

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88498 / March 27, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19738

<p>In the Matter of</p> <p>Benjamin Kirkland</p> <p>Respondent.</p>
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ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Benjamin Kirkland (“Kirkland” 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 Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing 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:

1. This proceeding involves insider trading by Kirkland in the securities of Roadrunner Transportation Systems, Inc. (“Roadrunner”), a publicly traded shipping and logistics company. From around 2013 to January 2017, certain executives at Roadrunner headquarters manipulated Roadrunner’s financial reports in order to meet prior earnings guidance and analysts’ projections

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.

for Roadrunner's earnings per share and hid significant expenses that were affecting Roadrunner's financial performance. Kirkland is the former President of Roadrunner Intermodal Services, Inc. ("RRIS"), a group of Roadrunner operating companies whose financial reports were manipulated by executives of Roadrunner. In November 2016 and January 2017, Kirkland sold 8,000 shares of Roadrunner stock while in possession of material nonpublic information about the accounts on RRIS's balance sheet that were materially overstated. After the market closed on January 30, 2017, Roadrunner announced that it had identified accounting discrepancies at one of the RRIS operating companies and another Roadrunner operating company and that it intended to restate its financial statements. The next day, Roadrunner's stock price fell by over 30%, from \$11.54 to \$7.92. On January 31, 2018, Roadrunner issued restated financial statements. Kirkland avoided losses of \$23,140 by his insider trading.

Respondent

2. Kirkland, age 66, is a resident of Peachtree City, Georgia and is the former President of RRIS.

Facts

3. Kirkland was President of RRIS from February 2011 to November 4, 2019.

4. In 2014, Kirkland was notified of accounting errors on the balance sheet of RRIS. Specifically, in May 2014, certain executives at Roadrunner began to investigate misstated accounts on the RRIS balance sheet with a potential exposure of nearly \$4.5 million, including large and growing receivables and certain prepaid assets.

5. By late 2014, executives at Roadrunner headquarters developed a plan to inconspicuously write off \$2 million of the overvalued accounts on RRIS's balance sheet. As President of RRIS, Kirkland received the plan to book one \$166,666 expense each month in 2015 to write off the \$2 million.

6. Concerns about the financial performance of Roadrunner caused the executives to direct that the monthly write-offs be delayed until Q2 2015 and be spread over nine months by charging \$222,000 per month. However, the \$222,000 expense was booked only once in April 2015. Kirkland was informed that the remainder of the \$2 million in overstated accounts was not to be written off because it would have been material to Roadrunner's financial statements.

7. In November 2016, a newly hired RRIS accountant identified unsupported balances on RRIS's financial statements, including the misstated accounts identified in 2014 discussed above. Between November 8 and November 18, 2016, the RRIS accountant notified Kirkland that 28 accounts were affected, and the unsupported balances totaled over \$13 million.

8. On Monday, November 21, 2016, Kirkland placed an order to sell 3,000 shares of Roadrunner stock. The trade was executed on December 2, 2016 at a price of \$10.50 per share.

9. On November 21, after Kirkland placed the trade, Kirkland received an email stating that an outside accounting firm had been hired to review the balance sheet discrepancies at RRIS. The outside accounting firm began work the next day and its work continued throughout the

remainder of November, December, and January. Kirkland knew about the outside accounting firm's review.

10. On January 3, 2017, Kirkland placed an order to sell 5,000 shares of Roadrunner stock. That trade was executed on January 4, 2017 at a price of \$11.00 per share.

11. After the market closed on January 30, 2017, Roadrunner announced that it had identified accounting discrepancies at one of the RRIS operating companies and another Roadrunner operating company. Roadrunner also announced that it intended to restate its financial statements. The next day, Roadrunner's stock price fell by over 30%, from \$11.54 to \$7.92.

12. Kirkland's total loss avoidance resulting from his insider trading was \$23,140.

Violation

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

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay disgorgement of \$23,140, prejudgment interest of \$2,803.15, and a civil money penalty in the amount of \$23,140 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 of the disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and if timely payment of the civil monetary penalty 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 Benjamin Kirkland 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 Kathryn A. Pyszka, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 1450, Chicago, IL 60604.

C. 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.

Vanessa A. Countryman
Secretary