

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101168 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22184

In the Matter of

Celsius Holdings, Inc.,

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 Celsius Holdings, Inc. (“Celsius” 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 issuer reporting requirements and beneficial ownership reporting requirements of the federal securities laws.
2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a class of equity security registered under Section 12 of the Exchange Act, and any beneficial owners of greater than 10% of such class (collectively, "insiders"), 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.
3. Reporting issuers are required to disclose in the proxy statement for the issuer's annual meeting, or its annual report, Section 16 reporting delinquencies by its insiders. Although insiders remain responsible for the timeliness and accuracy of their required Section 16(a) reports, the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing." Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003), 68 Fed. Reg. 25788, 25789 (May 13, 2003).
4. Since 2017, Respondent has been a reporting issuer and its insiders have been required to file Section 16(a) reports. On numerous occasions, Respondent's officers and directors violated Section 16(a) by failing to timely file required reports. Respondent failed to comply with its disclosure obligations to report such delinquencies. In addition, Respondent was a cause of many of the Section 16(a) violations by its officers and directors as a result of Respondent's negligence in performing certain tasks it voluntarily agreed to undertake in connection with the preparation and filing of Section 16(a) reports on their behalf.

Respondent

5. Celsius is a Nevada corporation with its principal place of business in Boca Raton, Florida. Celsius common stock is and has been at all relevant times registered with the Commission

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.

under Section 12 of the Exchange Act and trades on the NASDAQ (ticker: CELH). Celsius is required to file annual reports on Form 10-K pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Applicable Legal Framework

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 his or her beneficial ownership of all securities of the issuer. 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 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions). Insiders are required to file the reports electronically on EDGAR. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.²

7. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rule 13a-1 requires such issuers to file annual reports with the Commission containing specified information. In 1991, the Commission adopted Item 405 of Regulation S-K to help address compliance with Section 16(a) by requiring reporting issuers to disclose in annual proxy and information statements or annual reports information regarding delinquent Section 16(a) filings by insiders.³

² 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. 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”); SEC Release No. 34-47809, 68 Fed. Reg. at 25792 (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). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19 (Jan. 19, 2001) (Commission opinion) (“[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.”).

³ Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-28869, 56 Fed. Reg. 7242, 7259-60 (Feb. 21, 1991); 17 C.F.R. § 229.405. The Commission amended Item 405 in FAST Act Modernization and Simplification of Regulation S-K, SEC Release 33-10618 (Mar. 20, 2019), 84 Fed.

8. Item 405 of Regulation S-K specifically requires an issuer to disclose any late filing or known failure by an insider to file a report required by Section 16(a). In determining whether such disclosure is required, the issuer may rely on a review of the Forms 3 and 4 filed during the most recent fiscal year, and Forms 5 filed with respect to the most recent fiscal year, by the issuer's insiders. Section 16(a) reports are posted on EDGAR, and thus are readily available to issuers to evaluate their timeliness. A "known" failure to file includes, but is not limited to, a failure to file a Form 3, which is required of all insiders, and a failure to file a Form 5 in the absence of a written representation that no Form 5 is required, unless the issuer otherwise knows that no Form 5 is required. The Item 405 disclosure of any late filings or known failures to file must (i) identify by name each insider who failed to file on a timely basis Forms 3, 4, or 5 during the most recent fiscal year or prior fiscal years and (ii) set forth the number of late reports, the number of late-reported transactions, and any known failure to file. An issuer does not have an obligation under Item 405 to research or make inquiry regarding delinquent Section 16(a) filings beyond the review specified in the item.

9. An issuer that files annual reports with the Commission on Form 10-K, such as Respondent, is required to include the Item 405 disclosure in its Form 10-K, or incorporate by reference to its Form 10-K the Item 405 disclosure made in the issuer's definitive proxy or information statement for its annual meeting of shareholders for the election of directors, if that definitive proxy or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. To the extent disclosure is required by Item 405, materially false, misleading, or omitted Item 405 disclosures constitute a violation of Section 13(a) of the Exchange Act and Rule 13a-1. No showing of scienter is necessary to establish a violation of Section 13(a).⁴

Respondent Failed to Comply with Item 405 Disclosure Requirements

10. As an issuer required to file annual reports on Form 10-K, Respondent is and has been at all relevant times required to disclose information concerning delinquent Section 16(a) filings by its insiders to the extent required by Item 405 of Regulation S-K.

