

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 10430 / October 26, 2017

SECURITIES EXCHANGE ACT OF 1934

Release No. 81964 / October 26, 2017

INVESTMENT ADVISERS ACT OF 1940

Release No. 4802 / October 26, 2017

INVESTMENT COMPANY ACT OF 1940

Release No. 32885 / October 26, 2017

ADMINISTRATIVE PROCEEDING

File No. 3-18266

In the Matter of

KENNETH P. KRUEGER

Respondent.

CORRECTED ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTIONS 203(f) and 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to, Section 8A of the Securities Act of 1933 (“Securities Act”), Section 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Kenneth P. Krueger (“Krueger” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, 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:

Summary

1. From approximately January 2, 2013 to November 19, 2014 (“Relevant Period”), Krueger, while associated with Canterbury Consulting, Inc. (“Canterbury”), improperly favored himself over customers and clients when allocating trades (also known as “cherry-picking”). Krueger executed his fraudulent cherry-picking scheme by purchasing and selling securities through an omnibus trading account, which afforded him the ability to purchase large blocks of securities that he then allocated to his customers and clients. Krueger, however, delayed allocating the trades until he knew whether the trades had made a profit during the day. When a security appreciated in value on the day of purchase, Krueger would often sell the security, creating a profitable day trade. Krueger then disproportionately allocated the profitable day trades to his personal accounts. In contrast, for securities that did not appreciate on the day of purchase, Krueger would disproportionately allocate these purchases to his customers’ and clients’ accounts. As a result of the scheme, Krueger realized \$309,651 in ill-gotten gains, inclusive of commissions and advisory fees earned from those he harmed.

Respondent

2. Kenneth P. Krueger, 74, resides in Newport Beach, California. Krueger was associated with Canterbury from 1988 to November 2016, when Canterbury terminated him. He was a founding member of Canterbury and during the Relevant Period, he was a managing director and owned about 2-5% of Canterbury’s outstanding shares, until the first quarter of 2014, when he divested his remaining shares pursuant to a retirement agreement with the firm. In 1973, when Krueger worked for Dean Witter, he jointly settled a customer complaint and paid \$2,000 for

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.

allegations of breach of fiduciary duty, unsuitable transactions, churning and violation of Blue Sky laws for the state of Oregon. In 1986, when Krueger worked for Kidder Peabody & Co., he jointly settled a customer complaint and paid \$7,165 for allegations of unsuitable investments, churning, and unauthorized opening and maintenance of a margin account. In 2001, Krueger entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with then-NASD, Inc. and paid \$5,000 to settle allegations that he failed to maintain the required net capital for June and July of 2000.

Other Entity

3. Canterbury Consulting, Inc. is a California corporation based in Newport Beach, California. It has been registered with the Commission as an investment adviser since September 1989 and has almost \$16.45 billion in regulatory assets under management. Canterbury also was registered with the Commission as a broker-dealer from October 1988 until December 2013, when it withdrew its broker-dealer registration. In 1999, Canterbury entered into a consent order with the state of Alabama for filing an application containing a false statement that the firm had not done business in Alabama, when it had, and paid \$1,500 in administrative assessments and investigative costs. In 2001, Canterbury entered into an AWC with then-NASD, Inc. and paid \$5,000 to settle allegations that a broker (Krueger) failed to maintain the required net capital for June and July of 2000. In 2010, Canterbury paid the state of Illinois \$500 in fines and costs for failing to designate a principal with the secretary of state by the required deadline.

Facts

4. During the Relevant Period, Krueger engaged in fraudulent cherry-picking by disproportionately allocating profitable trades to his personal accounts and unprofitable or less profitable trades to 42 brokerage customer and advisory client accounts (the “discretionary accounts”).

5. Krueger traded securities using Canterbury’s omnibus trading account at Canterbury’s prime broker. As a general matter, Krueger executed a “block” trade in a security in the omnibus account, and then allocated portions of the trade to various accounts, including his personal accounts and discretionary accounts. Krueger executed and allocated shares in various securities each day. Krueger was the only person at Canterbury who the firm authorized to use the omnibus trading account.

6. Before executing the trades, Krueger documented each block trade on an order ticket, indicating the ticker symbol and number of shares of stock purchased. During the Relevant Period, Krueger allocated the majority of the trades – about 95% – after the close of trading on the New York Stock Exchange and other U.S. trading platforms.

7. Krueger knowingly cherry-picked profitable trades for his personal accounts to the detriment of the discretionary accounts. When a security appreciated in value on the day of purchase, Krueger often sold the security the same day and improperly allocated a disproportionate number of the profitable day trades to his personal accounts. In contrast, for securities that did not appreciate on the day of purchase, Krueger improperly allocated a disproportionate number of purchases to one or more discretionary accounts. Indeed, during the Relevant Period, Krueger

allocated 87% of the profitable day trades to his own accounts and 13% to the discretionary accounts, and allocated over 99% of the trades experiencing first-day losses to discretionary accounts.

8. The difference between the allocations of profitable trades to Krueger's own accounts as compared to profitable trades allocated to discretionary accounts is statistically significant; the probability of observing such an uneven allocation of profitable trades by chance is less than one-in-one million.

9. There is no evidence there were differing investment strategies between Krueger and the discretionary accounts at issue that would justify the disparate performance. For example, over the Relevant Period, 87 securities overlapped between Krueger's accounts and the discretionary accounts. Krueger's first-day gains were positive in 77 of the securities, while the discretionary accounts' first-day gains were positive in only 20 of the securities. Even when Krueger traded the same securities on the same day for both himself and the discretionary accounts, Krueger's return on investment was positive, while the discretionary accounts' collective return was negative.

10. Krueger's cherry-picking scheme financially benefited him while negatively impacting the discretionary accounts. During the Relevant Period, Krueger's accounts averaged first-day gains of 1% while the discretionary accounts averaged a first-day loss of -0.9% from trades Krueger allocated from the omnibus account. In total, Krueger received excess profits of \$266,169 from fraudulent trade allocations. In addition, Krueger received \$43,482 in commissions and advisory fees from the harmed discretionary accounts during the Relevant Period.

Violations

11. As a result of the conduct described above, Krueger willfully violated Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities, by knowingly or recklessly allocating profitable trades to his own accounts at the expense of brokerage customers and advisory clients.

12. As a result of the conduct described above, Krueger willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit investment advisers from defrauding their advisory clients. Specifically, Section 206(1) of the Advisers Act prohibits any investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client, and Section 206(2) of the Advisers Act prohibits any investment adviser from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

Respondent's Medical Condition

13. In determining to accept the offer, the Commission reviewed evidence provided by Krueger showing that he is suffering from a serious medical condition, and considered the progressive nature of it and impact on his financial condition.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Securities Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act;

B. Respondent be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall pay disgorgement of \$309,651 and prejudgment interest of \$32,409, and pay a civil money penalty in the amount of \$80,000. Payment of \$10,000 shall be made within 14 days of the entry of this Order, and the remainder shall be paid within 45 days of entry of this Order. Payments made within 45 days of the entry of the Order shall be paid to the Fair Fund in the related proceeding, In the Matter of Canterbury Consulting, Inc., Admin. Proc. File. No. 3-18269. Any monies paid after 45 days of the entry of the Order shall be paid to the Securities and Exchange Commission.

Payments to the Commission 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 Krueger as 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 C. Dabney O'Riordan, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California 90071.

E. 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.

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, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 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.

Brent J. Fields
Secretary