

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

EARL A. ABBOTT,
RICHARD L. STALVEY,
GLENN PURDUE,
ROBERT E. GERWIN and
KENNETH C. NUNN,

Defendants,

and

THOMAS J. O'KEEFFE,

Relief Defendant.

Civil Action No.

6:01-cv-364-orl-31 KPS

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants Earl A. Abbott ("Abbott"), Richard L. Stalvey ("Stalvey"), Glenn Purdue ("Purdue"), Robert E. Gerwin ("Gerwin") and Kenneth C. Nunn ("Nunn"), and relief defendant Thomas J. O'Keeffe ("O'Keeffe"), alleges the following:

PRELIMINARY STATEMENT

1. This enforcement action involves the fraudulent offer and sale of unregistered securities in the form of interests in a fictitious "trading program". Defendants claimed that they would use investor funds to buy and sell "medium term debentures" issued by some of the world's

“top 25 banks”, with the trading to be conducted by an unidentified “trading group” in a secret location somewhere in Europe. Defendants promised investors extraordinarily high returns (between 80% and 160%) with no risk. All of defendants’ representations were false. There were no bank debentures and no trading. Investors have lost approximately \$3.1 million. Defendants’ “trading program” has all the hallmarks of a “prime bank” scheme, a type of investment fraud involving fictitious instruments supposedly issued by leading world banks which has become far too common in the past decade.

2. Defendant Abbott, a businessman in Titusville, Florida, recruited defendants Stalvey, Purdue and Gerwin to help him find investors for the fictitious trading program. Between May and October 1998, they raised over \$3.5 million from twelve investors in five different states. Approximately \$3.3 million of investor funds were wired to an off-shore account on Guernsey in the Channel Islands controlled by defendant Nunn, a resident of England who had promised Abbott that he would receive a commission for recruiting U.S. investors for the program. Nunn then transferred approximately \$1 million to relief defendant O’Keeffe, a resident of Ireland who, Nunn claimed, would conduct the “trading”.

3. Through this fraudulent offering, defendants have engaged and, unless enjoined, will continue to engage in violations of the federal securities laws. Specifically, defendants have engaged in: (i) fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 (“Securities Act”); (ii) fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder; (iii) the offer and sale of unregistered securities, in violation of Sections 5(a) and 5(c) of the Securities Act; and (iv) the effecting of

securities transactions for the account of others without being registered with the Commission as a broker-dealer, in violation of Section 15(a) of the Exchange Act.

4. Accordingly, the Commission seeks: (i) entry of a permanent injunction prohibiting defendants from further violations of the relevant provisions of the federal securities laws; (ii) disgorgement by defendants Abbott, Stalvey and Nunn of their ill-gotten gains, plus pre-judgment interest; and (iii) imposition of civil monetary penalties against all defendants pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. In addition, the Commission requests that relief defendant O'Keeffe be ordered to return the U.S. investor funds which he received from Nunn.

JURISDICTION

5. The Commission is an agency of the United States of America established by Section 4(a) of the Exchange Act [15 U.S.C. §78d(a)].

6. The Commission seeks a permanent injunction pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d)(1) of the Exchange Act [15 U.S.C. §78u(d)(1)]. The Commission seeks the imposition of civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

7. In connection with the conduct alleged, defendants directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

DEFENDANTS

8. **Abbott** is a resident of Titusville, Florida. He operates a real estate management company, A&A Realty Company ("A&A"), which builds and manages real estate. He entered into the transactions described below through Mutual Assets Limited ("Mutual"), an offshore company for which he had power of attorney.

9. **Stalvey** is a resident of Albany, Georgia. He is a part-time accountant. He is also an ordained minister with a non-denominational church. He and his wife control a charitable organization known as "Christian Equippers".

10. **Purdue** is a resident of Indianapolis, Indiana. During the Commission's investigation, he invoked his Fifth Amendment privilege against self-incrimination with respect to all questions concerning his background and his involvement in the offer or sale of "prime bank" investment programs.

11. **Gerwin** is a resident of Cincinnati Ohio. He is retired and has pursued "prime bank" investment programs as a "hobby" since 1983.

12. **Nunn** is a resident of Kent, England. He raised at least \$6 million by selling "prime bank" securities, include the \$3.5 million from Abbott's investors which are the subject of this action. Approximately \$3.3 million of U.S. investor funds were deposited in a bank account, which Nunn controlled, in the name of "RMP Corporate Services" located on Guernsey in the Channel Islands. Less than \$1,000 remains in that account.

13. **O'Keeffe** is a resident of Ireland and is believed to be Nunn's associate. Nunn claims that he transferred approximately \$1 million of U.S. investor funds to O'Keeffe.

