

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9611 / July 8, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72562 / July 8, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3873 / July 8, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31151 / July 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15967

In the Matter of

LAWRENCE M. LABINE,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF
THE SECURITIES ACT OF 1933,
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF
1934, SECTIONS 203(f) AND 203(k)
OF THE INVESTMENT ADVISERS
ACT OF 1940, AND SECTION 9(b)
OF THE INVESTMENT COMPANY
ACT OF 1940**

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 pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 against Lawrence M. LaBine (“Respondent” or “LaBine”).

II.

After an investigation, the Division of Enforcement alleges that:

RESPONDENT

1. LaBine, age 53, is a resident of Fountain Hills, Arizona. From 2007 through 2010, LaBine was an investment adviser representative and registered representative associated with DeWaay Advisory, LLC and DeWaay Financial Network, Inc., an investment advisory firm and brokerage firm headquartered in Clive, Iowa. He was terminated from both DeWaay entities in 2010. In 2007, the State of Illinois fined LaBine \$1,250 and entered a consent order of withdrawal of his state registration as a salesperson with no application for re-registration for eighteen months. In 2005, the NASD suspended LaBine from association with any NASD member in any capacity for 15 business days, fined him \$25,000, and required him to requalify by examination as a general securities representative, for making and effectuating unsuitable recommendations to five customers. Currently, LaBine is a registered representative and investment adviser representative with a firm headquartered in Fort Lauderdale, FL.

FACTS

2. From in or around July 2008 through August 2009, LaBine recommended and sold to more than 100 of his advisory and brokerage clients (“Clients”) an alternative investment in a class of debt securities issued by a start-up company named Domin-8 Enterprise Solutions, Inc. (“Domin-8 or the “Company”). In recommending and selling this investment to his Clients, LaBine failed to disclose that his expected compensation for those sales included warrants to purchase shares in the Company.

3. From at least February 2009 through August 2009, LaBine also failed to disclose to his Clients that he was the principal fundraiser for Domin-8 and the Company was depending almost exclusively on LaBine to raise operating capital on its behalf.

4. LaBine knew that if he alone did not raise sufficient funds from his Clients, the Company would be forced into bankruptcy. LaBine did not disclose to his Clients that his ability to sell the Series D debentures to them was the only thing keeping the Company afloat, and out of bankruptcy, and that he was incentivized by increased warrant compensation to aggressively sell the debentures to his Clients. LaBine also misrepresented to his Clients their risk of loss on their Domin-8 investments.

Background

5. Domin-8 was formed in 2002 as a start-up enterprise software application company that provided software solutions and related services to the property management industry in the United States and Canada. The Company’s primary customers were multi-family residential property owners and managers, and managers of leased commercial and retail real estate.

6. From late 2005 through mid-2007, under the leadership of its founder and then-CEO, Domin-8 embarked on an aggressive acquisition strategy, purchasing eight

software companies. Net losses for the Company in 2006 and 2007 were \$11.2 million and \$14.5 million, respectively.

7. In 2007, Domin-8 began a series of debt offerings to pay off amounts due to the sellers of the acquired companies (“Seller Notes”) and to help fund Domin-8’s operations. The first three of these offerings –the Series A, Series B, and Series C debentures -- raised a total of \$18.7 million.

8. In June 2008, Domin-8 began another round of debt financing. This offering consisted of Series D debentures. The Series D debentures carried a 10 percent interest rate at the outset. The Company hoped to raise at least \$12 million from the Series D offering. The Company had a net loss in 2008 of approximately \$16.6 million, attributable in part to its increasing debt burden and restructuring from the acquisitions.

LaBine Sold Domin-8 Series D Debentures to His Clients But Failed to Fully Disclose His Compensation for Those Sales

9. During the debenture sales period, LaBine was a dually registered investment adviser representative and broker dealer representative. Approximately 80 percent of the Clients to whom he recommended and sold the Series D debentures had both fee-based advisory accounts and commission-based brokerage accounts with him. As to those Clients, LaBine had existing advisory relationships with them and made no attempt to step outside of his role as a fiduciary or delineate the capacity in which he sold them the Series D debentures. LaBine provided investment advice to those Clients with regard to both their advisory and brokerage accounts and made no distinction between advisory and brokerage services. Approximately 20 percent of LaBine’s Clients who purchased the Domin-8 debentures had only commission-based brokerage accounts. For all of LaBine’s purchasing Clients, the debentures were purchased in private placement transactions directly with the Company and the Domin-8 certificates were held in the Clients’ commission-based brokerage accounts.

