

**UNITED STATES OF AMERICA**  
**before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 52744 / November 7, 2005**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-12098**

<b>In the Matter of</b>  <b>VAN D. GREENFIELD and BLUE RIVER CAPITAL LLC,</b>  <b>Respondents.</b>	<b>ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND- DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934</b>
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**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 (i) pursuant to Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Van D. Greenfield (“Greenfield”); and (ii) pursuant to Sections 15(b)(4) and 21C of the Exchange Act against Blue River Capital LLC (“Blue River”) (Greenfield and Blue River hereinafter are referred to together as “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offers, the Commission finds<sup>1</sup> that:

#### Respondents

1. Greenfield, age 60, is a U.S. citizen who resides in New York, New York. Greenfield is Blue River's principal and he is a registered representative and a registered general securities principal. During the relevant period, Greenfield was Blue River's manager and compliance officer and had discretion over Blue River's investments.

2. Blue River is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and a member of the National Association of Securities Dealers, Inc. ("NASD"). Blue River is located in the same building as Greenfield's residence, a townhouse in New York, New York. Blue River operated from the ground floor and basement of the building. During the relevant period, Blue River's only members were Greenfield and a family trust established and funded by Greenfield in 1984 and it employed two full time traders and one assistant trader. Blue River ceased operations as a broker-dealer in November 2004. It has not engaged in any securities transactions since November 2004 except to liquidate existing securities positions.

#### Other Relevant Persons

3. John Edwin Reybold, age 65, is a U.S citizen who resides in Bronx, New York. Reybold has been associated with Blue River since 1988 and he became Blue River's principal securities trader in 1995.

#### **Blue River had Access to Material, Nonpublic Information While Greenfield Served as Blue River's Representative on Official Bankruptcy Committees and on an Informal Bondholders' Committee.**

4. On October 31, 2001, Blue River became a member of the informal bondholders' committee of Globalstar, L.P., a distressed telecommunications company, and Greenfield signed a confidentiality agreement with Globalstar, L.P. Globalstar, L.P. was traded publicly through its then general partner, Globalstar Telecommunications, Ltd. (together with Globalstar, L.P., "Globalstar"), a public company whose common stock was registered pursuant to Section 12(g) of the Exchange Act. On February 15, 2002, Globalstar, L.P. filed for protection under Chapter 11 of the U.S. Bankruptcy Code, and on March 6, 2002, Blue River was appointed to Globalstar, L.P.'s official unsecured creditors' committee by the office of the U.S. Trustee. Greenfield was Blue River's representative on the committee.

5. On June 25, 2002, Adelphia Communications Corporation ("Adelphia"), a public company whose stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act, filed for protection under Chapter 11 of the Bankruptcy Code. On July 31, 2002,

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Blue River was appointed to Adelphia's official equity holders' committee by the office of the U.S. Trustee, and Greenfield became co-chair of the equity holders' committee.

6. On July 21, 2002, WorldCom, Inc. ("WorldCom"), a public company whose common stock and series B preferred stock were registered with the Commission pursuant to Section 12(g) of the Exchange Act, filed the largest bankruptcy case in U.S. history under Chapter 11 of the Bankruptcy Code. On July 29, 2002, Blue River was appointed to WorldCom's official unsecured creditors' committee by the office of the U.S. Trustee, and Greenfield became co-chair of the unsecured creditors' committee.

7. As a member of the official committees in the Globalstar, L.P., Adelphia and WorldCom bankruptcy cases, Greenfield was bound to maintain the confidentiality of information he obtained as a committee member. As a member of the respective committees, Greenfield also owed a fiduciary duty of loyalty to Globalstar, L.P.'s and WorldCom's unsecured creditors, and to Adelphia's equity holders.

8. Soon after their appointments, the official committees in the WorldCom and Adelphia bankruptcy cases sought and obtained court orders that established a safe harbor for committee members who traded in securities of those issuers. The orders provided that any committee member who was in the business of trading securities for others or for its own account could continue to trade in the respective issuer's securities without violating its fiduciary duties as a committee member to the respective committee's constituents provided that it established an effective information barrier between the member's representative on the committee and the member's trading personnel. To be eligible for the safe harbor, the orders required any committee member who wished to trade in the respective issuer's securities to file with the respective courts an affidavit attesting to compliance with the information barrier procedures prior to any trading. The Adelphia motion stated specifically that Blue River was not seeking to trade any Adelphia securities pursuant to the motion at that time. Neither Blue River nor Greenfield ever filed an affidavit of compliance in the WorldCom or Adelphia bankruptcy cases and therefore they were ineligible for the protection of the safe harbor.

