

DEC 20 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CIVIL ACTION NO.

95-4

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT C. WILSON, GARY F. LONG,
SAMUEL L. BOYD and DEBENTURE
GUARANTY CORPORATION,

Defendants.

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

EURO SCOTIA FUNDING (U.S.A.), INC.,
EURO SCOTIA GROUP, LTD., JOHN J.
KENNY, KENNY CAPITAL MANAGEMENT, INC.,
NICHOLSON KENNY CAPITAL MANAGEMENT,
and KENNY SECURITIES CORPORATION,

Nominal Defendants.

COMPLAINT

For its Complaint against defendants Robert C. Wilson, Gary F. Long, Samuel L. Boyd, and Debenture Guaranty Corporation and nominal defendants Euro Scotia Funding (U.S.A.), Inc., Euro Scotia Group, Ltd., John J. Kenny, Kenny Capital Management Inc.,

Nicholson Kenny Capital Management and Kenny Securities Corporation, the Securities and Exchange Commission alleges as follows:

I. JURISDICTION AND VENUE

1. The Commission brings this action pursuant to Section 20(b) of the Securities Act of 1933 [15 U.S.C. § 77t(b)] and Sections 21(d) and 21(e) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78u(d) and 78u(e)].

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

3. Venue is proper in this Court under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and under Section 27 of the Securities Exchange Act [15 U.S.C. § 78aa] because certain of the transactions, acts, practices and courses of business alleged in this complaint occurred in this district.

II. THE DEFENDANTS

4. Robert C. Wilson ("Wilson") appears to have no permanent address and is reported to use various aliases. He resides in hotels, principally in Palm Beach, Florida. He is a beneficial owner of Debenture Guaranty.

5. Gary F. Long ("Long") is a resident of Knoxville, Tennessee. He is an associate of Wilson, a director of Debenture Guaranty, and the signatory on a Debenture Guaranty bank account.

6. Debenture Guaranty Corporation ("Debenture Guaranty") is a Delaware corporation with its principal place of business in Atlanta, Georgia. It purports to offer investment management services. Debenture Guaranty is not registered with the Commission.

7. Samuel L. Boyd ("Boyd") is an attorney who resides and practices law in Dallas, Texas. Boyd introduced Wilson to investors and used his attorney trust account to receive funds from investors.

III. THE RELIEF DEFENDANTS

8. Euro Scotia Group, Ltd., is a British Virgin Islands corporation controlled by Wilson with its principal place of business purportedly in Switzerland.

9. Euro Scotia Funding (U.S.A.), Inc. is a Delaware corporation controlled by Wilson with its principal place of business in Knoxville, Tennessee.

10. John J. Kenny is a registered representative and the owner of Kenny Capital Management, Inc. ("Kenny Capital"). Kenny Capital is the holding company for Nicholson Kenny Capital Management, Inc., an investment adviser registered with the Commission, and Kenny Securities Corporation, a broker dealer registered with the Commission. Kenny was the registered representative at Pauli & Company, Inc. ("Pauli"), another stock brokerage, for investor accounts opened upon Wilson's or Long's instructions. Kenny received substantial sums of misappropriated money from Wilson or Long which he used to establish his own broker-dealer and investment advisor businesses. The money given to Kenny came from Boyd's trust account.

IV. OVERVIEW OF THE SCHEME TO DEFRAUD

11. Beginning in the spring of 1994 and continuing to the present, Wilson, Long, Debenture Guaranty and Boyd engaged in an unlawful scheme to mislead and defraud investors. The investors included insurance companies. Wilson, Long and Boyd solicited investors to invest in U.S. Treasury securities with promises that the Treasury securities would be traded using a proprietary method that would produce unusually high yields. They advised the investors to loan funds to, or place securities with, Debenture Guaranty or another corporate front to invest in Treasury securities. Wilson or Long then arranged for some of the funds to be deposited in securities brokerage firm margin accounts, directed the brokers to purchase Treasury securities (on margin, typically 7% to 10%) in the face amount of the loan and misappropriated the excess funds. Boyd received the defrauded investors' funds into his attorney trust account and disbursed funds out for the benefit of Wilson, Long, himself and others on Wilson's instructions. Investors were given false brokerage confirmations or other documentation indicating that Treasury securities equalling the invested funds had been purchased and, therefore, that the investors' funds were safe. Wilson and Long also lulled investors with other guarantees that the investors funds were secured by collateral in the form of Treasury securities held in trust. These guarantees were fraudulent. Investors' funds were, in fact, not being invested in any high yield investment program. Their funds were being misappropriated by the defendants. The fraudulent conduct is ongoing.

