

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9672 / October 31, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 73484 / October 31, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31324 / October 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16227

In the Matter of

**MIDDLEBURY SECURITIES,
LLC**

Respondent.

**ORDER INSTITUTING 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, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER, AND NOTICE OF
HEARING**

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”), and Section 9(b) of the Investment Company Act of 1940 (“Company Act”), against Middlebury Securities, LLC (“Middlebury” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting

Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Company Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, and Notice of Hearing (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

1. From December 2009 through March 2011, Respondent made and disseminated false and misleading statements concerning the risks of investing in the short-term notes (“Notes”) of Navagate, Inc., (“Navagate”), a start-up venture purporting to create and sell sales force automation software. Specifically, in an effort to sell Navagate’s Notes (the “Notes Offering”), Respondent, through its principal Gregory Osborn (“Osborn”), and Gregory Rorke (“Rorke”)—Navagate’s CEO and controlling officer—made a number of false and misleading statements concerning (1) the assets purporting to guarantee the Notes; and (2) the use of the proceeds from the Notes Offering. Despite Respondent’s awareness, or reckless disregard, of these false statements, Respondent prepared and distributed certain offering documents (the “Offering Documents”) containing these falsehoods and reiterated the false statements to prospective investors both orally and in writing.

2. Between December 2009 and April 2011, Respondent, Navagate, and Rorke sold approximately \$3.2 million worth of the Notes. The Notes were purportedly backed by a personal guarantee from Rorke (the “Personal Guarantee”).

3. To demonstrate that he had sufficient assets to make good on his Personal Guarantee, Rorke signed a personal financial statement (the “Personal Financial Statement”). The Personal Financial Statement purported to show that (1) Rorke solely owned over \$12 million in assets, including \$6 million in liquid assets, consisting of cash and readily-marketable securities, and over \$1 million in real estate; and (2) Rorke had no liabilities.

4. In fact, as Respondent knew or recklessly disregarded:

a. Virtually all of the \$6 million in liquid assets—including almost all of the purportedly pledged cash and readily marketable securities—as well as the real estate, belonged solely to Rorke’s wife, who did not pledge any of her assets in connection with the Notes Offering (or otherwise obligate herself to make good on Rorke’s Personal Guarantee);

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

- b. Even including his wife’s unpledged assets, Rorke overstated the value of the liquid assets (the cash and readily-marketable securities) listed in the Personal Financial Statement by over 36%; and
- c. Rorke failed to disclose over \$1,000,000 owed in federal taxes for which he was personally liable.

5. As a result of the above—as Respondent knew or recklessly disregarded—Rorke did not have anywhere near sufficient liquid assets to make good on his Personal Guarantee of the Notes. Nonetheless, Respondent distributed and touted Rorke’s Personal Guarantee and Personal Financial Statement to investors, orally and in emails, as a key reason to invest in the Notes.

6. In addition, Respondent, acting through Osborn, knowingly or recklessly, used some of the proceeds of the Notes to pay back earlier investors, contrary to the disclosed use of proceeds in the Offering Documents.

7. Ultimately Navagate defaulted on the Notes and Rorke did not make good on his promise under the Personal Guarantee.

Respondent

8. **Middlebury** is a FINRA-registered broker-dealer organized as a Delaware limited liability company with offices in Vermont, New Jersey, and New York. Middlebury was the placement agent for the Notes Offering from approximately December 2009 to April 2011.

Other Relevant Entity and Individuals

9. **Navagate** is a Delaware limited liability company with its principal place of business in New York. Navagate’s business is purportedly to create and sell computer software that provides sales force automation to financial services organizations.

10. **Rorke**, age 59, is a resident of New York, and is the co-founder and CEO of Navagate.

11. **Osborn**, age 50, is a resident of New Jersey, and was primarily responsible for Middlebury’s relationship with Navagate. At all relevant times, Osborn was a Managing Partner at Middlebury. Osborn was registered with FINRA from 1988 until 2014, at which time he was permanently barred from associating with any FINRA-registered member as part of a settlement of charges brought against him by FINRA.

Background

12. In 2000, Rorke formed a Delaware limited liability company named G2X and began raising money for the development of software purportedly designed to automate certain sales and customer-relationship processes (called “sales force automation software”). In 2006, G2X changed its name to Navagate.

13. Navagate developed its software into a program known as Agility Source Platform, which purports to provide customer relations management and sales force automation software.

14. On October 12, 2009, Navagate and Rorke hired Respondent to act as placement agent to assist Navagate in selling its securities.

15. Around October 2009, Navagate and Rorke decided to raise capital by selling the Notes. The Notes had a six-month maturity and bore interest at an annual rate of 12%, increasing to 15% (and eventually 20%) in the event of default. Respondent, Osborn, Navagate, and Rorke contemplated that the Notes would serve as a bridge to an eventual public offering of Navagate equity securities. The Notes Offering would initially raise between \$2 and \$2.5 million for Navagate, but that amount was increased to \$3.25 million in or about March 2011.

