

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

CHRISTOPHER FREEMAN BROGDON,

Defendant,

-and-

CONNIE BROGDON, et al.,

Relief Defendants.

15. Civ. 8173 (KM) (JBC)

**~~PROPOSED~~ ORDER AUTHORIZING DISTRIBUTION OF SETTLEMENT FUNDS
COLLECTED IN RELATED ACTIONS BROUGHT BY THE
SECURITIES AND EXCHANGE COMMISSION**

WHEREAS the Securities and Exchange Commission (the “Commission”) filed this action on November 20, 2015, against defendant Christopher Freeman Brogdon (“Brogdon”) and certain relief defendants;

WHEREAS, on December 28, 2015, following a preliminary injunction hearing on December 11, 2015, and pursuant to a settlement between the parties, the Court entered: (1) judgment against Brogdon and relief defendant Connie Brogdon (ECF No. 58) (the “Judgment”); and (2) the Order Appointing Monitor on Consent (ECF No. 57) (as amended by the Consent Order Amending Monitor Order and Plan entered on August 26, 2016 (ECF No. 152), and as at any time further amended or modified, the “Monitor Order”);

WHEREAS, the Judgment requires Brogdon and relief defendant Connie Brogdon to redeem the 13 bond offerings (the “Judgment Bond Offerings”) and six private placement offerings (the “Judgment Private Placement Offerings”) listed on Exhibit B to the Judgment by

paying in full all accrued interest, principal outstanding, and any other amounts required by the governing bond or private placement documents;

WHEREAS, the Judgment also required Brogdon to propose a plan, subject to approval of a Court-appointed Monitor and of the Court, for the “fair, prompt, and efficient disposition or refinancing” of certain entities and assets listed on Exhibit C to the Judgment and, if necessary, the personal assets of Brogdon and relief defendant Connie Brogdon (together, the “Brogdons”), in order to satisfy their obligations under the Judgment with respect to the Judgment Bond Offerings and the Judgment Private Placement Offerings;

WHEREAS, following a hearing on Brogdon’s proposed plan on July 13, 2016, the Court approved Defendant's Third Amended Plan Pursuant to Paragraph XII(2) of the December 28, 2015 Judgment (as at any time amended or modified with Court approval, the “Plan”) by order dated July 19, 2016 (ECF No. 133) (the “Plan Order”);

WHEREAS, the Commission has subsequently entered into settlements with other entities and individuals in connection with conduct involving the Judgment Bond Offerings, as well as other bond offerings involving Brogdon;

WHEREAS, on September 9, 2016, the Commission instituted settled cease-and-desist proceedings against BOKF, NA, doing business as Bank of Oklahoma (“BOKF”), for causing certain of Brogdon’s violations of the securities laws as alleged in this action between 2007 and 2015, including his violations of Section 17(a) of the Securities Act of 1933 (the “Securities Act”) and Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 thereunder, in connection with the Judgment Bond Offerings and certain other Brogdon bond offerings, and pursuant to which BOKF agreed to pay to the Commission disgorgement of

\$984,200.73, prejudgment interest thereon of \$83,520.63, and a civil money penalty of \$600,000.00 (the “BOKF Commission Order”)¹;

WHEREAS, also on September 9, 2016, the Commission filed a complaint in this District and before this Court against Marrien Neilson (“Neilson”), a former employee of BOKF, for aiding and abetting certain of Brogdon’s violations as alleged in this action, including his violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in connection with the Judgment Bond Offerings and certain other bond offerings²;

WHEREAS, on March 3, 2017, the Court entered a final judgment against Neilson requiring her to pay to the Commission disgorgement of \$29,624.03, prejudgment interest thereon of \$4,208.92, and a civil money penalty of \$21,167.05 (the “Neilson Judgment”);

WHEREAS, both the BOKF Commission Order and the Neilson Judgment concern 14 bond offerings that remain outstanding (as identified on Appendix A attached hereto, the “Offerings”), 12 of which are Judgment Bond Offerings;

