

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75113 / June 5, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31661 / June 5, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16576

In the Matter of

Mark G. Brickman and
Mark E. Baratto

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934 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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Mark G. Brickman (“Brickman”) and Mark E. Baratto (“Baratto” and collectively with Brickman, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, 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 Respondents' Offers, the Commission finds¹ that:

SUMMARY

1. From approximately October 2008 to March 2013 (the "Relevant Period"), Mark G. Brickman and Mark E. Baratto founded, owned, and operated three day trading firms that improperly operated as unregistered broker-dealers. Each of the three businesses that Brickman and Baratto operated – Broad Street Trading, Broad Street International, and International Brokers – were day trading firms in which traders, in exchange for making an initial deposit of money to open a sub-account with the firm, received various services that allowed them to day trade securities. In particular, Brickman and Baratto personally created sub-accounts for traders, held customer funds and securities, provided each trader trading capital (margin) that exceeded the limits of FINRA's pattern-day trading rules, arranged the use of direct access electronic trading platforms, and enabled market access via an omnibus account that Brickman's and Baratto's firms had through a U.S. based clearing firm. In exchange for these services, each of the firms charged the traders transaction-based compensation consisting of commissions on purchases and sales of securities. Despite the fact that they solicited customers, provided brokerage services, and charged transaction-based compensation, Brickman and Baratto failed to register any of these three firms as broker-dealers with the Commission. By engaging in this conduct, Brickman and Baratto, each acting directly and through the three unregistered firms they controlled and operated, willfully violated Section 15(a)(1) of the Exchange Act.

RESPONDENTS

2. **Mark G. Brickman**, age 45, is a Miami, Florida resident and was the co-founder, co-owner, and co-principal of Broad Street Trading, Broad Street International, and International Brokers, along with Baratto. Brickman has never held any FINRA licenses.

3. **Mark E. Baratto**, age 40, is a Miami, Florida resident and was the co-founder, co-owner, and co-principal of Broad Street Trading, Broad Street International, and International Brokers along with Brickman. Baratto has never held any FINRA licenses.

OTHER RELEVANT ENTITIES

4. **Broad Street Trading, LLC** ("BST") was a Florida LLC that operated in New York providing services to day trading customers from approximately October 2008 through May 2011. BST is now defunct and was not registered with the Commission in any capacity.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. **Broad Street International** (“BSI”) was formed as a Cayman Islands exempted company in August 2010 and was restructured as a Nevis LLC in June 2011. It began operating in January 2011 and operated until April 2012. BSI is now defunct and was not registered with the Commission in any capacity.

6. **International Brokers, Inc.** (“IB”) was formed in January 2012 as a Belize company and was licensed as a broker-dealer with the Belize International Financial Services Commission. Brickman and Baratto owned and operated it from April 2012 through approximately March 2013. IB is now defunct and was not registered with the Commission in any capacity.

7. **Broad Street Securities Group, LLC** (“BSSG”) was a Delaware limited liability company that Brickman and Baratto operated from New York approximately from January 2011 through June 2012. Unlike BST, BSI, and IB, BSSG was an SEC-registered broker-dealer and a CBOE Stock Exchange member.

FACTS

THE FORMATION AND OPERATION OF BROAD STREET TRADING

8. Beginning in approximately October 2008, Brickman and Baratto operated Broad Street Trading, LLC, a New York-based business. Both Brickman and Baratto were equal partners in the business and jointly owned 100% of it.

9. Brickman and Baratto, via the firm’s website and other means, marketed BST as a proprietary day trading firm in which traders could obtain large amounts of trading capital, referred to as margin or leverage, for day trading. Brickman and Baratto solicited potential customers for the firm via the firm’s website, word of mouth, Craigslist postings, and open houses.

10. In order for a trader to become associated with BST, Brickman and Baratto required each trader to make an initial deposit of at least \$5,000 with the firm. BST then established an individual sub-account for that trader but retained effective custody and control over the sub-account. Such sub-accounts were visible only to BST, and not to the clearing broker at which BST maintained an omnibus account. Most of BST’s day traders made initial deposits into their individual sub-accounts that were substantially less than the \$25,000 minimum account equity required for pattern day traders who are customers of registered broker-dealers.²

11. Once the trader made an initial deposit – and also signed a customer agreement with BST – the firm provided the trader with various services. First, Brickman and Baratto extended trading capital to each trader at a ratio that ranged from 5:1 to 10:1. Thus, if a trader

² FINRA Rules define “pattern day trader” as a customer who executes four or more day trades within five business days, except if the number of day trades is 6% or less of total trades for the five business day period. FINRA Rule 2520(f)(8)(B)(ii). FINRA rules require broker-dealers to ensure that every pattern day trader maintains minimum equity of \$25,000 in the trader’s account at all times. FINRA Rule 2520(f)(8)(B)(iv)(a).

