

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101178 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22194

In the Matter of

Stilwell Value LLC

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 Stilwell Value LLC (“Stilwell Value” 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 it and the subject matter of these proceedings, which are admitted, 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. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 13(d) of the Exchange Act and Rule 13d-1 thereunder together require that any person who directly or indirectly acquires beneficial ownership of more than five percent of a voting class of equity security registered under Section 12 of the Exchange Act file a statement with the Commission. During the relevant time, beneficial owners could comply with this requirement by filing a Schedule 13D with the Commission within 10 days after they acquired the requisite amount of beneficial ownership. Whenever a material change occurred to the facts set forth in any Schedule 13D, the disclosure statement was required to have been truthfully amended to reflect that material change and filed promptly.

2. Certain persons required to file a Schedule 13D may instead file a short-form Schedule 13G if the person certifies the securities were acquired and held in the ordinary course of that person's business and were not acquired with the purpose, or with the effect of, changing or influencing the control of the issuer.

3. Stilwell Value and various related parties have taken an activist position in dozens of publicly-traded companies by asserting shareholder rights, engaging management, running alternate slates of directors, and seating representatives on company boards of directors. Stilwell Value violated and caused others to violate Section 13(d) and related rules on four separate occasions, each regarding a position in a different issuer. In each instance, Respondent and various related parties, did not timely file a Schedule 13D or Schedule 13G.

Respondent

4. Stilwell Value is an investment adviser with its principal place of business in New York, New York, and has been registered with the Commission as an investment adviser since March 2012. Stilwell Value is the general partner of a number of private investment partnerships (collectively "Stilwell Partnerships"). In turn, Stilwell Value is owned and managed by an individual (collectively with the Stilwell Partnerships, "Stilwell Entities").

Legal Framework

5. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) thereunder together require any person who has directly or indirectly acquired beneficial ownership of more than five percent of any class of equity security registered under Section 12 of the Exchange Act to file a statement with the Commission disclosing certain information specified in a Schedule 13D. During the relevant

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.

time, individuals or entities could comply with this requirement by filing a Schedule 13D with the Commission within ten days after they acquired the requisite amount of beneficial ownership.² Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings.³

6. During the time period relevant to this matter, Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder required a person who had filed a Schedule 13D to file an amendment “promptly”⁴ if any material change occurred in the facts set forth in that filing, including but not limited to, any material increase or decrease in the percentage of the class beneficially owned. An acquisition or disposition of beneficial ownership in an amount equal to one percent or more of a class of equity securities beneficially owned is deemed material by Rule 13d-2(a).

7. During the relevant time, Section 13(d)(1) of the Exchange Act and Rule 13d-1(b) provided that, in lieu of filing a Schedule 13D, certain persons, including registered investment advisers, may instead file a short-form statement on Schedule 13G after the triggering acquisition, if the person “has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect.” A Schedule 13G under this rule was required to have been filed within 45 days after the end of the calendar year in which the person became obligated to report a beneficial ownership position.

8. There is no state of mind requirement for violations of Section 13(d) and the rules thereunder.⁵ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁶

² On October 10, 2023, the Commission adopted amendments to the rules governing beneficial ownership reporting under Sections 13(d) and 13(g) to update and shorten certain filing deadlines (the “2023 Amendments”). *Modernization of Beneficial Ownership Reporting*, SEC Release No. 34-98704 (Oct. 10, 2023), 88 Fed. Reg. 76896 (Nov. 7, 2023). Among other provisions, the 2023 Amendments shortened the deadline for filing the initial statement on Schedule 13D from 10 days to five business days, which became effective on February 5, 2024. *Id.* at 76897, 76906.

³ See generally *GAF Corp. v. Milstein*, 453 F.2d 709, 717 (2d Cir. 1971) *cert. denied*, 406 U.S. 910 (1972); see also *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1167 (D.C. Cir. 1978) *cert. denied*, 440 U.S. 913 (1979), *citing*, S. Rep. No. 550, 90th Cong., 1st Sess. 1 (1967) and H.R. Rep. No. 1711, 90th Cong., 2d Sess. 2 (1968) (“[t]he purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time”).

⁴ Although the term “promptly” was not defined under the rules in effect at the time of the violation, any delay in filing beyond the date the filing reasonably could have been made would not have been prompt. *Amendments to Beneficial Ownership Reporting Requirements*, SEC Rel. No. 34-39538, 1998 WL 7449, at *3 n.14 (Jan. 12, 1998).

⁵ See, e.g., *Savoy Indus.*, 587 F.2d at 1167 (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons.”).

⁶ Cf. *Oppenheimer & Co., Inc.*, 47 SEC 286, 1980 WL 26901, at *1–2 (May 19, 1980) (Commission opinion) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful

Facts

Wheeler Real Estate

9. Respondent filed a Schedule 13D on July 3, 2017 disclosing a position in Wheeler Real Estate Investment Trust, Inc. (“Wheeler Real Estate”). Since that time, Respondent has filed numerous amendments to that initial filing.

