

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10042 / February 19, 2016**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 77195 / February 19, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17125**

**In the Matter of**

**IBC FUNDS, LLC**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT  
TO SECTION 8A OF THE SECURITIES  
ACT OF 1933 AND SECTIONS 15(b)  
AND 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER**

**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”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against IBC Funds, LLC (“IBC”).

**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 of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”) as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds that

#### **Summary**

This matter involves violations of the broker-dealer and securities registration provisions by IBC, a financing company located in Miami Beach, Florida. Between June 2013 and March 2015, IBC entered into more than 50 separate financing transactions through which IBC received securities from microcap issuers pursuant to an exemption found in Section 3(a)(10) of the Securities Act. In relevant part, Section 3(a)(10) of the Securities Act exempts from registration securities issued in court-approved exchanges for "bona fide outstanding claims." As part of its business model, IBC purchased outstanding claims from creditors of microcap issuers and then settled those claims through Section 3(a)(10) exchanges. Under the resulting settlements, IBC received discounted shares, which IBC subsequently liquidated, without registering as a broker-dealer as required by Section 15(a) of the Exchange Act.

IBC also violated Section 5 of the Securities Act. Section 5(a) of the Securities Act prohibits the sale of securities in interstate commerce unless pursuant to an effective registration statement or an exemption to the registration requirements of the Securities Act. In addition, Section 5(c) of the Securities Act makes it unlawful to offer to sell securities, through the use or medium of a prospectus or otherwise, unless a registration statement has been filed as to such security or pursuant to an exemption. In four instances, IBC sold unrestricted shares of stock that it had acquired through 3(a)(10) transactions that were based on misrepresentations or omissions made by the microcap company issuers and creditors to both IBC and the court approving the exchange. The Section 3(a)(10) exemption is not available where certain terms and conditions of the settlement are not presented to the court for consideration at a fairness hearing or where certain stipulations are misrepresented to the court. As a result of the misrepresentations, IBC's subsequent sales of the securities obtained through invalid 3(a)(10) exchanges violated Section 5 of the Securities Act.

#### **Respondent**

1. IBC, a Nevada limited liability company with its principal place of business in Miami Beach, Florida, is a financial services company engaged in microcap financing. Since June 2013, IBC's business, among other things, involved making investments for its own account through settlement transactions with microcap companies in purported reliance on the registration exemption contained in Section 3(a)(10) of the Securities Act. IBC has never been registered with the Commission in any capacity.

#### **Background**

2. Since June 2013, IBC has entered into financing transactions with microcap stock companies utilizing the registration exemption contained in Section 3(a)(10) of the Securities Act. Through the 3(a)(10) transactions, IBC has received more than 20.5 billion

shares of unrestricted common stock from the microcap companies and has sold into the market 19.5 billion shares of the stock for gross proceeds of over \$17 million. IBC continues to operate as a financing company and continues to receive and sell shares pursuant to Section 3(a)(10) exchanges.

### **IBC's Solicitation of and Negotiations with Microcap Issuers and Their Creditors**

3. IBC, through a network of bankers, brokers, finders, or lawyers, identified microcap stock companies with which to enter into a financing transaction. IBC also promoted its business as a financing company through attendance at microcap conferences. In some instances, IBC received financing opportunities from commission-based referral agents.

4. After identifying a company interested in a financing transaction, IBC and the microcap company would typically meet to discuss a possible transaction and determine whether the microcap company had outstanding debt obligations that could be settled through a 3(a)(10) exchange. IBC provided explanations as to the legal framework and financial structure of a potential 3(a)(10) transaction.

5. After identifying creditor claims to be included in a contemplated Section 3(a)(10) exchange, IBC then negotiated directly with the creditors for the purchase of the claims by IBC. IBC executed the purchase of claims through a Claim Purchase Agreement ("CPA") executed separately with each creditor. Pursuant to the terms of the CPA, IBC typically agreed to pay each creditor for the entire amount of the debt owed by the microcap issuer in exchange for an immediate assignment of the rights, title, and interest in the underlying claim.

6. To facilitate the deals, IBC provided templates of board of director resolutions and other documents necessary for the issuer to execute the exchange. IBC also recommended the attorneys who could represent the issuers in the associated settlement transactions and provided all of the legal documents required to complete the settlement transactions.

### **Issuance of Unrestricted Stock to IBC through Section 3(a)(10) Exchanges**

7. After IBC was assigned claims against a particular microcap issuer, it filed suit (styled as a collection action for breach of contract) against the microcap issuer, typically in a Florida state court. Through related "fairness hearings," the court approved the terms of the settlement agreements through which IBC would be issued unrestricted stock at a discount to market in exchange for extinguishing its claims against the microcap stock companies.

8. The court-approved settlement agreements provided IBC with an initial amount of settlement shares in addition to a variable number of shares equal to the claim amount divided by a discount to the market price of the issuers' stock.

### **IBC's Sale of Shares Issued in Section 3(a)(10) Exchanges**

9. During the relevant period, IBC consummated Section 3(a)(10) transactions with more than 40 different microcap issuers. In connection with purchasing underlying claims totaling approximately \$8 million, IBC sold approximately 19.5 billion shares of the issuers' stock for total proceeds of approximately \$17 million. IBC's profits derived almost exclusively from the discounted shares it received pursuant to the settlement agreements and not from price appreciation of the shares.

10. IBC's sales activity represented a significant percentage (ranging from 3.5 percent to 68 percent) of the average daily trading volume for the issuers' stock, and IBC's sales of stock received through 3(a)(10) transactions resulted in significant dilution of the outstanding shares of the issuers' common stock.

