

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9673 / October 31, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 73485 / October 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16228

In the Matter of

NAVAGATE, INC. and
GREGORY RORKE

Respondents.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
8A OF THE SECURITIES ACT OF 1933 AND
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND NOTICE OF
HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Navagate, Inc. (“Navagate”) and Gregory Rorke (“Rorke”) (collectively, “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

Summary

1. From December 2009 through March 2011, Respondents made and disseminated false and misleading statements concerning the risks of investing in short-term notes of Navagate, a start-up venture purporting to create and sell sales force automation software. Specifically, in an effort to sell the notes (the “Notes”), Respondents made a number of false and misleading statements concerning (a) the assets purporting to guarantee the Notes and (b) Navagate’s tax liabilities. Despite Respondents’ awareness, or reckless disregard, of these false statements, Respondents prepared and distributed certain offering documents (the “Offering Documents”) containing these falsehoods and reiterated the false statements to prospective investors. In

addition, Respondents knew or recklessly disregarded that Navagate’s placement agent, Middlebury Securities, LLC (“Middlebury”) and one of its principals, Gregory Osborn (“Osborn”), were also repeating many of the same false and misleading statements to prospective investors.

2. Between December 2009 and April 2011, Respondents, Middlebury, and Osborn sold approximately \$3.2 million worth of the Notes (the “Notes Offering”). 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 (a) 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 (b) Rorke had no liabilities.

4. In fact, as Respondents 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);
- 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 Respondents knew or recklessly disregarded—Rorke did not have anywhere near sufficient liquid assets to make good on his Personal Guarantee of the Notes. Nonetheless, Respondents, along with Middlebury and Osborn, distributed and touted Rorke’s Personal Guarantee and Personal Financial Statement to investors as a key reason to invest in the Notes.

6. Respondents also knowingly or recklessly made false and misleading statements about Navagate’s federal tax liabilities, understating the tax liability by at least \$1 million and then falsely representing to Middlebury and Osborn that they had repaid at least a portion of the tax debt (when they knew they had not).

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

Respondents

8. **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.

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

Other Relevant Entity and Individuals

10. **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.

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.

Background

12. Rorke is an experienced businessman. From at least 1989, Rorke specialized in turning around companies facing financial difficulties and building new businesses.

13. From 1997 through 2012, Rorke was also an adjunct professor at Columbia Business School, teaching turnaround management, bankruptcy, and restructuring in the MBA program.

14. In 2000, Rorke formed a Delaware limited liability company named G2X, which purportedly developed software to automate certain sales and customer-relationship processes. In 2006, G2X changed its name to Navagate.

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

16. In approximately October of 2009, Respondents hired Middlebury and Osborn to act as placement agents to assist Navagate in selling its securities.

17. Around October 2009, Respondents 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. Respondents intended for the Notes to serve as a bridge to an eventual public offering of Navagate equity securities. They originally planned to sell between \$2 and \$2.5 million in Notes. That amount was increased to \$3.25 million in or about March 2011.

The Personal Guarantee

18. In offering the Notes, Respondents, Middlebury, and Osborn, prepared and disseminated the Offering Documents.

19. 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. 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. Rorke refused to request that his wife sign any guarantee. Eventually, the potential investor agreed to participate in the Notes Offering based on a Personal Guarantee signed only by Rorke, "provided that [Rorke] provide[d] 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.

20. In or around April 21, 2010, Middlebury's attorneys inserted the Personal Guarantee into the Offering Documents and Rorke signed the Personal Financial Statement. The Personal Guarantee 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.

21. The Personal Financial Statement stated that Rorke solely owned the following assets: (a) \$200,000 in cash on hand; (b) \$800,000 in cash in banks; (c) \$5,000,000 in readily marketable securities in a brokerage account; (d) \$1,400,000 in real estate (his primary residence); (e) \$4,000,000 in shares of Navagate; and (f) \$1,000,000 in illiquid investments in two other, unrelated companies. Rorke also represented in the Personal Guarantee that he had zero liabilities.

22. Rorke filled out and executed the Personal Financial Statement on or around April 21, 2010, and forwarded the document to Osborn and others at Middlebury for inclusion in the Offering Documents.

23. 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 solely held \$4,355,502 of the assets, and they jointly held an additional \$33,635. Rorke also did not own the listed \$1,400,000 in real estate, 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.

24. 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

25. 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.

26. 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.

27. This statement was also misleading as Rorke could not mortgage the property because he had transferred title to his wife in October 2008.

28. Respondents repeatedly touted the Personal Guarantee and the Personal Financial Statement as a selling point during the Notes Offering. For example, Rorke cited the guarantee as a reason to invest in the Notes to at least three investors.

29. In addition to the above, Respondents further knew or recklessly disregarded that the Personal Guarantee and Personal Financial Statement were materially false and misleading, for a number of reasons, including:

30. First, Rorke had been explicitly asked for evidence that he was not judgment proof as a condition for a potential investor foregoing its request for a personal guarantee from Rorke's wife. In addition, Rorke has held himself out as an experienced businessman and has been a professor at Columbia business school teaching bankruptcy-related classes. Thus, Rorke fully understood at the time of the Notes Offering that investors wanted to know which assets he solely

owned and, therefore, what protection existed against the danger of Navagate defaulting on its Notes.

