

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100957 / September 6, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22077

In the Matter of

ESMARK INC. AND
JAMES P. BOUCHARD,

Respondents.

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 Esmark Inc. (“Esmark”) and James P. Bouchard (“Bouchard”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent 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 Respondents' Offers, the Commission finds¹ that:

Summary

This matter concerns the announcement of a tender offer by Respondents Esmark and Bouchard while not having a reasonable belief that Esmark would have the financial means to consummate the publicly announced tender offer. On August 14, 2023, at Bouchard's direction and approval, Esmark announced an offer for all issued and outstanding shares in U.S. Steel Corporation ("U.S. Steel") for \$35 per share. The press release in which the announcement was made stated that the initial offer period was from August 14, 2023 to November 30, 2023, and completion of the offer was expected in Q4 2023. The following day, on August 15, Bouchard appeared on CNBC and said that Esmark had no debt and \$10 billion available in cash committed to the deal. A week after the announcement, Esmark withdrew its offer.

In reality, Esmark and Bouchard did not have the \$7.8 billion in cash required to complete the purchase of U.S. Steel for \$35 per share as it publicly projected. As of August 31, 2023, as Bouchard knew, Esmark had on-hand less than 1% of the required \$7.8 billion cash to complete the tender offer. As such, Esmark and Bouchard violated Section 14(e) of the Exchange Act and Rule 14e-8 thereunder when they announced Esmark's offer to purchase U.S. Steel for cash while lacking a reasonable belief that they would have the means to complete the offer.

Respondents

1. James P. Bouchard, age 64, is a United States citizen residing in Clearwater, Florida. Bouchard is the founder, Chairman, and former CEO of Esmark. Bouchard retired as CEO on November 23, 2023, but remains the Chairman of the Board of Esmark. Bouchard is also the sole owner of the Bouchard Group, which is the controlling shareholder of Esmark.

2. Esmark Inc. is a diversified, privately-held family company with a portfolio of companies focused on several industries including, among others, steel services and oil and gas exploration. Bouchard founded Esmark in 2003, under the name "Esmark II." In 2007, Esmark completed a hostile reverse merger with Wheeling-Pittsburgh Steel Corporation without any debt financing. From 2007 to 2008, Esmark's common shares were registered pursuant to Section 12(b) of the Exchange Act and listed on NASDAQ. In August 2008, OAO Severstal purchased Esmark for \$1.3 billion. In October 2008, Bouchard, through the Bouchard Group, repurchased the Esmark name, trademark, and intellectual property from OAO Severstal.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Facts

3. On August 14, 2023, Bouchard emailed the director of communications at Esmark to prepare a press release for an all-cash offer to purchase U.S. Steel shares at \$35 per share, and that he wanted it to be released that day. That day, the director of communications at Esmark drafted the press release, and Bouchard reviewed and approved the press release.

4. That afternoon, around 3 p.m. EDT, the announcement was released on Business Wire. The headline stated: “Esmark Inc. Announces All-Cash Public Offer for U.S. Steel Shares. *Offering \$35 per share.*” The body of the press release stated in relevant part: “Esmark Inc. announced today a voluntary public cash and exchange offer for all issued and outstanding shares in U.S. Steel Corporation (NYSE: X) (‘U.S. Steel’) for \$35 USD per share. The initial offer period runs from August 14, 2023, to November 30, 2023, and may be extended. Completion of the Offer is expected in Q4 2023, subject to regulatory and antitrust clearances.”

5. On August 15, 2023, Bouchard participated in an interview on CNBC regarding Esmark’s press release. During the interview, he stated that Esmark has no debt and runs off cash. He further stated that Esmark has \$10 billion in cash committed to the deal and would not put up any of Esmark’s assets as collateral.

6. Statements in the press release and interview were false. Esmark and Bouchard did not have a reasonable belief that Esmark had the financial means to complete the tender offer. As of August 31, 2023, Esmark had less than 1% of the required \$7.8 billion in cash to complete the tender offer.

7. On August 23, 2023, Esmark withdrew its offer via issuance of a press release.

8. Between August 14 and 23, 2023, Esmark did not take many of the necessary steps to commence the tender offer. For instance, Esmark did not set up a depository trust agreement or provide the means by which U.S. Steel’s shareholders could tender their shares.

Violations

9. As a result of the conduct described above, Respondents Esmark and Bouchard violated Section 14(e) of the Exchange Act and Rule 14e-8 thereunder, which prohibit, among other things, the public announcement of a plan to make a tender offer if the person does not have the reasonable belief that it will have the means to purchase the securities to complete the offer.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents’ Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 14(e) of the Exchange Act and Rule 14e-8 thereunder.

B. Respondent Esmark shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$500,000 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.

C. Respondent Bouchard shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Esmark Inc. and James P. Bouchard as Respondents 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 P. Smith, Jr., Associate Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004.

D. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a

Penalty Offset, Respondents agree that they 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 Respondents 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 Bouchard, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Bouchard 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 Bouchard 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