9. While serving on the Globalstar, L.P. informal bondholders' committee and official bankruptcy committee, and on the Adelphia and WorldCom official bankruptcy committees, Greenfield obtained access to material, nonpublic information concerning those issuers.

10. While serving on the Globalstar, L.P. informal bondholders' committee, Greenfield received a copy of a proposed memorandum of understanding between Globalstar, L.P. and the informal committee that included the basic terms of Globalstar, L.P.'s proposed restructuring, including the probable elimination of all equity interests in Globalstar. After the proposed restructuring terms were disclosed publicly by Globalstar, L.P. on November 12, 2001, the market value of Globalstar Telecommunications, Ltd. stock dropped from 65 cents per share to 26 cents per share. Over the approximately two years Greenfield served on the official Globalstar, L.P. creditors' committee, Greenfield on occasion had access to the terms of proposed offers by third parties to purchase Globalstar, L.P.'s assets before the terms of those offers were disclosed publicly.

11. While serving as co-chair of Adelphia's equity holders' committee, Greenfield had access to information prepared by Adelphia concerning Adelphia's operations and in one instance the company's view of a long term business plan and estimated reorganization values.

12. While serving as co-chair of WorldCom's creditors' committee, Greenfield had access to information prepared by WorldCom concerning WorldCom's valuations and operations. Greenfield participated in confidential negotiations among various constituencies over the allocation and distribution of WorldCom's reorganization value and he was intimately involved in the search for a new CEO for WorldCom. As co-chair of the committee, Greenfield also had occasion to interact personally with WorldCom's CEO and other influential persons that had dealings with WorldCom. In June 2003, Greenfield applied for membership on the Board of Directors of reorganized MCI, Inc., the surviving entity that was to emerge from WorldCom's bankruptcy, but he was not appointed to the Board.

**Blue River did not Have Any Written Procedures to Prevent the Misuse of Material, Nonpublic Information Obtained by Greenfield.**

13. Blue River's supervisory and compliance procedures manual required that Greenfield, as manager, implement measures to prevent the dissemination of material, nonpublic information in his possession and, if necessary, restrict persons associated with Blue River from trading in the securities of issuers for which he possessed such information.

14. The only measures Blue River took occurred when Greenfield became Blue River's representative on the Globalstar, Adelphia and WorldCom committees, respectively. Those measures were: (1) Greenfield told Reybold to take over the trading in the securities of those issuers; (2) Greenfield told the Blue River staff that he would have no role in trading decisions while he was serving on the committees; and (3) in the case of WorldCom only, Greenfield also circulated a one page memorandum to his staff advising them that he would not be involved in trading decisions and that due to the small size of the firm there should be no discussion or mention of WorldCom in the office. Nevertheless, Greenfield also requested that his staff inform Greenfield of all public information they became aware of regarding Globalstar, Adelphia and WorldCom.

15. Greenfield maintained a small office adjacent to Blue River's trading room. The trading room consisted of four desks placed back to back in a converted dining room on the ground floor of the townhouse. Communication between Greenfield and Blue River's traders was generally informal and face-to-face or by telephone. While serving on the respective committees, Greenfield would frequently walk through the trading room and ask Reybold or other employees for the current market quotes for Adelphia and WorldCom securities. On one or more occasions, Greenfield and Reybold together met personally with a securities analyst who covered Globalstar securities and talked to the analyst about his evaluation of Globalstar, L.P.'s satellite technology. Greenfield also received daily Blue River profit and loss reports prepared by Reybold that reflected Blue River's trading activity in Globalstar, Adelphia and WorldCom securities.

