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FILED
2009 JUL 27 11:41

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DARRYL LAMONTH CLARK,

Defendant.

Case No. **09 03423 RS**
COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS

Plaintiff Securities and Exchange Commission ("Commission")
alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e), and 78aa. Defendant has, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

1 he participated in the sale of the Notes.

2 8. By engaging in the conduct described in this Complaint, Clark
3 violated the antifraud, securities registration, and broker-dealer registration
4 provisions of the federal securities laws.

5 9. By this Complaint, the Commission seeks permanent
6 injunctions prohibiting further violations, disgorgement with prejudgment
7 interest, and a civil penalty.

8 **DEFENDANT**

9 10. Darryl Lamonth Clark ("Clark"), age 42, was a resident of
10 Manteca, California during the Relevant Period. Clark worked as a sales
11 agent for AOB from at least July 2004, managed AOB's San Jose, California
12 branch office from 2006 through July 2007, and held the title of vice
13 president of sales and marketing.

14 **RELATED PARTIES**

15 11. Terchi "Nelson Liao ("Liao"), age 51, was a resident of
16 Arcadia, California during the Relevant Period. He was the sole owner of
17 AOB Commerce, Inc. and AOB Asia Fund I, LLC.

18 12. AOB Commerce, Inc. is a California corporation that was
19 located in Arcadia, California during the Relevant Period. AOB Commerce
20 never registered an offering of securities under the Securities Act, or a class
21 of securities under the Exchange Act. AOB Commerce offered and sold
22 Notes to investors from at least mid-2004. In July 2007, AOB Commerce
23 was placed into Court-ordered receivership.

24 13. AOB Asia Fund I, LLC is a California limited liability company
25 that was located in Arcadia, California during the Relevant Period. AOB
26 Asia Fund began offering Notes to investors in or about 2006 that were
27 indistinguishable from those offered by AOB Commerce. AOB Asia Fund
28 never registered an offering of securities under the Securities Act, or a class

1 of securities under the Exchange Act. In July 2007, AOB Asia Fund was
2 placed into a Court-ordered receivership.

3 **THE FRAUDULENT AND UNREGISTERED OFFERING**

4 **A. The Notes**

5 14. From at least mid-2004 through July 2007, AOB Commerce, Inc.
6 and (beginning in approximately 2006) the AOB Asia Fund I, LLC, raised
7 more than \$45 million from approximately 430 investors in at least 12 states
8 through the sale of the Notes.

9 15. The Notes are securities in the form of promissory notes.
10 Alternatively, the Notes are securities in the form of investment contracts.

11 16. Neither AOB Commerce's nor AOB Asia Fund's Note offering
12 was registered with the Commission.

13 17. The Notes promised investors interest of up to 5.5% per month.

14 18. Maturity dates for the Notes ranged from three months to one
15 year. Because the Notes typically rolled over at maturity, some investors held
16 their Notes for years.

17 19. Investor proceeds were pooled and were to be used to make loans
18 to companies in Asia. Although Liao made some loans to Asian companies, the
19 majority of investor funds were used to pay principal and interest on the Notes,
20 pay commissions to sales agents and investors who solicited others to purchase
21 the Notes, and make undisclosed loans to entities affiliated with AOB.

22 **B. The Offer and Sale of the Notes**

23 20. AOB made almost no written representations and did not
24 furnish audited financial statements to prospective investors. Instead, the
25 Notes were offered and sold principally through oral representations by Liao,
26 AOB's sales agents, and other investors.

27 21. Liao told prospective investors, or told existing investors who
28 in turn conveyed the information to prospective investors, that their money

1 would become part of a large fund that would be loaned to companies in
2 China that did not qualify for bank loans and therefore were willing to pay
3 AOB a higher interest rate.

4 22. The Notes stated the dates of maturity, the promised interest
5 rate and, in many cases, the fact that the interest rate was “guaranteed.”

6 23. Many Notes also represented that the investor monies would be
7 used in AOB’s “syndication program,” which was “designed to offer
8 financial services to AOB’s overseas . . . clients.”