The Personal Guarantee

16. In offering the Notes, Respondent, Osborn, Rorke and Navagate, prepared and disseminated the Offering Documents with the assistance of counsel.

17. The Offering Documents stated that the Notes were backed by Rorke's Personal Guarantee. The first drafts of the Offering Documents, prepared around November 2009, contained a general personal guarantee based on Rorke's wealth. In approximately December 2009, a potential investor asked that, in addition to Rorke's general personal guarantee, Rorke's wife execute a personal guarantee to back the Notes. As Respondent knew or recklessly disregarded, Rorke had refused to request that his wife sign any guarantee. After negotiations later that month, the potential investor agreed to participate in the Notes Offering based on a Personal Guarantee signed only by Rorke, "provided that [Rorke] provides some evidence of not being 'judgment proof' ie [sic] a personal financial statement." Rorke agreed to provide the Personal Guarantee and a more detailed Personal Financial Statement.

18. The Personal Guarantee, which Osborn and Rorke each read, represented to investors that Rorke had the "full power and capacity to execute and deliver" the Personal Guarantee and to incur and perform the obligations therein contemplated. Similarly, the signature block of the Personal Financial Statement contained a specific representation that Rorke:

[H]ad no liabilities, direct or contingent, business or accommodation, except as set forth in this statement, and that the title to all assets therein set forth is in [Rorke's] name solely, except as may be otherwise noted.

19. The Personal Financial Statement stated that Rorke solely owned the following assets: (1) \$200,000 in cash on hand; (2) \$800,000 in cash in banks; (3) \$5,000,000 in readily marketable securities in a brokerage account; (4) \$1,400,000 in real estate (his primary residence); (5) \$4,000,000 in shares of Navagate; and (6) \$1,000,000 in illiquid investments in two other, unrelated companies.

20. Rorke executed the Personal Financial Statement on or around April 21, 2010, and forwarded the document to Osborn for inclusion in the Offering Documents.

21. The Personal Financial Statement contained a number of false and misleading statements concerning Rorke's assets and liabilities:

- a. First, virtually none of the liquid assets Rorke pledged as his own were actually in his name. Of the \$6,000,000 Rorke claimed to have in cash and readily marketable securities, only \$1,527 was held by him alone. His wife held \$4,355,502 of the assets, and they jointly held an additional \$33,635. Rorke also did not own the \$1,400,000 in real estate listed, having transferred his primary residence to his wife in October 2008. Rorke had no legal authority to pledge his wife's assets, and his wife never agreed to such a pledge.
- b. Second, Rorke substantially inflated the value of the assets he was purporting to pledge. Although the Personal Financial Statement stated that Rorke's liquid assets totaled \$6 million; in reality, the value of these assets was approximately \$4,391,000 (an overstatement of more than 36%).
- c. Third, in his Personal Financial Statement, Rorke claimed that he had zero liabilities when, in fact, he was personally liable for at least \$1 million in taxes owed to the IRS.

22. In order to further convince prospective investors that the Personal Guarantee provided meaningful protection in the case of a default on the Notes, Rorke also represented that he would not:

[S]ell, assign or transfer any of the Guarantor's rights in the Pledged Assets, or . . . create any other security interest in, mortgage or otherwise encumber the Pledged Assets

23. This statement was misleading because Rorke did not hold title to most of the listed assets, and did not, therefore, have the ability to keep his wife from transferring or otherwise encumbering them.

24. In the Personal Guarantee, Rorke further agreed that he would:

[P]romptly obtain a mortgage on [his] primary residence located in Bronxville, NY . . . in the event that [the Notes were in default and] the Pledged Assets . . . [we]re not sufficient to satisfy all outstanding Indebtedness.

25. This statement was also misleading as it was not within Rorke's power to mortgage the property as he had transferred title to this residence to his wife in October 2008.

26. Respondent repeatedly touted the Personal Guarantee and the Personal Financial Statement as a selling point during the Notes Offering. For example, Osborn told an investor in December 2010 that investment in the Notes was a “layup” because Rorke had “Personally Guaranteed the loan.” Indeed, Osborn stated that he viewed the Personal Guarantee and the Personal Financial Statement as a “key” term of the Notes Offering.

Respondent Knew or Recklessly Disregarded the False and Misleading Statements Contained in Rorke’s Personal Guarantee and Personal Financial Statement

27. Despite repeatedly touting the Personal Guarantee and Personal Financial Statement, Respondent, acting through Osborn, knew or recklessly disregarded that these documents were materially false and misleading for a number of reasons.

28. First, Rorke told Osborn in April 2010 that the readily marketable securities in the brokerage account—the largest liquid asset—in the Personal Financial Statement were *jointly* held with his wife. Rorke’s statement to Osborn was false because the brokerage account was held solely by Rorke’s wife. Osborn and Middlebury thus knew that Rorke did not solely hold this asset as he had represented in the Personal Financial Statement.