deposited the minimum amount of \$5,000 to open a sub-account, between \$25,000 and \$50,000 was available to the trader for trading. This ratio exceeded the amount of margin that may be provided by a registered broker-dealer subject to FINRA's pattern day trading rules.³

12. Second, the firm arranged for each trader to have access to electronic trading platforms that allowed the traders to directly access the U.S. securities markets. Third, the firm arranged for each trader to have access to an online system that allowed the trader to monitor his or her account activity and holdings. Fourth, the firm provided each trader with market access through an omnibus account that the firm had through a U.S. based clearing firm. Fifth, the firm provided customer service and technical support and helped arrange for traders to obtain access to specific trading centers.

13. In exchange for these services, BST charged the traders various fees. To effectuate trades on behalf of BST and its sub-account holders, the U.S. based clearing firm charged commissions to BST. BST marked up these commissions when passing them along to the sub-account holders.

14. For trades in penny-stock securities, commissions were charged on a flat, per-ticket basis. BST often required the traders to pay approximately \$1.25 extra per trade on the flat ticket charges. Thus, if the clearing firm charged BST \$.50 on such penny stock trades, BST charged its traders \$1.75 on those trades, and kept the difference of \$1.25 per trade as profit.

15. For trades in non-penny stock securities, commissions were charged on a per-share basis. BST often required the traders to pay an extra \$1 per 1,000 shares for their trades. Thus, if the clearing firm charged BST \$2 per 1,000 shares traded, BST charged its traders \$3 per 1,000 shares traded, and kept the difference of \$1 per 1,000 shares as profit.

16. Moreover, BST charged the traders various other fees, including training fees for trading courses that traders were required to take. BST also marked up each trader's monthly fee for access to direct access electronic trading platforms. Also, BST shared in the profits of less experienced traders – receiving a percentage – typically 5% – of those traders' net profits.

17. BST held itself out as a "proprietary" trading firm, rather than as a broker-dealer serving customers. But in practice, BST imposed restrictions on each trader's sub-account in order to limit trading losses. In particular, BST closely monitored the traders' transactions and immediately suspended the market access of any trader whose account balance had fallen below \$1,000. Moreover, in the event that a trader lost more than his or her amount on deposit, BST attempted – sometimes successfully – to recoup the lost funds directly from the trader.

18. While BST had a small number of other employees, Brickman and Baratto handled a substantial portion of BST's functions on their own. For example, Brickman controlled BST's finances, interfaced with the firm that executed and cleared the traders' purchases and sales of

³ FINRA Rules restrict the amount of intraday buying power available to pattern day traders by limiting the amount of margin capital granted by broker-dealers to a ratio of 4:1. ("Whenever day trading occurs in a customer's margin account the special maintenance margin required for the day trades in equity securities shall be 25% of the cost of all the day trades made during the day.") FINRA Rule 2520(f)(8)(B)(iii).

securities, and oversaw trading activity and risk management. He also coordinated with the providers of direct access electronic trading platforms to obtain software, log-in credentials and user support for each trader. Baratto established and operated BST's website, conducted marketing and advertising to solicit traders, fielded inquiries from prospective traders, and established the firm's relationship with new traders.

THE FORMATION AND OPERATION OF BROAD STREET SECURITIES GROUP AND THE CONTINUED OPERATION OF BROAD STREET TRADING

19. Approximately in late 2009, Brickman and Baratto became aware that a firm might be required to register as a broker-dealer if it charged traders commissions for securities transactions. Accordingly, in April 2010, Brickman and Baratto filed a Form BD to register a new firm, Broad Street Securities Group as a broker-dealer. BSSG was approved as a registered broker-dealer in November 2010.

20. BSSG operated as a day trading firm just like BST, but BSSG was subject to the regulatory requirements imposed upon registered broker-dealers. Moreover, to trade with BSSG, traders were required to have their Series 56 license, consistent with CBOE Stock Exchange requirements. BSSG was not profitable because, among other things, many prospective traders did not wish to spend the time and expense to obtain their Series 56 licenses.

21. During BSSG's operation – and despite being aware that BST might be operating improperly as an unregistered broker-dealer – Brickman and Baratto never registered BST with the Commission and continued to operate BST in the same manner until approximately April 2011.

THE FORMATION AND OPERATION OF BROAD STREET INTERNATIONAL

22. In August 2010, Brickman and Baratto formed yet another unregistered entity, this time an entity called Broad Street International. BSI began trading and operating in January 2011.

23. As with BST, Brickman and Baratto wholly owned and fully controlled BSI, and each held generally the same duties and responsibilities as during the operation of BST.

