

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101177 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22193

In the Matter of

Pedro C. Gonzalez

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 Pedro C. Gonzalez (“Gonzalez” 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 him 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 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 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 acquiring the requisite amount of beneficial ownership.

2. Certain persons that have not made an acquisition recognized by Section 13(d)(1) may be subject to Section 13(g) of the Exchange Act and could file a short-form disclosure statement on Schedule 13G within 45 days of the end of the calendar year if their beneficial ownership exceeded five percent as of the year end.

3. 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% of such class, 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.

4. Respondent was an officer, director, and significant shareholder of Stratus Capital Corp. ("Stratus"). While subject to the reporting requirements above, he failed to file, or timely file, reports of his position and certain transactions in Stratus securities. As a result, Respondent violated Sections 13(d), 13(g) and 16(a) and related rules.

Respondent

5. Gonzalez, age 51, and a resident of St. Petersburg, Florida, was an officer and director of Stratus from June 2018 through at least January 2024.

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.

Legal Framework

6. 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 ten days after they acquired the requisite amount of beneficial ownership.² Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings.³

7. Section 13(g)(1) of the Exchange Act and corresponding Rule 13d-1(d) together require any person who, directly or indirectly, is or otherwise becomes a beneficial owner 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 13G. During the relevant time, pursuant to Rule 13d-1(d), individuals or entities subject to these provisions were required to file the Schedule 13G within 45 days after the end of a calendar year if their beneficial ownership exceeded five percent at the end of the last day of that year. Together with Section 13(d), Section 13(g) was intended to provide a “comprehensive disclosure system of corporate ownership” applicable to all persons who are the beneficial owners of more than five percent of certain classes of equity securities.⁴

8. Section 16(a) of the Exchange Act and Rule 16a-3 apply to every officer, director, and greater than ten 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

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 See Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34-14692, 43 Fed. Reg. 18484, 18486 (Apr. 21, 1978).

⁵ For purposes of determining who is a greater than 10% 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.

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 must 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 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).

9. 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

10. By September 2018, Respondent had acquired approximately 2.8 million shares of Stratus stock.

11. On September 9, 2019, Stratus filed a Form 10 General Form of Registration Pursuant to Exchange Act Section 12(b) or 12(g) that represented there were roughly 21.5 million shares outstanding. The number of outstanding shares did not change by November 2019 when the registration statement went effective. Thus, as of the effective date of the Form 10 registration statement, Respondent beneficially owned over 13% of Stratus stock and was an officer and director.

12. Because he obtained the 2.8 million shares before the registration of the class under Section 12, Respondent did not “acquire”, as determined under Rule 13d-5(a), an equity security within the meaning of Rule 13d-1(i).⁸ Thus, there was no “acquisition” recognized under Section

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).

⁸ Rule 13d-1(i) provides, in part, that the term “equity security” means “any equity security of a class which is registered pursuant to section 12 of that [Exchange] Act.” Rule 13d-5(a) provides that a person who becomes a beneficial owner of securities “shall be deemed to have acquired such securities for purposes of section 13(d)(1) of the [Exchange] Act, whether such acquisition was through purchase or otherwise.”

13(d)(1) at that time because the class of equity security had not yet been registered under Section 12 and thus the regulation did not apply.

13. However, Respondent maintained his position in Stratus common stock through the end of 2019. After registration of the class of common stock under Section 12(g) went effective 60 days after the Form 10 was filed, and the class of equity securities was thus subject to the regulation, Respondent became subject to Section 13(g) of the Exchange Act because he still held greater than 5% beneficial ownership on December 31, 2019. As a result, he was required to file a Schedule 13G within 45 days as of the end of 2019 pursuant to Section 13(g)(1) and corresponding Rule 13d-1(d). Respondent failed to make this filing.

14. Because Respondent beneficially owned more than 10% of Stratus, and was an officer and director, he was required to file a Form 3 reporting his holdings by the effective date of the Form 10 registration statement. Respondent failed to make this filing.

15. Having not made a Form 3 filing, Respondent should have filed a Form 5 within 45 days after the end of the issuer's 2019 fiscal year to report any holdings that should have been, but were not, reported on Form 3. Respondent did not file a Form 5 until November 23, 2020. This filing was late and failed to report certain of Respondent's holdings.

16. On October 28, 2020, Respondent obtained approximately 7.9 million shares of common stock and 1,000,000 shares of Series A Preferred Stock of Stratus as trustee of an entity. The receipt of these shares constituted a non-exempt acquisition of beneficial ownership under Rule 13d-5(a), and subjected Respondent to Section 13(d)(1) and corresponding Rule 13d-1(a). Respondent filed a Schedule 13D, in his individual capacity, on November 18, 2020, and represented that the date of event that required a filing was October 28, 2020. Respondent's Schedule 13D should have been filed no later than 10 days from the event requiring filing and was therefore untimely.

17. Because Respondent beneficially owned more than 10% of Stratus common stock, and was an officer and director, he was required to report the October 28, 2020 acquisitions within two business days on Form 4. Respondent failed to make that filing.

Violations

As a result of the conduct described above, Respondent violated Sections 13(d)(1), 13(g)(1) and 16(a) of the Exchange Act and Rules 13d-1 and 16a-3 thereunder.

Cooperation

In determining to accept the Offer, the Commission considered 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 Gonzalez's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Gonzalez cease and desist from committing or causing any violations and any future violations of Sections 13(d)(1), 13(g)(1) and 16(a) of the Exchange Act and Rules 13d-1 and 16a-3 thereunder.

B. Respondent shall pay civil penalties of \$25,000 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 shall be made in the following installments: \$10,000 within 14 days after the entry of this Order; \$5,000 within 120 days after the entry of this Order; \$5,000 within 240 days after the entry of this Order; and \$5,000 within 360 days after the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Pedro C. Gonzalez 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, 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