STATEMENT OF FACTS

Abbott Agrees to Sell "Prime Bank" Securities for Nunn

14. During a trip to England in late 1997, Abbott met Nunn, who solicited him to invest in a fictitious trading program known as "Glenmar". Nunn knowingly or recklessly made numerous material misrepresentations to Abbott. For example, Nunn falsely stated that: (i) the Glenmar program would pay 15% a month for twelve months and then return an investor's funds; (ii) an investment in the Glenmar program would be fully collateralized by U.S. Treasury Bills ("T-Bills"); (iii) if there were a default on a monthly payment, Abbott could withdraw his money in full; (iv) for years he had successfully operated high-yield "prime bank" programs, buying and selling newly-issued bonds in 45-minute intervals and earning 20% per week with no risk because the transactions were all pre-arranged; and (v) the traders he worked with had accumulated over \$1 billion of trading profits which were held in a secret Swiss bank account.

15. Shortly after meeting with Nunn, Abbott began recruiting investors for Nunn's fictitious program. Abbott understood that he would receive a commission if he obtained additional investors for Nunn. As set forth below, Abbott induced Stalvey, Purdue and Gerwin to help him find investors for Nunn's fictitious program. Between January and October 1998, they convinced twelve U.S. investors to invest more than \$3.5 million, most of which was wired overseas to the Guernsey account controlled by Nunn.

16. During the relevant period, Nunn had frequent telephone and facsimile contacts with Abbott. In February 1998, Abbott himself sent \$100,000, which he claims was his own money, to Nunn for investment in the Glenmar program.

Abbott and Stalvey Offer and Sell \$250,000 of "Prime Bank" Securities

17. Stalvey became acquainted with Abbott in 1996 through a mutual friend. Abbott knew that Stalvey was a certified public accountant in Georgia

18. In approximately January 1998, Abbott told Stalvey about the fictitious Glenmar program. Abbott knowingly or recklessly made numerous material misrepresentations to Stalvey. For example, Abbott falsely stated that: (i) Nunn, the so-called "program manager", was able to pay an above-market return by buying large blocks of T-Bills in highly leveraged transactions and by selling to multiple investors at a huge profit; (ii) the trading program's profits were well in excess of the 15% per month that would be paid to investors, as Nunn also earned a profit on the trades; (iii) Nunn had run the program successfully for many years; and (iv) the transaction was risk-free, as each investor's principal was fully collateralized by the T-Bills.

19. In approximately April 1998, Stalvey solicited one of his accounting clients to invest in Abbott's fictitious program. Stalvey knowingly or recklessly made numerous material misrepresentations to the client. For example, Stalvey falsely stated that: (i) Abbott's program paid 15% a month and was risk-free; (ii) Abbott was a multi-millionaire who had been running programs for some time; (iii) investors received interest payments every month, "just like clockwork"; (iv) the client's return would be 7.5% a month while he and Abbott would split the remaining profits as their commission.

20. Using a sample provided by Abbott, Stalvey drafted a document entitled "Private Joint Venture Offshore Trading Agreement" between his client and Mutual, Abbott's off-shore company. The agreement called for payments of 7.5% per month for twenty-two months, with the profits to be derived from an offshore program trading primarily in T-Bills.

21. Abbott signed the agreement on May 22, 1998 and Stalvey's client signed it on May 26, 1998. The agreement called for an investment of \$250,000 with monthly interest payment to start in ninety days.

22. On or about May 27, 1998, Stalvey's client provided Abbott with a bank check in the amount of \$250,000 made payable to Abbott.

23. In November 1998, Stalvey received a \$50,000 wire transfer from the Guernsey account controlled by Nunn as a commission. The payment was made to a bank account in the name of Christian Equippers, an entity controlled by Stalvey. Stalvey spent the money on personal living expenses.

24. Stalvey's client received monthly payments of \$18,750 (or 7.5%) for five months in 1998, then the payments stopped. Stalvey and Abbott each provided the client with a variety of explanations for the failure to make further payments, all of which blamed Nunn. The only other payment which Stalvey's client received was a \$50,000 wire transfer in January 2000 from the Guernsey account controlled by Nunn. None of these payments were from trading profits. In fact, and in typical Ponzi scheme fashion, the source of the payments to Stalvey's client consisted of funds which Nunn had received from other investors.

25. Stalvey's client has lost \$106,250 of her investment.

Abbott and Purdue Offer and Sell \$3 Million of "Prime Bank" Securities

26. Abbott met Purdue through his real estate dealings.

27. Sometime thereafter, Abbott solicited Purdue's help in finding investors for a fictitious trading program in exchange for a commission. Abbott knowingly or recklessly made material misrepresentations to Purdue. For example, Abbott falsely stated that he had access to

successful European trading programs.

