with the Commission. For example, the Commission has deemed any sale of 1% or more of the outstanding securities subject to a Schedule 13D filing to be material, triggering a duty to amend. In addition, a Schedule 13D filer's change in its stated investment intentions can constitute a material change to the qualitative disclosures provided under Item 4 of Schedule 13D and require an amendment. Prompt amendments to Schedule 13D filings allow investors to make informed investment decisions and determine the value of a company's securities.

2. In 2016, Welsh Carson, primarily an investor in privately-held healthcare and technology companies, and the investment manager of the WC Funds, began acquiring shares in Hanger, Inc. (NYSE: HNGR), a prosthetics care company, with the intention of acquiring the company and taking it private. Consistent with this effort, the WC Funds acquired approximately 7% of the company's outstanding common stock and filed a Schedule 13D in July 2016 ("the 2016 filing"), disclosing that they would consider a possible acquisition or restructuring of Hanger. Hanger, however, was not agreeable to Welsh Carson's acquisition interest at that time, and Welsh Carson eventually decided to liquidate the entire position in Hanger, which was accomplished through two large block sales in July and August 2019.

3. In taking steps to dispose of the WC Funds' position in Hanger, Welsh Carson caused the WC Funds to violate the federal regulatory provisions governing timely amendments to Schedule 13D. First, when Welsh Carson abandoned its efforts to take Hanger private and determined to liquidate the entire position in the company, the 2016 filing should have promptly been amended to reflect the change in intent disclosed in the 2016 filing. Second, Welsh Carson, on behalf of the WC Funds, should have filed a Schedule 13D amendment reflecting its sale of 1% or more of Hanger's outstanding common stock when it conducted a large block sale on July 1, 2019. Welsh Carson eventually discovered its failure and filed a Schedule 13D amendment on September 6, 2019, more than two months after decision to liquidate its holdings and the initial block sale.

B. Respondent

4. **WCAS Management Corporation** ("Welsh Cason") is a Delaware corporation and an investment adviser registered with the Commission, with its principal place of business in

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.

New York, New York. Welsh Carson performed management and administrative duties, including making Commission filings, for all five funds.

C. The WC Funds

5. **Welsh, Carson, Anderson & Stowe XII, L.P., Welsh, Carson, Anderson & Stowe XII Delaware, L.P., Welsh, Carson, Anderson & Stowe XII Delaware II, L.P., Welsh, Carson, Anderson & Stowe XII Cayman, L.P., and WCAS XII Co-Investors LLC**, according to filings with the Commission, are private funds pursuant to Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940.

D. Facts

Welsh Carson's Purchase of Hanger Stock and the Initial 13D Filing

6. During the first half of 2016, Welsh Carson became interested in taking a substantial position in Hanger as its stock price had dropped significantly resulting from accounting issues and the company's failure to timely file its periodic reports with the Commission, ultimately resulting in the company's delisting by the New York Stock Exchange. During the same time, a Welsh Carson general partner was having conversations with an officer of Hanger, with whom he had a pre-existing relationship. The Welsh Carson general partner inferred from this conversation that taking a significant position in Hanger would make a Welsh Carson offer to acquire the company more creditable to Hanger management.

7. Welsh Carson's deal team, consisting of several general partners, oversaw the Hanger stock acquisitions, which included a series of substantial purchases of Hanger common stock from May 23 through July 13, 2016. On July 22, 2016, Welsh Carson filed a Schedule 13D, indicating that the WC Funds had a collective ownership of more than 5% of Hanger's outstanding common stock ("the 2016 filing"). More specifically, the filing indicated that the WC Funds had purchased 2,399,385 shares of Hanger common stock, which amounted to a 6.7% position in Hanger.

8. The 2016 filing disclosure indicated that the acquisition of Hanger stock was for "investment purposes" and that based on discussions with Hanger management, the WC Funds could "explore a possible acquisition or restructuring" of Hanger. In response to Item 4(a) of Schedule 13D, which requires a filer to indicate whether there is a plan or proposal to dispose of the securities, the WC Funds stated that they did not have any such plan, although it generally reserved the right to do so.²

² The pertinent disclosure from the Schedule 13D is as follows:

"[T]he Reporting Persons do not have any current plans or proposals which relate to or would result in any of the actions specified in clauses (a) through (j) of Item 4 of Schedule 13D, although the Reporting Persons do not rule out the possibility of effecting or seeking to effect any such actions in the future. Without limiting the generality of any of the above, the Reporting Persons reserves the right ... to at any time or from time to time (i) sell, transfer or otherwise dispose of securities of the Issuer ..."

