

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101173 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22189

In the Matter of

**Bain Capital Credit
Member, LLC**

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 Bain Capital Credit Member, LLC (“Bain Capital Credit Member” 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:

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.

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 Rule 13d-1 thereunder together require that any person who directly or indirectly acquires beneficial ownership of more than five percent of a voting class of any equity security registered under Section 12 of the Exchange Act file a statement with the Commission. During the relevant time, beneficial owners could comply with this requirement by filing a Schedule 13D with the Commission within 10 days after they acquired the requisite amount of beneficial ownership.

2. While subject to this reporting requirement, Bain Capital Credit Member and two of its affiliates did not timely file two reports of their beneficial ownership of certain securities. Bain Capital Credit Member took responsibility for making beneficial ownership filings on behalf of itself and the two affiliates. As a result, Bain Capital Credit Member violated and caused its affiliates to violate Section 13(d) and Rule 13d-1 thereunder.

Respondent

3. Bain Capital Credit Member is a Delaware limited liability company based in Boston, Massachusetts. Bain Capital Credit Member serves as the general partner to certain of its affiliates, some of which are affiliated investment funds and some of which are entities that serve as the general partner to affiliated investment funds. In the Relevant Period, Bain Capital Credit Member took responsibility for making beneficial ownership filings on behalf of itself and certain of its affiliates.

Legal Framework

4. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) thereunder together require any person who has directly or indirectly acquired beneficial ownership of more than five percent of any voting class of equity security registered under Section 12 of the Exchange Act to file a statement with the Commission disclosing certain information specified in a Schedule 13D. During the relevant time, individuals or entities could comply with this requirement by filing a Schedule 13D with the Commission within 10 days after they acquired the requisite amount of beneficial ownership.² Section 13(d) allows shareholders and potential investors to evaluate changes in substantial shareholdings.³

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 five business days, which became effective on February 5, 2024. *Id.* at 76897, 76906.

³ See generally *GAF Corp. v. Milstein*, 453 F.2d 709, 717 (2d Cir. 1971) *cert. denied*, 406 U.S. 910 (1972); see also *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1167 (D.C. Cir. 1978) *cert. denied*, 440 U.S. 913 (1979), *citing*, S. Rep. No. 550, 90th Cong., 1st Sess. 1 (1967) and H.R. Rep. No. 1711, 90th Cong., 2d Sess. 2 (1968) (“The purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased

5. There is no state of mind requirement for violations of Section 13(d) and the rules thereunder.⁴ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁵

Facts

6. On June 11, 2020, an affiliate of Bain Capital Credit Member (“Affiliate 1”) received 2,883,356 shares of Bristow Group Inc. (“Bristow”) stock, representing beneficial ownership of 9.3 percent of the outstanding class. Bain Capital Credit Member indirectly serves as the general partner to investment funds that hold economic interests in Affiliate 1. Affiliate 1 reportedly received these shares through an extended bankruptcy and a subsequent merger of Bristow with a publicly-traded competitor. Bain Capital Credit Member took responsibility for making beneficial ownership filings for itself and Affiliate 1. Within a few days of the transaction, Bain Capital Credit Member identified the obligation to make a Section 13 filing and spoke with outside counsel about making a filing. The Schedule 13D was required to be filed within 10 days of Bain Capital Credit Member’s and Affiliate 1’s beneficial ownership crossing the five percent threshold. The filing was untimely, however, as Bain Capital Credit Member did not file the required Schedule 13D until July 1, 2020, which was more than 10 days of the acquisition.

7. During the investigation of the Bristow filing, Bain Capital Credit Member undertook a review of its other Schedule 13D filings at the Commission staff’s request and voluntarily reported that it had made an untimely Schedule 13D filing regarding a different affiliate’s (“Affiliate 2”) position in Algoma Steel Group Inc. (“Algoma”), a foreign private issuer with securities listed on NASDAQ. Affiliate 2 reportedly received these shares after an extended Canadian bankruptcy of Algoma and subsequent merger with a publicly-listed special purpose acquisition company. Bain Capital Credit Member reported that on February 17, 2022, this affiliate received 6,997,852 shares of Algoma stock, which were purchased for the accounts of Affiliate 2’s clients. These shares, together with the Algoma stock that the affiliate already owned at the time, represented a beneficial ownership of 13.6 percent of the outstanding class of Algoma stock. Bain Capital Credit Member took general responsibility for making beneficial ownership filings for this affiliate. By early April 2022, Bain Capital Credit Member identified the need to make a Section 13 filing and evaluated with outside counsel the need to make a filing. The Schedule 13D was required to be filed within 10 days of the affiliate’s beneficial ownership crossing the five percent threshold. The filing was untimely, however, as Bain Capital Credit

their interest in the equity securities of a company by a substantial amount, within a relatively short period of time.”).

⁴ See, e.g., *Savoy Indus.*, 587 F.2d at 1167 (“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.”).

⁵ Cf. *Oppenheimer & Co., Inc.*, 47 SEC 286, 1980 WL 26901, at *1–2 (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 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).

Member did not file the required Schedule 13D until April 13, 2022, which was more than 10 days of the acquisition.

8. Both investments were managed by a business unit associated with Bain Capital Credit Member that specializes in credit transactions, does not typically invest in public equities, and therefore does not typically file Schedule 13D reports. In some private credit transactions, entities may not have knowledge of their precise holdings in an issuer until after a transaction closes, which in these instances affected the timely monitoring of changes to holdings of public securities. During the global COVID-19 pandemic, the unit's internal processes did not timely identify the need to make the Bristow and Algoma filings, and as a result, Bain Capital Credit Member did not file the Schedule 13D reports for these transactions timely.

9. Since staff contacted Bain Capital Credit Member regarding the untimely Schedule 13Ds, Bain Capital Credit Member has taken steps to help ensure Schedule 13D filings involving credit restructuring investments are timely filed, including by enhancing its monitoring systems.

Violations

10. As a result of the conduct described above, Respondent violated, and caused its affiliates to violate, Section 13(d)(1) of the Exchange Act and Rule 13d-1 thereunder.

Remedial Efforts and Cooperation

11. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent after being approached by Commission staff, as well as cooperation afforded to the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Bain Capital Credit Member, LLC cease and desist from committing or causing any violations and any future violations of Section 13(d)(1) of the Exchange Act and Rule 13d-1 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$130,000 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 Bain Capital Credit Member 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 D. Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$130,000, based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek

an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman
Secretary