28. Purdue arranged for one of his "clients" to meet Abbott so that Abbott could describe the program. Purdue expected to receive a commission if his client invested with Abbott.

29. In approximately September 1998, Purdue and his client met with Abbott in Florida. Abbott knowingly or recklessly made material misrepresentations to Purdue's client. For example, Abbott falsely stated that: (i) he had a \$1 million trading contract with Nunn; (ii) Nunn's program paid 2% a week for forty weeks; (iii) the investment was a great opportunity and was risk-free because it was fully collateralized by T-Bills; (iv) Nunn made his money by buying mid-term notes at a discounted price of \$87 when he had an "exit contract" to sell the same notes for \$100; and (v) by buying large quantities of notes in highly leveraged transactions, Nunn was able to pay the investor 2% a week while still making money for himself.

30. On October 2, 1998, Purdue's client entered into a 2% per week "Private Placement Commercial Contract" trading agreement with Mutual, Abbott's off-shore company. Purdue signed the agreement on behalf of Mutual pursuant to a power of attorney granted by Abbott. The agreement stated that the client's funds would be used to trade "unrestricted and unsubordinated medium term senior bank debentures with International Chamber of Commerce Format 322 and subject to the uniform customs and practices for documentary credits, ICC publication 400/500 & revised." The agreement also stated that the medium term bank debentures would come only from "the top twenty-five Western European Banks."

31. Pursuant to this agreement, Purdue's client wired \$2.5 million to the Guernsey account controlled by Nunn.

32. The payments to Purdue's client were to begin within fifteen days of receipt of

funds. No payments arrived and, in January 1999, the client asked for his funds back. Abbott provided a number of excuses to Purdue's client, including that the "trader" was ill, that there had been a fraudulent scheme at one of the banks involved in the trading, and that trading had been shut down by the government authorities.

33. In January 2000, Purdue's client received \$200,000 from the Guernsey account controlled by Nunn. The client has lost the remaining \$2.3 million of his investment.

34. In the fall of 1998, Purdue brought a second client to Abbott. Purdue knowingly or recklessly made material misrepresentations to the client. For example, Purdue falsely stated that: (i) Abbott was honest and trustworthy; and (ii) Abbott had invested \$1 million of his own money in trading programs with Nunn.

35. As instructed by Abbott, Purdue's second client wired a total of \$500,000 to the Guernsey account controlled by Nunn. The projected profits from this client's investment were the same as for Purdue's first client: 2% a week for 40 weeks. As before, Purdue signed the agreement with the client on behalf of Mutual. Purdue and Abbott expected to receive a commission payable from the profits in excess of those paid to the client.

36. When no payments arrived and the second client complained, Abbott transferred certain land in Florida to the client pursuant to an agreement that the land would be deeded back to Abbott if the client received his entire \$500,000 investment back from Nunn.

37. In January 2000, the second client received a wire of \$50,000 from the Guernsey account controlled by Nunn. The client has lost the remaining \$450,000 of his investment, less the value of Abbott's land in Florida.

Abbott and Gerwin Offer and Sell \$300,000 of "Prime Bank" Securities

38. Abbott met Gerwin through a mutual acquaintance who knew of their interest in "prime bank" investment programs.

39. Gerwin introduced Abbott to Richard Briden ("Briden"), a retired Massachusetts small business consultant who had recruited seven people, mainly friends and relatives, for a joint venture that would participate in a "prime bank" investment program.¹ Gerwin knowingly or recklessly made material misrepresentations to Briden. For example, Gerwin falsely stated that: (i) Abbott was running a program which traded in western European bank medium term debentures; (ii) Abbott had spent years in Europe working on trading programs; and (iii) Abbott was very knowledgeable, successful and honest. With the expectation of receiving a commission, Gerwin offered to set up a meeting between Briden and Abbott.

40. On September 29, 1998, Gerwin and Briden met with Abbott in Florida. Abbott knowingly or recklessly made material misrepresentations to Briden. For example, Abbott falsely stated that: (i) Nunn's investment program was a high-yield trading program earning 16% per week for 40 weeks from trading medium term notes; (ii) investor funds would be used to "rent" U.S. Treasury bills, which would then serve as collateral for trading in "medium term notes"; and (iii) Nunn was a man of honesty and integrity.

41. In early October 1998, Abbott set up a conference call with Stalvey and Briden in

¹ On May 11, 1999, the Commission filed an injunctive action against Briden in the U.S. District Court for the District of Massachusetts, alleging violations of the registration and anti-fraud provisions of the federal securities laws in connection with Briden's sale of "prime bank" securities to his group of investors. The action is entitled SEC v. Briden, Civil Action No. 99-11009-RCL. The Commission recently filed a motion for summary judgment which is now pending.

which Stalvey confirmed that his client was receiving her promised return. (At the time of the telephone call, Stalvey's client was still receiving her monthly payments. Those payments did not stop until January 1999.)