WHEREAS, on April 5, 2017, the Commission instituted settled administrative and cease-and-desist proceedings against Lawson Financial Corporation (“LFC”) and Robert Lawson (“Lawson”), for violations of Sections 17(a)(2) and (3) of the Securities Act and Section 15(c)(2) of the Exchange Act and Rule 15c2-12 thereunder between 2010 and 2014 in connection with certain Offerings, and pursuant to which LFC and Lawson agreed to pay to the Commission

¹ *In the Matter of BOKF, NA*, Securities Act Release No. 10204, Exchange Act Release No. 78794, A.P. File No. 3-17533 (Sept. 9, 2016), available at <https://www.sec.gov/litigation/admin/2016/33-10204.pdf>.

² *SEC v. Marrien Neilson*, 16 Civ. 5475 (KM) (D.N.J., filed Sept. 9, 2016), available at <https://www.sec.gov/litigation/complaints/2016/comp-pr2016-182.pdf>.

disgorgement of \$178,750.00, prejudgment interest thereon of \$19,576.06, and civil money penalties totaling \$278,326.06, pursuant to 12-month payment plans (the “LFC Commission Order”)³;

WHEREAS, the LFC Commission Order concerns nine Offerings, also listed on Appendix A, including seven Judgment Bond Offerings;

WHEREAS, also on April 5, 2017, the Commission instituted partially-settled administrative and cease-and-desist proceedings against John T. Lynch, Jr. (“Lynch”) for violations of Sections 17(a)(2) and (3) of the Securities Act and Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-5 and 15c2-12 thereunder between 2010 and 2013 in connection with certain Offerings, and pursuant to which Lynch agreed to pay the Commission disgorgement of \$20,000.00, prejudgment interest thereon of \$2,338.00, and a civil money penalty of \$22,338.00, pursuant to a 12-month payment plan (the “Lynch Commission Order”)⁴;

WHEREAS, the Lynch Commission Order concerns eight Offerings, also listed on Appendix A, including seven Judgment Bond Offerings;

WHEREAS, the Commission has collected, and will continue to collect pursuant to payment plans, certain funds pursuant to the BOKF Commission Order, Neilson Judgment, LFC Commission Order, and Lynch Commission Order, and is seeking to distribute such funds to current holders of these bond offerings; and

³ *In the Matter of Lawson Financial Corporation and Robert Lawson*, Securities Act Release No. 10334, Exchange Act Release No. 80376, Investment Company Act Release No. 32591, A.P. File No. 3-17901 (Apr. 5, 2017), available at <https://www.sec.gov/litigation/admin/2017/33-10334.pdf>.

⁴ *In the Matter of John T. Lynch, Jr.*, Securities Act Release No. 10335, Exchange Act Release No. 80377, Investment Company Act Release No. 32592, A.P. File No. 3-17902 (Apr. 5, 2017), available at <https://www.sec.gov/litigation/admin/2017/33-10335.pdf>.

WHEREAS, the Court finds that adequate notice has been given, and based on the record in this action, that the entry of this Order is appropriate and necessary for the protection of investors in the Offerings;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Monitor Order is hereby amended in accordance with this Order.

2. The Monitor shall establish interest-bearing checking accounts at one or more federally insured banks of his choice (collectively, the "Monitor Accounts") for the deposit of the funds recovered pursuant to the BOKF Commission Order, the Neilson Judgment, the LFC Commission Order, and the Lynch Commission Order. The Monitor shall establish three separate Monitor Accounts, as follows: (a) one account for the BOKF Commission Order and the Neilson Judgment; (b) one account for the LFC Commission Order; and (c) one account for the Lynch Commission Order. The Monitor may use his discretion as to when to establish each Monitor Account depending on the timing of each transfer from the Commission described in the following paragraph.

3. The Commission shall transfer to the corresponding Monitor Account all funds it has collected as of the date of this Order, and may subsequently collect, pursuant to the BOKF Commission Order, the Neilson Judgment, the LFC Commission Order, and the Lynch Commission Order (collectively, the "Commission Proceeds").

