

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 101164 / September 25, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22180**

**In the Matter of**

**Peter M. Thomas,**

**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 Peter M. Thomas (“Thomas” 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, 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<sup>1</sup> that:

#### Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to these reporting requirements as a greater than 10% beneficial owner of the registered class of equity securities of Switch, Inc. ("Switch"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Switch's securities.

#### Respondent

3. Thomas, age 74, is a resident of Las Vegas, Nevada. He was a greater than 10% beneficial owner of Switch's Class A common stock since it was registered with the Commission under Section 12 in October 2017 in connection with its initial public offering and remained a greater than 10% beneficial owner until at least March 26, 2020.

#### Issuer

4. Switch is a Nevada corporation with its principal place of business in Las Vegas, Nevada. Switch's Class A common stock was registered with the Commission under Section 12 of the Exchange Act and traded on the New York Stock Exchange (ticker: SWCH) from October 2017 to December 2022. In December 2022, Switch completed a previously announced transaction to be acquired, and its stock ceased being publicly traded and registered with the Commission.

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<sup>1</sup> 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.

## Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder,<sup>2</sup> subject to limited exceptions.

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 report within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 (as applicable) during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

7. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.<sup>3</sup> The failure to timely file a required report, even if inadvertent, constitutes a violation.<sup>4</sup>

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<sup>2</sup> 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.

<sup>3</sup> See, e.g., SEC v. e-Smart Technologies, Inc., 82 F. Supp. 3d 97, 104 (D.D.C. 2015) (scienter is not required to establish a violation of Section 16(a) of the Exchange Act); cf. 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”).

<sup>4</sup> 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”); 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

**Respondent Failed to File Required Section 16(a) Reports on a Timely Basis**

8. Since Switch’s Class A common stock became registered with the Commission on October 5, 2017 until at least March 26, 2020, Respondent was subject to the reporting requirements of Exchange Act Section 16(a) as a greater than 10% beneficial owner. Respondent timely filed an initial statement of beneficial ownership on Form 3 on October 5, 2017.

9. Subsequently, Respondent failed to file any of the required reports on Forms 4 for his transactions in Switch’s securities between September 11, 2018 and January 8, 2019. On February 14, 2019, Respondent filed a Form 4 and Form 5 to report open-market purchases or sales of Switch’s Class A common stock on 25 dates that were required to be reported within two business days of the date of the transactions. Thereafter, Respondent also failed to file on a timely basis certain conversions of Class B common stock to Class A common stock and other transactions that were also required to be reported on Form 4 within two business days. Respondent’s late reports include transactions executed on the following dates:

<b><u>Form Type</u></b>	<b><u>Date of Trans.</u></b>	<b><u>Due Date</u></b>	<b><u>Date Filed</u></b>
5	09/11/2018	09/13/2018	02/14/2019
5	09/17/2018	09/19/2018	02/14/2019
5	09/19/2018	09/21/2018	02/14/2019
5	09/20/2018	09/24/2018	02/14/2019
5	09/21/2018	09/25/2018	02/14/2019
5	09/24/2018	09/26/2018	02/14/2019
5	10/02/2018	10/04/2018	02/14/2019
5	10/04/2018	10/09/2018	02/14/2019
5	10/09/2018	10/11/2018	02/14/2019
5	11/05/2018	11/07/2018	02/14/2019
5	11/08/2018	11/13/2018	02/14/2019
5	11/09/2018	11/14/2018	02/14/2019
5	11/12/2018	11/14/2018	02/14/2019
5	11/13/2018	11/15/2018	02/14/2019

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13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003), 68 Fed. Reg. 25788, 25792 (May 13, 2003) (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
5	11/14/2018	11/16/2018	02/14/2019
5	11/15/2018	11/19/2018	02/14/2019
5	11/16/2018	11/20/2018	02/14/2019
5	11/20/2018	11/23/2018	02/14/2019
5	11/23/2018	11/27/2018	02/14/2019
5	11/28/2018	11/30/2018	02/14/2019
5	11/30/2018	12/04/2018	02/14/2019
5	12/04/2018	12/06/2018	02/14/2019
5	12/14/2018	12/18/2018	02/14/2019
4	01/04/2019	01/08/2019	02/14/2019
4	01/08/2019	01/10/2019	02/14/2019
4	07/02/2019	07/05/2019	12/2/2019
4	11/15/2019	11/19/2019	11/21/2019

10. Respondent's late-reported purchases and sales between September 11, 2018 and January 8, 2019 had an aggregate market value of over \$600,000.

11. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

**Respondent's Remedial Efforts**

12. In determining to accept Respondent's Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded to 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 cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$77,000 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 Peter M. Thomas 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, 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