

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73039 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16068

In the Matter of Lazarus Management Company LLC, 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 Lazarus Management Company LLC (“Lazarus” 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.

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 and posted on the company’s website to facilitate rapid dissemination to the public.

2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. 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). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

3. Lazarus failed to file on a timely basis multiple required Section 16(a) reports of transactions it executed on behalf of affiliated funds it managed in the securities of Authentidate Holding Corp. ("Authentidate"), AeroGrow International, Inc. ("AeroGrow"), Coupon Express, Inc. ("Coupon Express"), Silver Bull Resources, Inc. ("Silver Bull") and Teletouch Communications, Inc. ("Teletouch"), and failed to timely file certain statements or amendments required under Section 13(d).

Respondent

4. Lazarus, a Colorado limited liability company headquartered in Denver, Colorado, provides investment management services to affiliated private funds structured as limited partnerships or other types of entities (the "Lazarus Funds") that principally invest in microcap issuers. Lazarus has been registered with the State of Colorado as an investment adviser since June 14, 2012 and was previously registered with the Commission from May 2004 to June 2012. Lazarus or an affiliated entity serves as general partner of the Lazarus Funds (or in a similar capacity) and had beneficial ownership of the securities held by the Lazarus Funds under Section 13(d) of the Exchange Act and the rules thereunder. The Lazarus Funds and Lazarus' control person (collectively, the "Lazarus Affiliates") also each shared direct or indirect beneficial ownership of securities held by the Lazarus Funds. Lazarus took responsibility for making all beneficial ownership filings on behalf of the Lazarus Affiliates.

Issuers

5. Authentidate is a Delaware corporation with its principal place of business in New Jersey. Authentidate's common stock has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NASDAQ stock market (ticker: ADAT).

6. Silver Bull is a Nevada corporation with its principal place of business in Vancouver, British Columbia, Canada. Silver Bull's common stock has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NYSE MKT (ticker: SVBL).

7. AeroGrow is a Nevada corporation with its principal place of business in Colorado. AeroGrow's common stock has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and quoted on the OTC Link ATS (ticker: AERO).

8. Coupon Express (f/k/a PSI Corporation) is a Nevada corporation with its principal place of business in New York. Coupon Express' common stock has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and quoted on the OTC Link ATS (ticker: CPXP).

9. Teletouch is a Delaware corporation with its principal place of business in Texas. At all relevant times, Teletouch's common stock was registered with the Commission under Section 12 of the Exchange Act and quoted on the OTC Link ATS (ticker: TLLEQ).

Applicable Legal Framework

10. 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.

11. The term “beneficial owner” is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, 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. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

12. 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. An acquisition or disposition of 1% or more of a class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

13. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person “has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect,” and is not directly or indirectly the beneficial owner of 20% or more of the class of securities (a “Passive Investor 13G Filer”). Exchange Act Rule 13d-2(b) requires that a Passive Investor 13G Filer must file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, a Passive Investor 13G Filer must also amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and must thereafter promptly amend the Schedule 13G upon increasing or decreasing its beneficial ownership by more than 5% of the class under Exchange Act Rule 13d-2(d). Under Rule 13d-1(f), a person who has filed a Schedule 13G pursuant to Rule 13d-1(c) must file a Schedule 13D within 10 days after beneficial ownership first equals 20% of the class and is prohibited from voting or acquiring additional securities of the class until 10 days after the Schedule 13D is filed.⁴

14. Rule 13d-1(b) also provides certain qualified institutional investors, such as registered investment advisers, broker-dealers, or banks that fall within the definition in Exchange Act Section 3(a)(6), with an additional alternative by permitting a Schedule 13G to be filed in lieu of Schedule 13D within 45 days after the end of the calendar year in which they made the triggering acquisition, so long as the specified institutions acquired beneficial ownership of the securities “in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect” (a “Qualified Institution 13G Filer”). A parent holding company or control person of a Qualified Institution 13G Filer may also file on Schedule 13G under Rule 13d-1(b), provided that the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not eligible as Qualified Institution 13G Filers, does not exceed 1% of the class of securities (a “Qualified Control Person 13G Filer”).⁵