11. Respondent failed to do so for multiple fiscal years, including:

a. Respondent failed to make the required Item 405 disclosure for its 2018 fiscal year, improperly stating that "based on our review of such reports, during the year ended December 31, 2018 the Reporting Persons complied with all applicable Section 16(a) reporting requirements, except that [Director 1]'s Form 3 was not filed until July 26, 2018 due to an administrative oversight." (Celsius Form 10-K filed on March 14, 2019.) However, during such fiscal year, multiple Celsius insiders filed numerous untimely Form 4 reports, which Respondent failed to disclose as required. Respondent was required to review the forms filed and identify by

Reg. 12674 (Apr. 2, 2019), which among other things, permits an issuer to omit the disclosure if there are no Section 16(a) delinquencies to report.

⁴ SEC v. McNulty, 137 F.3d 732, 740-41 (2d Cir. 1998).

name each insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do.

b. Respondent failed to make the required Item 405 disclosure for its 2019 fiscal year, improperly stating that “based on our review of such reports, during the year ended December 31, 2019 the Reporting Persons complied with all applicable Section 16(a) reporting requirements.” (Celsius Form 10-K filed on March 12, 2020.) In fact, during such fiscal year, multiple Celsius officers and directors filed numerous untimely Form 4 reports, which Respondent was required to disclose pursuant to Item 405. Respondent was required to review the forms filed and identify by name each insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do.

c. Respondent failed to make the required Item 405 disclosure for its 2020 fiscal year, improperly stating that “based on our review of such reports, during the year ended December 31, 2020 the Reporting Persons complied with all applicable Section 16(a) reporting requirements.” (Celsius Form 10-K filed on March 11, 2021.) In fact, during such fiscal year, multiple Celsius insiders filed numerous untimely required Form 4 reports and one new director filed an untimely required Form 3, which Respondent was required to disclose pursuant to Item 405. Respondent was required to review the forms filed and identify by name each insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do.

d. Respondent failed to make the required Item 405 disclosure for its 2021 fiscal year, improperly omitting any disclosure. An issuer may only omit the disclosure if there are no Section 16(a) delinquencies to report. In fact, during such fiscal year, multiple Celsius insiders filed numerous untimely required Section 16(a) reports and four new directors filed untimely required Forms 3, which Respondent was required to disclose pursuant to Item 405. Respondent was required to review the forms filed and identify by name each insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do.

12. As a result of the conduct described above, Respondent failed to comply with its disclosure obligation to the extent required by Item 405 and violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Respondent Was a Cause of Certain Violations of Section 16(a) by its Insiders

13. Although the Commission encourages the practice of many issuers to assist insiders in complying with Section 16(a) filing requirements, issuers who voluntarily accept certain

responsibilities and then act negligently in the performance of those tasks may be liable as a cause of Section 16(a) violations by insiders.

14. Since at least 2018, Respondent has voluntarily agreed with its officers and directors to perform certain tasks in connection with the filing of Section 16(a) reports on their behalf, including the preparation and filing of all such reports for which Respondent had timely notification of the required information concerning the transactions. However, on multiple occasions, Respondent acted negligently in its performance of such tasks and was a cause of Celsius's officers and directors failing to file Section 16(a) reports on a timely basis. The procedures and practices employed by Respondent were insufficient to the extent that those practices resulted in the recurrent failure to meet the two-business day filing deadline.

15. For example, between February 2018 and August 2023, Respondent's officers and directors in the aggregate filed more than 100 untimely Forms 4 to report transactions related to award grants, vesting, exercises of restricted stock units and options, and open-market purchases or sales. For virtually all of these late-reported transactions, Respondent had received timely notification of or otherwise possessed the necessary information for such filings but failed to prepare and file the reports within the required time frame. In addition, for many of these untimely Forms 4, Respondent improperly marked certain transactions, such as stock and option awards, with the code indicating the transaction was "voluntarily reported earlier than required" when in fact such transactions were required to be reported on Form 4 within two business days.

16. As a result of the conduct described above, Respondent was a cause of certain violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by Respondent's insiders.

Respondent's Remedial Efforts

17. In determining to accept the Offer, the Commission considered certain 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 Celsius cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 16(a) of the Exchange Act and Rules 13a-1 and 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 \$200,000 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 Celsius Holdings, Inc. 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.

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