42. On October 20, 1998, Briden's joint venture entered into a contract with Mutual, Abbott's offshore company. Briden signed the agreement on behalf of his investor group and Gerwin signed on behalf of Mutual pursuant to a power of attorney granted by Abbott. The contract stated that Briden's investor group would receive 16% per week for forty weeks. As with the other Mutual contracts described above, the contract with Briden's group stated that the profits would come from trading in "medium term bank debentures" of the "top 25" western European banks.

43. On October 21, 1998, Briden wired \$295,000 from his investor group, plus \$5,000 of his own money, to the Guernsey account controlled by Nunn. Briden's group has not received any return except a \$50,000 payment made by Nunn in January 2000.

44. In January 1999, Abbott provided Briden with a "guarantee" on behalf of himself and Mutual Assets. Sometime in 2000, Abbott conveyed certain land in Florida to Briden's joint venture. Thus, Briden's investor group has lost the remaining \$245,000 of its investment, less the value of Abbott's land in Florida.

Nunn Transfers \$1,094,189 to O'Keeffe

45. Between June 25, 1998 and December 18, 1998, Nunn transferred \$1,094,189 from the Guernsey account which he controlled to O'Keeffe in Ireland, purportedly for the purpose of engaging in trading in "prime bank" instruments. No trading was done, and O'Keeffe did not provide anything in return for the funds he received.

FIRST CLAIM
(Violation of Section 17(a) of the Securities Act)

46. The Commission repeats and incorporates by reference the allegations in paragraphs 1-45 of the Complaint as if set forth fully herein.

47. Defendants, directly and indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions 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) have engaged or are engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities.

48. As a result, defendants have violated, are violating and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

49. Defendants' violation of Section 17 (a) of the Securities Act has involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and has resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 20(d) of the Securities Act [15 U.S.C. §77t(d)].

SECOND CLAIM
(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)

50. The Commission repeats and incorporates by reference the allegations in paragraphs 1-45 of the Complaint as if set forth fully herein.

51. Defendants, directly or indirectly, acting intentionally, knowingly or recklessly, by

the use of means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have made or are making untrue statements of material fact or have omitted or are omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) have engaged or are engaging in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

52. As a result, defendants have violated, are violating and, unless 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].

53. Defendants' violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder has involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and has resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

THIRD CLAIM
(Violation of Sections 5(a) and 5(c) of the Securities Act)

54. The Commission repeats and incorporates by reference the allegations in paragraphs 1-45 of the Complaint as if set forth fully herein.

55. Defendants, directly and indirectly: (a) have made or are making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement has been in effect and for which no exemption from registration has been available;

and/or (b) have made or are making use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement has been filed and for which no exemption from registration has been available.

56. As a result, defendants have violated, are violating and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a) and 77e(c)].

57. Defendants' violation of Sections 5(a) and 5(c) of the Securities Act has involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and has resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 20(d) of the Securities Act [15 U.S.C. §77t(d)].

FOURTH CLAIM
(Violation of Section 15(a) of the Exchange Act)

58. The Commission repeats and incorporates by reference the allegations in paragraphs 1-45 of the Complaint as if set forth fully herein.

59. Defendants, directly or indirectly: (a) are each a natural person not associated with a broker or dealer which is a person other than a natural person (other than a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange); (b) have made or are making use of the mails or of the means or instrumentalities of interstate commerce to effect transactions in, or to induce the purchase of, securities (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills); and (c) were not or are not registered as a broker-dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. §78o(b)].

60. As a result, defendants have violated, are violating and, unless enjoined, will continue to violate Section 15(b) of the Exchange Act [15 U.S.C. §78o(b)].

61. Defendants' violation of Section 15(b) of the Exchange Act has involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and has resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

FIFTH CLAIM
(Unjust Enrichment of Relief Defendant)

62. The Commission repeats and incorporates by reference the allegations in paragraphs 1-45 of the Complaint as if set forth fully herein.

63. Relief defendant O'Keeffe received investor funds under circumstances dictating that, in equity and good conscience, he should not be allowed to retain such funds.

64. As a result, O'Keeffe is liable for unjust enrichment and should be required to return his ill-gotten gains, in an amount to be determined by the Court.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining defendants and each of their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)];
2. 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];
3. Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a) and 77e(c)]; and
4. Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)];

B. Require defendants Abbott, Stalvey and Nunn and relief defendant O'Keeffe to disgorge their ill-gotten gains, plus pre-judgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

C. Order defendants to pay appropriate civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)];

D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

E. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Dated: March 21, 2001