9 24. AOB maintained a website at www.aobinc.com. The website
10 held out AOB Commerce as “a financial services company serving small to
11 large businesses by offering business lending solutions to assist with short-
12 term and long-term financial needs.” The website further stated that “AOB
13 Commerce syndicated loan specialists work closely with investors/lenders to
14 raise capital of over \$50 million.”

15 25. AOB’s website also contained a password-protected entry to a
16 presentation of the investment opportunity provided by the AOB Asia Fund,
17 which was described as “an AOB Commerce guaranteed principal and return
18 product.” The password-protected portion of the website devoted to the
19 AOB Asia Fund also represented that “fast growing businesses in Asia look
20 to AOB Commerce for the capital they need for expansion. . . . The AOB
21 Asia Fund is the source of this capital.” The website represented that the
22 AOB Asia Fund offers “secured high returns” of 24% per year on one-year
23 investments of at least \$10,000.

24 26. AOB’s sales and operations ceased in July 2007, when the
25 Commission brought an emergency injunctive action to halt the scheme, and
26 a receiver was appointed.¹

27
28 ¹ *SEC v. AOB Commerce, Inc., et al.*, Civil Action No. CV-07-4507
CAS (JCx) (C.D. Cal. filed July 12, 2007).

1 **C. Clark's Involvement in the Scheme**

2 27. In July 2004, Clark became an AOB sales agent, and in 2006
3 Liao put him in charge of AOB's San Jose, California branch office.
4 Additionally, Clark held the title of vice president of sales and marketing for
5 AOB Commerce. Clark received checks totaling more than \$800,000.

6 28. Clark's duties as head of the San Jose sales office included
7 assisting Liao in tracking commissions that were to be paid to the San Jose
8 sales staff by preparing a monthly report beginning in approximately 2006.

9 29. As a sales agent, Clark initially received monthly commissions
10 based on the outstanding amount invested by the Note holders he introduced
11 to AOB Commerce. Clark also was entitled to receive sales overrides, i.e. a
12 percentage of each sale made on the Notes by other sales agents in the San
13 Jose office.

14 30. Clark stopped soliciting investments from individuals after he
15 assembled a sales team in San Jose (which ultimately numbered at least six
16 agents) in or about 2006. At or about this time, Clark was placed on salary,
17 which he received in lieu of commissions and overrides.

18 **D. Clark's Misrepresentations and Omissions**

19 31. Clark failed to perform meaningful due diligence before he
20 became an AOB sales agent in July 2004.

21 32. From the outset of his involvement in the Note program, Clark
22 knew of serious accounting deficiencies at AOB involving internal tracking
23 and payment of commissions to sales agents. AOB's payroll and accounting
24 difficulties became more pronounced in 2007, after accusations that AOB
25 and Liao were operating a ponzi-scheme began circulating among investors.
26 Although Clark was aware of these problems, he never asked to examine
27 AOB's books and records, and never questioned why Liao would not permit
28 anyone to examine his financial records.

1 33. Clark was involved in the preparation of a sales brochure that
2 was distributed to prospective investors in the AOB Asia Fund. The brochure
3 described AOB Asia Fund as an “AOB Commerce guaranteed principal &
4 return product,” and represented that investors’ principal and interest payments
5 were secured. Clark was aware of several material misrepresentations or
6 omissions that were made in the brochure and/or failed to conduct a sufficient
7 amount of due diligence before making it available to prospective investors.
8 For example, the brochure represented that “AOB has the highest trained
9 project underwriting team in the industry [with] over 15 years of experience
10 in the Asia Marketplace.” Although Clark knew that Liao was the primary
11 member of the team, he allowed the solicitation materials to be disseminated
12 from the San Jose sales office, giving the false impression of a much larger
13 “team” of professionals and experts with years of experience.

14 34. Clark also participated in the creation of a second brochure in
15 approximately 2006, which purportedly was to be used for the loan
16 brokering side of AOB’s business. This brochure was also disseminated to
17 prospective investors by at least one AOB sales agent. Clark was involved
18 in researching the text of the brochure, and reviewed the document prior to
19 its publication. The brochure includes a section concerning the corporate
20 finance services purportedly offered to AOB’s clients, and describes the
21 activities of the company’s corporate finance “specialists.” Yet, Liao was
22 the only person that Clark was aware of at AOB with this type of experience.