15. 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 means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, except that persons eligible as Qualified Institution 13G Filers or Qualified Control Person 13G Filers are not deemed the beneficial owner of any securities held by the qualified institution “for the benefit of third parties or in customer or fiduciary accounts in the

ordinary course of business ... as long as such shares are acquired by such institutions or persons without the purpose or effect of changing or influencing control of the issuer.”

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

17. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁶ The failure to timely file a required report, even if inadvertent, constitutes a violation.

Respondent Was a Cause of Violations of Section 16(a) by the Lazarus Affiliates

18. The Lazarus Funds held greater than 10% of the registered class of common stock of Authentidate as of February 11, 2011, of Silver Bull as of September 26, 2011, of AeroGrow as of June 30, 2009, of Coupon Express as of January 5, 2010, and of Teletouch as of June 2, 2011, resulting in the Lazarus Affiliates becoming subject to the reporting requirements of Section 16(a) as of such dates.⁸

19. Lazarus failed to file on a timely basis multiple required Section 16(a) reports with the Commission on behalf of the Lazarus Affiliates with respect to reportable transactions in the securities of Authentidate, Silver Bull, AeroGrow, Coupon Express, and Teletouch, including to report transactions Lazarus executed on behalf of the Lazarus Funds on the following dates that were required to be reported on Form 4 within two business days:

<u>Issuer</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Silver Bull	9/27/2011	9/29/2011	10/6/2011
Silver Bull	9/28/2011	9/30/2011	10/6/2011
Silver Bull	9/29/2011	10/3/2011	10/6/2011
Silver Bull	9/30/2011	10/4/2011	10/6/2011
Coupon Express	10/12/2011	10/14/2011	12/22/2011
Coupon Express	10/24/2011	10/26/2011	12/22/2011
Coupon Express	10/31/2011	11/2/2011	12/22/2011
Coupon Express	11/1/2011	11/3/2011	12/22/2011
Coupon Express	11/2/2011	11/4/2011	12/22/2011
Coupon Express	11/3/2011	11/7/2011	12/22/2011
Coupon Express	11/4/2011	11/8/2011	12/22/2011
Coupon Express	11/8/2011	11/10/2011	12/22/2011
Coupon Express	11/15/2011	11/17/2011	12/22/2011
Teletouch	11/15/2011	11/17/2011	12/15/2011

<u>Issuer</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Teletouch	11/16/2011	11/18/2011	12/15/2011
Coupon Express	11/17/2011	11/21/2011	12/22/2011
Silver Bull	11/21/2011	11/23/2011	12/15/2011
Silver Bull	11/22/2011	11/25/2011	12/15/2011
Silver Bull	11/25/2011	11/29/2011	12/15/2011
Authentidate	11/25/2011	11/29/2011	12/14/2011
Silver Bull	11/28/2011	11/30/2011	12/15/2011
Authentidate	11/28/2011	11/30/2011	12/14/2011
Coupon Express	11/30/2011	12/2/2011	12/22/2011
Silver Bull	11/30/2011	12/2/2011	12/15/2011
Teletouch	11/30/2011	12/2/2011	12/15/2011
Authentidate	11/30/2011	12/2/2011	12/14/2011
Silver Bull	12/1/2011	12/5/2011	12/15/2011
Authentidate	12/1/2011	12/5/2011	12/14/2011
Silver Bull	12/2/2011	12/6/2011	12/15/2011
Teletouch	12/2/2011	12/6/2011	12/15/2011
Authentidate	12/2/2011	12/6/2011	12/14/2011
Coupon Express	12/5/2011	12/7/2011	12/22/2011
Silver Bull	12/5/2011	12/7/2011	12/15/2011
Teletouch	12/5/2011	12/7/2011	12/15/2011
Authentidate	12/5/2011	12/7/2011	12/14/2011
Silver Bull	12/6/2011	12/8/2011	12/15/2011
Teletouch	12/6/2011	12/8/2011	12/15/2011
Authentidate	12/6/2011	12/8/2011	12/14/2011
Silver Bull	12/7/2011	12/9/2011	12/15/2011
Teletouch	12/7/2011	12/9/2011	12/15/2011
Authentidate	12/7/2011	12/9/2011	12/14/2011
Silver Bull	12/8/2011	12/12/2011	12/15/2011
Teletouch	12/8/2011	12/12/2011	12/15/2011