At least as recently as November 1995, Wilson and Long approached new potential investors about setting up high yield government securities investment programs.

V. FACTUAL ALLEGATIONS

A. Fraudulent Misrepresentations to National Family Care Life Assurance Company

12. In May 1994 National Family Care Life Insurance Company ("NFC"), an insurance company based in Dallas, Texas, was introduced to Boyd and Wilson.

13. Boyd and Wilson proposed that NFC invest in U.S. Treasury securities under Wilson's management.

14. Wilson represented to NFC that it would receive annual returns in excess of 14% on its investment with him based upon a proprietary Treasury securities leveraged investment program he developed.

15. NFC liquidated approximately \$8.4 million of Certificates of Deposit and, at Wilson's instructions, purchased U.S. Treasury securities.

16. NFC then borrowed against the Treasury securities and loaned the money to Euro American Insurance Company Limited ("EAIC"), an entity controlled by Wilson. EAIC signed "guaranteed notes" promising repayment to NFC.

17. The loan called for EAIC to pay NFC \$11.2 million plus interest at the rate of 10% per year. To secure repayment of the loan, EAIC agreed to maintain assets worth at least \$11.4 million in a trust account in Boyd's name at Pauli & Company, Inc., a St.

Louis based brokerage firm where Kenny worked. The funds were to be invested in U.S. Treasury securities.

18. These securities were to be held in trust for the exclusive benefit of NFC.

19. The notes were guaranteed by U.S. government securities held in trust in Boyd's account with stockbrokers Pauli & Co.

20. Boyd also signed irrevocable instructions purportedly securing repayment of the NFC loan.

21. During June 1994, the Treasury securities were maintained in a cash account at Pauli. Kenny was the account executive for that account.

22. Beginning in July 1994, Kenny began trading the Treasury securities on margin, without NFC's knowledge and in violation of Texas insurance regulations.

23. When NFC learned that the securities had been leveraged, it confronted Wilson with the impropriety. Wilson instructed NFC to have the money withdrawn from Pauli and transferred to Boyd's trust account at Nations Bank in Dallas where it would be held in trust.

24. Between July 22, 1994 and October 26, 1994, NFC withdrew \$9.48 million from Pauli and transferred it to Boyd's trust account in Dallas based upon Wilson's instructions.

25. Shortly thereafter, Robert Erwin ("Erwin"), then the Chairman of NFC's Board of Directors, became concerned that the money had been dissipated from Boyd's trust account.

26. Wilson began a fraudulent course of conduct to lull NFC into believing its investments were safe and that the collateralized loan would be repaid. First, on October 1, 1994, Wilson gave NFC a promissory note for \$10.8 million.

27. On December 30, 1994 Wilson caused NFC to receive a letter from Kenny at Pauli stating that \$11.4 million of Treasury securities were being held for NFC.

28. On January 3, 1995, Kenny faxed NFC a breakdown of the principal and interest amounts making up the value of the investment.

29. Neither the letter nor the fax disclosed that the Treasury securities were bought on margin.

30. NFC officials later learned that the Treasury securities were, again, improperly purchased on margin and that the actual cash value of the account was only approximately \$1 million.

31. Wilson caused NFC to receive a counterfeit Johnston Kent confirmation, dated December 29, 1994, indicating that that brokerage house held \$9.9 million of Treasury securities in the name of Debenture Guaranty. Wilson also gave NFC a "blocking" letter indicating that those securities were being pledged to NFC.

32. On March 30, 1995, Wilson gave NFC another promissory note for approximately \$9.6 million.

33. The March 1995 note purportedly was collateralized by Treasury securities held at Johnston Kent Securities, Inc. in the name of Debenture Guaranty.

