

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77959 / June 1, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4411 / June 1, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17267

In the Matter of

**BLACKSTREET CAPITAL
MANAGEMENT, LLC
and
MURRY N. GUNTY,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, AND SECTIONS 203(e) AND 203(k) OF
THE INVESTMENT ADVISERS 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Blackstreet Capital Management, LLC (“BCM”) and Murry N. Gunty (“Gunty”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of

the Investment Advisers 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 Respondents’ Offer, the Commission finds¹ that:

SUMMARY

1. These proceedings arise from violations by registered private equity fund adviser BCM and its principal, Gunty, relating to: (i) the receipt of transaction-based compensation for the provision of brokerage services in connection with the acquisition and disposition of portfolio companies,² while not being registered as a broker; (ii) the collection and receipt of certain unauthorized and inadequately disclosed fees in one of the BCM-advised funds; (iii) the unauthorized use of fund assets; (iv) the unauthorized purchase of portfolio company interests; and (v) the purchase of limited partnership interests. In addition, BCM failed to adopt and implement reasonably designed compliance policies and procedures to prevent violations of the Advisers Act and its rules arising from the foregoing conduct.

2. In connection with the acquisition and disposition of portfolio companies or their assets, some of which involved the purchase or sale of securities, BCM provided brokerage services to and received transaction-based compensation from the portfolio companies. This activity caused BCM to be acting as a broker. BCM, however, has never been registered with the Commission as a broker.

3. Between 2011 and 2012, BCM improperly charged two portfolio companies owned by one of its funds \$450,000 in operating partner oversight (“OPO”) fees. The fund’s governing documents did not expressly authorize BCM to charge OPO fees and the fees were not disclosed to the fund’s limited partners until after BCM received the fees.

4. Between 2005 and 2012, BCM improperly used fund assets to make political and charitable contributions. BCM also used fund assets to pay for entertainment expenses. The funds’ governing documents did not expressly authorize BCM to use fund assets for these purposes. BCM

¹ The findings herein are made pursuant to Respondents’ Offer and are not binding on any other person or entity in this or any other proceeding.

² As part of its investment strategy, BCM first formed an acquisition vehicle, which BCM referred to as a portfolio company. The portfolio company then purchased a controlling interest in the actual operating company. This Order uses the term “portfolio company” when referring to the acquisition vehicle and/or operating company.

also did not adequately track or maintain records of whether entertainment expenses were for business or personal use.

5. In 2010, BCM improperly purchased shares in portfolio companies from a departing BCM employee who previously purchased shares in the portfolio companies. Pursuant to the terms of the agreement by which the BCM employee received the shares, the shares should have been repurchased by the portfolio companies for the benefit of the fund and its LPs; however, BCM purchased them directly from the departing employee.

6. Between 2010 and 2012, Gunty, through an entity he controlled, acquired interests in a BCM-advised private equity fund from two limited partners (“LPs”) who had defaulted on their commitments, as well as from six LPs who were seeking to sell their interests and exit the fund. Gunty improperly acquired the interests of the defaulted LPs rather than causing the LPs to forfeit their interests back to the funds as provided in the fund’s governing documents. Subsequent to acquiring the LPs’ interests, Gunty, acting on behalf of the fund’s general partner, improperly waived his obligation to satisfy future capital calls on any new investments in one of the funds that would have been associated with these interests, contrary to the applicable provisions of the fund’s governing documents.

7. Finally, BCM failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules arising from the improper use of fund assets, undisclosed receipt of fees, purchase of LP interests, and conflicts of interest.

8. By virtue of this conduct, BCM willfully violated, and Gunty caused BCM’s violations of, Section 15(a) of the Exchange Act, and Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder.

RESPONDENTS

9. **Blackstreet Capital Management, LLC (“BCM”)** is a Delaware limited liability company with its principal place of business in Chevy Chase, Maryland. BCM was originally formed in 2002 as MMP Capital Management. In 2007, MMP Capital Management changed its name to Blackstreet Capital Management. BCM is an investment adviser that has been registered with the Commission since August 2005. BCM provides advisory and management services to private equity funds. According to its most recent Form ADV, filed in March 2016, BCM had more than \$156.3 million in assets under management.

10. **Murry N. Gunty (“Gunty”)**, age 49, is a resident of Bethesda, Maryland. Gunty founded MMP Capital Management, which became BCM. Gunty has been the managing member and principal owner of BCM since May 2005.