4. Upon the Monitor's receipt of any Commission Proceeds, such Commission Proceeds (including any interest accruing on such proceeds) and each Monitor Account (and the balances therein) (i) shall be deemed to be in the custody and control, and subject to the exclusive jurisdiction, of this Court, (ii) shall not be disbursed or used by the Monitor except in

accordance with this Order, (iii) shall not constitute assets covered by the Plan, (iv) shall not be subject to any claim or lien (consensual, statutory, judgment or otherwise) held or asserted by any creditor of the Brogdons or any affiliated entity, (v) shall not be subject to attachment, garnishment, levy or execution by any creditor of the Brogdons or any affiliated entity, and (vi) shall not be used to pay the fees of the Monitor and his agents, except with respect to any fees of the Tax Advisor (as defined below).

5. The balances in each Monitor Account shall be used solely for the purposes of (i) paying the principal balance of each Offering for which the Monitor Account is established (the "Offering Balance"), (ii) paying any federal and state taxes (including those described in Paragraph 15 hereof) owing at any time with respect to the balances from time to time in each Monitor Account and the "Settlement Fund" as referred to in Paragraph 15 (the "Taxes"), (iii) paying, or reimbursing the Monitor and his agents, including Retained Personnel, counsel and the Tax Advisor (as defined below) for, the expenses incurred in administering the Monitor Accounts in accordance with, and otherwise performing under, this Order, with such payments or reimbursements being subject to review and approval by the Commission staff (the "Administration Expenses"), and (iv) paying the fees of the Tax Advisor subject to review and approval by the Commission staff.

6. The Monitor shall make disbursements (each a "Disbursement") from balances in each Monitor Account with respect to the Offering Balances for the Offerings to which such Monitor Account relates, on a pro rata basis for each such Offering, with such pro rata amount allocable to each Offering determined on any date (a "Determination Date") by multiplying the balance in the Monitor Account on such Determination Date by a percentage derived by dividing

the original face amount of such Offering by the aggregate original face amount of all Offerings then outstanding and that have not already received a Disbursement pursuant to this Order (except as permitted by Paragraph 13). Attached hereto as Appendix A is a list of each Offering and the original face amount of each Offering, together with a calculation (rounded to the nearest one-hundredth of a percent) of the allocation for each Offering in each proposed Monitor Account as of the date hereof. Before making a Disbursement with respect to any Offering Balance, the Monitor shall be authorized to hold back or set aside from each Monitor Account his reasonable estimate of the amounts necessary to pay when due Taxes, Tax Advisor fees, and Administration Expenses.

7. Prior to or concurrently with making any Disbursement, the Monitor shall provide counsel for the Commission and counsel for Brogdon with written notice of the Monitor's calculation of the appropriate amount of such Disbursement for each Offering.

8. For each Offering, the Monitor shall make a Disbursement from the Monitor Accounts on the "Disbursement Date", defined as follows:

- a. With respect to the Development Authority of Bibb County, Georgia Offering and the Bleckley-Cochran Development Authority Offering, as soon as reasonably possible after the date hereof;
- b. With respect to the City of Sumner, Illinois Offering, the sooner to occur of (i) on or about the date of any payment of principal or (ii) December 31, 2018; and
- c. With respect to all other Offerings, the sooner to occur of (i) on or about the date by which all or substantially all of the real and personal property securing the

obligations owing to the bondholders for such Offering is sold and liquidated to cash or (ii) December 31, 2018.

9. In connection with the calculation of each Disbursement, at the request of the Monitor, the indenture trustee for each Offering (the "Trustee") shall provide the Monitor with a written statement of the Offering Balance as of the date of each such statement (the "Offering Balance Statement") and any other pertinent tax identification information the Monitor may request for the purpose of complying with tax requirements. As of the date of this Order, BOKF is the Trustee for all Offerings listed on Appendix A.

