

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95138 / June 22, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20904

In the Matter of

The Brink's Company,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND 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 The Brink’s Company (“Brinks” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Brinks 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 it 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 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 finds¹ that:

Respondent

1. Brinks, a Virginia corporation with headquarters in Richmond, Virginia, provides cash transit and money processing services worldwide. Brinks' common stock is registered under Section 12(g) of the Exchange Act and trades on the New York Stock Exchange. Brinks files periodic reports, including reports on Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. Brinks operates in the United States through Brink's U.S. ("Brinks U.S."), a division of Brink's, Inc., which is a wholly-owned subsidiary of Brinks. Brinks U.S. is based in Dallas, Texas and has approximately 11,000 U.S.-based employees.

Facts

A. Regulatory Framework Protecting Whistleblowers

2. On August 12, 2011, the Commission implemented rules to fulfill its congressional mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") to encourage whistleblowers to report possible violations of the securities laws. Adopted as part of this rulemaking, Exchange Act Rule 21F-17 prohibits any person from taking any action to impede an individual from communicating directly with the Commission, including by "enforcing, or threatening to enforce, a confidentiality agreement...." The new rules were well-publicized at the time.

3. In April 2015, the Commission brought the first enforcement action for a violation of Rule 21F-17 based on a company's use of a restrictive confidentiality agreement.² Subsequently, from 2016 to early 2017, the Commission instituted eight other enforcement actions charging violations of Rule 21F-17.³ These enforcement actions were reported in the media and Brinks received general circulation client alerts from multiple law firms, as well as specific advice

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 *In the Matter of KBR, Inc.*, Exchange Act Rel. No. 74619 (April 1, 2015) (settled cease and desist proceeding).

³ See *In the Matter of Merrill Lynch, Peirce, Fenner and Smith, Inc.*, Exchange Act Rel. No. 78141 (June 23, 2016); *In the Matter of BlueLinx Holdings, Inc.*, Exchange Act Rel. No. 78528 (Aug. 10, 2016); *In the Matter of HealthNet, Inc.*, Exchange Act Rel. No. 78590 (Aug. 16, 2016); *In the Matter of Anheuser-Busch InBev SA/NV*, Exchange Act Rel. No. 78957 (Sept. 28, 2016); *In the Matter of NeuStar, Inc.*, Exchange Act Rel. No. 79593 (Dec. 19, 2016); *In the Matter of SandRidge Energy, Inc.*, Exchange Act Rel. No. 79607 (Dec. 20, 2016); *In the Matter of BlackRock, Inc.*, Exchange Act Rel. No. 79804 (Jan. 17, 2017); *In the Matter of Homestreet, Inc., et al.*, Exchange Act Rel. No. 79844 (Jan. 19, 2017).

from their regular outside counsel, to review their employment-related agreements with a view to ensuring that the agreements did not violate Rule 21F-17.

B. Brinks Required Thousands of Its Employees to Sign Confidentiality Agreements

4. Beginning in at least 2015, and continuing through April 2019 (hereinafter, the “relevant period”), new Brinks U.S. employees were required to execute a Confidentiality and Non-Competition Agreement (“Confidentiality Agreement”) as part of their onboarding process. The Confidentiality Agreement prohibited employees from divulging confidential information about the company to any third party without the prior written authorization of a Brinks, Inc. executive officer. The agreement defined “Confidential Information” broadly to include information about “current and potential customers, . . . prices, costs, business plans, market research, sales, marketing, . . . operational processes and techniques, [and] financial information including financial information set forth in internal records, files and ledgers or incorporated in profit and loss statements, financial reports and business plans. . . ,” which are the kind of information and documents that often are components of whistleblower complaints.

5. In addition to the Confidentiality Agreement, during a part of the relevant period Brinks used a number of other agreements for U.S.-based employees leaving the company or settling litigated employment matters. Similar to the Confidentiality Agreement, certain of those agreements contained provisions that prohibited employees from divulging confidential corporate information to any third parties, unless compelled by law or legal process or expressly authorized by Brinks to do so.