9. After the acquisition of Hanger stock, Welsh Carson reached out to Hanger management to discuss the possibility of acquiring Hanger and taking it private. Hanger management, however, indicated in conversations with Welsh Carson that Hanger was not interested in being acquired at such time. After the initial overture, communications between Welsh Carson and Hanger management over the next three years were few and far between. In the meantime, Hanger's stock price began increasing and it was eventually relisted on the New York Stock Exchange. Welsh Carson did not take any other significant steps toward acquiring Hanger during this period.

Welsh Carson's Decision to Sell Hanger Stock and Late Filing of the Schedule 13D Amendment

10. By 2019, Hanger's resolution of its accounting issues and the steady increase in its stock price had diminished Hanger as an attractive acquisition candidate. No later than June 2019, Welsh Carson definitively abandoned its plan to acquire Hanger, and made the decision to liquidate the entire Hanger position.

11. On or about June 3, 2019, Welsh Carson engaged an external consultant to assist it in selling the Hanger stock and further contacted its broker-dealer to alert it to the forthcoming sales. A Welsh Carson general partner requested the external consultant for an analysis of trading of Hanger stock since November 2018 and indicated Welsh Carson's intent to liquidate its entire Hanger holdings. On the same day, the general partner contacted Employee-1 (a Welsh Carson employee with substantial finance and operational responsibilities), and told him that the firm was about to sell its Hanger stock. Over the next several weeks, the external consultant provided guidance and assistance to Welsh Carson regarding the disposition of its Hanger stock, including one or more block trades. Welsh Carson had several discussions with the external consultant regarding the potential for block trades of Hanger stock, and on June 17, 2019, the external consultant advised Welsh Carson that the timing for a block trade was good. By no later than June 17, 2019, Welsh Carson had abandoned its interest in acquiring Hanger, formulated a definitive intention to liquidate the entirety of its Hanger holdings, and taken steps to liquidate its Hanger shares. Welsh Carson never amended the 2016 filing to disclose this material change.

12. On July 1, 2019 and August 8, 2019 Welsh Carson disposed of the WC Funds' entire position in Hanger stock through two block sales. In the first block sale, on July 1, 2019, Welsh Carson sold 1,699,385 shares, or the majority of its holdings, equaling approximately 4.6% of the outstanding shares of Hanger common stock. In the second sale, on August 8, 2019, Welsh Carson sold the remaining 700,000 shares, or 1.9% of the outstanding common stock of Hanger.

13. Welsh Carson did not file a Schedule 13D amendment disclosing the Hanger sales until September 6, 2019, more than two months after the disposition that triggered an amendment obligation under Section 13(d)(2) and Rule 13d-2 thereunder. Welsh Carson discovered the failure to file the amendment in late August, after an employee alerted Employee-2 (a Welsh Carson employee who oversaw the firm's compliance function). Employee-2 contacted the firm's outside counsel, who confirmed that a filing was necessary, and Welsh Carson proceeded to file the amendment on behalf of the WC Funds.

14. Welsh Carson should have filed a Schedule 13D amendment promptly after it made the decision to liquidate its Hanger position, as well as after the July 1 block sale.³ Without the benefit of a timely amendment, Hanger investors were deprived of information explaining the potential cause of the surge in trading volume on July 1, 2019, and numerous investors attempted to ascertain the reason for the unusual volume, including by contacting Hanger. Hanger conducted its own inquiry into the unusual trading and contacted Welsh Carson to determine if the firm had sold the shares; Welsh Carson, however, did not respond.

Welsh Carson’s Steps that Resulted in the Delayed Filings of Schedule 13D Amendments

15. Welsh Carson understood its obligation pursuant to Section 13(d) of the Exchange Act and had protocols in place intended to ensure that the WC Funds’ Section 13(d) filings were made timely and accurately.

16. Welsh Carson delegated the responsibility for Section 13(d) compliance to two individuals, Employee-1 and Employee-2, and the firm’s regular outside counsel. Employee-1 and Employee-2 were expected to work with outside counsel to track Section 13D filings and submit all required Schedule 13D filings. Welsh Carson designated Employee 1 as the person to be informed of any transactions that may require a Schedule 13D filing as well as be the person responsible for submitting such filings.

17. Employee-1, by virtue of his role at Welsh Carson, was notified of the firm’s intent to liquidate its entire Hanger position, as well as the specific block sale on July 1, 2019. He further communicated with the external consultant and the firm’s broker-dealer on the plans to sell Hanger stock, ensured that the securities were delivered for settlement shortly after the July 1st sale, and oversaw an itemized summary of the beneficiaries of the sale shortly thereafter. Employee-1 was aware of key events in the transaction from the initial decision to sell through settlement.

