

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78574 / August 15, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32215 / August 15, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17172

In the Matter of

BARRY B. CLARE,

Respondent.

**ORDER MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER
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**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter this Order Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 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 Barry B. Clare (“Clare” or “Respondent”).¹

II.

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 Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act (“Order”), as set forth below.

¹ On March 15, 2016, the Commission instituted public administrative and cease-and-desist proceedings against Respondent pursuant to Sections 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that:

Summary

1. From at least March 2011 to March 2015 (the "Relevant Period"), while serving as the vice president of finance at Baltia Air Lines, Inc. ("Baltia" or the "Company"), Clare acted as an unregistered broker for sales of Baltia's common stock to investors.
2. Although Baltia has existed since 1989—ostensibly for the purpose of flying commercial flights from New York City to St. Petersburg, Russia—it has never operated a commercial flight or otherwise generated any revenue.
3. To fund its operations, Baltia has sold its common stock to investors through a continuous, unregistered offering that raised over \$26 million during the Relevant Period.
4. Baltia's finance department, which Clare ran, essentially functioned as an in-house brokerage firm.
5. Clare acted as a broker by actively soliciting potential investors, recommending investments in Baltia, negotiating and closing stock sales, and receiving transaction-based compensation for his work.

Respondent

6. **Clare**, age 58, resides in Bayside, New York. Clare joined Baltia in 2006 and has served as its vice president of finance since approximately 2007. Since January 5, 2016, Clare has also served as a director of Baltia.

Other Relevant Entity

7. **Baltia**, a New York corporation formed on August 24, 1989 and headquartered in Jamaica, New York, describes itself as a development-stage airline currently seeking air carrier certification from the Federal Aviation Administration ("FAA"). Baltia apparently plans to operate the only direct flight between New York City's John F. Kennedy International Airport and St. Petersburg, Russia. Baltia's common stock is registered with the Commission under Exchange Act Section 12(g) and quoted on OTC Link under the ticker symbol BLTA. The stock has traded below \$0.01 over the last year.

Clare's Unregistered Brokerage Activities

8. Because Baltia has never generated any revenue, it has funded its operations through unregistered offerings of its common stock.

² The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

9. Clare and others in Baltia's finance department raised capital for Baltia by selling the Company's stock.
10. During the Relevant Period, Baltia raised over \$26 million through these stock sales.
11. To sell Baltia's stock, Clare and others in Baltia's finance department first solicited potential investors.
12. Clare and the Baltia employees he oversaw often contacted people whose names appeared on certain lists of individuals who had no pre-existing relationship with Baltia.
13. Clare actively solicited these and other potential investors by phone, by email, and in person.
14. Clare also solicited potential investors during two interviews broadcast on a New York-area, Russian-language radio station in February and May 2014.
15. In the interviews, Clare stated that Baltia was a "great investment opportunity" and that he believed Baltia's share price was "undervalued."
16. Baltia paid for each interview pursuant to an advertising contract.
17. Once Clare and his employees had solicited potential investors, Clare recommended investments in Baltia directly to the potential investors.
18. For example, in 2011, Clare wrote and sent a glowing email about Baltia to potential investors: "As discussed, Baltia Air Lines is quite an attractive investment opportunity. I believe it is a prudent investment at this time."
19. Similarly, in March 2012, Clare wrote and sent another email to potential investors: "I believe the investors who invest at this level could realize tremendous gains on their investments once Baltia begins flight revenue operations this coming summer."
20. After actively soliciting investors and recommending Baltia investments to them, Clare typically closed the stock sale.
21. Clare generally met or spoke with Baltia's investors himself.
22. Clare collected subscriber questionnaires and subscription agreements and ensured that the investors had completed the necessary forms.
23. Although Baltia's then-chief executive officer had to approve the price per share each investor paid, Clare often helped finalize this price.
24. Specifically, Clare told certain investors that the price per share could be negotiated, he provided or relayed offers and counter-offers, and he helped implement the negotiated price after the former CEO had accepted it.

25. Finally, in return for his work, Clare received transaction-based compensation of up to 20% of the proceeds of the Baltia investments he obtained.

26. During the Relevant Period, Clare maintained ledgers of investments and compensation paid to him.

27. The ledgers list the name of each investor, the amount of the investment, the number of shares received, and the compensation paid or owed to Clare based on the investment, among other things.

28. Clare's ledgers typically note Baltia's obligation to pay him a portion of the amount of the investment, although Baltia's actual payments to him varied based on the Company's financial situation.

29. As Clare's ledgers show, Clare sold Baltia stock on a near-daily basis during the Relevant Period. Indeed, Clare participated in at least 820 sales of Baltia stock.

30. During the Relevant Period, Clare received transaction-based compensation, totaling at least \$988,277.30, for approximately 605 of these sales. Clare's ledgers show that Baltia owed him additional amounts of unpaid transaction-based compensation.

31. Baltia's Forms 10-K for the years 2011, 2012, and 2013 note that the Company paid Clare "for negotiating services in connection with the raise of new equity capital."

Violations

32. As a result of the conduct described above, Clare willfully³ violated Exchange Act Section 15(a), which makes it illegal for a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless the broker is registered with the Commission or associated with a registered broker-dealer.

³ 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)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

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

A. Respondent Clare cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Respondent Clare be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and 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, for a period of twelve months, effective on the second Monday following the entry of this Order.

C. Respondent Clare shall pay disgorgement of \$988,277.30, prejudgment interest of \$69,330.03, and a civil money penalty of \$15,000.00 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. Payment shall be made in the following installments: one installment of \$200,000.00 due within 10 days of the date of the entry of this Order, and then three installments of \$290,869.11 each, due within 180, 360, and 540 days, respectively, of the date 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, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and/or pursuant to 31 U.S.C. § 3717, 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;
- (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 Clare 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 Sanjay Wadhwa, Senior Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281.

D. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, he shall not argue that he is entitled to, nor shall he 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 he 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