

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90360 / November 5, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20143

In the Matter of

MICHAEL J. PIRES

Respondent.

**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 Michael J. Pires (“Pires” 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:

Summary

1. This matter involves trading in the securities of JetPay Corporation ("JetPay") ahead of an October 22, 2018 announcement by NCR Corporation ("NCR") that it had entered into a definitive merger agreement with JetPay to acquire the company in an all-cash tender offer. In advance of the public announcement, Michael J. Pires ("Pires"), a manager at JetPay with knowledge of the prospective acquisition, purchased 2,500 shares of JetPay and, in breach of a duty owed to JetPay and its shareholders, persuaded his father to purchase 1,300 shares of JetPay. Following the announcement, JetPay's stock price increased by approximately 142 percent, yielding total trading profits of \$11,254.60. By engaging in this conduct, Pires committed violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

Respondent

2. **Michael J. Pires**, age 47, is a resident of Ridgewood, New Jersey and oversees JetPay's HR and Payroll division.

Relevant Entities

3. **JetPay Corporation**, headquartered in Allentown, Pennsylvania, was a provider of debit and credit card processing, prepaid card, and payroll and human capital management services to individuals and businesses in the United States. Until the completion of its acquisition by NCR, the company's common stock traded on the NASDAQ Capital Market under the ticker symbol "JTPY."

4. **NCR Corporation**, headquartered in Atlanta, Georgia, is a global software and services-led enterprise provider in the financial, retail, hospitality and telecommunications and technology industries. Its common stock trades on the New York Stock Exchange under the ticker symbol "NCR."

Background

5. On August 4, 2018, JetPay and NCR executed a confidentiality agreement concerning the proposed acquisition of JetPay by NCR.

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.

6. Over subsequent weeks, NCR conducted due diligence for the proposed transaction and, among other things, met confidentially with JetPay senior managers to evaluate the profitability and costs associated with JetPay's various internal divisions.

7. In late September 2018 and early October 2018, the two companies exchanged draft merger and tender and support agreements contemplating that NCR would acquire JetPay via tender offer.

8. On October 19, 2018, JetPay's board of directors approved a proposed merger agreement with NCR, which was structured to include a tender offer from NCR for JetPay stock, and resolved to recommend that JetPay's stockholders tender their shares to NCR.

9. On October 22, 2018, prior to the market open, JetPay and NCR issued a joint press release announcing a definitive agreement to acquire JetPay through a tender offer. Following that announcement, JetPay's shares opened at a price of \$4.97 per share, representing an increase of approximately 142 percent over the previous session's closing price of \$2.05 per share.

10. Pires was subject to the company's insider trading policy. The policy prohibited employees in possession of material nonpublic information relating to JetPay—including information concerning proposed mergers and acquisitions—from buying or selling securities of the company or from communicating such information to others. In 2015, Pires expressly acknowledged that he understood and agreed to be governed by the policy.

11. On or about September 13, 2018, JetPay senior management included Pires in confidential due diligence discussions related to JetPay's proposed acquisition by NCR. During those discussions, he obtained material nonpublic information concerning the proposed acquisition from senior JetPay management and NCR representatives.

12. On or about October 12, 2018, Pires persuaded his father to purchase JetPay's common stock in breach of a fiduciary or similar duty owed by him to JetPay and its shareholders; his father shortly thereafter purchased a total of 1,300 shares of JetPay at an average price of \$1.93 per share.

13. Between October 15, 2018 and October 18, 2018, Pires also purchased for his own account a total of 2,500 shares of JetPay at an average price of \$2.04 per share, again breaching a fiduciary or similar duty owed by him to JetPay and its shareholders.

14. Pires undertook these acts after NCR had taken substantial steps to commence a tender offer for JetPay stock and while in possession of material information relating to the proposed tender offer, which he knew or had reason to know was nonpublic information, and which he knew or had reason to know had been acquired from JetPay and NCR.

15. On October 22, 2018, approximately six hours after the public announcement of JetPay's acquisition, Pires sold all 2,500 JetPay shares acquired earlier that week, at a price of \$4.97 per share, realizing total profits of \$7,315.

16. As of October 22, 2018, Pires' father's imputed profits were \$3,939.60.

Violations

17. As a result of the conduct described above, Respondent 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, and Section 14(e) of the Exchange Act and Rule 14e-3 thereunder, which prohibit fraudulent conduct in connection with any tender offer.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Pires cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

B. Respondent Pires shall, within 10 days of the entry of this Order, pay a civil penalty of \$18,569.60 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 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 Michael J. Pires 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 Brendan P. McGlynn, Assistant Regional Director, Philadelphia Regional Office, Division of Enforcement, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103.

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 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