16. Blue River did not have any written guidelines or procedures in place to prevent the misuse by Reybold or Blue River of material, nonpublic information obtained by Greenfield while

he served on the committees and it did not restrict Blue River's trading in Globalstar, Adelphia or WorldCom securities during the period when Greenfield was in possession of material, nonpublic information about these companies. No person at Blue River monitored for compliance purposes any aspect of Blue River's trading in Globalstar, Adelphia or WorldCom securities or reviewed Reybold's trade tickets for transactions in the securities of those issuers. Reybold continued to trade actively in Globalstar, Adelphia and WorldCom securities in Blue River's proprietary accounts while Greenfield, who was Blue River's compliance officer and principal owner, served on the Globalstar, Adelphia and WorldCom committees.

17. Blue River realized a net profit of \$167,309 from trades in Globalstar securities, \$664,241 from trades in Adelphia securities, and \$424,290 from trades in WorldCom securities during the time that Greenfield served on the respective committees of those issuers.

**Blue River Obtained Membership on WorldCom's Creditors' Committee by Misrepresenting Its Holdings in WorldCom Securities to the Office of the U.S. Trustee and Thereby also Indirectly Misrepresented Its Holdings to the Public.**

18. WorldCom filed for bankruptcy protection on July 21, 2002 (the "Petition Date"). On the Petition Date, Blue River owned only \$6 million in face value of WorldCom unsecured 7.5% notes due 2011 (the "Notes") and \$500,000 in face amount of WorldCom 6.25% Notes due 2003.

19. On July 25, 2002, Greenfield directed Reybold to execute a short sale of \$400,000 in face value of the Notes in one Blue River proprietary account and a purchase of \$400,000 in face value of the Notes in another Blue River proprietary account and to book both trades as having been made "as of" July 19, 2002, the last business day before the Petition Date. In fact, Blue River had not traded any WorldCom securities on July 19, 2002.

20. On July 26, 2002, Greenfield directed Reybold to cancel the prior day's trades and to execute, "as of" July 19, 2002, a short sale of \$400 million in face value of the Notes in one Blue River proprietary account and a purchase of \$400 million in face value of the Notes in a another Blue River proprietary account. Blue River's account statements for the month of July 2002 prepared by Blue River's clearing firm reflect the short sale in one Blue River proprietary account and the purchase in a separate Blue River proprietary account.

21. Also on July 26, Greenfield sent a letter to the U.S. Trustee for the Second Circuit requesting that Blue River be appointed to WorldCom's official unsecured creditors' committee. On a questionnaire attached to his letter, Greenfield represented that Blue River held a \$400 million unsecured claim against WorldCom based upon the Notes. The letter did not disclose that Blue River had no net economic interest in the notes because it also held a \$400 million short position in the Notes, that the transaction in the Notes had not yet settled, or that the purchase had occurred after the Petition Date but was backdated to a date prior to the Petition Date. A \$400 million unsecured claim would have put Blue River among the top 20 unsecured creditors of WorldCom as disclosed in WorldCom's schedule of the 50 largest unsecured claims against it that was filed on the Petition Date.

22. On July 29, 2002, the U.S. Trustee for the Second Circuit appointed Blue River to WorldCom's official unsecured creditors' committee and Greenfield became co-chair of the committee. On or about July 30, 2002, Greenfield directed Reybold to cancel the \$400 million short sale and associated purchase of the Notes, leaving Blue River only with its original \$6.5 million position in WorldCom debt. The \$6.5 million face value claim was much smaller than the smallest unsecured claim listed by WorldCom in the schedule of the 50 largest unsecured claims against it, which exceeded \$100 million.

#### **Reybold was not Registered With the NASD.**

23. During the entire time that Reybold was employed as Blue River's principal securities trader he was not registered with the NASD. Greenfield knew since at least 1995 that Reybold was not registered with the NASD but took no steps to remedy that deficiency.

### **IV.**

#### **Conclusions**

#### **Sections 15(b)(7) and 15(f) of the Exchange Act and Rule 15b7-1.**

24. Section 15(f) of the Exchange Act provides that "every registered broker or dealer shall establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer."

