

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 101180 / September 25, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22196**

**In the Matter of**

**Mitchell P. Rales**

**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 Mitchell P. Rales (“Rales” 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 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 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. Respondent violated Section 13(d) on two occasions by failing to timely file Schedules 13D related to his beneficial ownership in Danaher Corporation ("Danaher") and ESAB Corporation ("ESAB"), respectively. Regarding Danaher, Respondent's beneficial ownership position changed due to changes in the total amount of common stock outstanding. Regarding ESAB, Respondent's beneficial ownership position changed through a distribution of shares following a spin-off transaction.

#### **Respondent**

3. Rales, age 68, and a resident of Potomac, Maryland, is a co-founder of Danaher, and has served on Danaher's board of directors since 1983. Rales is chairman of the board of directors of ESAB.

#### **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

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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.

ownership.<sup>2</sup> Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings.<sup>3</sup>

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

### **Facts**

#### *Danaher Corporation*

6. In his capacity as a shareholder of Danaher, Respondent had at various times filed statements and amendments on Schedule 13D, when required, based upon his beneficial ownership of Danaher's common stock.

7. On April 19, 2019, Respondent filed an amendment to his previously filed Schedule 13D, disclosing that, as of April 18, 2019, due to a combination of donations by Respondent of shares of Danaher common stock that he had beneficially owned as well as an increase in the outstanding share count of Danaher's common stock, Respondent was no longer the beneficial owner of more than five percent of the company's common stock.

8. However, on February 21, 2020, Danaher filed its annual report on Form 10-K for the fiscal year ended December 31, 2019, and reported there were 696,237,113 shares of common stock outstanding. This amount represented a reduction of approximately 22 million shares compared to the share count disclosed in Danaher's prior quarterly report on Form 10-Q.

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<sup>2</sup> 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.

<sup>3</sup> 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.").

<sup>4</sup> 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.").

<sup>5</sup> 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).

9. As a result of the reduction in the outstanding share count, and not due to any acquisition of Danaher common stock by Respondent, Respondent's beneficial ownership of Danaher common stock as of the date of the Form 10-K filing, February 21, 2020, represented approximately 5.1%.

10. Respondent should have made a Schedule 13D filing to report his 5.1% beneficial ownership position no later than 10 days from February 21, 2020. However, Respondent did not file a Schedule 13D until May 12, 2020, which was untimely.

#### *ESAB Corporation*

11. During the investigation of the Danaher filing, Respondent undertook a review of his other Schedule 13D filings at the Commission staff's request and voluntarily reported that he had made an untimely Schedule 13D filing regarding his beneficial ownership position in ESAB common stock.

12. ESAB is a company that was spun off in April 2022 from a corporation ("Prior Corporation") in which Respondent was a director. In connection with the spin-off transaction, the common stock of ESAB was registered under Section 12 of the Exchange Act on March 18, 2022.

13. On April 4, 2022, the spin-off of ESAB was consummated and each shareholder of the Prior Corporation received one share of ESAB common stock for every three shares of Prior Corporation common stock. As a result, Respondent received approximately 3.2 million shares of ESAB, which represented 5.4% of the company's common stock.

14. Respondent should have made a Schedule 13D filing no later than 10 days from April 4, 2022. However, Respondent did not file a Schedule 13D until August 18, 2022, which was untimely.

#### **Violations**

15. As a result of the conduct described above, Respondent violated Section 13(d)(1) of the Exchange Act and Rule 13d-1 thereunder.

#### **Remedial Efforts and Cooperation**

In determining to accept the Offer, the Commission considered remedial acts, steps promptly undertaken by Respondent after being approached by Commission staff, and 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 Rales' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Mitchell P. Rales cease and desist from committing or causing any violations and any future violations of Sections 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 \$10,000.00 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 Mitchell P. Rales 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.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$10,000, based upon his 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.

## 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