34. In July 1995, Wilson gave NFC's chairman eleven checks totalling \$11.6 million and told her she could begin depositing them the following week and could deposit one check each day. Upon depositing the first check, she learned that Wilson had placed a "stop-payment" on the checks.

35. NFC then attempted to confirm that securities were still being held for NFC at Johnston Kent.

36. On August 21, 1995, Wilson or Long caused Johnston Kent to fax NFC a document confirming that, as of December 31, 1994, the brokerage firm held Treasury securities guaranteeing Wilson's note to NFC.

37. The next day Johnston Kent faxed NFC a second confirmation.

38. On August 23, 1995, NFC officials went to Johnston Kent's offices in Denver and demanded the securities described in the confirmations.

39. Johnston Kent's principal, George Johnston, said the brokerage firm no longer held the securities. He claimed that he had given them to Wilson in February 1995.

40. The representations orchestrated by Wilson and Long from Johnston Kent that it held securities for the benefit of NFC, were false.

41. NFC's \$9.48 million was misappropriated. Some of NFC's money was distributed by Boyd as follows:

- \$2.6 million was sent to Canadian Imperial Bank of Commerce to pay off a previous check kiting scheme by Wilson, Long and Euro Scotia;

- \$138,000 was used by Wilson as an escrow deposit for his personal purchase of a parcel of real estate in Florida;
- \$50,000 was paid directly to Wilson;
- \$352,750 was paid to Wilson's brother-in-law;
- \$461,202 was taken out by Boyd in cashiers checks;
- \$602,661 was used to pay expenses of Euro Scotia;
- \$913,000 was used to purchase The Nicholson Group for Kenny; and
- \$140,000 was transferred to Kenny's accounts.

42. NFC has not received the repayment of its loan to Wilson and his entities, or any securities purportedly guaranteeing its loan. NFC has been defrauded of in excess of \$11.5 million by Wilson, Long and Boyd.

B. Fraudulent Misrepresentations to Jeffrey Crowley

43. In June 1994, Crowley went to Boyd's office and Boyd outlined how Wilson's securities trading program worked.

44. Boyd told Crowley that he, Boyd, had \$51 million of Treasury Bills in his trust account which Euro Scotia was managing for other investors.

45. Boyd refused to identify the investors, claiming the information was privileged.

46. Boyd represented to Crowley that he had other clients who had operated similar securities trading programs, but that no program he had ever seen produced returns as high as Wilson and Euro Scotia did.

47. Based in part on Boyd's vouching for Wilson, Crowley invested \$186,000 of his own money with Wilson.

48. Crowley sent the money to Boyd's trust account for his investment with Wilson.

49. Crowley subsequently received approximately \$156,000 of his money back, which was repaid, in part, using NFC and U.S. Employer Consumer Association ("USEC") monies.

50. Wilson asked Crowley to meet with the USEC people when Wilson solicited them to invest in Wilson's program because Crowley had insurance business experience.

51. Wilson told Crowley and USEC that USEC's money would be going into unencumbered investments, not on margin, and would be free and clear of any liens.

52. Crowley was unaware until December 1995 that Wilson, Long, Debenture Guaranty and Boyd were not investing funds as they had represented and that they were misappropriating investor funds.

C. Fraudulent Misrepresentations to U.S. Employer Consumer Association

53. United States Employer Consumer Association, Inc. is an administrator of self-insurance funds managing workers' compensation premiums. USEC administered self-insurance funds in Florida ("USEC FLA") and North Carolina ("USEC NC").

54. In late 1994 USEC officials met with Wilson. Wilson offered to have Debenture Guaranty invest USEC FLA's self-insurance funds in Treasury securities and to manage the investments in accordance with Wilson's trading strategies.

55. USEC FLA was provided brochures describing how the transactions would be brokered by Pauli and cleared through Bear, Stearns & Company, Inc. ("Bear, Stearns"). Kenny was the account executive at Pauli for USEC FLA's account.

56. Wilson represented to USEC FLA that all investments were to be held by Bear, Stearns and were secured by Treasury securities.

57. Wilson represented that the USEC FLA account would always maintain a minimum cash value equal to the original investment and that USEC would receive a 9.3% annual return.