29. Osborn, and through him Middlebury, understood or recklessly disregarded the important distinction regarding ownership of the assets backing the Notes; if Rorke did not solely own the assets, he could not pledge them to mitigate the risk of default on the Notes. Indeed, in December 2009, Rorke refused to request that his wife be an additional party to the Personal Guarantee, which made clear that he did not intend to put her assets at risk.

30. Second, in early 2010, Middlebury hired a private detective agency to undertake a background check on Rorke. The agency provided a written report to Osborn on April 21, 2010, saying that Rorke had transferred his primary residence to his wife in October 2008.

31. Third, in April 2010, Middlebury’s attorney told Osborn, in an email, that Rorke was personally liable for approximately \$1.8 million of Navagate’s past-due payroll tax liabilities. In a follow-up email, Rorke admitted to Osborn that he was personally liable for at least \$1 million of those taxes. Thus, Osborn—and, therefore, Respondent—knew or recklessly disregarded that Rorke’s claim in his Personal Financial Statement to have no liabilities was false.

Misrepresentations Regarding the Use of Proceeds From the Notes

32. In a schedule titled “Use of Proceeds,” the Offering Documents also stated that the proceeds of the Notes were to be used only “to fund [Navagate’s] sales efforts, for other working capital purposes and to satisfy certain tax liabilities.”

33. Nonetheless, in October 2010, Osborn orchestrated using over \$275,000 in Notes proceeds to pay back four investors who had purchased Notes in December 2009. These individuals had important business relationships with Middlebury and Osborn, repayment on their Notes was overdue, and three of them had demanded prompt repayment.

34. However, Osborn, and through him Middlebury, knew or recklessly disregarded that the Offering Document's "Use of Proceeds" section allowed for the offering proceeds to be used only as set forth above, and not for Navagate to repay prior investors with new investors' money.

35. In one instance, Osborn attempted to disguise the fact that Navagate was improperly using newly-raised funds to pay back old Navagate investors by calling one repayment Middlebury's repayment of an outstanding "'loan' to 'Middlebury' by [the old investor]." But Osborn knew or was reckless in not knowing that the purported "loan" to Middlebury did not exist and that this was merely a ruse to allow Navagate to use Note proceeds to repay those investors whose Notes were past due.

36. Osborn never told any investors that their investments in the Notes would be used to repay other investors whose Notes were in default (or that such payments had occurred).

37. The use of investor proceeds was material to investors in the Notes.

Navagate Defaults on the Notes

38. Starting in June 2010, Navagate began defaulting on the Notes. Despite these defaults, Respondent, Osborn, Navagate, and Rorke continued selling the Notes, but failed to tell any new investors about the defaults. Indeed, following the first defaults, Navagate raised another approximately \$2.2 million from sales of the Notes.

39. Despite the defaults, Rorke did not fulfill his obligations under the Personal Guarantee and Personal Financial Statement to repay investors.

40. As of early 2014, Navagate owed over \$1.25 million in principal and \$1.4 million in interest on the Notes.

Violations

41. As a result of the conduct described above, Respondent willfully² violated Section 17(a) of the Securities Act, which makes it unlawful for any person in the offer or sale of any securities, directly or indirectly, to employ any device, scheme, or artifice to defraud, or to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

42. As a result of the conduct described above, Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful for any person, directly or indirectly, to employ any device, scheme, or artifice to defraud, to make any untrue statement of a material fact or to omit 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 to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

43. As a result of the conduct described above, Respondent willfully aided and abetted and caused Rorke's and Navagate's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

Respondent undertakes to do the following: In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) will make all reasonable efforts to ensure that its employees and members appear and are interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's undersigned attorneys as agents to receive service of such notices and subpoenas; and (iv) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

V.

Pursuant to this Order, Respondent agrees to additional proceedings to determine the amount of disgorgement and civil penalties, plus prejudgment interest if ordered, pursuant to Section 8A of the Securities Act, Section 21B of the Exchange Act, and Section 9(d) of the Company Act, against Respondent that is in the public interest. In connection with such additional proceedings: (a) Respondent agrees that it will be precluded from arguing that it did not violate the federal securities laws described in this Order; (b) Respondent agrees that it may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the allegations of the Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

VI.

In view of the foregoing, the Commission deems it appropriate, in the public interest and for the protection of investors to impose the sanctions set forth in Respondent's Offer, and to institute proceedings to determine what, if any, disgorgement, civil penalties, and prejudgment interest are appropriate.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent is censured.

VII.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section V 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.

If Respondent fails to appear at a hearing after being duly notified, Respondent may be deemed in default and the proceedings may be determined against it 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, 17 C.F.R. § 201.360(a)(2).

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.

Brent J. Fields
Secretary