24. BSI operated in the same manner as BST. In particular, Brickman and Baratto – through BSI – facilitated traders' effecting of securities transactions by establishing sub-accounts for them, obtaining access to electronic trading platforms for them, and providing them large amounts of margin capital that exceeded the pattern-day trading rules. As with BST, they obtained transaction-based compensation from traders in the form of commissions, and monitored the traders' sub-accounts through "risk of loss" trading restrictions. Moreover, Brickman and Baratto solicited traders to join BSI by the same mechanisms they used to solicit traders to join BST. Numerous traders who had been customers of BST eventually became customers of BSI.

25. Neither Brickman nor Baratto took any steps to register BSI as a broker-dealer with the Commission, despite knowing when they formed it that they might have improperly operated BST – BSI's functionally similar predecessor – as an unregistered broker-dealer. On the contrary, Brickman and Baratto sought to make BSI appear to be foreign, so that it might appear

eligible for Exchange Act Rule 15a-6, which exempts from the broker-dealer registration requirement some foreign broker-dealers meeting certain specific criteria.

26. Specifically, Brickman and Baratto engaged in several acts of subterfuge to make BSI appear to be an offshore entity, despite operating BSI exclusively from New York and Florida. They formed BSI as a Cayman Islands entity, and later restructured it as a Nevis entity, and publicly gave the address of their registered agent in those nations as their operating address, notwithstanding that BSI had no business operations in either the Cayman Islands or Nevis.

27. Moreover, Brickman and Baratto claimed, including on BSI's website, that BSI only served non-U.S. traders. In reality, BSI served many traders who were located in the United States. Brickman and Baratto also transferred the firm's omnibus brokerage account from its U.S. based clearing firm to the U.K. affiliate of that firm in order to create the impression that BSI's trades were cleared by a foreign broker-dealer when, in reality, the clearing arrangement was functionally identical to that used by BST.

28. In addition, Baratto, with Brickman's knowledge, submitted to the clearing firm numerous documents which identified a relative of Baratto – who was a dual U.S.-Canadian citizen – as BSI's owner and chief executive. Specifically, Baratto created an electronic image of the relative's passport signature, and electronically inserted that image on at least seven BSI corporate documents and ten account forms he provided to the clearing broker. This relative, however, had no involvement with, or economic interest in, BSI.

29. Brickman and Baratto operated BSI from approximately January 2011 through April 2012, and during that time, solicited customers, provided brokerage services, and obtained transaction-based compensation from traders in the form of commissions. During that entire period, however, BSI was not registered as a broker-dealer with the Commission.

THE FORMATION AND OPERATION OF INTERNATIONAL BROKERS

30. In April 2012, Brickman and Baratto began operating a new entity named International Brokers, Inc., a Belizean corporation licensed as a broker-dealer only in Belize. Brickman and Baratto owned and controlled IB, and each held generally the same duties and responsibilities as during their operation of BST and BSI. IB was a successor to BSI, assuming its operations and taking over the omnibus account BSI had with its clearing broker-dealer. As with BSI, Brickman and Baratto employed various ruses to make IB appear to be a non-U.S. entity eligible for Exchange Act 15a-6's foreign broker-dealer registration exemption.

31. Baratto, with Brickman's knowledge, again installed Baratto's relative as the figurehead principal of IB by electronically inserting that relative's passport signature onto corporate documents and brokerage account forms. As with BSI, that relative also had no involvement with, or economic interest in, IB.

32. Brickman and Baratto also claimed, including on IB's website, that IB did not provide services to U.S. residents. However, IB served many traders located in the United States. Also, IB maintained its omnibus account with the same clearing firm's U.K. affiliate in order to create the impression that IB's trades were cleared by a foreign broker-dealer. Brickman and

Baratto also registered IB with the Belizean International Financial Services Commission in order to market IB as a licensed “offshore broker-dealer.” In reality, IB had no operations in Belize and was overseen from the same Florida office used to operate BSI.

33. IB operated in a manner very similar to its predecessors, BST and BSI. In particular, Brickman and Baratto – through IB – provided traders with trading capital in ratios of 5:1, 10:1 and even 20:1 – far in excess of the amounts permitted under pattern-day trading rules. As with BST and BSI, IB set up traders with electronic trading platforms and an online account management system and provided customer service and technical support. IB also monitored the traders’ profit and loss status through “risk of loss” trading restrictions. Numerous traders who had been customers of BSI eventually became customers of IB.

34. Brickman and Baratto owned and operated IB from approximately April 2012 to March 2013 and during that time solicited customers, provided brokerage services, and obtained transaction-based compensation from traders in the form of commissions. During that entire period, however, IB was not registered as a broker-dealer with the Commission.

