

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101160 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22176

In the Matter of

The Bank of Nova Scotia,

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 The Bank of Nova Scotia (“Scotiabank” 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 Respondent 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:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person who directly or indirectly acquires beneficial ownership of more than 5% of a registered class of equity security to file a statement with the Commission disclosing certain information and to file certain updating amendments. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

2. While subject to these reporting requirements due to its beneficial ownership of more than 5% of a registered class of equity securities of several issuers, Respondent violated Section 13(d) by failing to timely file as required on Schedule 13D, or in lieu thereof, on Schedule 13G.

Respondent

3. Scotiabank is a Canadian chartered bank with its principal executive office in Ontario, Canada. Scotiabank is a foreign private issuer whose common shares are registered with the Commission under Section 12 of the Exchange Act and trade on the NYSE (ticker: BNS). At the relevant times discussed herein, Scotiabank acquired greater than 5% beneficial ownership of a registered class of equity securities of at least 22 issuers. Scotiabank's beneficial ownership derived in part from certain of its subsidiaries that include broker-dealers and investment advisers operating worldwide, including certain subsidiaries that are registered with the Commission.

Applicable Legal Framework

4. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) together require any person, including a group, who has acquired beneficial ownership of more than 5% of a class of equity security registered under Section 12 of the Exchange Act to publicly file a Schedule 13D disclosure statement with the Commission, which includes, among other things, the identity of the beneficial owner, the amount of beneficial ownership, and plans or proposals regarding the issuer. During the

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.

time period herein, Rule 13d-1(a) required the Schedule 13D to be filed within 10 days² after the triggering acquisition.

5. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. One of those provisions, Rule 13d-1(b), provides certain specified types of institutional investors, such as registered investment advisers, broker-dealers, and banks, with an alternative to file on Schedule 13G, so long as the institutional investor acquired the securities “in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect” (a “Qualified Institution”). During the time period herein, a Qualified Institution was permitted to file a Schedule 13G, in lieu of filing a Schedule 13D, within 45 days after the end of the calendar year³ in which they made the triggering acquisition (a “Qualified Institution 13G Filer”).⁴ A parent holding company or control person of a Qualified Institution also was permitted to file on this same time table if the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not Qualified Institutions, did not exceed 1% of the class of securities (a “Qualified Control Person”).

6. During the time period herein, Exchange Act Rule 13d-2(b) required that a Qualified Institution or Qualified Control Person 13G Filer file an annual amendment within 45 days after the end of each calendar year⁵ if there were any changes in the information previously reported, unless certain limited exceptions applied. In addition, during the time period herein, if a Qualified Institution or Qualified Control Person 13G Filer acquired beneficial ownership of greater than 10% of a registered class of equity securities, Exchange Act Rule 13d-2(c) required that they file an

² On October 10, 2023, the Commission adopted amendments to the rules governing beneficial ownership reporting under Sections 13(d) and 13(g) to update and shorten certain filing deadlines (the “2023 Amendments”). Modernization of Beneficial Ownership Reporting, SEC Release No. 34-98704 (Oct. 10, 2023), 88 Fed. Reg. 76896 (Nov. 7, 2023). Among other provisions, the 2023 Amendments shortened the deadline for filing the initial statement on Schedule 13D from 10 days to 5 business days. Id. at 76897, 76906. Compliance with this new deadline is required as of February 5, 2024. See id. at 76942.

³ The 2023 Amendments shortened this filing deadline to within 45 days after the end of the calendar quarter in which beneficial ownership first exceeds 5%. See id. at 76897, 76916. Compliance with this new requirement is required beginning September 30, 2024. See id. at 76942.

⁴ During the time period herein, under Rule 13d-1(b), Qualified Institutions did not need file a statement with the Commission unless they beneficially owned more than 5% of a class as of the end of the calendar year in which they acquired the securities.

⁵ The 2023 Amendments replaced this requirement with a requirement to file an amendment within 45 days after the end of a calendar quarter in which a material change occurred to the information previously set forth. See id. at 76898, 76921. Compliance with this new requirement is required beginning September 30, 2024. See id. at 76942.

amendment within 10 days after the end of the first month in which the 10% threshold was crossed if beneficial ownership continued to exceed 10% at month-end; thereafter, amendments were required to be filed within 10 days after any month-end at which beneficial ownership had increased or decreased by more than 5% from that previously reported.⁶

7. Under Section 13(d) of the Exchange Act and the application of Rule 13d-3, a beneficial owner of a security includes “any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise” has or shares voting or investment power with respect to such security. More than one person may be a beneficial owner of the same securities. Because a beneficial owner, under this standard, includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership held by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.⁷

8. There is no state of mind requirement for violations of Section 13(d) and the rules thereunder.⁸ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁹

Respondent Failed to Comply with Filing Obligations Under Section 13(d)

9. Between 2018 and 2023, Scotiabank failed to timely file initial statements pursuant to Exchange Act Section 13(d) and Rule 13d-1 thereunder as required after acquiring beneficial ownership of more than 5% of a registered class of equity securities with respect to at

⁶ The 2023 Amendments replaced this requirement with a requirement to file an amendment within five business days after the end of the month in which beneficial ownership first exceeds 10%, and thereafter upon any deviation by more than 5% of the class, with these requirements applying if the thresholds were crossed at any time during a month. See id. at 76898, 76924. Compliance with this new requirement is required beginning September 30, 2024. See id. at 76942.