58. In December 1994, USEC sent approximately \$3.4 million to Pauli for the purchase of Treasury securities.

59. Wilson told USEC FLA that Debenture Guaranty would deposit an additional \$5 million at Pauli for the benefit of USEC FLA in exchange for USEC's non-performing accounts receivable.

60. Wilson then began a course of fraudulent conduct to assure USEC FLA that its securities were safe and that he was conducting his claimed high yield Treasury securities investment program.

61. In January 1995 Wilson caused USEC FLA to receive a confirmation from Pauli that over \$7 million in Treasury securities had been purchased for the benefit of USEC.

62. After USEC had received the confirmation, Wilson told USEC that he had mistakenly deposited about \$2.3 million of his money in the USEC FLA account at Pauli.

63. Based on this representation and on Wilson's instructions, USEC FLA authorized Pauli to send to Debenture Guaranty all cash or securities in its account in excess of \$7.011 million of Treasury securities.

64. In fact, Wilson and Debenture Guaranty had not deposited any of their money at Pauli for USEC FLA's benefit.

65. The \$2.3 million cash which was "returned" to Wilson was actually all that was left of USEC FLA's \$3.4 million after the purchase of the treasury obligations on margin.

66. This money misappropriated from USEC FLA was wired into Debenture Guaranty's bank account and then distributed to Wilson, Long and Debenture Guaranty.

67. USEC later learned that the account at Pauli was an impermissible margin account and complained to Wilson.

68. In January 1995, Wilson or Long caused USEC FLA to receive a letter from Kenny reporting that \$8.4 million in Treasury securities were held at Pauli for the benefit of USEC FLA.

69. Wilson later told USEC FLA that he was going to move its account. On February 9, 1995, USEC FLA received a confirmation from Johnston Kent Securities, Inc. ("Johnston Kent") stating that Johnston Kent was holding \$9.96 million in U.S. Treasury securities in a Debenture Guarantee account for USEC FLA. An accompanying letter stated that the securities were not in a margin account.

70. On April 4, 1995, Wilson or Long caused Steven C. Signer ("Signer"), a registered representative at Cohig & Associates to send a letter confirming that USEC FLA's account was then at Cohig. That letter stated that the account held Treasury securities with a cash value of \$8.28 million.

71. However, contrary to Signer's representations, the Cohig account statement as of March 31, 1995 reflected that USEC FLA's account actually held Treasury securities with a face value of \$6 million but with a \$5.605 million margin debt against them. The net cash value was only \$355,000.

72. Beginning in approximately January 1995, a second USEC entity, USEC NC sent \$1.75 million to Debenture Guaranty's bank account.

73. In response to USEC NC's requests for evidence of its investment, Wilson represented to USEC NC that its funds had been initially invested at Pauli but moved to Cohig.

74. Wilson then caused Treasury securities to be purchased on margin at Cohig, generating misleading confirmations to USEC NC, and then sold them within days thereafter, resulting in losses.

75. The Treasury securities for USEC NC's account were actually purchased using money transferred from the USEC FLA account at Cohig. In fact, the money provided by USEC NC was misappropriated by Wilson, Long and Debenture Guaranty.

76. Debenture Guaranty later provided USEC NC with two Johnston Kent confirmations falsely representing that the \$1.75 million had been invested in Treasury securities being held at Johnston Kent.

77. Wilson or Long also caused Johnston Kent to confirm the purchases to USEC NC's independent auditors.

78. In fact, no Treasury securities were ever purchased at Johnston Kent for either USEC entity and the confirmations were wholly fictitious.

79. In total, approximately \$6.3 million from USEC FLA and USEC NC was deposited into Debenture Guaranty's bank account in Tennessee.

80. The money was misappropriated for the benefit of Wilson, Long, Boyd or their associates, or to repay earlier investors. The following approximate amounts (at least) were paid for the benefit of various participants in the scheme:

- \$853,311 to Wilson;
- \$738,669 to Euro Scotia Funding;

- \$281,892 to Long;
- \$175,000 for the benefit of Boyd;
- \$280,000 to Kenny;
- \$282,800 to Wilson's brother-in-law;
- \$49,777 to Wilson's associate, Doug McClain; and
- \$100,000 to the principals of Johnston Kent Securities.