OTHER RELEVANT ENTITIES

11. **Blackstreet Capital Partners (“Fund I”)**, formerly known as MMP Capital Partners, is a private equity fund comprised of two related Delaware limited partnerships, Blackstreet Capital Partners (AI), L.P. and Blackstreet Capital Partners (QP), L.P. The two entities are identical except that one consists of accredited investors, and the other consists of qualified purchasers. Both entities make the same investments on a side-by-side basis, oftentimes through the same special purpose vehicle, and are collectively referred to as “Fund I.” Fund I primarily invests in leveraged buyouts of businesses primarily located in the Eastern United States and with revenues typically between \$20 million and \$100 million.

12. **Blackstreet Capital Partners II (“Fund II”)** is a private equity fund comprised of two related Delaware limited partnerships, Blackstreet Capital Partners (AI) II, L.P. and Blackstreet Capital Partners (QP) II, L.P. The two entities are identical except that one consists of accredited investors, and the other consists of qualified purchasers. Both entities make the same investments on a side-by-side basis, oftentimes through the same special purpose vehicle, and are collectively referred to as “Fund II.” Fund II primarily invests in leveraged buyouts of businesses primarily located in the Eastern United States and with revenues typically between \$20 million and \$100 million.

13. **Blackstreet Capital Advisors, LLC (“BCA”)** is a Delaware limited liability company with its principal place of business in Chevy Chase, Maryland. BCA is an investment adviser that has been registered with the Commission since January 2006. BCA is the general partner of Fund I. According to its most recent Form ADV, filed in March 2016, BCA had more than \$42.9 million in assets under management.

14. **Blackstreet Capital Advisors II, LLC (“BCA II”)** is a Delaware limited liability company with its principal place of business in Chevy Chase, Maryland. BCA II is an investment adviser that has been registered with the Commission since January 2009. BCA II is the general partner of Fund II. According to its most recent Form ADV, filed in March 2016, BCA II had more than \$113.4 million in assets under management.

FACTS

A. Background

15. BCM provides investment advisory and management services to Fund I and Fund II (collectively, the “Funds”). The Funds are each governed by an Agreement of Limited Partnership (“LPA”) that sets forth the terms and operation of the fund. Pursuant to each LPA, BCA and BCA II, as general partners, are responsible for management of their respective funds, but each is permitted to, and did, appoint BCM to serve as manager.

16. The Funds invest primarily in undervalued portfolio companies that are mismanaged, unprofitable, orphaned by a parent conglomerate, or have limited earnings potential

in a declining market. The Funds call capital from their respective LPs, which may be used to fund the acquisition of the portfolio companies, including related turnaround fees and other transaction fees and costs, or to pay “Partnership Expenses,” which include management fees and all fund costs and expenses (as distinctly defined in each LPA). LPs failing to satisfy capital calls may be defaulted, subjecting them to possible forfeiture of their interests in the fund.

17. BCM earns a management fee equal to 2% of the aggregate capital commitment, which is then reduced by .2% per year following expiration of the commitment period. BCM also is entitled to a “carry” of 20% of the sum of all distributions in excess of the sums contributed by the LPs in Fund I and up to 25% in Fund II.

B. Unregistered Broker-Dealer Activity

18. Although the LPAs expressly permitted BCM to charge transaction or brokerage fees, BCM has never been registered with the Commission as a broker nor has it ever been affiliated with a registered broker. Rather than employing investment banks or broker-dealers to provide brokerage services with respect to the acquisition and disposition of portfolio companies, some of which involved the purchase or sale of securities, BCM performed these services in-house, including soliciting deals, identifying buyers or sellers, negotiating and structuring transactions, arranging financing, and executing the transactions. BCM received at least \$1,877,000 in transaction-based compensation in connection with providing these brokerage services.

C. Undisclosed OPO Fees

19. In 2011 and 2012, BCM charged two Fund I portfolio companies at least \$450,000 in OPO fees. These fees were paid directly to BCM pursuant to a written agreement between BCM and the portfolio companies for various BCM employees to provide certain senior-level operating and management services to these companies in circumstances where the companies were having difficulty recruiting suitable talent to work directly for them. The fees were intended to remain in place until the portfolio companies were able to attract suitable personnel to perform these services. The OPO fees resulted in a conflict of interest between the fund and BCM because BCM used the fund’s assets to compensate itself and BCM employees. Fund I’s LPA did not expressly address OPO fees or specifically authorize BCM to charge these fees to the portfolio companies (and, indirectly, to the fund). BCM did not disclose the OPO fees to the fund’s LPs until after the LPs committed capital and the fees were being charged.

D. Unauthorized Use of Fund Assets

20. In several instances between 2005 and 2012, BCM used fund assets for purposes that were not expressly authorized by the Funds’ LPAs. In particular, the LPAs did not address using fund assets to pay for political contributions, charitable contributions, and entertainment expenses.