25. Greenfield's membership on the committees gave him direct access to material, nonpublic information concerning Globalstar, Adelphia and WorldCom. The only steps Blue River took to prevent the misuse of such information were Greenfield's oral directive to Reybold to take over Blue River's trading in the securities of those issuers and the circulation of the one page memorandum regarding WorldCom. These steps were inadequate to guard against the potential misuse of material, nonpublic information in light of the conflicts of interest arising from Greenfield's serving as Blue River's representative on the committees at the same time that he was also Blue River's compliance officer, principal owner, and general securities principal. *In re Guy P. Wyser-Pratte, Wyser-Pratte Management Co., Inc., and Wyser-Pratte and Co., Inc.*, Exch. Act Rel. 44283 (May 9, 2001). The potential for misuse of such information was exacerbated by the physical proximity of Greenfield to Blue River's traders and the informal nature of communications between Greenfield and his employees.

26. Accordingly, Blue River willfully violated Section 15(f) of the Exchange Act and Greenfield willfully aided and abetted and caused Blue River's violation.

27. Rule 15b7-1, promulgated under Section 15(b)(7) of the Exchange Act, provides that "no registered broker or dealer shall effect any transaction in, or induce the purchase of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards . . . established by the rules of any

national securities exchange or national securities association of which such broker or dealer is a member.”

28. Reybold had been Blue River’s principal securities trader from at least 1995, and Greenfield knew that Reybold was not registered with the NASD as required by NASD Rule 1031.

29. Accordingly, Blue River willfully violated Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder, and Greenfield willfully aided and abetted and caused Blue River’s violations.

### **Section 10(b) of the Exchange Act and Rule 10b-5.**

30. Section 10(b) of the Exchange Act proscribes the use of any deceptive device in connection with the purchase or sale of securities in contravention of rules prescribed by the Commission. Rule 10b-5 under the Exchange Act makes it “unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, (a) to employ any device, scheme, or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”

31. Greenfield caused Blue River to enter into the \$400 million backdated short sale and purchase of the Notes between two separate Blue River proprietary accounts in order to misrepresent to the office of the U.S. Trustee his true holdings in WorldCom securities to help him gain membership on WorldCom’s creditors’ committee. The creditors’ committee was statutorily charged with participating in the formulation of a reorganization plan that would affect WorldCom’s distributions to equity and debt securities holders and other creditors. 11 U.S.C. § 1103(c).

32. As co-chair of the committee, and at a time that Blue River owned WorldCom debt securities, Greenfield played a significant role in negotiating with various WorldCom constituencies over the allocation of WorldCom’s reorganization value among WorldCom securities holders and other creditors. Greenfield also obtained the personal benefit of access to influential persons in the American business world and the possibility of becoming a member of reorganized WorldCom’s Board of Directors, both benefits that he would not likely have obtained had he not been appointed to WorldCom’s creditors’ committee.

33. Greenfield used a deceptive device, and engaged in a series of acts, practices, or courses of business, which operated as a fraud or deceit on the U.S. Trustee in connection with the purchase or sale of a security. Greenfield entered into a purchase and simultaneous short sale of the same amount of Notes, leaving Blue River with no net economic interest in the Notes. Greenfield backdated the purchase to a date prior to the Petition Date and caused Blue River to cancel the trades immediately after he was appointed to the WorldCom creditors’ committee. Greenfield also knowingly misrepresented to the U.S. Trustee that Blue River owned \$400 million

in face value of the Notes, when in fact this interest was offset by the short position in another Blue River proprietary account.

34. Because the long position in one proprietary account was offset by a short position in another proprietary account, Blue River had only a \$6.5 million face value claim against WorldCom. Had the U.S. Trustee known that Blue River's claim was \$6.5 million and not \$400 million, it is unlikely that Blue River would have been appointed to WorldCom's creditors' committee. By obtaining membership on WorldCom's creditors' committee, Greenfield indirectly misrepresented to all WorldCom constituencies and the public the magnitude of his holdings in WorldCom securities and thereby gained undue influence in WorldCom's reorganization proceedings. Greenfield's actions also could have had the effect of depriving another legitimate creditor from obtaining a seat on WorldCom's creditors' committee.