18. Notwithstanding firm protocols, Employee-1 believed his role to be essentially ministerial—that he would “shepherd” a filing through to the end once outside counsel told him a filing was required, but that he otherwise had no duty or obligation to determine whether a filing was necessary, even if he had submitted a prior Schedule 13D filing. Similarly, Employee-2 believed that no one person at the firm was tasked with monitoring the firm’s Schedule 13D filings, that neither he nor Employee-1 had any role in evaluating whether a particular transaction implicated Section 13(d), and that it was his expectation that outside counsel would alert the firm if it had a filing obligation. In practice, Welsh Carson essentially outsourced the responsibility to comply with Section 13(d) to outside counsel.

19. Accordingly, the firm fulfilling its obligation to make Schedule 13D filings on behalf of the WC Funds was based on the firm’s outside counsel being retained in connection

³ The material change caused by the July 1 securities transaction triggered an amendment to the 2016 filing that can be characterized as a final or “exit” amendment because the WC Funds’ ceased to be subject to the Section 13(d) beneficial ownership reporting requirements since their ownership of Hanger common stock dropped to 5% or less.

with a particular securities transaction. Where such outside counsel was retained, the firm would expect that it would be alerted as to the steps necessary to ensure compliance and prepare the regulatory filings under Section 13(d), including as to whether a particular filing or amendment was necessary. However, if outside counsel was not retained in connection with securities transactions, the firm did not assess whether a Section 13(d) reporting obligation was triggered. Although the firm's customary practice was to engage outside counsel in connection with securities transactions, the firm did not retain counsel in connection with the 2019 sale of its Hanger position. With the firm looking to its outside counsel, no one at the firm took on the responsibility for ensuring the Hanger stock sales complied with the WC Funds' Section 13(d) obligations. The firm has since implemented a process to address its compliance with Section 13(d).

E. Violations

20. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) together require a filer to promptly amend Schedule 13D when there are material changes or developments in the information previously reported. "Material" is defined as information regarding those matters where there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered. Generic, boilerplate disclosure that indicates the filer is reserving the right to engage in any of the kinds of transactions enumerated in Item 4 (a)-(j) of Exchange Act Rule 13d-101 must be amended promptly when a material change occurs in the facts previously reported. *See, e.g., Tracinda Corporation*, Rel. No. 34-58451, 2008 WL 4068303, at *4 (Sept. 3, 2008) (settled order). Welsh Carson caused the WC Funds to violate Section 13(d)(2) of the Exchange Act and Rule 13d-2 thereunder when Item 4 of the 2016 filing materially changed because Welsh Carson had abandoned its interest in acquiring Hanger, formulated a definitive intention to liquidate the entirety of its Hanger holdings, and taken steps to liquidate its Hanger shares and this material change in the facts set forth in the 2016 filing was not disclosed.

21. Rule 13d-2(a) also requires a filer to amend a Schedule 13D promptly upon any material increase or decrease in the percentage of the class beneficially owned.⁴ According to the Rule, acquisitions or dispositions of a beneficial ownership of securities amounting to one percent or more of the class of securities are considered "material" and trigger an amendment to be filed. Welsh Carson caused the WC Funds to violate Section 13(d)(2) of the Exchange Act and Rule 13d-2 thereunder when it failed to timely amend the 2016 filing after the WC Funds had disposed of one percent or more of the outstanding common stock of Hanger.

⁴ Any delay beyond the date the filing reasonably can be filed may not be prompt. *See In re Cooper Laboratories*, Release No. 34-22171 (June 26, 1985). No state of mind requirement exists for violations of Section 13(d) and the rules thereunder. *See SEC v. Levy*, 706 F. Supp. 61, 63-69 (D.D.C. 1989) (defendant asserting that his attorney "misinformed defendant about his obligation to disclose" information on Schedule 13D held liable because scienter is not an element of such violations). The failure to timely file a required report, even if inadvertent, constitutes a violation. *See Oppenheimer & Co., Inc.*, 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"); *see also KPMG Peat Marwick LLP*, 74 SEC Docket 357, 2001 WL 47245, at *19-20 (Jan. 19, 2001) ("[N]egligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to 'cause' a primary violation that does not require scienter.").

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Welsh Carson shall cease and desist from committing or causing any violations and any future violations of Section 13(d)(2) and Rules 13d-2 thereunder.

B. Welsh Carson shall, within 10 days of the entry of this Order, pay a civil penalty in the amount of \$100,000 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 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 Marvell as the 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 Anita Bandy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, DC 20549-6561A.

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, it shall not argue that it is entitled to, nor shall it 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 it 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.

By the Commission.

Vanessa A. Countryman
Secretary