

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9655 / September 25, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 73213 / September 25, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3936 / September 25, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31263 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16166

In the Matter of

RICHARD O'LEARY

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Richard O’Leary (“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 Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

These proceedings arise out of insider trading in the securities of Towerstream Corporation ("Towerstream") in advance of the announcement after the market close on January 30, 2013, of its intent to offer for purchase shares of its previously registered common stock in an underwritten public offering. The next day, January 31, Towerstream's stock price dropped to \$2.95 per share from its closing price on January 30, the day of the announcement, of \$3.17 -- an approximate seven percent decline. Prior to the announcement, on January 28, 2013, O'Leary received material, nonpublic information relating to the offering. The next day, O'Leary sold 16,500 shares of Towerstream on the basis of that information, avoiding losses of \$6,845.

Respondent

1. **Richard O' Leary**, 48, of Boulder, Colorado, is associated with an unregistered investment adviser. Specifically, O'Leary is an analyst for an investment adviser that provides investment advice to a private hedge fund and a venture fund for compensation. O'Leary is not and has never been associated with a registered investment adviser nor been registered as an investment adviser with the Commission or any state. From approximately February 1989 through February 2005, O'Leary was a registered representative associated with broker-dealers registered with the Commission. O'Leary has no disciplinary history.

Other Relevant Entity

2. **Towerstream Corporation** is a Delaware corporation with its principal place of business in Middletown, Rhode Island. It is a 4G wireless service provider. Towerstream's securities are registered with the Commission under Exchange Act Section 12(b) and its common stock trades on the NASDAQ under the symbol "TWER."

Background

3. On or about January 15, 2013, Towerstream's management met with a third-party advisory group to discuss financing alternatives for Towerstream. On or about January 24, 2013,

Towerstream determined the structure of a potential underwritten offering of its previously-registered securities. From about January 25 through January 30, 2013, the advisory group solicited potential investors for the underwritten offering, bringing some of those investors “over the wall” to learn the identity of the offeror and details of the offering. The potential investors agreed to keep the information confidential.

4. On January 28, 2013, after the market close, Towerstream’s advisory group spoke with O’Leary, seeking the participation of O’Leary’s employer in the contemplated offering. O’Leary agreed to be brought “over the wall,” and the advisory group identified Towerstream as the offeror and detailed some of the proposed offering terms. In an email dated that same day, a representative of the advisory group confirmed O’Leary’s receipt of material, nonpublic information and reminded O’Leary of his agreement to keep the information confidential and of the restriction from trading in Towerstream’s securities until the information became publicly available.

5. On January 29, 2013, O’Leary, knowing this material, nonpublic information, sold 16,500 shares of Towerstream’s common stock from brokerage accounts held in the names of his wife and children for which he was an authorized agent.

6. After the market close on January 30, 2013, Towerstream announced the public offering of shares of previously registered common stock. The offering raised approximately \$30 million from the sale of ten million shares of Towerstream common stock at a price of \$3.00 per share. The \$3.00 per share purchase price represented a more than five percent discount to Towerstream’s January 30 closing price (the last trading day before the announcement) of \$3.17 per share and caused an approximately 21.5 percent dilution of the total shares outstanding. The day after the announcement, Towerstream’s stock closed at \$2.95 per share, an approximate seven percent decline from \$3.17 per share.

7. As a result of this decrease in Towerstream’s stock price following the announcement of the offering, O’Leary avoided losses of \$6,845 based on the sale of Towerstream stock on January 29, 2013.

8. As a result of the conduct described above, O’Leary willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

O’Leary’s Cooperation

In determining to accept the Offer, the Commission considered cooperation afforded the Commission staff.

Undertakings

Respondent undertakes to:

Provide to the Commission, within 15 days after the end of the 12-month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent O'Leary's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent O'Leary cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent O'Leary be, and hereby is, suspended from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of 12 months, effective on the second Monday following the entry of this Order.

C. Respondent is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of 12 months, effective on the second Monday following the entry of this Order.

D. Respondent shall, within 14 days of the entry of this Order, pay disgorgement, which represents losses avoided as a result of the conduct described herein, of \$6,845, prejudgment interest of \$313, and a civil penalty of \$6,845, for a total of \$14,003 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 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 Richard O'Leary 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 Thomas J. Krysa, Associate Director, Division of Enforcement, Securities and Exchange Commission, Denver Regional Office, 1961 Stout St., Suite 1700, Denver, Colorado 80294-1961.

E. Respondent shall comply with the undertakings enumerated in Section III above.

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.

Brent J. Fields
Secretary