23 **E. Clark’s Failure to Register as a Broker or Dealer While**
24 **Involved in the Sale of Notes**

25 35. Clark, himself and through the sales agents he managed,
26 solicited investors to purchase Notes, and directly or indirectly received
27 transaction-based compensation.

28 36. Clark was neither registered as a broker-dealer nor associated

1 with a registered broker-dealer while facilitating and participating in the sale
2 of securities.

3 **FIRST CLAIM FOR RELIEF**

4 **UNREGISTERED OFFER OR SALE OF SECURITIES**

5 **Violations of Sections 5(a) and 5(c) of the Securities Act**

6 37. The Commission re-alleges and incorporates by reference
7 paragraphs 1 through 36 above.

8 38. Clark, by engaging in the conduct described above, directly or
9 indirectly, made use of the means or instruments of transportation or
10 communication in interstate commerce or of the mails, to offer to sell or to
11 sell securities, or to carry or cause such securities to be carried through the
12 mails or in interstate commerce for the purpose of sale or for delivery after
13 sale.

14 39. No registration statement was filed or in effect with the
15 Commission pursuant to the Securities Act with respect to the offering
16 described herein.

17 40. By engaging in the conduct described above, Clark violated,
18 and unless restrained and enjoined will continue to violate Sections 5(a) and
19 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

20 **SECOND CLAIM FOR RELIEF**

21 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

22 **Violations of Section 17(a) of the Securities Act**

23 41. The Commission re-alleges and incorporates by reference
24 paragraphs 1 through 36 above.

25 42. Clark, by engaging in the conduct described above, directly or
26 indirectly, in the offer or sale of securities by the use of means or
27 instruments of transportation or communication in interstate commerce or by
28 use of the mails, with scienter: (a) employed devices, schemes, or artifices

1 to defraud; (b) obtained money or property by means of untrue statements of
2 a material fact or by omitting to state a material fact necessary in order to
3 make the statements made, in light of the circumstances under which they
4 were made, not misleading; or (c) engaged in transactions, practices, or
5 courses of business which operated or would operate as a fraud or deceit
6 upon the purchaser.

7 43. By engaging in the conduct described above, Clark violated,
8 and unless restrained and enjoined will continue to violate, Section 17(a) of
9 the Securities Act, 15 U.S.C. § 77q(a).

10 **THIRD CLAIM FOR RELIEF**

11 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF**
12 **SECURITIES**

13 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

14 **Thereunder**

15 44. The Commission re-alleges and incorporates by reference
16 paragraphs 1 through 36 above.

17 45. Clark, by engaging in the conduct described above, directly or
18 indirectly, in connection with the purchase or sale of a security, by the use of
19 means or instrumentalities of interstate commerce, of the mails, or of the
20 facilities of a national securities exchange, with scienter: (a) employed
21 devices, schemes, or artifices to defraud; (b) made untrue statements of a
22 material fact or omitted to state a material fact necessary in order to make
23 the statements made, in the light of the circumstances under which they were
24 made, not misleading; or (c) engaged in acts, practices, or courses of
25 business which operated or would operate as a fraud or deceit upon other
26 persons.

27 46. By engaging in the conduct described above, Clark violated,
28 and unless restrained and enjoined will continue to violate, Section 10(b) of

1 the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.
2 § 240.10b-5.

3 **FOURTH CLAIM FOR RELIEF**

4 **FAILURE TO REGISTER AS A BROKER-DEALER**

5 **Violations of Section 15(a) of the Exchange Act**

6 47. The Commission re-alleges and incorporates by reference
7 paragraphs 1 through 36 above.

8 48. Clark, by engaging in the conduct described above, directly or
9 indirectly, made use of the mails or means or instrumentalities of interstate
10 commerce to effect transactions in, or to induce or attempt to induce, the
11 purchase or sale of securities, without being registered as a broker or dealer
12 in accordance with Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

13 49. By engaging in the conduct described above, Clark violated,
14 and unless restrained and enjoined will continue to violate, Section 15(a) of
15 the Exchange Act, 15 U.S.C. § 78o(a).

16 **PRAYER FOR RELIEF**

17 WHEREFORE, the Commission respectfully requests that the Court:

18 **I.**

19 Issue findings of fact and conclusions of law that Clark committed the
20 violations of the federal securities laws alleged herein.

