

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 98322 / September 8, 2023

ADMINISTRATIVE PROCEEDING

File No. 3-21629

In the Matter of

**MONOLITH
RESOURCES, 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**

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 Monolith Resources, LLC (“Monolith” 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 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 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. Monolith is a privately held Delaware limited liability company headquartered in Lincoln, Nebraska. Monolith is a clean technology company that produces hydrogen and carbon related products. The company currently has approximately 236 employees.

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.

Facts

A. Statutory and Regulatory Framework Protecting Whistleblowers

2. The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), enacted on July 21, 2010, amended the Exchange Act by adding Section 21F, “Whistleblower Incentives and Protection.” The congressional purpose underlying these provisions was “to encourage whistleblowers to report possible violations of the securities laws by providing financial incentives, prohibiting employment-related retaliation, and providing various confidentiality guarantees.” *See Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, Release No. 34-64545, at p. 197 (Aug. 12, 2011) (the “Adopting Release”).

3. Congress explicitly noted the critical importance of providing financial incentives to promote whistleblowing to the Commission as it determined that “a critical component of the Whistleblower Program is the minimum payout that any individual could look towards in determining whether to take the enormous risk of blowing the whistle in calling attention to fraud.” *See The Restoring American Financial Stability Act of 2010*, Committee on Banking, Housing, and Urban Affairs (Apr. 30, 2010).

4. To fulfill this congressional purpose, the Commission adopted Rule 21F-17, which provides in relevant part:

- (a) No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.

Rule 21F-17 became effective on August 12, 2011.

B. Monolith’s Separation Agreements

5. Historically, Monolith has entered into separation agreements with certain employees who leave the company. A separation agreement is a contract between an employer and a former employee documenting the rights and responsibilities of both parties incidental to the employee’s departure.

6. Beginning in approximately February 2020 and continuing through early March 2023, Monolith’s separation agreement stated that “nothing in this agreement is intended to limit in any way your right or ability to file a charge or claim with any federal, state, or local agency,” but the agreement also took away an employee’s right to recover a monetary award for filing a claim with, or participating in an investigation or action by, a governmental agency.

7. Specifically, Section 10 of Monolith’s separation agreement stated in relevant part:

These [governmental] agencies have the authority to carry out their own statutory duties by investigating charges or claims, issuing determinations, filing lawsuits in their own name or

taking other action authorized by statute. You retain the right to participate in any such action, but not the right to recover money damages or other individual legal or equitable relief awarded by any such governmental agency.

8. Twenty-two separated employees signed agreements that contained the above language.

9. In or about April 2023, after being contacted by the Commission staff in this matter, Monolith voluntarily revised its separation agreement to make clear that in addition to not restricting a departing employee's right to communicate with or provide information to governmental agencies, including the Commission, the separation agreement did not in any way limit a separated employee's ability to obtain an incentive award in connection with providing such information to governmental agencies. Monolith's revised separation agreement now provides that "nothing in this Agreement shall bar or impede in any way your ability to seek or receive any monetary award or bounty from any governmental agency or regulatory or law enforcement authority in connection with protected 'whistleblower' activity."

10. Although the Commission is unaware of any instances in which (i) a former employee of Monolith who executed the prior separation agreement did not communicate directly with Commission staff about potential securities law violations or (ii) Monolith took any action to enforce that provision or otherwise prevent such communications, from February 2020 until early March 2023, Monolith's separation agreements raised impediments to participation in the Commission's whistleblower program by having the employees forego the critically important financial incentives that are intended to encourage persons to communicate directly with the Commission staff about possible securities law violations. Such restrictions on accepting financial awards for providing information regarding possible securities law violations to the Commission undermine the purpose of Section 21F and Rule 21F-17(a), which is to "encourag[e] individuals to report to the Commission," [Adopting Release at p. 201], and violate Rule 21F-17(a) by impeding individuals from communicating directly with the Commission staff about possible securities law violations.

Remedial Actions

11. In determining to accept Monolith's Offer, the Commission considered its remedial actions. For example, Monolith revised its separation agreements to make clear that the agreement does not in any way limit a separated employee's ability to obtain an incentive award in connection with providing information to governmental agencies. In addition, Monolith notified, or used reasonable efforts to notify, employees who had signed the prior separation agreement that the agreement does not in any way limit their ability to obtain such an incentive award.

Violation

12. Through its conduct described above, Monolith violated Rule 21F-17 of the Exchange Act.

IV.

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

Accordingly, it is hereby ORDERED that:

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

B. Respondent Monolith shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$225,000 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 Monolith 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 Nicholas Heinke, Associate Regional Director, United States Securities and Exchange Commission, Denver Regional Office, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, Colorado 80294-1961.

C. 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 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