10. In June or July 2008, LaBine began recommending to his Clients that they purchase Domin-8’s Series D debentures. The Series D debentures were offered via a private placement memorandum (“PPM”) dated June 30, 2008. The PPM was amended and restated in June 2009, and was supplemented at least eight times over the course of the Series D offering, which extended to at least August 2009.

11. The PPM listed GunnAllen Financial, Inc. (“GAF”), an investment banking and brokerage firm, as the Placement Agent for the offering, and disclosed that the Placement Agent was entitled to receive commissions for sales of the debentures, as well as warrants to purchase shares of Domin-8. The PPM defined the Placement Agent as GAF.

12. For the Series D offering, GAF and DeWaay Financial Network, Inc. (“DeWaay”), the brokerage firm with which LaBine was then associated, entered into a selling agreement under which DeWaay was to receive 80 percent of payable commissions and warrants and GAF the remaining 20 percent. That selling agreement was not disclosed

in the PPM or any other offering documents. DeWaay was not listed in the PPM or any other offering documents as a Placement Agent for the Series D offering. LaBine was not listed in the PPM or any other offering documents as a Placement Agent for the Series D offering.

13. LaBine's Clients received subscription documents and executed subscription agreements issued by Domin-8 to effectuate their purchases of the Series D debentures. The subscription documents did not disclose any information about LaBine's compensation for the transaction. In addition, the Clients signed DeWaay disclosure forms in connection with their Series D purchases. These disclosure forms did not disclose that LaBine expected to receive warrants to purchase shares of Domin-8 as part of his compensation for selling the debentures. LaBine also did not inform his Clients verbally that he expected to receive such warrants.

14. The warrant compensation was important to LaBine. In November 2008, he sought an increase in his share of warrants from DeWaay before raising more money for Domin-8. Later in 2009, when he was essentially the sole fundraiser for Domin-8, LaBine received confirmation from the Placement Agent that his warrant price would be reduced, making his warrant compensation more valuable.

15. LaBine did not tell his Clients that he expected to receive warrants as additional compensation for selling the securities, and as incentive to recommend and sell the securities to his Clients. He knew or should have known that his warrant compensation was also not disclosed in any of the offering documents or other documents that his Clients received concerning their Domin-8 investment. The information concerning LaBine's expectation of receiving warrants in Domin-8 was material to his Clients and represented an undisclosed conflict of interest.

LaBine Failed to Disclose His Role as Primary Fundraiser for Domin-8

16. Domin-8 could not service its existing debt or fund operations unless it raised the full \$12 million authorized in the Series D debenture offering. By January 2009, however, Domin-8 had not raised the desired \$12 million and was becoming increasingly desperate for additional capital. After an on-site visit with Domin-8's senior management in late January 2009, LaBine knew that Domin-8 needed to raise money to meet its operating expenses and stave off bankruptcy, and he committed to raise \$500,000 by the end of that month for the Company.

17. In or around February 2009, LaBine agreed to raise \$1 million per month for Domin-8 to complete the Series D offering and keep the Company afloat. From February 2009 through August 2009, LaBine aggressively recommended and sold the Domin-8 Series D debentures to his Clients. He did not disclose to his Clients the material information that his sales efforts, including his ability to successfully close sales of the Series D debentures to those clients, were critical to the company's solvency. He also did not disclose that he had a financial and potential ownership interest in Domin-8 via the warrants.

18. During this sales period, LaBine received direct information about the Company's waning prospects from the Company's Chief Financial Officer and from GAF, the Placement Agent for the Series D offering. LaBine knew from these discussions that Domin-8 could not make payroll or pay its current obligations without his sales efforts, and that Domin-8's management was depending on his personal sales efforts to continue operating and to avoid bankruptcy. LaBine did not disclose this material information to his Clients.

19. In April 2009, in a discussion with LaBine concerning the importance of LaBine's sales efforts to the Company, the Placement Agent informed LaBine that his warrant price would be reduced, making LaBine's warrant compensation more valuable. LaBine continued to recommend and sell the Series D debentures to his Clients without disclosing to them his crucial role in fundraising for the Company, or the fact that he was incentivized to sell the debentures by the promise of more valuable warrants to purchase shares in the Company.