VIOLATION

35. Section 15(a)(1) of the Exchange Act makes it unlawful for any broker or dealer “to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers’ acceptances, or commercial bills) unless such broker or dealer is registered” in accordance with Section 15(b) of the Exchange Act. Scierter is not required in order to prove a violation of Section 15(a)(1).⁴

36. Section 3(a)(4) of the Exchange Act defines a “broker” as a person, including a company, engaged in the business of effecting transactions in securities for the account of others. A person acts as a broker if it regularly “participates in securities transactions at key points in the chain of distribution.”⁵ Actions indicating that a person is “effecting” securities transactions include soliciting investors; handling customer funds and securities; participating in the order-taking or order-routing process; and extending or arranging for the extension of credit in connection with a securities transaction. A key factor indicating that a person is “engaged in the business” is the receipt of transaction-based compensation.⁶

⁴ See SEC v. Nat’l Executive Planners, Ltd., 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

⁵ See Massachusetts Fin’l Servs. v. SIPC, 411 F. Supp. 411, 415 (D. Mass. 1976).

⁶ See, e.g., Release No. 34-22172 (June 27, 1985), 50 FR 27946 (July 9, 1985), at Section II.B (discussing the role of transaction-based compensation in determining whether associated persons of an issuer are deemed to be brokers). See also SEC v. Corporate Relations Group, Inc., 2003 U.S. Dist. LEXIS 24925, at *56 (M.D. Fla. Mar. 28, 2003); SEC v. Hansen, 1984 U.S. Dist. LEXIS 17835, at *26 (S.D.N.Y. April 6, 1984). While receipt of transaction-based compensation in connection with participation in securities transactions is sufficient to show a

37. As a result of the conduct described above, Brickman and Baratto, each acting directly and through the three unregistered broker-dealers they owned, controlled, and operated, willfully⁷ violated Section 15(a)(1) of the Exchange Act. In particular, although these firms were not registered with the Commission, Brickman and Baratto solicited traders to engage in securities transactions through sub-accounts at the firms, provided brokerage services, and received transaction-based compensation related to the trading.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents Brickman and Baratto shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondents Brickman and Baratto be, and hereby are:

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 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. Respondents Brickman and Baratto jointly and severally shall pay disgorgement totaling \$67,446.62 and prejudgment interest totaling \$6,010.62, and each separately shall pay a civil money penalty of \$25,000, for a total of \$123,457.24 to the Securities and Exchange

person is engaged in the business of effecting transactions in securities, transaction-based compensation is not a necessary element to determine whether someone is a broker. Receipt of other forms of compensation in conjunction with regular participation in securities transactions may also indicate that a person is engaged in the business.

⁷ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)).

Commission. Payment of disgorgement and interest shall be made in accordance with the following schedule:

- Payment 1, each of Brickman and Baratto shall separately pay \$12,500, in partial satisfaction of each one's civil money penalty, due within ten (10) days of the entry of this Order.
- Payment 2, each of Brickman and Baratto shall separately pay \$4,295.22, in partial satisfaction of each one's civil money penalty, due within ten (30) days of the entry of this Order.
- Payment 3, each of Brickman and Baratto shall separately pay \$4,102.39, in partial satisfaction of each one's civil money penalty, due within sixty (60) days of the entry of this Order.
- Payment 4, each of Brickman and Baratto shall separately pay \$4,102.39, in partial satisfaction of each one's civil money penalty, due within ninety (90) days of the entry of this Order.
- Payment 5, in the amount of \$8,161.96, due within one hundred twenty (120) days of the entry of this Order.
- Payment 6, in the amount of \$8,161.91, due within one hundred fifty (150) days of the entry of this Order.
- Payment 7, in the amount of \$8,161.91, due within one hundred eighty (180) days of the entry of this Order.
- Payment 8, in the amount of \$8,161.91, due within two hundred ten (210) days of the entry of this Order.
- Payment 9, in the amount of \$8,161.91, due within two hundred forty (240) days of the entry of this Order.
- Payment 10, in the amount of \$8,161.91, due within two hundred seventy (270) days of the entry of this Order.
- Payment 11, in the amount of \$8,161.91, due within three hundred (300) days of the entry of this Order.
- Payment 12, in the amount of \$8,161.91, due within three hundred thirty (330) days of the entry of this Order.
- Payment 13, in the amount of \$8,161.91, due within three hundred sixty (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 disgorgement, plus any additional interest accrued pursuant to SEC Rule of Practice 600, 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;⁸

⁸ The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to option (2) or (3) above.

- (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 Mark G. Brickman and Mark E. Baratto as Respondents 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 Antonia Chion, Associate Director, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-5720.

V.

It is further Ordered that, solely for the 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