31. Second, when pressed in July 2012 for documents to back up his assets, Rorke provided Osborn with a copy of one of his wife's account statements that he had altered by deleting the line showing that the account was in her name.

32. Third, Rorke had signed the document in October 2008 that had transferred his primary residence from joint ownership with his wife to sole ownership by his wife.

33. Fourth, Rorke never informed his wife that he was pledging her assets to support the Notes, and his wife never gave him authority to do so.

Misrepresentations with Respect to Navagate's Payroll Tax Liabilities

34. The Offering Documents also materially misrepresented Navagate's tax liabilities.

35. The early versions of the Offering Documents, given to investors who purchased the Notes between December 2009 and April 2010, stated that Navagate was current in its federal tax filing and tax payment obligations.

36. However, starting in mid-2008 and continuing through the end of 2009, Navagate had failed to stay current on the employer's share of Social Security and Medicare taxes (also known as payroll or trust fund taxes) to the IRS.

37. From mid-2008 and continuing through the end of 2009, Rorke was one of the Navagate officers responsible for remitting federal payroll taxes to the IRS. Rorke thus knew, or recklessly disregarded, that Navagate was not current on its federal payroll tax obligations. Moreover, because he was responsible for remitting these payments to the IRS, Rorke was personally liable for the unpaid payroll taxes, as Rorke knew or recklessly disregarded.

38. As a result of Navagate's failure to stay current on its payroll taxes, by late 2009 the IRS had filed tax liens against Navagate totaling approximately \$1.7 million, accounting for principal, interest, and penalties.

39. Accordingly, the Offering Documents' statement that Navagate was current in its federal tax filing and tax payment obligations was false.

40. In January 2010, Middlebury and its lawyers uncovered approximately \$543,000 of the total then-outstanding tax liens. Middlebury's lawyers asked Rorke about these liabilities, but Respondents failed to disclose to Middlebury and its lawyers that the existing tax liens were, at that time, greater than \$543,000. In addition, Respondents represented to Middlebury and its lawyers that the tax liens would be extinguished within the next two weeks.

41. Respondents, however, did not pay down even the tax liens totaling \$543,000.

42. Moreover, as noted, the tax liens were in fact significantly higher than \$543,000. On April 29, 2010, Middlebury's lawyers conducted a follow-up tax lien search that revealed that (a) the \$543,000 liens remained unsatisfied; (b) the IRS had filed other liens against Respondents in 2009, totaling approximately \$1,165,000; and (c) the IRS filed an additional lien against Respondents in April of 2010 for approximately \$133,000.

43. Thus, by April 2010, the tax liens against Respondents totaled approximately \$1.8 million, contrary to the Offering Documents' statements that Navagate was current on its taxes, and to the Personal Financial Statement's disclosure that Rorke had no liabilities.

44. When confronted with these liens, Rorke agreed to amend the Offering Documents to state that Navagate owed approximately \$790,000 in payroll taxes to the IRS and that Rorke would pay \$350,000 to decrease this liability. Most investors who purchased Notes between September 2010 and April 2011 were given this updated disclosure. However, even this amended disclosure was materially false and misleading because the total amount of liens amounted to approximately \$1.8 million and because Rorke never paid the \$350,000 to decrease the tax liability (as discussed below).

45. As Rorke knew or recklessly disregarded, at least some investors requested that their funds be held in escrow until Rorke personally paid the \$350,000 to the IRS.

46. When Rorke was asked by Middlebury's attorneys about his payment of the \$350,000 to the IRS, Rorke responded by representing that he had sent a check directly to the IRS, and asking for a release of \$100,000 of investor money in escrow. Middlebury's attorneys asked Rorke for proof that Rorke had paid the \$350,000. To satisfy Middlebury and its attorneys, Rorke completed a notarized affidavit stating that he had sent the check to the IRS and attached a copy of the purported check. Based on Rorke's affidavit, Middlebury authorized releasing the investor funds from the escrow account to Navagate.

47. However, Rorke never actually paid the IRS the \$350,000, and his affidavit was, therefore, false and misleading.

Navagate Defaults on the Notes

48. Starting in June 2010, Navagate began defaulting on the Notes. Despite these defaults, Respondents, 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.

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

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

Violations

51. As a result of the conduct described above, Respondents willfully 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.

52. As a result of the conduct described above, Respondents 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.

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

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest and for the protection of investors, that cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 8A of the Securities Act including, but not limited to, disgorgement and civil penalties;

C. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Sections 21B and 21C of the Exchange Act including, but not limited to, disgorgement, civil penalties, and an appropriate order prohibiting him from acting as an officer and director pursuant to Section 21C(f); and

D. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of 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, and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act.

IV.

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

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after the service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If a Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, that Respondent may be deemed in default and the proceedings may be determined against it or him 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 Respondents 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