6. Throughout the relevant period, Brinks maintained two separate legal departments in the United States. One group, based at Brinks U.S.’s offices in Dallas, Texas (“Texas Group”), was responsible for, among other things, employment matters pertaining to U.S.-based rank-and-file employees, including Confidentiality Agreements, severance agreements and employee litigation. The Texas Group oversaw changes to the Confidentiality Agreement template at issue here, in conjunction with Brinks U.S.’s human resources group. The other legal group, based at Brinks’ global headquarters (“Brinks HQ”) in Richmond, Virginia (“Virginia Group”), was responsible for, among other things, executive-level employment matters, including the severance agreement template for management employees. Executives at Brinks HQ did not sign the Confidentiality Agreement or other agreements containing such restrictive language as part of their on-boarding. Although each group was headed by a General Counsel and retained different outside counsel for employee-related issues, the groups routinely shared the legal guidance that they had received from outside counsel and information about the actions that they respectively were taking when they encountered an issue, such as employment-related agreements, that they believed also was applicable to the other group.

7. Beginning in April 2015, after the Commission had issued the order in the initial Rule 21F-17 enforcement proceeding, and continuing into 2017, Brinks in-house attorneys in both the Virginia and Texas Groups received general client bulletins, legal alerts, and case summaries from various private law firms discussing the Commission’s enforcement actions charging violations of Rule 21F-17(a). On April 3, 2015, a partner at Brinks U.S.’s outside employment counsel, sent an email to the company’s General Counsels and other lawyers in the Virginia and Texas Groups attaching a “Client Memo” that described the Commission’s initial

Rule 21F-17 enforcement action, cited key findings from the Commission's order, predicted that the Commission would be bringing more cases enforcing Rule 21F-17, and recommended that public companies consider incorporating into their employment agreements certain whistleblower carve-out language apparently copied verbatim from the order.

8. On or about April 10, 2015, the Texas Group modified the Confidentiality Agreement template. However, instead of including a whistleblower protection carve-out, or otherwise addressing the restrictive language in the agreement as it applied to potential whistleblowers, the Texas Group added a provision imposing a \$75,000 liquidated damages liability, together with payment of Brinks' attorney's fees and costs, on any employee found to have violated the Confidentiality Agreement. The Texas Group proceeded to use this more restrictive version of its Confidentiality Agreement for Brinks U.S. employees over the next four years.

9. In 2016, lawyers in both the Texas and Virginia Groups continued receiving information and advice regarding the Commission's enforcement of Rule 21F-17. On or about August 16, 2016, an employment attorney in the Virginia Group emailed to herself a Wall Street Journal article about a Rule 21F-17 enforcement action brought by the Commission earlier that month. Brinks took no action at that time to review or revise any of its employee agreements. On or about December 22, 2016, another attorney in the Virginia Group received a law firm's client advisory bulletin that addressed two additional Rule 21F-17 enforcement proceedings. The client memo was forwarded to lawyers in both the Texas and Virginia Groups, and to the Virginia Group's outside counsel. Shortly thereafter, in January 2017, the Virginia Group modified its corporate-level severance agreement template to add a whistleblower exemption provision.

10. At that time, the Virginia Group informed the Texas Group of the changes that it had made to the Brinks HQ executive-level severance agreement template and sent them a copy of the revised Brinks HQ template. Despite this, the Texas Group, at that time, did not revise any of the employee agreement templates that it used for rank-and-file employees.

11. Beginning in mid-May 2017, the Texas Group added the whistleblower protection language that previously had been adopted by the Virginia Group for the Brinks HQ severance agreement to several employee litigation settlement agreements. The Texas Group, however, did not add whistleblower protection language to any other employee agreements, including the Confidentiality Agreement, at that time.

