

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MALCOLM SEGAL,

Defendant.

Civil Action No. 15-3668

Jury Trial Demanded

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges as follows:

SUMMARY OF THE ACTION

1. This matter involves an offering fraud and Ponzi scheme conducted by Defendant Malcolm Segal, formerly a registered representative associated with a dually registered broker-dealer and investment adviser.

2. From at least 2009 through July 2014, Segal raised approximately \$15.5 million from at least 50 investors through the fraudulent sale of certificates of deposit (“CDs”). Segal made misrepresentations and omissions while offering and selling CDs to his brokerage customers and others, falsely claiming that, among other things, he had access to banks that offered higher interest rates on FDIC-insured CDs than were otherwise available to the general public.

3. Although Segal actually purchased some of the CDs he promised investors, unbeknownst to them he redeemed most of the CDs before they matured and took the proceeds. At other times, contrary to his representations to investors, Segal purchased no CDs and instead, he simply commingled the investor funds in a bank account he controlled. Toward the end of the

fraud, Segal also made unauthorized withdrawals from the accounts of his brokerage customers to fund payments to other investors in an effort to prevent the scheme from collapsing. In July 2014, the scheme did collapse after an investor informed Segal's employer about an unauthorized withdrawal from the investor's brokerage account.

4. Segal used most of the fraud proceeds to make so-called "interest" and "redemption" payments to earlier investors in the nature of a Ponzi scheme. Segal also used proceeds for his personal benefit, including to purchase a condominium in Florida and to pay for vacations and other luxuries.

5. By knowingly or recklessly engaging in the conduct described in this complaint, Defendant Segal violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R § 240.10b-5].

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], to enjoin such acts, transactions, practices, and courses of business, and to obtain disgorgement, prejudgment interest, civil penalties, and such other and further relief as the Court may deem just and appropriate.

7. The Court has jurisdiction over this action pursuant to Sections 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

8. Venue lies in this judicial district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Among other

things, certain of the acts, practices, and courses of business constituting the violations of the federal securities laws alleged herein occurred within the Eastern District of Pennsylvania.

DEFENDANT

9. **Malcolm Segal**, age 69, is a resident of Langhorne, Pennsylvania, and Boynton Beach, Florida. From 1988 through July 2014, Segal was associated with broker-dealers registered with the Commission. As a result of the conduct described in this complaint, Segal has been barred by the Financial Industry Regulatory Authority (“FINRA”) from association with any broker-dealer.

FACTS

A. Background of the Fraud

10. Between 2009 and 2014, Segal raised approximately \$15.5 million in proceeds through the fraudulent sale of CDs, approximately \$8.1 million of which involved entirely non-existent CDs.

11. Segal orchestrated the fraudulent sale of CDs to his brokerage customers and others through J&M Financial and National CD Sales, entities which were effectively Segal’s alter egos and that existed in name only and shared a Post Office Box address that he controlled. Segal identified himself as the President of both of these entities and further described them as “certificate of deposit placement compan[ies].”

B. Segal’s Early Redemption Scheme

12. From approximately 2009 through 2011, Segal often purchased CDs from banks insured by the Federal Deposit Insurance Corporation (“FDIC”), on behalf of investors and as he had promised. However, without informing investors, Segal redeemed many of those CDs before

they matured. Segal then covertly used the proceeds of those early redemptions to make payments to earlier investors and for his personal use.

13. For example, in 2009, Segal bought at least 134 CDs with interest rates between 1.14% and 2.75% (in amounts ranging from \$5,000 to \$248,000), totaling \$11,690,000 for clients of a registered investment adviser (“Adviser A”). Segal did not purchase these CDs in the name of the individual investors, but purchased the CDs in the name of “Clients of [Adviser A].”

14. By titling the CDs in this manner, Segal, and not the individual investor, retained control over the funds invested in the CD and denied investors the protections usually associated with FDIC-insured CDs. With this control, Segal redeemed at least 76 of those CDs, totaling at least \$5 million, before they reached their maturation date.

15. Segal then commingled the proceeds with other investor funds in the J&M Financial account and, rather than returning the money to the purchasers of the CDs, he used the money to repay earlier, and different, investors and to finance his lifestyle.

16. Beginning in May 2009, Segal also purchased at least \$750,000 in CDs through a bank account he controlled in the name of National CD Sales Inc. Segal wired investor funds from this account to purchase the CDs from various banks.

17. Those CDs were held in the name of “National CD Sales Inc. FBO NCDS CD Participation Program,” which was also the name on the bank account. Segal then redeemed the CDs early and commingled the proceeds into the J&M Financial account.