⁷ See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), 63 Fed. Reg. 2854, 2857 (Jan. 16, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

⁸ See, e.g., SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct”).

⁹ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *2 (May 19, 1980) (Commission opinion) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); see generally Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

least 22 issuers. During the time period herein, Scotiabank was required to file a Schedule 13D within 10 days after acquiring greater than 5% beneficial ownership with respect to each of these issuers under Rule 13d-1(a), or in lieu thereof, file a Schedule 13G, which would be due at the latest within 45 days after the end of the relevant calendar year if eligible to file as a Qualified Institution 13G Filer under Rule 13d-1(b).

10. From at least 2018 until 2023, Scotiabank failed to monitor and aggregate its beneficial ownership across its subsidiaries.¹⁰ This resulted in Scotiabank failing to timely file as required under Section 13(d) and the rules thereunder with respect to at least 11 issuers. On December 26, 2023, Scotiabank filed Schedule 13G statements intended as Qualified Institution 13G Filer filings under Rule 13d-1(b) with respect to each of the 11 issuers that reported beneficial ownership of more than 5% as of December 30, 2022.

11. For example, Scotiabank's failures to file included:

- Scotiabank's acquisition of beneficial ownership of more than 5% of Bridge Investment Group Holdings Inc.'s registered class of Class A common stock (NYSE: BRDG) as of at least December 30, 2021 through December 30, 2022;
- Scotiabank's acquisition of beneficial ownership of more than 5% of CAE Inc.'s registered class of common shares (NYSE: CAE) as of at least December 31, 2018 through December 30, 2022;
- Scotiabank's acquisition of beneficial ownership of more than 5% of Descartes Systems Group Inc.'s registered class of common shares (Nasdaq: DSGX) as of at least December 31, 2018 through December 30, 2022;
- Scotiabank's acquisition of beneficial ownership of more than 5% of Gildan Activewear Inc.'s registered class of common shares (NYSE: GIL) as of at least December 31, 2018 through December 30, 2022; and
- Scotiabank's acquisition of beneficial ownership of more than 5% of Open Text Corporation's registered class of common stock (Nasdaq: OTEX) as of at least December 31, 2018 through December 30, 2022.

12. In addition, from at least 2018 until 2023, Scotiabank also failed to have systems that monitored its beneficial ownership resulting from rehypothecable securities for which it had or shared investment and/or voting discretion, and to the extent Scotiabank's subsidiaries individually monitored for greater than 5% beneficial ownership during this time period, such subsidiaries similarly failed to monitor for or include rehypothecable securities for which they had beneficial

¹⁰ During this period, Scotiabank did not rely upon and did not meet the conditions concerning independence in organizational structure of the parent and related entities, as a result of which Scotiabank was required to aggregate beneficial ownership across subsidiaries when reporting beneficial ownership.

ownership in performing such calculations. As a result, Scotiabank failed to timely file as required under Section 13(d) and the rules thereunder with respect to at least 11 issuers.

13. For example, Scotiabank's failures to file include:

- Scotiabank's acquisition of beneficial ownership of more than 5% of Bio-Rad Laboratories, Inc.'s registered class of Class A common stock (NYSE: BIO) as of at least December 30, 2022;
- Scotiabank's acquisition of beneficial ownership of more than 5% of Fortis, Inc.'s registered class of common shares (NYSE: FTS) as of at least December 30, 2022;
- Scotiabank's acquisition of beneficial ownership of more than 5% of GoodRx Holdings Inc.'s registered class of Class A common stock (Nasdaq: GDRX) as of at least December 30, 2022;
- Scotiabank's acquisition of beneficial ownership of more than 5% of Manulife Financial Corp.'s registered class of common shares (NYSE: MFC) as of at least December 30, 2022; and
- Scotiabank's acquisition of beneficial ownership of more than 5% of Vermilion Energy Inc.'s registered class of common shares (NYSE: VET) as of at least December 30, 2022.

14. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder.

Respondent's Remedial Efforts

15. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff, including Respondent's voluntary self-reporting of its violations.

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 13(d) of the Exchange Act and Rule 13d-1 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$375,000 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 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 The Bank of Nova Scotia 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 Thomas Smith, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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