<u>Issuer</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Authentidate	12/8/2011	12/12/2011	12/14/2011
Coupon Express	12/9/2011	12/13/2011	12/22/2011
Silver Bull	12/9/2011	12/13/2011	12/15/2011
Teletouch	12/9/2011	12/13/2011	12/15/2011
Coupon Express	12/13/2011	12/15/2011	12/22/2011
AeroGrow	6/1/2012	6/5/2012	6/15/2012
Coupon Express	8/8/2012	8/10/2012	11/1/2012
AeroGrow	9/18/2012	9/20/2012	9/25/2012
AeroGrow	12/31/2012	1/3/2013	5/15/2013

20. The late-reported transactions primarily involved open-market purchases required to be reported on Form 4 within two business days after the date of the transaction and small acquisitions that no longer qualified for deferred reporting on Form 5 under Exchange Act Rule 16a-6. Lazarus also failed to file until August 14, 2012 a required Form 5 due by July 15, 2012 to report small acquisitions of Teletouch's common stock eligible for deferred reporting under Rule 16a-6 during Teletouch's fiscal year ended May 31, 2012 that were not earlier reported on Form 4.

21. As a result of the conduct described above, Lazarus was a cause of violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by the Lazarus Affiliates.

Respondent Failed to Timely File on Schedule 13D and 13G

22. At all relevant times, Lazarus and the Lazarus Affiliates are and have been subject to the reporting requirements of Exchange Act Section 13(d) after having acquired beneficial ownership of more than 5% of a class of registered equity securities of Authentidate. Lazarus filed an initial statement on Schedule 13G pursuant to Rules 13d-1(b) and 13d-1(c) on October 18, 2010 on behalf of itself and the Lazarus Affiliates with respect to beneficial ownership of Authentidate's class of common stock. By June 21, 2012, the Lazarus Affiliates were no longer eligible to file on Schedule 13G because their beneficial ownership exceeded 20% due to certain warrants held by the Lazarus Funds that became exercisable upon a shareholder vote. As a result, the Lazarus Affiliates were required to file a Schedule 13D within 10 days of the date on which their beneficial ownership equaled or exceeded 20% under Rule 13d-1(f). Lazarus did not file a Schedule 13D statement until August 28, 2012, which was filed on behalf of Lazarus and the Lazarus Affiliates as joint reporting persons. Subsequently, Lazarus also failed to timely file amendments required as a result of material changes to the information set forth previously on Schedule 13D. For example, Lazarus entered into two agreements with Authentidate on behalf of the Lazarus Funds on September 24 and 25, 2012 in which additional securities were purchased and Lazarus received the right to nominate a board member and/or appoint an observer to the board if certain conditions were met. These agreements were not reflected in an amendment until February 7, 2013, in violation of Rule 13d-2(a).

