

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83873 / August 17, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 4988 / August 17, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33202 / August 17, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18649

In the Matter of

ROGER T. DENHA,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) and 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934, SECTIONS 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, 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 United States Securities and Exchange Commission (the “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”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Roger T. Denha (“Denha”).

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, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, 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

1. From at least January 2012 to November 2017 (the "relevant time period"), Roger T. Denha, an investment adviser and investment adviser representative of BKS Advisors LLC ("BKS"), an investment adviser registered with Commission and based in Southfield, Michigan, engaged in fraudulent trade allocation, or "cherry-picking." Denha executed his cherry-picking scheme by unfairly allocating purchases of securities between his favored accounts (including his personal and family accounts) and his other BKS clients' accounts. Denha disproportionately allocated profitable trades to the favored accounts, and disproportionately allocated unprofitable trades to the accounts of certain advisory clients. He executed his scheme by buying the securities in an omnibus account and then waiting to allocate until after he had an opportunity to see whether the securities had increased in price.

2. By virtue of his conduct, Denha willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder and Sections 206(1) and 206(2) of the Advisers Act.

Respondent

3. **Roger T. Denha**, age 61, resides in Beverly Hills, Michigan. Denha has been an investment adviser representative of BKS since August 2003. From August 2003 to September 2017, Denha was a registered representative of a firm that was registered with the Commission as a broker-dealer throughout that time period and terminated its registration effective November 30, 2017. Denha has never been an owner or principal of BKS, but he is the only investment adviser representative for the BKS clients that he advises. Denha has no disciplinary history.

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.

Other Relevant Entity

4. **BKS** is a Michigan limited liability company with its principal place of business in Southfield, Michigan. BKS has been registered with the Commission as an investment adviser since 2001. According to its most recent Form ADV filed in March 2018, BKS had approximately 446 clients and \$365 million in assets under management. Of these clients and assets, Denha had approximately 197 clients and \$202 million in assets under management. BKS's and Denha's clients are primarily individual investors.

Facts

5. During the relevant time period, all of BKS's clients had their accounts in custody at a brokerage firm. To execute trades on behalf of himself and his clients, Denha sometimes made trades for himself and his clients in an omnibus account BKS set up for Denha's block account trading at the brokerage firm. After placing a trade in the omnibus account, Denha instructed the brokerage firm to allocate the purchased securities among his and/or his clients' accounts. By allocating shares sometime later in the day, after he placed a trade, Denha could watch the changes in price and then choose how to allocate the shares.

6. Denha allocated a greater proportion of profitable trades, i.e., trades that increased in price from the time of purchase in the omnibus account to the time of allocation later that day, to favored accounts and a greater proportion of unprofitable trades, i.e., trades that decreased in price from the time of purchase in the omnibus account to time of allocation later that day, to his other clients' accounts ("disfavored accounts"). The favored accounts included accounts that belonged to Denha and his family members.

7. Denha made two types of profitable trades. The first type involved realized profits from day-trading, i.e., selling the security on the same day it was purchased for a profit. The second type involved unrealized profits from buy-and-hold trades, i.e., holding a security that increased in value on the day it was purchased. Denha allocated a greater proportion of profitable day-trades and buy-and-hold trades to his favored accounts. Sometimes, Denha had a profitable day trade and an unprofitable buy-and-hold trade in the same security on the same day. When this occurred, he disproportionately allocated the profitable day trades to his favored accounts and the unprofitable buy-and-hold trades to his disfavored accounts. The difference between the allocations of profitable trades and unprofitable trades is statistically significant; the probability that such an uneven allocation of gains and losses occurred by chance is less than one-in-one-million.

8. Combining both day trades and buy-and-hold trades, the average combined, realized and unrealized return (measured from purchase to sale for day trades and from purchase to allocation for buy-and-hold trades) for the favored accounts during the relevant time period was approximately 1.01% while the average combined, realized and unrealized return for the disfavored accounts was negative 0.16%.

9. As a result of the cherry-picking scheme, Denha obtained at least \$412,230 in realized and unrealized gains.

Violations

10. By knowingly or recklessly allocating profitable trades to Denha's favored accounts at the expense of his other advisory clients, Denha willfully violated Section 206(1) of the Advisers Act, which prohibits any investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client.

11. Through this cherry-picking scheme and by failing to disclose the scheme, Denha willfully² violated Section 206(2) of the Advisers Act, which prohibits any investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

12. By knowingly or recklessly allocating profitable trades to Denha's favored accounts at the expense of his other advisory clients, Denha willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder. Section 10(b) of the Exchange Act makes it unlawful for any person to use or employ, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe. Rule 10b-5 under the Exchange Act makes it unlawful for any person, directly or indirectly, (a) to employ any device, scheme, or artifice to defraud, and (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

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)(6) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Denha cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder and Sections 206(1) and 206(2) of the Advisers Act.

B. Denha be, and hereby is:

barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

² 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)).

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 promotor, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for the purposes of the issuance or trading of any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by Denha 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 shall, within 14 days of the entry of this order, pay disgorgement of \$412,230.00 and prejudgment interest of \$35,388.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 will be credited upon receipt by the Commission and must be accompanied by a cover letter identifying Roger T. Denha as the 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 Robert Baker, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110.

E. Respondent shall, within 14 days of the entry of this order, pay a civil money penalty in the amount of \$169,000.00 to the Securities and Exchange Commission. 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 will be credited upon receipt by the Commission and must be accompanied by a cover letter identifying Roger T. Denha as the 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 Robert Baker, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110.

F. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraphs IV.D. and IV.E. above. This Fair Fund is expected to include all funds collected from the Commission's related proceeding, *In the Matter of BKS Advisors, LLC* (Admin. Proc. File No. 3-18648 filed August 17, 2018). The Fair Fund will be distributed to harmed investors in accordance with a Commission-approved plan of distribution. 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 these proceedings 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 these proceedings. 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 these proceedings.

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 Roger T. Denha, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Roger T. Denha under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with these proceedings, is a debt for the violation by Respondent Roger T. Denha 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