### **IBC's Participation in Unregistered Distributions**

11. IBC sold stock that it acquired through four 3(a)(10) exchanges with two microcap issuers in which the issuers and/or the creditors made misrepresentations and omissions concerning the claims exchanged. None of these transactions were registered with the Commission. The discussion below reviews the four transactions.

#### ***Issuer A***

12. IBC entered into a 3(a)(10) transaction with Issuer A in December 2013, pursuant to which IBC agreed to purchase three outstanding debt obligations purportedly owed by Issuer A totaling \$132,410. In connection with the December 2013 3(a)(10) exchange with Issuer A, IBC received and sold 2.286 billion shares of Issuer A's common stock, earning proceeds of approximately \$603,500.

13. IBC entered into another 3(a)(10) transaction with Issuer A in February 2014, pursuant to which IBC agreed to purchase two outstanding debt obligations purportedly owed by Issuer A totaling \$57,681. In connection with the February 2014 3(a)(10) exchange with Issuer A, IBC received and sold 580 million shares of Issuer A stock, earning proceeds of approximately \$306,400.

14. In furtherance of the December 2013 and February 2014 3(a)(10) exchanges, IBC and Issuer A submitted proposed settlements to a state court in Sarasota, Florida. The Settlement Agreement and Stipulations submitted to the court by the parties stated, *inter alia*, that the debts IBC acquired from Issuer A were "bona fide outstanding liabilities" of Issuer A and that Issuer A's creditors have "no present intention to utilize any of the proceeds to be received from Purchaser to directly or indirectly, provide any consideration to or invest in any manner in the Company or any affiliate of the company."

15. Issuer A fabricated the debt obligations underlying three of the claims that were purchased by IBC by creating fake invoices. Without IBC's knowledge or involvement, Issuer A arranged with the creditors to sign the CPA with IBC, receive

payment from IBC, and send a portion of the funds received from IBC to Issuer A and its CEO, with the creditors retaining a small sum for themselves.

16. Issuer A's fabrication of the claims and the kickbacks from creditors to Issuer A rendered the Section 3(a)(10) exemption unavailable for the related stock issuances to IBC and, as a result, IBC's sales of those securities needed to be registered with the Commission or subject to another exemption.

### ***Issuer B***

17. IBC entered into a 3(a)(10) transaction with Issuer B in February 2014, pursuant to which IBC agreed to purchase two outstanding debt obligations purportedly owed by Issuer B totaling \$178,500, including a \$162,500 debt owed by Issuer B to Creditor A. In connection with the February 2014 3(a)(10) exchange with Issuer B, IBC received and sold 81.3 million shares of Issuer B's common stock, earning proceeds of approximately \$624,400.

18. IBC entered into another 3(a)(10) transaction with Issuer B in December 2014, pursuant to which IBC agreed to purchase another outstanding debt obligation purportedly owed by Issuer B to Creditor A totaling \$62,500. In connection with the December 2014 3(a)(10) exchange with Issuer B, IBC received and sold 63.2 million shares of Issuer B's common stock, earning proceeds of approximately \$105,200.

19. In furtherance of the February 2014 and December 2014 3(a)(10) exchanges, IBC and Issuer B submitted proposed settlements to a state court in Sarasota, Florida. The Settlement Agreement and Stipulations submitted to the court by the parties included a representation by Issuer B that Creditor A "is not and within the past ninety days has not been directly or indirectly through one or more intermediaries in control, controlled by, or under common control with, [Issuer B] and is not an affiliate of [Issuer B] as defined in Rule 144 promulgated under the Act. [Creditor A] is not in any way affiliated with any of [Issuer B's] Officers, Directors or ten-percent shareholders," and that Creditor A "has no present intention to utilize any of the proceeds to be received from Purchaser to directly or indirectly, provide any consideration to or invest in any manner in the Company or any affiliate of the company."

20. Without IBC's knowledge or involvement, Creditor A, at all times relevant, was under common control with Issuer B, and Creditor A sent a portion of the funds received from IBC to Issuer B and its CEO. Because Issuer B and Creditor A were affiliates and because Creditor A utilized proceeds received from IBC to provide consideration to Issuer B and its CEO, the Section 3(a)(10) exemption was unavailable for the related stock issuances to IBC and, as a result, IBC's sales of those securities needed to be registered with the Commission or subject to another exemption.

## Violations

21. As a result of the conduct described above, IBC willfully<sup>1</sup> violated Section 15(a) of the Exchange Act, which prohibits a broker or dealer from using the mails or any means or instrumentality of interstate commerce to effect transactions in, or induce or attempt to induce the purchase or sale of, securities without being registered as or associating with a registered broker-dealer. IBC also willfully violated Sections 5(a) and 5(c) of the Securities Act, which makes it unlawful, for any person, directly or indirectly, to sell or offer a security through the use of any means or instrument of transportation or communication in interstate commerce or the mails unless a registration statement is in effect as to the security.

### IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondent IBC's Offer.

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

- A. Respondent IBC is censured.
- B. Respondent IBC shall cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act and Sections 5(a) and 5(c) of the Securities Act.
- C. Respondent IBC shall pay disgorgement of \$2,200,000, prejudgment interest of \$32,850, and a civil money penalty in the amount of \$250,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: \$500,000 within 30 days of entry of the Order; \$500,000 within 90 days of entry of the Order; \$500,000 within 180 days of entry of the Order; \$500,000 within 270 days of the Order; and the remaining \$482,850 within 360 days of the Order. If any payment is not made by the date the payment is required by the Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. §3717, shall be due and payable immediately, without further application.

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<sup>1</sup> 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)).

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying IBC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to:

William P. Hicks  
Associate Director  
Division of Enforcement  
Securities and Exchange Commission  
950 East Paces Ferry N.E., Suite 900  
Atlanta, GA 30326-1382

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in

this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields  
Secretary