21 **II.**

22 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),
23 permanently enjoining Clark and his officers, agents, servants, employees,
24 and attorneys, and those persons in active concert or participation with any
25 of them, who receive actual notice of the judgment by personal service or
26 otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of
27 the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a), and Sections
28 10(b) and 15(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78o(a), and

1 Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

2 **III.**

3 Order Clark to disgorge all ill-gotten gains from his illegal conduct,
4 together with prejudgment interest thereon.

5 **IV.**

6 Order Clark to pay civil penalties under Section 20(d) of the
7 Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange
8 Act, 15 U.S.C. § 78u(d)(3).

9 **V.**

10 Retain jurisdiction of this action in accordance with the principles of
11 equity and the Federal Rules of Civil Procedure in order to implement and
12 carry out the terms of all orders and decrees that may be entered, or to
13 entertain any suitable application or motion for additional relief within the
14 jurisdiction of this Court.

15 **VI.**

16 Grant such other and further relief as this Court may determine to be
17 just and necessary.

18 Respectfully submitted,

19
20 DATED: July 24, 2009

21 
22 William S. Fiske

23 Attorney for Plaintiff

24 Securities and Exchange Commission

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I (a) PLAINTIFFS
SECURITIES AND EXCHANGE COMMISSION
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
John McCoy, III
William S. Fiske
Securities and Exchange Commission
5670 Wilshire Blvd., 11th Floor, Los Angeles, CA 90036 (323) 965-3998

DEFENDANTS
DARRYL LAMONTH CLARK
County of Residence of First Listed Defendant San Joaquin
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)
C09 03423 RS

E-filing

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
[X] 1 U.S. Government Plaintiff
[] 2 U.S. Government Defendant
[] 3 Federal Question (U.S. Government Not a Party)
[] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF DEF [] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State PTF DEF [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise.
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property.
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury. CIVIL RIGHTS: 441 Voting, 442 Employment, 443 Housing/Accommodations, 444 Welfare, 445 Amer. w/Disabilities - Employment, 446 Amer. w/Disabilities - Other, 440 Other Civil Rights. PRISONER PETITIONS: 510 Motions to Vacate Sentence, Habeas Corpus: 530 General, 535 Death Penalty, 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition.
FORFEITURE/PENALTY: 610 Agriculture, 620 Other Food & Drug, 625 Drug Related Seizure of Property 21 USC 881, 630 Liquor Laws, 640 R.R. & Truck, 650 Airline Regs., 660 Occupational Safety/Health, 690 Other. LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, 730 Labor/Mgmt. Reporting & Disclosure Act, 740 Railway Labor Act, 790 Other Labor Litigation, 791 Empl. Ret. Inc. Security Act. IMMIGRATION: 462 Naturalization Application, 463 Habeas Corpus - Alien Detainee, 465 Other Immigration Actions.
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157. SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)). FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS-Third Party 26 USC 7609.
OTHER STATUTES: 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 810 Selective Service, 850 Securities/Commodities/Exchange, 875 Customer Challenge 12 USC 3410, 890 Other Statutory Actions, 891 Agricultural Acts, 892 Economic Stabilization Act, 893 Environmental Matters, 894 Energy Allocation Act, 895 Freedom of Information Act, 900 Appeal of Fee Determination Under Equal Access to Justice, 950 Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding [] 2 Removed from State Court [] 3 Remanded from Appellate Court [] 4 Reinstated or Reopened [] 5 Transferred from another district (specify) [] 6 Multidistrict Litigation [] 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 77e(a) and 77e(c); 15 U.S.C. § 77e(a); 15 U.S.C. § 78i(b); 17 C.F.R. § 240.10b-5; 15 U.S.C. § 78o(a)
Brief description of cause:
The Complaint alleges violations of the federal securities laws.

VII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23
CHECK YES only if demanded in complaint:
JURY DEMAND: [] Yes [X] No

VIII. RELATED CASE(S) IF ANY
PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)
[] SAN FRANCISCO/OAKLAND [X] SAN JOSE

DATE: July 24, 2009
SIGNATURE OF ATTORNEY OF RECORD: William S. Fiske