

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5442 / February 6, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19694

In the Matter of

JAY COSTA KELTER,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Jay Costa Kelter (“Kelter” 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, Respondent admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and the findings contained in paragraphs 3 and 4 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

1. Kelter, 50 years old, is a resident of Marietta, Georgia. From 2007 to September 2013, Kelter was associated with a dual registrant as a registered representative, where he provided investment advisory and broker services to clients. Kelter left the firm in or around September 2013.

2. From 2013 through 2016, Kelter, acting through his unregistered company BEK Consulting Partners, LLC, continued to provide certain clients with investment advisory services after leaving the firm.

3. On January 6, 2020, a final judgment was entered by consent against Respondent, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Kelter, Civil Action Number 1:02-CV-1663, in the United States District Court for the Middle District of Tennessee.

4. The Commission’s complaint alleged that Kelter, in the course of providing investment advisory services to clients from 2013 to 2016, made material misrepresentations to clients in connection with the purchase, sale, and offer of securities, including misrepresentations concerning the use of client funds. Kelter also misappropriated over \$1.4 million from one client by forging the client’s name on withdrawal requests or misrepresenting the nature of the withdrawals to the client.

5. On May 7, 2019, Kelter pled guilty to one count of securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5, five counts of wire fraud in violation of Title 18, United States Code Sections 1343 and 2, and 15 counts of mail fraud in violation of Title 18, United States Code Sections 1341 and 2, before the United States District Court for the Middle District of Tennessee, in United States v. Jay Costa Kelter, No. 3:17-cr-00208. On December 20, 2019, a judgment in the criminal case was entered against Kelter. Kelter was sentenced to a prison term of 29 months followed by three years of supervised release and ordered to make restitution in the amount of \$1,467,000.

6. The counts of the criminal indictment to which Kelter pled guilty alleged, inter alia, that Kelter engaged in a scheme to defraud investment advisory clients, obtained money and property by means of materially false and misleading statements, that he used the United States mails to make false and misleading statements, and that he used wire communications in interstate commerce to execute his fraudulent scheme.

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, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent 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.

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.

By the Commission.

Vanessa A. Countryman
Secretary