(i) Political Contributions

21. Beginning in 2005, BCM used fund assets to make political contributions to a Maryland political candidate's campaigns. Fund I contributed a total of \$12,000 to the candidate's campaigns, including \$4,000 in each of 2005, 2009, and 2011.

(ii) Charitable Contributions

22. From 2009 to 2011, BCM used Fund I assets to make more than \$23,000 in charitable contributions to a variety of charities. BCM subsequently reimbursed Fund I for these contributions, plus interest.

(iii) Entertainment Expenses

23. From 2010 to 2013, BCM charged Fund I and Fund II each one-third of the cost of the lease and event tickets associated with a luxury suite at the Verizon Center in Washington, DC; BCM paid the remaining one-third of the cost. BCM and Gunty did not take sufficient steps to ensure that the costs of the lease and event tickets were allocated appropriately among BCM and the Funds. BCM and Gunty also did not adequately track or keep records of their usage of the lease or event tickets, including adequate records of personal use. BCM reimbursed the Funds, with interest, for their costs of the suite and tickets.

24. Although BCM disclosed to the Funds' LPs that fund assets had been used to make political and charitable contributions, and to pay entertainment expenses, the disclosures were not made until after the LPs committed capital and until after the contributions were made and the expenses were incurred. BCM neither sought nor obtained appropriate consent for these expenditures.

E. Purchase of Portfolio Company Interests

25. BCM provided incentive-based compensation to employees assigned to perform services on behalf of portfolio companies. Such incentives included the opportunity to invest alongside the Funds and purchase shares in the portfolio companies. In those instances, the employees signed share purchase agreements that granted the portfolio companies exclusive rights to repurchase the employees' shares at fair market value in the event of the employees' departure or termination.

26. Despite that term of the share purchase agreements, in 2010, BCM purchased a departing employee's incentive-based shares in Fund I portfolio companies. By acquiring the shares, BCM engaged in a conflicted transaction because it purchased shares in portfolio companies owned by Fund I without disclosing its financial interest or obtaining appropriate consent to engage in the transaction. BCM later transferred the shares and associated distributions, plus interest, to Fund I.

F. Acquisition of LP Interests

27. Between 2010 and 2012, Gunty, through an entity he controlled, acquired interests in Fund II from two defaulted LPs and from six LPs who were seeking to sell their interests and exit the fund.

28. As to the two defaulted LPs, Fund II's LPA permits the general partner – BCA II – to require defaulted LPs to forfeit all but one dollar of their interests, and then the general partner shall purchase the defaulted partner's remaining interest for one dollar. Gunty, however, paid only one dollar to acquire each defaulted LP's entire forfeited interest for himself rather than forfeiting all but one dollar of their interests to the fund. Gunty later relinquished to Fund II the forfeited interests that he acquired. As to the six LPs who sought to sell their interests and exit the fund, Gunty and the LPs agreed on a negotiated price at which Gunty would pay for their interests.

29. Fund II's LPA states that anyone who acquires the interest of another LP assumes that LP's obligation to make future capital contributions. Despite this disclosure, BCA II, at Gunty's direction, waived Gunty's obligation to make future capital calls on any new investments that would have been associated with the interests he purchased from the two defaulted LPs and the other six LPs. The waivers of Gunty's obligation to make future capital calls on new investments were not disclosed to the Fund II LPs. Accordingly, BCM's failure to disclose the waivers rendered the LPA's disclosures concerning LPs' obligations to make future capital calls materially misleading.

30. Although Gunty did not participate in the gains resulting from new investments made in Fund II subsequent to acquiring the defaulting and non-defaulting LP interests, his failure to make future capital calls reduced the capital available for investment opportunities and increased the pro rata share of future capital calls borne by the remaining LPs.

G. Failure to Adopt and Implement Policies and Procedures Reasonably Designed to Prevent Violations of the Advisers Act and its Rules

31. As a registered investment adviser, BCM was subject to the Advisers Act's rule requiring it to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

32. BCM adopted and implemented written policies and procedures in the form of its Investment Adviser Supervisory Procedures and Compliance Manual. BCM, however, did not adopt or implement any policies and procedures designed to prevent violations of the Advisers Act or its rules arising from the improper use of fund assets, undisclosed receipt of fees, or purchase of LP interests. Furthermore, despite BCM's policies and procedures designating Gunty as BCM's "Designated Supervisor" responsible for ensuring compliance with BCM's policies and procedures and the federal securities laws, BCM failed to adopt and implement any policies and procedures designed to address conflicts of interest arising from Gunty's supervisory role. Thus, BCM's

policies and procedures were not reasonably designed to prevent the violations of the Advisers Act and its rules described herein.