35. Section 10(b) "does not confine its coverage to deception of a purchaser or seller of securities . . . ; rather, the statute reaches any deceptive device used 'in connection with the purchase or sale of any security.'" *U.S. v. O'Hagan*, 521 U.S. 642, 651 (1997). *See also SEC v. Zandford*, 535 U.S. 813, 820 (2002) (section 10(b) "should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes"). The "in connection with" requirement can be satisfied when a fraud or deceit is "practiced on one person, with resultant harm to another person or group of persons." *U.S. v. O'Hagan*, 521 U.S. at 656.

36. A misrepresentation concerning the extent of one's ownership of a class of securities may form the basis for a Section 10(b) violation. *SEC v. Bilzerian*, 29 F.3d 689 (D.C. Cir. 1994); *SEC v. Drexel Burnham Lambert, Inc.*, 837 F. Supp. 587 (S.D.N.Y. 1993), *aff'd*, 16 F.3d 520 (2d Cir. 1994); *In re Basic Capital Management, Inc. et al*, Exch. Act Rel. No. 46538 (September 24, 2002). Here, all of the acts, practices, or courses of business which operated as a fraud or deceit on the U.S. Trustee were connected to a series of securities transactions: the purchase and simultaneous short sale were securities transactions, and the backdating concerned those transactions. In addition, the misrepresentations made to the U.S. Trustee about the value of Blue River's holdings were directly tied to the purchase and short sale of the Notes.

37. Accordingly, Blue River and Greenfield willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Greenfield willfully aided and abetted and caused Blue River's violations.

### **Section 17(a) of the Exchange Act and Rule 17a-3**

38. Blue River also violated the Exchange Act's books and record keeping provisions. Blue River's blotters and trade tickets concerning the short sale and purchase of the \$400 million in face value of WorldCom Notes incorrectly reflected that the transactions occurred on July 19, 2002, when, in fact, Blue River did not execute any trades in WorldCom securities on that date.

39. Section 17(a) of the Exchange Act and Rule 17a-3 thereunder provide that "every broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, shall make and keep current . . . books and records relating to its business."



40. Accordingly, Blue River willfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, and Greenfield willfully aided and abetted and caused Blue River's violations.

### **Undertakings**

41. Blue River has voluntarily filed with the Commission a Form BDW seeking a full withdrawal from registration with the Commission, all Self-Regulatory Organizations and all jurisdictions. Blue River also filed with the Commission notification, pursuant to Exchange Act Rule 15b6-1(b), that it consents to delay the date the Form BDW becomes effective for purposes of the Order until immediately after the Commission institutes the Order. Blue River further undertakes to:

- a. Not withdraw its Form BDW; and
- b. Provide to the Commission, with fifteen (15) days after the date of the entry of the Order, an affidavit from an authorized agent of Blue River that Blue River has not conducted any business as a broker-dealer after November 30, 2004.

42. Greenfield shall provide to the Commission, within thirty (30) days after the end of the six (6) month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section V. below.

In determining whether to accept the Offers, the Commission has considered these undertakings.

### **V.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 15(b)(4), 15(b)(6), 21B, and 21C of the Exchange Act, it is hereby ORDERED that:

- A. Blue River cease and desist from committing or causing any violations and any future violations of Sections 10(b), 15(b)(7), 15(f), and 17(a) of the Exchange Act and Rules 10b-5, 15b7-1, and 17a-3 thereunder;
- B. Greenfield 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 and from causing any violations and any future violations of Sections 15(b)(7), 15(f), and 17(a) of the Exchange Act and Rules 15b7-1 and 17a-3 thereunder;
- C. Greenfield and Blue River are censured;
- D. Greenfield be, and hereby is, suspended from association with any broker or dealer for a period of six months, effective on the second Monday following the entry of this Order;

E. Greenfield and Blue River shall together pay a civil money penalty in the amount of \$150,000 to the United States Treasury within three (3) days of entry of this Order. Such payment by Greenfield and Blue River, who are jointly and severally liable for the penalty amount, shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Greenfield and Blue River as Respondents in these proceedings and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Alistaire Bambach, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, Room 4300, New York, New York 10281-1022; and

F. Blue River shall comply with the undertakings enumerated in Section IV.41. above and Greenfield shall comply with the undertakings enumerated in Section IV.42. above.

By the Commission.

Jonathan G. Katz  
Secretary