D. Fraudulent Misrepresentations to USCAN Free Trade Zones, Inc.

81. In November 1995, Long, through a new entity, Biltmore Funding, attempted to induce USCAN Free Trade Zones, Inc. ("USCAN") to borrow \$46 million to invest. The investment would purportedly be backed by U.S. Treasury securities placed in a leveraged trading account with Signer at Cohig & Associates.

82. Long represented to USCAN that, using the trading program, the U.S. Treasury securities would be leveraged at Cohig to create huge trading profits.

83. Long was to receive 25% of the profits.

84. The USCAN transaction was to close on November 10, 1995.

85. An attorney for USCAN contacted Cohig on November 6 to verify that Long had deposited \$46 million in U.S. Treasury securities, purportedly guaranteeing the loan, at Cohig.

86. Cohig would not verify the account and USCAN did not go through with the transaction.

E. Wilson and Long's Current Fraudulent Activities

87. Since March 1995, Wilson and Long have created new entities including Rittenhouse and Debenture Guaranty Funds I through IV. They also appear to be in the process of forming Collateral Bond Corporation and ABC Collateral Corporation with an ostensible parent corporation, NEWCO.

88. They have also entered into negotiations to form a new company which could claim to be free of commitments, liabilities or regulatory issues associated with Wilson.

VI. FIRST CLAIM FOR RELIEF

**For Violations of Section 10(b) of the Securities
Exchange Act and Rule 10b-5 thereunder by Defendants
Wilson, Long, Debenture Guaranty and Boyd**

89. The Commission incorporates paragraphs 1 through 88 as if fully stated herein.

90. Defendants Wilson, Long, Debenture Guaranty, and Boyd, directly or indirectly, in connection with the purchase and sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails:

- (a) have employed devices, schemes or artifices to defraud;
- (b) have made, are making, and are about to make, untrue statements of material fact or have omitted to state material facts 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 in acts, practices or courses of business which have been and are operating as a fraud or deceit upon other persons, including purchasers and sellers of such securities.

91. As part of, and in furtherance of, such conduct, these defendants have knowingly engaged in the conduct described in paragraphs 1 through 88 above.

92. By reason of the conduct described in paragraphs 1 through 88 above, defendants Wilson, Long, Debenture Guaranty and Boyd, and each of them, have violated, are violating, and unless restrained and enjoined will continue to violate Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.

VII. SECOND CLAIM FOR RELIEF

For Violations of Section 17(a) of the Securities Act by Defendants Wilson, Long, Debenture Guaranty and Boyd

93. The Commission incorporates paragraphs 1 through 88 as if fully stated herein.

94. Defendants Wilson, Long, Debenture Guaranty, and Boyd, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails:

- (a) have employed devices, schemes or artifices to defraud;
- (b) have obtained money or property by means of untrue statements of material fact or omissions of material facts 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 in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of such securities.

95. As part of, and in furtherance of, such conduct, these defendants have engaged in the conduct described in paragraphs 1 through 88 above.

96. By reason of the conduct described in paragraphs 1 through 88 above, defendants Wilson, Long, Debenture Guaranty and Boyd, and each of them, have violated, are violating, and unless restrained and enjoined will continue to violate Section 17(a) of the Securities Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Find that defendants Wilson, Long, Debenture Guaranty and Boyd, and each of them, committed the violations alleged above.

II.

Enter an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, enjoining defendants Wilson, Long, Debenture Guaranty and Boyd from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)],

Section 10(b) of the Securities Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

III.

Enter an Order directing each defendant to account for, disgorge and pay over, as the Court may direct, all ill-gotten gains received or benefit in any form derived from the illegal conduct alleged in this complaint, together with pre-judgment and post-judgment interest as provided by law.

VI.

Enter an Order imposing a constructive trust on the accounts of the nominal defendants, and require them to account for, disgorge and pay over, as the Court may direct, all ill-gotten gains received or benefit in any form derived from the illegal conduct of the defendants alleged in this Complaint, together with prejudgment and post-judgment interest as provided by law.

V.

Enter orders directing defendants Wilson, Long, Debenture Guaranty and Boyd, and each of them, to pay civil money 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)].

V.

Grant such further relief as this Court deems just and proper.

Dated this 20th day of December, 1995

Respectfully submitted,



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