12. Brinks continued using the restrictive version of the Confidentiality Agreement until 2019.⁴ In April 2019, after Brinks had been aware of the staff's investigation for over a year, the Texas Group added a whistleblower exemption provision to the Confidentiality Agreement template.

⁴ A limited number of Confidentiality Agreements executed between May and July 2018, contained a provision that allowed Brinks U.S. employees to disclose "Trade Secrets" to government agencies without prior company authorization in order to report a suspected violation of law.

13. By requiring current and former employees to notify the company prior to disclosing any financial or business information to any third parties, and threatening them with liquidated damages and legal fees if they did not do so, Brinks took action to impede potential whistleblowers by forcing those employees to choose between identifying themselves to the company as whistleblowers or potentially having to pay \$75,000 and the company's legal fees. This conduct undermines the purpose of Section 21F and Rule 21F-17(a) to "encourage[e] individuals to report to the Commission." Adopting Release at p. 201.

14. From April 2015 through April 2019, Brinks U.S. hired approximately 2,000 to 3,000 employees annually, virtually all of whom were required to execute Confidentiality Agreements that contained the restrictive confidentiality provisions and provided for the financial penalties described above.

15. In May 2019, Brinks posted a statement on its public website stating that employees were permitted to provide confidential information to government agencies and accept monetary awards for doing so. The notice stated, in part:

The Brink's Company does not restrict or interfere with individuals' rights or ability to:

- Communicate, without notice to or approval by Brink's, with any government agencies as provided for, protected under or warranted by applicable law;
- Participate in any investigation or proceeding that may be conducted by any government agency, including providing documents or other information without notice to the Company; or
- Receive an award from any government agency for information provided to any such government agency.

Violation

16. Through its conduct described above, Brinks violated Exchange Act Rule 21F-17(a).

Undertakings

17. Brinks undertakes that, within ten (10) days from the date of issuance of this Order, it will include the following provision in all employment-related agreements involving U.S.-based employees that include prohibitions on the use or disclosure of confidential information relating to the company:

Protected Rights. Employee understands that nothing contained in this Agreement limits Employee's ability to file a charge or complaint with the Securities and Exchange Commission, or any other federal, state, or local governmental regulatory or law enforcement agency ("Government Agencies"). Employee further understands that nothing in this Agreement limits Employee's ability to communicate with any Government Agencies or otherwise participate in or fully cooperate with any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other

information, without notice to or approval from the Company. Employee can provide confidential information to Government Agencies without risk of being held liable by Brinks for liquidated damages or other financial penalties. This Agreement also does not limit Employee's right to receive an award for information provided to any Government Agencies."

18. In determining whether to accept the Offer, the Commission has considered the undertaking set forth above.

19. Brinks also undertakes that, within sixty (60) days from the date of issuance of this Order, it will make reasonable efforts to contact current and former U.S.-based Brinks employees who signed a Confidentiality and Non-Competition Agreement from April 1, 2015 through May 1, 2019, and provide them with an electronic or paper copy of the Order and a statement that Brinks permits current or former employees to: (1) provide information and/or documents to, and/or communicate with, Commission staff without notice to or approval from the Company; and (2) accept a whistleblower award from the Commission pursuant to Section 21F of the Exchange Act.

20. Brinks further undertakes that, within one hundred twenty (120) days from the date of issuance of this Order, it will certify, in writing, compliance with the undertakings set forth above. The certification shall identify each undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Yuri B. Zelinsky, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549, with a copy to the Office of the Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Brinks' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Brinks cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 21F-17;

B. Respondent shall comply with the undertakings set forth in paragraphs 19 and 20, above;

C. Respondent shall, within ten days of issuance of this Order, pay a civil money penalty in the amount of \$400,000 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) 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 Brinks 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 Yuri B. Zelinsky, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

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, it shall not argue that it is entitled to, nor shall it 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 it shall, within thirty (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.

By the Commission.

Vanessa A. Countryman
Secretary