23. At all relevant times, Lazarus and the Lazarus Affiliates are and have been subject to the reporting requirements of Exchange Act Section 13(d) after having acquired beneficial ownership of more than 5% of a class of registered equity securities of AeroGrow in 2008. On July 23, 2009, Lazarus filed a Schedule 13D statement on behalf of itself and the Lazarus Affiliates reflecting beneficial ownership in excess of 20% of the class of AeroGrow common stock. Lazarus failed to timely file multiple amendments to the Schedule 13D required as a result of material changes to the information set forth previously. For example, Lazarus did not reflect a decline in beneficial ownership of AeroGrow's class of common stock from approximately 70.6% to approximately 60.1% that occurred on October 3, 2011 due to a convertible note that was held by the Lazarus Funds being repaid in full and no longer convertible into common stock, in violation of Rule 13d-2(a). In addition, after Lazarus resumed filing on Schedule 13G

pursuant to Rule 13d-1(h) on May 4, 2012 reporting beneficial ownership of 16.9%, Lazarus failed to file a required annual amendment to Schedule 13G, due by February 14, 2013 pursuant to Rule 13d-2(b), which was not made until May 15, 2013.

24. At all relevant times, Lazarus and the Lazarus Affiliates are and have been subject to the reporting requirements of Exchange Act Section 13(d) after having acquired beneficial ownership of more than 5% of a class of registered equity securities of Coupon Express in 2008. On January 6, 2011, Lazarus filed a Schedule 13D statement on behalf of itself and the Lazarus Affiliates reflecting beneficial ownership in excess of 20% of the class of Coupon Express common stock. After filing an amendment to Schedule 13D on May 3, 2011 reflecting beneficial ownership of approximately 25.4%, Lazarus failed to make any Section 13(d) filings until August 27, 2013. Although Lazarus and the Lazarus Affiliates' beneficial ownership dropped below 20% as of approximately October 2011 and therefore became eligible under Rule 13d-1(h) to again file on Schedule 13G pursuant to Rule 13d-1(c), Lazarus did not file a Schedule 13G statement until August 27, 2013 (or any amendment to Schedule 13D). During this period, Lazarus was required to promptly file amendments to Schedule 13D pursuant to Rule 13d-2(a) to reflect material changes, but did not. For example, by December 30, 2011, Lazarus had purchased on behalf of the Lazarus Funds shares of Coupon Express common stock in an amount constituting in excess of 1% of the class of outstanding common stock.

25. As a result of the conduct described above, Lazarus violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder and was a cause of violations by the Lazarus Affiliates of such provisions.

Respondent's Remedial Efforts

26. 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 Lazarus's Offer.

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a- promulgated thereunder.

B. Respondent shall pay a civil money penalty in the amount of \$60,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: (i) \$15,000 within 14 days of the entry of this Order, (ii) \$15,000 within 120 days of the entry of this Order, (iii) \$15,000 within 240 days of the entry of this Order, and (iv) \$15,000 within 360 days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. 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 Lazarus Management Company LLC 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

Footnotes

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

2 See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34- 39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. *Id.*

3 SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

4 Thereafter, if a person's beneficial ownership declines below 20%, Exchange Act Rule 13d-1(h) permits a person who has filed a Schedule 13D pursuant to Rule 13d-1(f) to again report beneficial ownership on Schedule 13G pursuant to Rule 13d-1(c), provided the person qualifies thereunder and files a Schedule 13G statement.

5 A Qualified Institution or Qualified Control Person 13G Filer must also file an annual amendment within 45 days after the end of each calendar year under Exchange Act Rule 13d- 2(b) if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, Rule 13d-2(c) requires that the Schedule 13G be amended within 10 days after the end of the first month in which the 10% threshold was crossed if beneficial ownership continues to exceed 10% at month end; thereafter, amendments must be filed within 10 days after any month-end at which beneficial ownership has increased or decreased by more than 5% from that previously reported.

6 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."); see also *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.").

7 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.”); 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); *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).

8 None of the Lazarus Affiliates were eligible under Exchange Act Rule 16(a)(1) subparagraphs (i) through (xi) to exclude any securities over which they were deemed to have direct or indirect beneficial ownership under Rule 13d-3.