VIOLATIONS

33. Section 15(a)(1) of the Exchange Act makes it unlawful for any broker or dealer to use the mails or any other means of interstate commerce to “effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security” unless that broker or dealer is registered with the Commission in accordance with Section 15(b) of the Exchange Act. “Broker” is defined in Section 3(a)(4) of the Exchange Act as “any person engaged in the business of effecting transactions in securities for the account of others.” As a result of the conduct described above, BCM willfully violated, and Gunty caused BCM’s violations of, Section 15(a) of the Exchange Act.

34. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging “in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. As a result of the conduct described above, BCM willfully violated, and Gunty caused BCM’s violations of, Section 206(2) of the Advisers Act.

35. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to “[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle” or “engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.” As a result of the conduct described above, BCM willfully violated, and Gunty caused BCM’s violations of, Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

36. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. As a result of the conduct described above, BCM willfully violated, and Gunty caused BCM’s violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

BCM’S REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondents, including BCM’s and Gunty’s voluntary retention of a compliance consultant in 2012; BCM’s decision to cease charging OPO fees; revisions to BCM’s written policies and

procedures; and BCM's and Gunty's decision to return the remaining LP interests from the two defaulted LPs, the portfolio company interest, and money, with interest, to the Funds in connection with the conduct discussed above.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents BCM and Gunty cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act, and Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder.

B. Respondent BCM is censured.

C. Respondents BCM and Gunty shall pay, jointly and severally, disgorgement of \$2,339,000, prejudgment interest of \$283,737, and a civil money penalty of \$500,000. The sum of \$504,588 of that total shall be paid pursuant to paragraph D below. The remaining balance of \$2,618,149 shall be paid, within 10 days of the entry of this Order, 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 SEC Rule of Practice 600 and/or 31 U.S.C. §3717.

Payment of the \$2,618,149 must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Blackstreet Capital Management, LLC and Murry N. Gunty 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 Anthony Kelly, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

D. Respondents shall pay, jointly and severally, a total of \$504,588 consisting of disgorgement of \$450,000 and prejudgment interest of \$54,588 (collectively, the “Disgorgement Fund”) to Fund I or its LPs, as follows:

- i. Within ten (10) days of the entry of this Order, Respondents shall deposit the full amount of the Disgorgement Fund into an escrow account acceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit of the Disgorgement Fund is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600;
- ii. Respondents shall be responsible for administering the Disgorgement Fund. When possible, Respondents shall distribute the amount of the Disgorgement Fund to Fund I or its LPs as a credit against or other effective reduction of certain fees or other amounts that the fund or LPs would otherwise be obligated to pay to BCM or that BCM would otherwise be entitled to receive. Within 30 days of the entry of this Order, BCM shall submit a proposed distribution to the staff for review and approval. The proposed distribution will include payment amounts made to Fund I or its LPs and a description of the methodology used to determine the exact amount of payment or credit for the fund or each LP that will receive a distribution. The distribution of the Disgorgement Fund shall be made in the next two fiscal quarters immediately following the entry of this Order, based on the methodology set forth in the proposed distribution and as reviewed and not objected to by the staff. If Respondents do not distribute any portion of the Disgorgement Fund for any reason, including factors beyond Respondents’ control, Respondents shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury. Any such payment shall be made in accordance with Section IV.C above;
- iii. Respondents agree to be responsible for all tax compliance responsibilities associated with distribution of the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondents and shall not be paid out of the Disgorgement Fund; and
- iv. Within 180 days after the date of the entry of the Order, Respondents shall submit to the Commission staff a final accounting and certification of the

disposition of the Disgorgement Fund not unacceptable to the staff, which shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (i) the amount paid or credited to the fund or each LP; (ii) the date of each payment or credit; (iii) the check number or other identifier of money transferred or credited to the fund or LP; and (iv) any amounts not distributed to be forwarded to the Commission for transfer to the United States Treasury. Respondents shall submit the final accounting and certification, together with proof and supporting documentation of such payments and credits in a form acceptable to Commission staff, under a cover letter that identifies Blackstreet Capital Management, LLC and Murry N. Gunty as the Respondents in these proceedings and the file number of these proceedings to Anthony S. Kelly, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5010. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request. Once the Commission approves the final accounting, Respondents shall pay any amounts that have not been distributed to the Commission for transmittal to the United States Treasury.

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