

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73035 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16064

In the Matter of

Gregory M. Shepard,

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 AND CIVIL
PENALTY**

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 Gregory M. Shepard (“Shepard” 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 and Civil Penalty (“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 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, 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.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as a greater than 10% beneficial owner of the registered Class A common stock of Donegal Group, Inc. ("Donegal"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of holdings and transactions in Donegal's securities.

Respondent

3. Gregory M. Shepard, age 58, has been subject to Section 16(a) of the Exchange Act since becoming a greater than 10% beneficial owner of Donegal's Class A common stock as of March 5, 2010.

Issuer

4. Donegal is a Delaware corporation with its principal place of business in Pennsylvania. Donegal's Class A common stock and Class B common stock each are and have been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ (tickers: DGICA and DGICB). Neither the Class A common stock nor Class B common stock is convertible into the other or into any other class or security.

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.

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term “beneficial owner” is defined by reference to Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions. Under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, “beneficial owner” is defined broadly to include “any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise” has or shares voting or investment power with respect to a registered equity security.²

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 in which the insider has or is deemed to have a direct or indirect pecuniary interest. 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 an annual statement on Form 5 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

² Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. As an alternative, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). A person’s obligation to make filings required by Section 13(d) and the rules thereunder does not alter such person’s obligation to make filings required by Section 16(a) and the rules thereunder, if applicable.

and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

7. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

8. As a beneficial owner of more than 10% of Donegal's Class A common stock since March 2010, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) and remains subject to those requirements.

9. Until March 30, 2011, Respondent did not file with the Commission an initial statement of beneficial ownership on Form 3 or any of the required reports on Forms 4 or 5 for his transactions in Donegal's securities between March 5, 2010 and March 15, 2011. On March 30, 2011, Respondent filed a Form 3 and filed Forms 4 to report open-market purchases of Donegal's Class A common stock and Class B common stock on more than 100 dates that were required to be reported within two business days of the date of the transactions. Thereafter, Respondent also failed to file on a timely basis additional purchases that were also required to be reported on Form 4 within two business days. Respondent's late reports include purchases executed on the following dates:

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17–18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]”); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) (“No showing of scienter is required to prove violations of these reporting provisions”); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“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. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct”).

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1–2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“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); see generally SEC Release No. 34-47809 (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).

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	7/26/2010	7/28/2010	3/30/2011
4	7/27/2010	7/29/2010	3/30/2011
4	7/28/2010	7/30/2010	3/30/2011
4	7/29/2010	8/2/2010	3/30/2011
4	7/30/2010	8/3/2010	3/30/2011
4	8/3/2010	8/5/2010	3/30/2011
4	8/4/2010	8/6/2010	3/30/2011
4	8/5/2010	8/9/2010	3/30/2011
4	8/6/2010	8/10/2010	3/30/2011
4	8/9/2010	8/11/2010	3/30/2011
4	8/10/2010	8/12/2010	3/30/2011
4	8/11/2010	8/13/2010	3/30/2011
4	8/12/2010	8/16/2010	3/30/2011
4	8/18/2010	8/20/2010	3/30/2011
4	8/19/2010	8/23/2010	3/30/2011
4	8/20/2010	8/24/2010	3/30/2011
4	9/14/2010	9/16/2010	3/30/2011
4	9/27/2010	9/29/2010	3/30/2011
4	9/28/2010	9/30/2010	3/30/2011
4	9/29/2010	10/1/2010	3/30/2011
4	10/5/2010	10/7/2010	3/30/2011
4	10/7/2010	10/12/2010	3/30/2011
4	10/8/2010	10/13/2010	3/30/2011
4	10/20/2010	10/22/2010	3/30/2011
4	10/21/2010	10/25/2010	3/30/2011
4	11/9/2010	11/12/2010	3/30/2011
4	11/19/2010	11/23/2010	3/30/2011
4	12/7/2010	12/9/2010	3/30/2011
4	1/21/2011	1/25/2011	3/30/2011

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	1/24/2011	1/26/2011	3/30/2011
4	1/25/2011	1/27/2011	3/30/2011
4	2/3/2011	2/7/2011	3/30/2011
4	2/7/2011	2/9/2011	3/30/2011
4	2/9/2011	2/11/2011	3/30/2011
4	2/24/2011	2/28/2011	3/30/2011
4	2/25/2011	3/1/2011	3/30/2011
4	3/1/2011	3/3/2011	3/30/2011
4	3/2/2011	3/4/2011	3/30/2011
4	3/7/2011	3/9/2011	3/30/2011
4	3/8/2011	3/10/2011	3/30/2011
4	3/9/2011	3/11/2011	3/30/2011
4	3/10/2011	3/14/2011	3/30/2011
4	3/11/2011	3/15/2011	3/30/2011
4	3/14/2011	3/16/2011	3/30/2011
4	3/15/2011	3/17/2011	3/30/2011
4	3/25/2011	3/29/2011	3/30/2011
4	3/29/2011	3/31/2011	5/2/2011
4	3/30/2011	4/1/2011	5/2/2011
4	3/31/2011	4/4/2011	5/2/2011
4	4/1/2011	4/5/2011	5/2/2011
4	4/7/2011	4/11/2011	5/2/2011
4	4/8/2011	4/12/2011	5/2/2011
4	4/11/2011	4/13/2011	5/2/2011
4	4/12/2011	4/14/2011	5/5/2011
4	4/13/2011	4/15/2011	5/2/2011
4	4/14/2011	4/18/2011	5/2/2011
4	4/15/2011	4/19/2011	5/2/2011
4	4/18/2011	4/20/2011	5/2/2011

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	4/19/2011	4/21/2011	5/2/2011
4	4/20/2011	4/22/2011	5/2/2011
4	4/21/2011	4/25/2011	5/2/2011
4	4/25/2011	4/27/2011	5/2/2011
4	4/26/2011	4/28/2011	5/2/2011

10. These late-reported purchases of Donegal Class A common stock and Class B common stock had an aggregate market value of over \$2.5 million. Respondent also failed to file a required Form 5 to report transactions that should have been reported on Forms 4 during Donegal's fiscal year 2010 but were not.⁵

11. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

12. In determining to accept Respondent's 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 Shepard's Offer.

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

⁵ Respondent was also subject to Section 13(d) of the Exchange Act and the rules thereunder as a greater than 5% beneficial owner of both Donegal's Class A common stock and Class B common stock. Respondent filed a statement on Schedule 13D on July 12, 2010, reporting his beneficial ownership of approximately 15.8% of Donegal's Class A common stock and 6.5% of the Class B common stock, and providing details of his purchases from May 12, 2010 through July 12, 2010. Respondent filed an amendment to the Schedule 13D on December 10, 2010, reporting beneficial ownership of approximately 16.3% of Donegal's Class A common stock and 6.7% of the Class B common stock, and providing details of his purchases from October 20, 2010 through December 7, 2010. Respondent's filings on Schedule 13D did not alter Respondent's obligations under Section 16(a) and were not a substitute for making the required Section 16(a) reports.

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 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 \$80,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. 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 Gregory M. Shepard 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 Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.

Jill M. Peterson
Assistant Secretary