20. LaBine knew or should have known that his Clients would have regarded it as material that, but for his ability to sell to them the Series D debentures, the Company would not survive, and that he was incentivized to aggressively sell his Clients the debentures. Because he did not disclose this material information, LaBine's Clients were deprived of the ability to assess whether the undisclosed information affected LaBine's independence and trustworthiness.

21. While some of the PPM supplements disclosed that the Company needed funds from the offering in order to operate, execute its business strategy, or conduct planned business activities, LaBine did not disclose to his Clients the material information that his own sales efforts, including his ability to successfully close sales of the Series D debentures to those Clients, were critical to the Company's solvency. LaBine failed to disclose that he was essentially the only investment professional successfully advising and recommending to his Clients that they purchase debentures in the Series D offering.

22. As their investment adviser, LaBine owed his Clients a fiduciary duty to act in their best interests, which includes an obligation not to subordinate his Clients' interests to his own and an obligation to eliminate or fully disclose all material conflicts of interest, including any economic self-interest. As their broker recommending the purchase of Domin-8 debentures, LaBine was required to deal fairly with his Clients by, among other things, disclosing all material information about the investment, including material conflicts of interest. Based on the conduct described above, LaBine failed his Clients in his duties as both an investment adviser and a broker.

LaBine Misrepresented the Risk of Loss to his Clients

23. From at least February 2009, LaBine falsely represented to his Clients that the illiquid Domin-8 debentures were essentially risk-free, in contradiction to the risk

disclosures in the PPM and supplements. LaBine told Clients that the investment was safe, secured, and they would not lose any of the money they invested in Domin-8.

24. In July 2009, for example, LaBine had several meetings with an elderly couple who were new Clients of his. To persuade them to invest in the Series D debentures, LaBine told them the Series D investment was safe and that they would get all of their investment back if something went wrong. This couple was one of the last Clients LaBine put into the Domin-8 investment, when he knew the company was depending on his sales efforts to stave off bankruptcy. The couple told LaBine they were fearful about investing in Series D and possibly losing money recently inherited from a parent. Their decision to invest in Series D rested on LaBine's false assurance to them in their meetings that they would get their money back even in bankruptcy.

25. LaBine regularly told his Clients that the Series D investment was safe and he presented the possibility of bankruptcy as a positive development, touting it as the best thing that could happen because his Clients could end up owning the company. While the company's written disclosures indicated that the company may need to seek bankruptcy protection, LaBine's oral representations regarding the alleged safety of the Domin-8 investment, even in the event of bankruptcy, were false and misleading, and LaBine knew or should have known that he had no basis to guarantee the safety of his Clients' investment in the highly speculative Domin-8 debentures. In fact, his Clients lost a third of their investment in the bankruptcy and did not end up owning the company.

26. Domin-8 ultimately did not succeed in raising the money needed to service its debt and fund its operations. LaBine stopped raising money for Domin-8 when he had nearly exhausted his list of Clients who were willing to invest, and after Domin-8's CFO had suggested to LaBine that he could organize a bid to purchase Domin-8's assets in a bankruptcy proceeding. Domin-8 filed a Chapter 11 bankruptcy petition on September 17, 2009, after Domin-8's CFO informed its Board of Directors that LaBine would stop selling Series D debentures. Domin-8's bankruptcy filing occurred only a few weeks after LaBine had closed his final sale of the Series D debentures. LaBine then formed an entity to purchase Domin-8's assets in the bankruptcy proceeding and convinced his Clients to exchange their Domin-8 debentures for debt and shares in the newly-formed entity. Had his bid been accepted by the bankruptcy court, LaBine stood to gain a substantial ownership interest in Domin-8. But the court rejected his bid because, among other things, it found that a competitor's bid provided greater recovery to the Series D debenture holders – LaBine's own clients – than LaBine's bid provided. The bankruptcy court also found that LaBine's bid unfairly benefited some creditors over others with equal priority.

27. The Clients to whom LaBine had recommended and sold the Series D debentures lost substantially on the bankruptcy filing. For his part, LaBine earned over \$500,000 in sales commissions, notwithstanding the rejection of his bankruptcy bid.

VIOLATIONS

28. As a result of the conduct described above, LaBine willfully violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, which make it unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to employ any device, scheme, or artifice to defraud any client or prospective client; or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

29. As a result of the conduct described above, LaBine willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act;

D. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act of 1940;

E. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and Section 206(2) of the Advisers Act; and whether Respondent should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B of the Exchange Act, and Section 203(i) of the Advisers Act; and whether Respondent should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, and Section 203(j) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson
Assistant Secretary