

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73047 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16076

In the Matter of

**Brown Brothers Harriman &
Co.,**

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 AND CIVIL
PENALTY**

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 Brown Brothers Harriman & Co. (“BBH” 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 Respondent 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 and Civil Penalty (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.
2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.
3. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.
4. BBH failed to file on a timely basis multiple required Section 16(a) reports of transactions in the securities of Deltek, Inc. ("Deltek") and Tyler Technologies, Inc. ("Tyler") it executed on behalf of an affiliated fund it managed that held greater than 10% of Deltek's and Tyler's respective registered classes of common stock. BBH also failed to file on a timely basis required amendments to the Schedules 13G it filed with respect to Deltek and Tyler.

Respondent

5. BBH is a custodian bank organized under New York law as a partnership and has its principal place of business in New York. BBH provides investment management and advisory

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.

services to a private pooled investment vehicle structured as a limited partnership or other type of entity, (the “BBH Fund”), of which BBH also serves as the general partner. BBH designated certain of its partners to exercise voting and investment power over investments of the BBH Fund and to serve as directors of the BBH Fund (hereafter referred to together with the BBH Fund as the “BBH Affiliates”). BBH took responsibility for making all beneficial ownership filings on behalf of the BBH Affiliates.

Issuers

6. Deltek is a Delaware corporation with its principal place of business in Virginia. Deltek’s common stock was registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: PROJ) until October 2012.

7. Tyler is a Delaware corporation with its principal place of business in Texas. Tyler’s common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: TYL).

Applicable Legal Framework

8. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

9. The term “beneficial owner” is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include “any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise” has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

10. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person “has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect,” and is not directly or indirectly the beneficial owner of 20% or more of the class of securities (a “Passive Investor 13G Filer”). Exchange Act Rule 13d-2(b) requires that a Passive Investor 13G Filer must file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, a Passive Investor 13G Filer must also amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and must thereafter promptly amend the Schedule 13G upon increasing or decreasing its beneficial ownership by more than 5% of the class under Exchange Act Rule 13d-2(d). Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

11. Rule 13d-1(b) also provides certain qualified institutional investors, such as registered investment advisers, broker-dealers, or banks that fall within the definition in Exchange Act Section 3(a)(6), with an additional alternative by permitting a Schedule 13G to be filed in lieu of Schedule 13D within 45 days after the end of the calendar year in which they made the triggering acquisition, so long as the specified institutions acquired beneficial ownership of the securities “in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect” (a “Qualified Institution 13G Filer”). A parent holding company or control person of a Qualified Institution 13G Filer may also file on Schedule 13G under Rule 13d-1(b), provided that the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not eligible as Qualified Institution 13G Filers, does not exceed 1% of the class of securities (a “Qualified Control Person 13G Filer”).⁴

³ Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

⁴ A Qualified Institution or Qualified Control Person 13G Filer must also file an annual amendment within 45 days after the end of each calendar year under Exchange Act Rule 13d-2(b) if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, Rule 13d-2(c) requires that the Schedule 13G be amended within 10 days after the end of the first month in which the 10% threshold was crossed if beneficial ownership continues to exceed 10% at month-

12. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, except that persons eligible as Qualified Institution 13G Filers or Qualified Control Person 13G Filers are not deemed the beneficial owner of any securities held by the qualified institution “for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business ... as long as such shares are acquired by such institutions or persons without the purpose or effect of changing or influencing control of the issuer.”

13. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

14. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁵ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁶

end; thereafter, amendments must be filed within 10 days after any month-end at which beneficial ownership has increased or decreased by more than 5% from that previously reported.

⁵ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)].”); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) (“No showing of scienter is required to prove violations of these reporting provisions.”); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather,

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

15. The BBH Fund held greater than 10% of the registered class of common stock of Tyler as of October 26, 2009 and of Deltek as of November 18, 2010, resulting in the BBH Affiliates becoming subject to the reporting requirements of Section 16(a) as of such dates.⁷

16. BBH filed an untimely Form 3 on behalf of the BBH Affiliates with respect to Tyler on April 30, 2010 and did not file a Form 3 on behalf of the BBH Affiliates with respect to Deltek until September 26, 2011.

17. BBH also did not file until September 26, 2011 any of the required reports on Form 4 with respect to reportable transactions in Deltek executed beginning in November 2010 and reportable transactions in Tyler executed beginning in June 2011. The late reported-transactions consist of open-market purchases of Deltek common stock and open-market sales of Tyler common stock that were executed on behalf of the BBH Fund on the following dates:

<u>Issuer</u>	<u>Date of Trans.</u>	<u>Due Date</u>
Deltek	11/19/2010	11/23/2010
Deltek	11/22/2010	11/26/2010
Deltek	12/2/2010	12/6/2010
Deltek	1/10/2011	1/12/2011

appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.”).

⁶ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation.”); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

⁷ None of the BBH Affiliates were eligible under Exchange Act Rule 16(a)(1) subparagraphs (i) through (xi) to exclude any securities over which they were deemed to have direct or indirect beneficial ownership under Rule 13d-3.

<u>Issuer</u>	<u>Date of Trans.</u>	<u>Due Date</u>
Deltek	1/24/2011	1/26/2011
Deltek	3/2/2011	3/4/2011
Tyler	6/28/2011	6/30/2011
Tyler	6/29/2011	7/1/2011
Tyler	6/30/2011	7/5/2011
Tyler	7/1/2011	7/6/2011
Tyler	7/5/2011	7/7/2011
Tyler	7/6/2011	7/8/2011
Tyler	7/7/2011	7/11/2011
Tyler	7/8/2011	7/12/2011
Tyler	7/13/2011	7/15/2011
Tyler	7/19/2011	7/21/2011
Tyler	7/20/2011	7/22/2011

18. The purchases of Deltek common stock had an aggregate market value of more than \$18 million and the sales of Tyler common stock had an aggregate market value of more than \$3 million. BBH also failed to file a required Form 5 on behalf of the BBH Affiliates to report transactions that should have been reported on Forms 4 during Deltek's fiscal year 2010 but were not.

19. As a result of the conduct described above, Respondent BBH was a cause of violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by the BBH Affiliates.

Respondent Failed to Timely File Schedule 13G Amendments

20. BBH and the BBH Affiliates were subject to the reporting requirements of Exchange Act Section 13(d) with respect to Tyler and Deltek. BBH filed an initial statement on Schedule 13G pursuant to Exchange Act Rule 13d-1(c) on behalf of itself and the BBH Affiliates with respect to Tyler on May 18, 2007 and with respect to Deltek on February 12, 2010.

21. BBH failed to timely file multiple amendments required, including to reflect:

- As of the end of calendar year 2010, the number of shares of Deltek beneficially owned by BBH and the BBH Affiliates had increased from the amount previously set forth, which was not reflected in an amendment until December 8,

2011, more than 45 days after the end of the calendar year, in violation of Rule 13d-2(b); and

- As of the end of calendar year 2010, the number of shares of Tyler beneficially owned by BBH and the BBH Affiliates had increased from the amount previously set forth, which was not reflected in an amendment until December 8, 2011, more than 45 days after the end of the calendar year, in violation of Rules 13d-2(b).

22. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rule 13d-2 thereunder and was a cause of violations by the BBH Affiliates of such provisions.

Respondent's Remedial Efforts

23. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

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

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$120,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. 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 Brown Brothers Harriman & Co. 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 Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.

Jill M. Peterson
Assistant Secretary