10. The amount of any such Disbursement, when combined with the proceeds of the sale of all real and personal property securing an Offering, shall not exceed the amount of principal and interest owed to bondholders in that Offering as of the corresponding Disbursement Date. If for any reason the amount of a Disbursement exceeds the amount of principal due and owing to bondholders in that Offering, the Trustee for such Offering shall be obligated to promptly return such overpayment to the Monitor, and, if, after written demand by the Monitor, such Trustee has failed to return such overpayment within five (5) days after the date of such written demand, the Monitor may petition the Court for relief.

11. The Monitor shall make each such Disbursement by delivery of a check or checks drawn on, or wire transfer (pursuant to written instructions provided to the Monitor by the Trustee) from, the appropriate Monitor Accounts payable to the Trustee, for the benefit of bondholders in the Offering, unless, at least five (5) days prior to the Disbursement Date for such Disbursement, such Trustee has provided written notice (the "Trustee Notice") to the Monitor of a new successor Trustee and/or a new address for such Disbursement. In making each

Disbursement, the Monitor and his agents shall be entitled to rely, and shall be fully protected in relying, on the Trustee, any wire instructions provided by the Trustee, or any Trustee Notice delivered to the Monitor or any of his agents in accordance with this Paragraph 11 and shall not have any liability to any person or entity, including any investor, bondholder or Trustee, for making a Disbursement substantially in compliance with the terms hereof.

12. The Trustee shall cause each Disbursement to be paid to the bondholders in the corresponding Offering pursuant to the terms of the trust indenture governing that Offering.

13. If, after all Offerings have received a Disbursement, there are funds remaining in any Monitor Account, the Monitor shall make subsequent Disbursements to the Trustee for all Offerings for which principal remains due and owing in the manner set forth in Paragraphs 5 through 11 of this Order.

14. In making a Disbursement and in otherwise performing his duties under this Order, the Monitor and his agents shall be entitled to rely, and shall be fully protected in relying, upon matters and information stated in the Motion, this Order (including Appendix A), each Offering Balance Statement, each Trustee Notice and any other documents provided to the Monitor or any of his agents by the Brogdons, the Commission or the Trustee and, in respect of legal matters, upon advice of the Monitor's counsel, in each case without undertaking any independent investigation or verification of any of the matters or information contained therein, and shall have no liability to any person or entity for any loss or damage suffered as a result of such reliance.

15. The Monitor shall take all necessary steps to enable the balances in each Monitor Account to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of

Section 468B of the Internal Revenue Code and of the regulations, when applicable, whether proposed, temporary or final, or pronouncements thereunder, including the filing of the elections and statements contemplated by those provisions. The Monitor shall be designated the administrator of each such Settlement Fund, pursuant to Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2, including but not limited to (a) obtaining a taxpayer identification number, (b) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon, and (c) satisfying any information, reporting or withholding requirements imposed on distributions from each such Settlement Fund. The Monitor shall cause each Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a “Qualified Settlement Fund.” Brogdon shall cooperate with the Monitor in fulfilling each Settlement Fund’s obligations under Treas. Reg. § 1.468B-2. Any taxes accruing with respect to a Settlement Fund shall be payable from the balance of such Settlement Fund.

16. In performing his duties hereunder, the Monitor shall be authorized to call upon any Retained Personnel (as defined in the Monitor Order), including counsel, for assistance. In addition to any such Retained Personnel, subject to prior Court approval, the Monitor shall be authorized to engage such person or entity, or in the alternative to call upon a professional employed by KapilaMukamal, LLP, as an additional Retained Personnel, as the Monitor deems necessary to advise and assist the Monitor and his agents in performing the Monitor’s duties hereunder, including, without limitation, preparing and filing the appropriate state and federal tax returns (the “Tax Advisor”).

