

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10818 / August 13, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 89553 / August 13, 2020

ADMINISTRATIVE PROCEEDING
File No. 3- 19915

In the Matter of

GARRETT GAYLOR,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, AND
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
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 Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Garrett Gaylor (“Gaylor” 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 Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934 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

Respondent

1. **Gaylor**, 61, resides in Northport, New York. Gaylor was associated with Joseph Stone Capital LLC ("JSC") as a registered representative from September 23, 2015, until April 13, 2020, when his Form U-5 was filed indicating a voluntary departure. Between 1993 and 2015, Gaylor was associated with ten different broker-dealers. Gaylor is currently unemployed.

Relevant Entity

2. **JSC**, a Delaware limited liability company with its main office in Mineola, New York, has been registered with the Commission as a broker-dealer since February 26, 2013.

Gaylor's Fraudulent Trading and Material Misrepresentations to Customers

3. From October 2015 through July 2019, Gaylor violated the antifraud provisions of the federal securities laws by recommending a high-cost pattern of frequent trading that he had no reasonable basis to believe would be suitable for anyone; by making material misrepresentations and omissions to customers; and by engaging in unauthorized trading.

4. For twelve customers, Gaylor recommended a high-cost pattern of frequent trading that he had no reasonable basis to believe was suitable for those customers. The high-cost pattern of frequent trading implemented by Gaylor was almost certain to result in losses if implemented in any account and did produce losses in the accounts of all twelve customers.

5. Gaylor determined, on a trade-by-trade basis, the amount to charge in commissions on agency trades and mark-ups and mark-downs on principal trades. Gaylor received a percentage of the commissions, mark-ups and mark-downs as compensation, with the balance retained by JSC. In addition, JSC charged customers a fixed "postage" fee of \$75.

6. Gaylor's high-cost pattern of frequent trading that he recommended served to enrich himself at the expense of those twelve customers. In view of the commission structure and the short holding periods averaging just 14.9 days and representing the average amount of time that Gaylor held position in customer accounts, there was virtually no chance of a customer achieving even a minimal profit. The twelve customers experienced losses of approximately \$741,230, and

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.

their accounts had an average cost-to-equity ratio of 75% and a turnover of 42.8, well above the benchmarks for excessive trading.²

7. Gaylor also made material misrepresentations and omissions regarding the high-cost pattern of frequent trading that he recommended. Gaylor failed to disclose to the twelve customers that the pattern of frequent trading that he recommended, combined with the high per-trade transaction costs, was extremely likely to cause losses. This was material information that a reasonable investor would consider important in making an investment decision.

8. Finally, although the twelve customers' accounts were non-discretionary, Gaylor executed unauthorized trades in their accounts. Gaylor communicated with his customers almost exclusively by telephone. A comparison of trading and the firm's phone records revealed large numbers of trades for all customers with no call with the customer in advance of the trade, as would be required for a non-discretionary account.

9. Gaylor received \$264,694 in commissions and fees as a result of the fraudulent conduct and material misrepresentations described above.

10. As a result of the conduct described above, Gaylor willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

Disgorgement and Civil Penalties

Respondent has submitted a sworn Statement of Financial Condition dated May 18, 2020 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest.

Respondent has submitted a sworn Statement of Financial Condition dated May 18, 2020 and other evidence and has asserted his inability to pay a civil penalty.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

² An annualized turnover rate is the number of times per year a customer's securities are replaced by new securities. The cost-to-equity ratio reflects the rate of return necessary for an account to break even after considering the cost of commissions. A turnover rate that exceeds six, or a cost-to-equity ratio that exceeds 20%, is considered to be indicative of excessive trading.

A. Respondent Gaylor cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Gaylor be, and hereby is:

- a. Barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
- b. 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.

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 shall, within 7 days of the entry of this Order, pay disgorgement of \$264,694 and prejudgment interest of \$10,053, but payment of such amount is waived based upon Respondent's sworn representations in his Statement of Financial Condition dated May 18, 2020 and other documents submitted to the Commission. Based upon Respondent's sworn representations in his Statement of Financial Condition dated May 18, 2020 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, prejudgment interest, and the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement, prejudgment interest, and a penalty should not be ordered; (3) contest the imposition of disgorgement, prejudgment interest, or the maximum penalty allowable under the law; or (4)

assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

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.

Vanessa Countryman
Secretary