

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96243 / November 4, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21234

In the Matter of

MICHAEL E. MUELLER,

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 Michael E. Mueller (“Respondent” or “Mueller”).

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 finds¹ that:

Summary

1. This proceeding arises out of insider trading in the securities of Layne Christensen Company ("Layne") by Mueller based on material nonpublic information ("MNPI") provided to him by his friend and broker, John P. Mendes. By at least October 2017, Mendes's close friend, Andre Dabbaghian, told Mendes that Dabbaghian's then employer, Granite Construction Inc. ("Granite"), had identified Layne as an acquisition target and provided Mendes with MNPI regarding the potential acquisition. In November 2017, Mendes tipped Mueller about the impending acquisition of Layne. Based on the MNPI, Mueller authorized Mendes to purchase Layne securities in Mueller's brokerage account. Mueller also recommended that a close relative ("Relative-1") purchase Layne securities, which Relative-1 did.

2. On February 14, 2018, prior to the market open, Layne announced that Granite had agreed to acquire Layne for \$565 million (the "Announcement"). After the Announcement, the price of Layne shares increased by approximately 18 percent from the previous day's close. As a result of Mueller's transactions in Layne's securities, he generated a profit of over \$38,000. As a result of Relative-1's transactions in Layne securities, Relative-1 generated a profit of over \$14,000. Mueller's conduct violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondent

3. Mueller, age 41, resides in Austin, Texas. Mueller has worked in the construction industry for more than 20 years. Mueller has never held any securities licenses and has never been registered with the Commission.

Other Relevant Entities and Individuals

4. Layne was a Delaware corporation with its principal place of business in The Woodlands, Texas. Prior to its acquisition in June 2018, Layne's common stock was listed on the NASDAQ exchange and traded under the symbol "LAYN." Layne's stock was delisted in June 2018.

5. Granite, a Delaware corporation, has its principal place of business in Watsonville, California. Granite is a civil general contractor and construction material producer. Granite's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its common stock is listed and trades on the New York Stock Exchange.

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.

6. Mendes, age 39, resides in Philadelphia, Pennsylvania. From at least January 2013 through September 21, 2022, Mendes was a registered representative and investment adviser representative with a dually-registered broker-dealer and investment adviser. Mendes acted as Mueller's broker from September 2015 to September 21, 2022.

7. Dabbaghian, age 37, is a resident of Santa Cruz, California. From at least November 2015 through mid-2018, Dabbaghian served as the Senior Manager of Corporate Development at Granite.

Background

8. Mueller and Mendes have known each other since middle school and are close friends. In September 2015, Mueller opened a brokerage account at Mendes's employer, which is a broker-dealer and investment adviser registered with the Commission. At all relevant times, Mendes acted as the registered representative on Mueller's brokerage account. Mendes was required to obtain Mueller's authorization to purchase or sell securities in Mueller's account.

9. Mueller has also been friends with Dabbaghian since after Mueller graduated from college.

10. Dabbaghian was involved in Granite's potential acquisition of Layne from at least June 2016 through the date of the Announcement. As an employee of Granite, Dabbaghian was subject to the company's policies and procedures, including those policies relating to insider trading and treatment of MNPI. Under those policies, which were in effect during 2017 and 2018, Dabbaghian owed Granite a duty not to disclose MNPI without a corporate purpose, including information relating to the potential acquisition of another company by Granite. Mendes knew of Dabbaghian's role at and duty to Granite.

11. In breach of his duty to Granite, in or around October 2017, Dabbaghian disclosed specific MNPI relating to Granite's potential acquisition of Layne to Mendes.

12. By at least mid-November 2017, Mendes told Mueller that their mutual friend Dabbaghian was working on structuring and financing a potential acquisition of Layne. Mueller knew that Dabbaghian was involved in the Layne transaction and that the transaction was to be completed in the first quarter of 2018.

13. From at least mid-November 2017 to the date of the Announcement, Mendes communicated MNPI to Mueller relating to the potential Layne transaction by telephone and text message. Mueller understood that the information conveyed by Mendes concerning Layne came from Dabbaghian. During the same period, Mendes recommended that Mueller purchase Layne securities in Mueller's brokerage account.

14. From November 27, 2017 through February 12, 2018, Mueller authorized Mendes to purchase Layne common stock and equity options on his behalf and in a brokerage account in his name, based on the MNPI that Mendes shared with him.

15. In December 2017, based on the MNPI that he had received from Mendes, Mueller recommended that Relative-1 purchase Layne securities. Between December 12, 2017 and December 19, 2017, Relative-1 bought 8,500 shares of Layne stock.

16. Mueller knew, consciously avoided knowing, or was reckless in not knowing that the information provided by Mendes regarding the potential acquisition of Layne was material and nonpublic. Mueller also knew, consciously avoided knowing, or was reckless in not knowing that the MNPI being provided to him was passed in breach of a duty of trust and confidence.

17. Prior to market open on February 14, 2018, Layne and Granite announced that they had entered into a definite agreement under which Granite would acquire all of the outstanding shares of Layne in a stock-for-stock transaction valued at \$565 million, or \$17 per share of Layne's stock.

18. Following the Announcement, Mueller and Relative-1 sold their holdings of Layne securities. As a result of their Layne securities trades, Mueller generated illicit gains of \$38,075.32 and Relative-1 generated profits of \$14,043.55.

19. As a result of the conduct described above, Mueller violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Disgorgement and Civil Penalties

The disgorgement and prejudgment interest ordered in paragraph IV.B is consistent with equitable principles and does not exceed Respondent's net profits from his violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.B shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

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 Mueller 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 pay disgorgement of \$38,075.32, prejudgment interest of \$8,003.38, and a civil penalty of \$52,118.87, 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). Payment shall be made in the following installments: (1) \$32,732.53, within 30 of days

of entry of this Order; (2) \$32,732.52, within 180 days of entry of this Order; and (3) \$32,732.52 within 360 days of entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 and to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Michael E. Mueller 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, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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