17. The Monitor, any such Retained Personnel assisting the Monitor under this Order, and any Tax Advisor shall be entitled to reasonable compensation for services provided hereunder. For any services provided hereunder, the Monitor and any Retained Personnel shall bill at the hourly rates agreed upon by the Monitor and the Commission for services under the Monitor Order. Such compensation shall require the prior approval of the Court and shall be submitted to the Court for approval in any Quarterly Fee Application (as defined in the Monitor Order) filed in accordance with the procedure set forth in Paragraphs 16-20 of the Monitor Order. Any such Quarterly Fee Application shall clearly distinguish between the fees and expenses sought for services provided under the Monitor Order generally and the fees sought for services hereunder. Administration Expenses, as defined and described in Paragraphs 5 and 6, shall not be included in any Quarterly Fee Application and are subject to review and approval by the Commission staff only as set forth in Paragraph 5. For any services provided hereunder, the Tax Advisor shall bill at the hourly rates agreed upon by the Monitor and the Commission. The fees of the Tax Advisor shall not be included in any Quarterly Fee Application and are subject to review and approval by the Commission staff only as set forth in Paragraph 5.

18. In no event shall the Monitor or the Monitor's agents, including any Retained Personnel (as such term is defined in the Monitor Order), be liable to anyone for their good faith compliance with their duties and responsibilities hereunder as Monitor or Monitor's agents.

19. This Court shall retain jurisdiction over any action filed against the Monitor or the Monitor's agents based upon acts or omissions committed in their representative capacities hereunder.

SO ORDERED.

Dated: Newark, New Jersey

Aug 21, 2017



Hon. Kevin McNulty
United States District Judge

Appendix A – Allocations for the Offerings

Closing Date	Issuer/Offering Name	Face Amount¹	BOKF Commission Order and Neilson Judgment Allocations²	LFC Commission Order Allocation²	Lynch Commission Order Allocation²
9/30/1992	Liberty County Industrial Authority, Georgia	\$4,800,000	5.93%	0.00%	0.00%
5/30/1997	Toombs County Development Authority	\$2,315,000	2.86%	0.00%	0.00%
3/16/2000	Development Authority of Bibb County, Georgia	\$4,550,000	5.62%	0.00%	0.00%
2/25/2002	City of Sumner, Illinois	\$3,615,000	4.47%	0.00%	0.00%
8/31/2011	Chelsea Investments (“Clayton IV”)	\$2,150,000	2.66%	0.00%	0.00%
4/12/2012	City of Springfield, Ohio ³	\$7,230,000	8.93%	11.38%	12.51%
9/28/2012	Medical Clinic Board of the City of Mobile (Second) (“Mobile I”)	\$11,700,000	14.46%	18.42%	20.24%
11/29/2012	Medical Clinic Board of the City of Mobile (Second) (“Mobile II”)	\$5,740,000	7.09%	9.04%	9.93%
4/29/2013	Chelsea Investments (“Clayton V”)	\$2,750,000	3.40%	4.33%	4.76%
4/30/2013	Bleckley-Cochran Development Authority	\$5,850,000	7.23%	9.21%	10.12%
7/17/2013	Crisp-Dooly Joint Development Authority	\$6,975,000	8.62%	10.98%	12.07%

¹ “Face Amount” is the original principal amount of each Offering at the time of its issuance.

² The percentages reflected in these columns have been calculated based upon the Offerings outstanding as of the date of this Order and have been rounded to the nearest one-hundredth of a percent.

³ This is not a Judgment Bond Offering, though the borrower, Eaglewood Property, LLC, is listed as one of the “Brogdon Entities” in the Commission’s complaint.

Closing Date	Issuer/Offering Name	Face Amount¹	BOKF Commission Order and Neilson Judgment Allocations²	LFC Commission Order Allocation²	Lynch Commission Order Allocation²
9/26/2013	Medical Clinic Board of the City of Mobile (Second) ("Mobile III")	\$8,610,000	10.64%	13.56%	14.89%
12/12/2013	Thomaston-Upson County Industrial Development Authority	\$8,950,000	11.06%	14.09%	15.48%
3/21/2014	Tulsa County Industrial Authority ¹	\$5,700,000	7.04%	8.98%	0.00%

¹This is not a Judgment Bond Offering, though the borrower, Southern Tulsa, LLC, is listed as one of the "Brogdon Entities" in the Commission's complaint.