C. Segal’s Fictitious CD Scheme

18. From at least 2009 through July 2014, Segal raised approximately \$8.1 million from the fraudulent sale of entirely non-existent CDs. After 2011, Segal stopped buying CDs altogether and relied on entirely fictitious investments to perpetuate the fraud.

19. Segal convinced certain investors to wire funds to one of his entities for the purpose of buying CDs. Instead of purchasing the CDs as promised, Segal diverted the investor funds to a bank account he controlled and continued to use the funds to pay earlier investors and to fund his extravagant lifestyle.

20. For these fictitious investments, Segal instructed investors to wire funds directly to a bank account, titled in the name of J&M Financial, which Segal controlled. Segal falsely represented to investors that he would use the funds to purchase the CDs directly and hold them in his vault for “safe keeping.” After Segal joined Broker-Dealer A in the spring of 2011, he also falsely told investors that Broker-Dealer A sponsored and oversaw the CD program and was responsible for the custody of the CDs.

21. Segal often memorialized the terms of the transactions in a follow-up e-mail message or facsimile transmission sent to investors that set forth the issuing bank, interest rate, and duration of the purported CD. Each of those details was materially false.

22. After investors wired their funds into the J&M Financial account, Segal sent investors a document on National CD Sales letterhead purporting to be a “confirmation” that acknowledged the investor’s “deposit into the Custodial CD Program.” The body of the document purported to confirm the issuer, settlement date, principal amount, net rate, term, maturity date, the tax identification number, and the alleged location of the CD (which Segal listed as “Held in Safe Keeping”). At the bottom of the document, it stated: “Depositor has authorized National CD Sales Inc. to purchase the above certificate for their [sic] benefit.” Each of those statements was also materially false, because Segal never purchased those CDs.

i. Investor A

23. For example, on December 10, 2009, Segal solicited Investor A, the Managing Agent for a co-operative residential high-rise building located in Philadelphia, Pennsylvania (the “Building”), to purchase CDs totaling \$1,495,000.

24. Segal falsely told Investor A via e-mail that, among other things, the banks issuing the CDs were “FDIC insured to \$250,000 through 12-31-13.” Segal claimed that rates would expire within days and urged Investor A to complete the transaction the next day.

25. On December 11, 2009, Investor A wired \$1,495,000 to the J&M Financial account on behalf of the Building. At that time, the J&M Financial account held a balance of approximately \$11,000. Segal sent Investor A a purported “confirmation” detailing the terms of four CDs purchased for \$240,000 each. The CDs supposedly carried a 3% interest rate and purportedly were issued by legitimate banks based in Phoenix, Arizona, San Diego, California, Houston, Texas, and Madisonville, Texas.

26. But these CDs never existed. The four banks that Segal claimed were the issuers of the CDs each had been closed by federal and state banking authorities on the same date – October 30, 2009 – six weeks before the purported purchases took place.

27. On the same day he received the funds, Segal used \$60,000 of the Building’s investment money to pay down his personal home equity line of credit.

28. Similarly, between December 17 and 22, 2009, Segal wired \$1,221,762.65 to two other bank accounts for the benefit of advisory clients of Adviser A who had purchased actual CDs through Segal in March and June 2009. Unbeknownst to those advisory clients, Segal had already prematurely redeemed their CDs to pay earlier investors. Segal used the Building’s funds, along with the proceeds of several other CDs that Segal redeemed before their respective

maturity dates, to reimburse these earlier investors' principal and pay their promised rate of return.

ii. Investors B and C

29. In another series of transactions that occurred in early 2010, Segal defrauded two investors through the sale of fictitious CDs and then used the proceeds to purchase a condominium for himself and his wife in a gated community in Boynton Beach, Florida.

30. First, on January 19, 2010, Segal offered the manager of an account held in trust for a deceased brokerage customer the opportunity to purchase a six-month CD at a 1.2% interest rate. The manager ("Investor B") agreed to invest \$60,000 from the brokerage account in the CD and authorized Segal to wire funds from the brokerage account into the J&M Financial account, which Segal did the very same day.

31. Second, in early February 2010, Segal convinced another investor ("Investor C") to purchase a 91-day CD for \$197,980 at a 1% interest rate. On February 10 and 12, Investor C wired the funds to the J&M Financial account.

32. Instead of purchasing the CDs as promised, on February 19 Segal transferred \$135,000 from the J&M Financial account to a joint checking account held in his and his wife's name.

