

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101174 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22190

In the Matter of

FIG 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 FIG LLC (“Fortress” 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 together require that any person who directly or indirectly acquires beneficial ownership of more than five percent of any voting class of 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 acquiring the requisite amount of beneficial ownership. Whenever a material change occurred to the facts set forth in any Schedule 13D so filed, the disclosure statement was required to have been truthfully amended to reflect that material change and filed promptly.

2. Section 16(a) of the Exchange Act requires officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10 percent of such class of equity security, to file certain reports of securities holdings and transactions. Enactment of Section 16(a) was motivated by a belief that “the most potent weapon against the abuse of insider 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). The obligation to make Section 16 filings applies irrespective of profits or the filer’s reasons for engaging in the transactions.

3. While subject to these reporting requirements, Fortress and its affiliates did not timely file four reports of their beneficial ownership of certain securities. Fortress took responsibility for making the beneficial ownership filings on behalf of itself and its affiliates. As a result, Fortress violated and caused its affiliates to violate Sections 13(d) and 16(a) and Rules 13d-1, 13d-2, and 16a-3 thereunder.

Respondent

4. Fortress or FIG LLC is a Delaware limited liability company with a principal place of business in New York, New York. Fortress has been registered as an investment adviser with the Commission since 2004 and according to a Form ADV filed with the Commission in July 2024, conducts business under the name Fortress Investment Group.

Legal Framework

5. 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

6. During the time period relevant to this matter, Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder required a person who had filed a Schedule 13D to file an amendment “promptly”⁴ if any material change occurred in the facts set forth in that filing, including but not limited to, any material increase or decrease in the percentage of the class beneficially owned. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of a class of equity securities is deemed material by Rule 13d-2(a).

7. Section 16(a) of the Exchange Act and Rule 16a-3 apply to every officer, director, and greater than 10 percent beneficial owner⁵ of any class of equity security registered pursuant to Exchange Act Section 12 (collectively referred to herein as “insiders”). Pursuant to Rule 16a-3(a), 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, Section 16(a)(2) of the Exchange Act and Rule 16a-3 thereunder require that 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. These same provisions require that insiders also file Form 4 reports disclosing certain transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction. Pursuant to Rule 16a-3(g)(1), transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and

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

⁴ Although the term “promptly” was not defined under the rules in effect at the time of the violation, any delay in filing beyond the date the filing reasonably could have been made may not have been prompt. *Amendments to Beneficial Ownership Reporting Requirements*, SEC Rel. No. 34-39538, 1998 WL 7449, at *3 n.14 (Jan. 12, 1998).

⁵ For purposes of determining who is a greater than 10 percent beneficial owner required to report under Section 16(a), Rule 16a-1(a)(1) incorporates the standards in Exchange Act Rule 13d-3, which specifies that a “beneficial owner” includes any person who directly or indirectly has or shares voting or investment power, regardless of whether they have any economic interest in the securities. More than one person may be a beneficial owner of the same securities.

grants or awards of securities from the issuer. In addition, according to Rule 16a-3(f)(1), 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 corporate insider has previously reported all such transactions).

8. There is no state of mind requirement for violations of Sections 13(d) and 16(a) and the rules thereunder.⁶ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁷

Facts

Gannett

9. On February 18, 2020, Fortress made a Schedule 13D filing disclosing that Fortress and two of its affiliates were beneficial owners of 7,449,581 shares of Gannett Co., Inc. ("Gannett") stock, representing 5.7 percent of the outstanding class. Fortress and its affiliates reportedly were issued the shares or options to acquire the shares in connection with the closing of a merger between Gannett and another entity. The Schedule 13D was required to be filed within 10 days of the reported "Date of Event which Requires Filing of this Statement" ("Event Date"), which the filing listed as November 19, 2019. The filing was not made until February 18, 2020, however, and was therefore untimely.

10. Fortress took responsibility for making the beneficial ownership filing for itself and its affiliates. Due to an internal error, Fortress did not initially recognize the requirement to file a Schedule 13D, because the shares received as a result of the merger created a less than five percent beneficial ownership interest in Gannett. Specifically, a Fortress affiliate already held shares of the subsidiary representing a less than five percent ownership interest, and those shares were not initially considered when tracking the ownership interest following the merger. The additional share acquisition as a result of the merger caused Fortress and its affiliates to hold a beneficial ownership interest in Gannett exceeding the five percent threshold. Sometime after the merger, Fortress' Compliance Department identified the need to make the Schedule 13D filing.

⁶ 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."); *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).

⁷ 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).

PLBY Group

11. On March 3, 2021, Fortress filed a Schedule 13D disclosing its and certain affiliates' beneficial ownership of 3,625,202 shares of PLBY Group, Inc. ("PLBY Group"), which represented 10.8 percent of the outstanding shares. In the filing, Fortress represented that the Event Date for the filing was February 10, 2021, and that the shares were received in connection with a merger. The Schedule 13D also disclosed that a Fortress affiliate had entered into a lock-up and director voting agreement with respect to the shares, which was also disclosed in a Form 8-K filed by PLBY Group on February 16, 2021. Fortress took responsibility for making beneficial ownership filings for itself and its affiliates concerning the beneficial ownership interest in PLBY Group.

12. Due to an internal error, the received PLBY Group shares were not included in an internal monitoring report used by Fortress to prepare Schedule 13D filings until February 23, 2021. The Schedule 13D should have been filed within 10 days of February 10, 2021, but was not filed until March 3, 2021 and was therefore untimely.

13. On March 3, 2021, Fortress also filed a Form 3 disclosing the beneficial ownership in 3,625,202 shares of PLBY Group that was disclosed in the March 3, 2021 Schedule 13D. The filing listed a Date of Event Requiring Statement of February 10, 2021. The Form 3 should have been filed within 10 days of February 10, 2021 and was untimely.

14. Since the filing of the initial PLBY Group Schedule 13D, Fortress has filed multiple amendments to that initial filing. On May 17, 2022, Fortress filed a fourth Schedule 13D amendment reporting that it and its affiliates held a beneficial ownership interest in 1,817,620 shares of PLBY Group, representing four percent of the outstanding class of shares. This reflected a 1.2 percent decrease from the beneficial ownership interest reported in the previous Schedule 13D Amendment filed on September 30, 2021.

15. The filing represented that the Event Date was May 2, 2022. The change in beneficial ownership interest was due to a combination of disbursements of PLBY Group shares by Fortress and its affiliates and an increase in the outstanding share count of PLBY Group common stock. As a result, the beneficial ownership interest held by Fortress and its affiliates had changed by more than one percent since the filing of the previous Schedule 13D amendment. Fortress and its affiliates should have filed the Schedule 13D amendment promptly after the May 2, 2022 Event Date, but did not make the filing until May 17, 2022, and it was therefore submitted untimely.

Violations

16. As a result of the conduct described above, Respondent violated, and caused its affiliates to violate, Sections 13(d)(1), 13(d)(2), and 16(a) of the Exchange Act and Rules 13d-1, 13d-2, and 16a-3 thereunder.

Remedial Efforts

17. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent, 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's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent FIG LLC cease and desist from committing or causing any violations and any future violations of Sections 13(d)(1), 13(d)(2), and 16(a) of the Exchange Act and Rules 13d-1, 13d-2, and 16a-3 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 Fortress 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.

By the Commission.

Vanessa A. Countryman
Secretary