

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83754 / July 31, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33188 / July 31, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18619

In the Matter of

BRANDON T. NEFF

Respondent.

**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 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 Brandon T. Neff (“Neff” 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 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 (“Order”), as set forth below.

III.

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

Summary

These proceedings arise out of Respondent Neff's participation as an unregistered broker-dealer in the offer and sale of securities of Blackbird Capital Partners, LLC ("Blackbird") in interstate commerce. On November 28, 2016, the Commission filed an emergency injunctive action in federal district court charging Blackbird and its principals, Andrew D. Kelley ("Kelley") and Paul H. Shumway ("Shumway") with securities fraud. *SEC v. Blackbird Capital Partners, LLC, et al.*, Civil Action No. 2:16-cv-01199-TC (D. Utah).

Blackbird's principals, Kelley and Shumway, solicited individuals to invest money with Blackbird, an entity that was registered as a Commodity Trading Advisor and/or through separate "Family and Friends" accounts, which they claimed Kelley managed as proprietary trading funds. Neff, acting as an unregistered sales agent of Blackbird, offered and sold Blackbird's securities to investors and earned transaction-based compensation, in the form of ownership interest in a limited liability company, from each sale.

Respondent

1. **Brandon T. Neff**, age 42, is a resident of South Jordan, Utah. Neff was an investor in Blackbird Capital Partners, LLC, an entity that purported to hold funds for investors and trade securities for profit. Neff is not and has never been registered with the Commission in any capacity and does not hold any securities licenses. From at least May 2016 to November 2016, Neff engaged in the business of identifying, soliciting, and communicating with potential investors to solicit and facilitate the purchase of securities. By engaging in this conduct and receiving transaction-based compensation therefrom, Neff acted as an unregistered broker. Neff participated in an offering of Blackbird's stock, which is a penny stock.

Other Relevant Entities

2. **Blackbird Capital Partners, LLC** was formed as a Nevada limited liability company on July 15, 2013. Blackbird registered as a foreign LLC in Utah on July 1, 2015, but failed to file renewal as of October 26, 2016. Blackbird was registered as a member with the National Futures Association ("NFA"), approved on July 10, 2015, but its membership was withdrawn on September 4, 2016.

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.

3. **Andrew D. Kelley (“Kelley”)**, age 42, was a resident of Draper, Utah, and is currently incarcerated in federal prison. Kelley was a founder and manager of Blackbird, is not registered with the Commission in any capacity, and does not hold any securities licenses. On January 31, 2017, Kelley consented to the entry of a judgment in *SEC v. Blackbird*, Case No. 2:16cv01199-TC (D. Utah), without admitting or denying the allegations of the complaint. The judgment enjoined Kelley from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and ordered disgorgement in an amount yet to be determined.

Background

4. In or around the spring of 2015, Neff was introduced to Blackbird and its principal, Andrew Kelley. Kelley claimed that he had an expertise in trading and that he traded on behalf of others through his entity, Blackbird. Kelley represented that his trading had historically produced substantial rates of return. Neff decided to invest money with Blackbird. During the following year, Kelley represented that Neff’s investment with Blackbird had made substantial profits, and Neff invested additional funds with Blackbird.²

5. Blackbird also engaged Neff as a salesperson to obtain additional investors in Blackbird’s securities. Neff represented to potential investors that their money would be put into an account that would be traded by Kelley. Neff represented that Kelley was an expert trader with a history of earning substantial returns, and that profits would be earned solely through Kelley’s efforts of effecting transactions in securities in the investors’ accounts.

6. As compensation for raising funds for Blackbird, Neff received a partnership interest in a new entity, TradeTech Holdings, LLC, which was formed to trade securities for profit. From approximately spring 2015 to November 2015, Neff raised over \$1.2 million from at least twelve investors and received a 5% interest in the new entity. Neff’s compensation was based on the amount of money invested in each transaction facilitated by Neff.

7. While acting as an unregistered broker, Neff identified, contacted, and communicated with potential investors and acted as an intermediary in negotiations between Blackbird and potential investors by relaying terms of the deals between them. Neff contacted investors and potential investors through the use of telephone and/or email. Neff also tracked investments of the individuals he solicited and informed them of the performance of their investments.

8. In performing the above-described conduct, Neff received transaction-based compensation.

² Neff ultimately lost a significant amount of funds through his investment with Blackbird.

9. On November 28, 2016, the Commission obtained a temporary restraining order and asset freeze against Blackbird, Kelley, and Shumway, based on evidence that they fraudulently collected at least \$3.1 million from investors through the use of falsified documents and material misrepresentations and omissions regarding the amount of funds controlled by Blackbird, the use of investor funds, and the past performance and expected profitability and safety of invested funds.³

10. As a result of the conduct described above, Neff willfully violated Section 15(a)(1) of the Exchange Act, which makes it unlawful for any broker or dealer to use the mails or any 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.

IV.

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

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

A. Respondent Neff cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent Neff 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;

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

³ On October 5, 2017, Kelley pled guilty to securities fraud in the criminal case, *U.S. v. Kelley*, Case No. 2:16cr00630-001 (D. Utah). Kelley was ordered to pay \$7,965,523.58 in restitution and is currently serving a seven-year sentence prison sentence.

C. Any reapplication for association by the 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 Neff shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$5,000 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. 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 Brandon T. Neff 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 Daniel J. Wadley, Acting Regional Director, Division of Enforcement, Securities and Exchange Commission, 351 S. West Temple Street, Suite 6.100, Salt Lake City, UT 84101.

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, 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