33. Segal then purchased three cashier's checks. Two of the checks, one in the amount of \$37,200 and the other in the amount of \$10,000, were payable to the Boynton Beach condominium community. The other cashier's check, in the amount of \$129,300.80, was made payable to a title company in Boca Raton, Florida. Segal and his wife purchased the condominium on March 30, 2010, for \$142,500. Segal subsequently sold additional fictitious

CDs to fund the repayment of principal and interest to the investors he defrauded in order to purchase the condominium.

iii. Investor D

34. As time passed and the scheme evolved, it became increasingly difficult for Segal to raise the funds necessary to fund both his living expenses and meet his “interest” and “redemption” obligations to earlier investors.

35. Thus, in or about July 2011, Segal substantially increased the purported “interest rates” offered on his fictitious CDs.

36. Segal solicited Investor D, one of Segal’s brokerage customers, to purchase CDs by falsely claiming that Broker-Dealer A was offering lucrative rates on CDs through the firm’s fictitious and non-existent “Bulk CD Program.” He further falsely claimed that, because the issuing bank was offering an exceptionally large number of CDs, he was able to obtain an annual interest rate of twelve percent.

37. Segal also wrote to Investor D (on Broker-Dealer A letterhead) that the CDs were FDIC-insured and would be held for safe keeping at Broker-Dealer A, all of which was untrue. Segal told Investor D that he needed to fund the purchases through J&M Financial, and not Broker-Dealer A, to ensure that Segal received a commission on the transactions. This statement, too, was false.

38. Investor D, and his friends and family members, ultimately purchased approximately \$2.1 million in fictitious CDs from Segal and, although they received some monthly “interest” payments, lost a significant amount of their principal investment.

D. Segal Directly Misappropriates from Customer Accounts

39. By December 2013, Segal began misappropriating funds directly from his brokerage customers' accounts to keep the scheme from collapsing. In December 2013, Investor A told Segal that he intended to redeem three maturing CDs (which, unbeknownst to Investor A, did not exist) for a total of \$720,000.

40. At the time, Segal had approximately \$13,140 available in the J&M Financial account. Apparently unable to generate any new investments, on December 17, 2013, Segal transferred \$225,000 from Investor D's brokerage account to the J&M Financial account. On December 19, Segal liquidated securities in the account of another brokerage customer ("Customer") and transferred all of the proceeds, \$540,000, to the J&M Financial account.

41. Segal forged letters of authorization to facilitate the transfer of funds out of both Investor D's and Customer's brokerage accounts. Notably, one of the signatures forged by Segal was that of Customer's wife, who had died before the date of the transfer.

42. On December 20, 2013, Segal wired \$720,000 from the J&M Financial account to a bank account held in the name of Building, representing the return of principal on the purported CDs purchased by Investor A. He wired an additional \$18,000 on December 30, representing the purported rate of return.

43. Segal's scheme ultimately collapsed in July 2014 when Investor D alerted Segal's employer to the missing funds from his brokerage account.

44. Investor D originally noticed \$225,000 missing from his account in March 2014 and asked Segal about it. For several weeks Segal lulled Investor D with various false statements and by creating a fictitious account statement that purported to show that the funds had been transferred back to the account.

45. Eventually, Segal admitted to Investor D that he never purchased any CDs. Segal's employer terminated Segal after he failed to cooperate with its investigation.

FIRST CLAIM FOR RELIEF
Violations of Section 17(a) of the Securities Act

46. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 45, inclusive, as if they were fully set forth herein.

47. From at least 2009 through July 2014, as a result of the conduct alleged herein, Defendant Segal knowingly or recklessly, in the offer or sale of securities, directly or indirectly, by the use of the means or instruments of transportation or communication in interstate commerce, or the mails:

- a. employed devices, schemes or artifices to defraud;
- b. obtained money or property by means of any untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities.

48. By engaging in the foregoing conduct, Defendant Segal violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

49. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 48, inclusive, as if they were fully set forth herein.

50. From at least 2009 through July 2014, as a result of the conduct alleged herein, Defendant Segal knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use of the means or instrumentality of interstate commerce or of the mails, or a facility of a national securities exchange:

- a. employed devices, schemes or artifices to defraud;
- b. made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

51. By engaging in the foregoing conduct, Defendant Segal violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently restrain and enjoin Defendant Segal from violating Section 17(a) of the Securities Act [15 U.S.C § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R § 240.10b-5];

II.

Order Defendant Segal to disgorge any and all ill-gotten gains derived from his illegal conduct, together with prejudgment interest thereon.

III.

Order Defendant Segal to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

IV.

Retain jurisdiction of this action for purposes of enforcing any final judgment and orders.

V.

Grant such other and further relief as this Court may deem just and appropriate.

Respectfully submitted,

/s/ Michael J. Rinaldi

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