10. On June 16, 2020, Respondent filed Amendment 21 to its initial Schedule 13D regarding Wheeler Real Estate. Respondent and various Stilwell entities signed the amendment. The amendment disclosed a beneficial ownership position of 1,068,879 shares of common stock, which represented 10.9% of the outstanding shares and a more than one percent increase from the position disclosed in the previous amendment. Several of the Stilwell Partnerships took positions in Wheeler Real Estate common stock.

11. In the Schedule 13D amendment, Respondent represented that those Stilwell Partnerships had purchased additional shares of the issuer’s common and preferred stock and that “we continue to work to maximize shareholder value through our position on the Issuer’s board of directors.” Beyond that, Respondent represented it had no present plans or proposals to change or effect control over the issuer.

12. Respondent represented that the date of event that required filing the amendment (“Event Date”) was June 2, 2020. Respondent should have filed the Schedule 13D amendment promptly after the Event Date. Thus, the June 16, 2020 filing was untimely.

Cincinnati Bancorp

13. On May 7, 2020, Respondent filed a Schedule 13D disclosing beneficial ownership of 205,874 shares of common stock of Cincinnati Bancorp, Inc. (“Cincinnati Bancorp”), which represented 6.9% of the outstanding shares. Respondent and various Stilwell Entities signed the Schedule 13D. Several of the Stilwell Partnerships took positions in Cincinnati Bancorp common stock. In the filing, Respondent represented that it “hope[d] to work with management and the board of directors to maximize shareholder value” but had no present plans or proposals to change or effect control over the issuer.

14. Due to an error in its trade blotter and internal records, Respondent did not realize that certain April 17, 2020 purchases of Cincinnati Bancorp common stock caused Respondent to cross the five percent beneficial ownership threshold. Respondent realized its error on May 6, 2020, and filed a Schedule 13D the next day.

violation”); *Herbert Moskowitz*, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

15. Respondent represented that the Event Date was April 17, 2020. Respondent should have filed the statement within 10 days of the Event Date. Thus, the May 7, 2020 Schedule 13D was untimely.

Generations Bancorp

16. During the investigation, Respondent undertook a review of its other Schedule 13D filings at the Commission staff's request and voluntarily reported that it filed an untimely Schedule 13D regarding Generations Bancorp NY, Inc. ("Generations Bancorp").

17. Following a January 12, 2021 bank conversion transaction, all shares of common stock of the predecessor holding company were converted into shares of Generations Bancorp. Generations Bancorp's common stock began trading on the Nasdaq Capital Market on January 13, 2021.

18. Respondent had been an activist investor in the predecessor holding company but had reached a settlement agreement with that company that included the bank conversion transaction. As a result, Respondent believed it no longer had the purpose to effect change or influence the control of Generations Bancorp; thus, Respondent planned on filing a Schedule 13G. However, after consultation with outside regulatory counsel, Respondent concluded that it had crossed the five percent beneficial ownership threshold after the conversion as a result of its activist strategy, and thus it should have filed a Schedule 13D.

19. Thus, on October 8, 2021, Respondent filed a Schedule 13D disclosing beneficial ownership of 243,606 shares of Generations Bancorp common stock, which represented 9.91% of the issuer's outstanding shares. Respondent and various Stilwell Entities signed the filing. The filing disclosed that the shares were acquired in connection with the conversion of the predecessor holding company's shares as described above. Several of the Stilwell Partnerships acquired positions in Generations Bancorp.

20. Respondent represented that the Event Date was January 13, 2021. Respondent should have filed the statement within 10 days of the Event Date. Thus, the October 8, 2021 Schedule 13D was untimely.

Lake Shore Bancorp

21. As part of its review of its other Schedule 13D filings at the Commission staff's request, Respondent also voluntarily reported that it filed an untimely Schedule 13G regarding Lake Shore Bancorp, Inc. ("Lake Shore Bancorp").

22. In July 2019, Respondent crossed the five percent threshold in Lake Shore Bancorp common stock, holding 5.02% beneficial ownership of outstanding shares. Respondent held this position in the ordinary course of its business and not for the purpose of, or with the effect of, changing or influencing control of the issuer.

23. By December 31, 2019, Respondent continued to hold the same position in Lake Shore Bancorp common stock. Thus, Respondent should have filed a Schedule 13G by mid-February 2020. Due to an oversight, Respondent failed to make that filing.

24. Having discovered its error, Respondent filed a Schedule 13G on February 1, 2021. Respondent and various Stilwell Entities signed the filing. This filing was untimely.

Violations

25. Stilwell Value is the general partner of the Stilwell Partnerships, and it made the investment decisions for those entities. Stilwell Value caused the various Stilwell Entities to sign the relevant Schedules 13D and 13G.

26. As a result of the conduct described above, Respondent violated, and caused the Stilwell Entities to violate, Sections 13(d)(1) and 13(d)(2) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder.

Remedial Efforts and Cooperation

In determining to accept the Offer, the Commission considered remedial acts, steps promptly undertaken by Respondent after being approached by Commission staff, and cooperation afforded to Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Stilwell Value LLC cease and desist from committing or causing any violations and any future violations of Sections 13(d)(1) and 13(d)(2) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 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 Stilwell Value LLC 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 D. Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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, it shall not argue that it is entitled to, nor shall it 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 it 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.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$75,000, based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman
Secretary