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

ADMINISTRATIVE PROCEEDING
File No. 3-~~18265~~ /827/

In the Matter of

JEFFREY D. SMITH,
JOSEPH CARSWELL and
MICHAEL W. FULLARD

Respondents.

MOTION BY DIVISION OF ENFORCEMENT FOR A FINDING THAT RESPONDENTS JOSEPH CARSWELL AND MICHAEL W. FULLARD ARE IN DEFAULT AND FOR IMPOSITION OF REMEDIAL SANCTIONS

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I. BACKGROUND

On October 31, 2017, this matter was instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). Michael W. Fullard ("Fullard") was served with the Order Instituting Proceedings ("OIP") on November 26, 2017, and Joseph Carswell ("Carswell") was served with the OIP on December 13, 2017. *Jeffrey D. Smith*, Admin. Proc. Rulings Release No. 5279, 2017 SEC LEXIS 3882, at *1 (Dec. 6, 2017); *Jeffrey D. Smith,* Admin. Proc. Rulings Release No. 5462, 2018 SEC LEXIS 93, at *1 & n.1 (Jan. 12, 2018). They each had twenty days to file an answer, but failed to do so. They also failed to contact Judge Elliot's office by January 19, 2018, to provide their availability for a telephonic prehearing conference, or show cause, by February 5, 2018, why they should not be found in default and have this proceeding determined against them. *Jeffrey D. Smith,* Admin. Proc. Rulings Release No. 5523, 2018 SEC LEXIS 225, at *1 (Jan. 24, 2018); *Jeffrey D. Smith*, Admin. Proc. Rulings Release No. 5569, 2018 SEC LEXIS 374, at *3 (Feb. 6, 2018). Jeffrey D. Smith ("Smith") was served with the OIP on February 5, 2018. *See* Division of Enforcement's Response to Order Requiring It to File Supplemental Declaration Regarding Status of Service on Jeffrey D. Smith (February 22, 2018).

On November 8, 2016, a Complaint for Injunctive and Other Relief was filed against Smith, Carswell and Fullard, alleging that they engaged in a variation of a prime bank scheme and fraudulently obtained money from investors, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10b of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Section 15(a) of the Exchange Act. *See* Complaint (Exhibit A, attached hereto); *see also* Dixon Decl., ¶ 6 (Exhibit B, attached hereto). The Complaint alleged that Smith and Carswell engaged in securities fraud, and that Smith, Carswell and Fullard acted as unregistered broker dealers. *See* Complaint.

Specifically, in 2012 and 2013, Smith and Carswell, using two fictitious companies (Atlanta Capital LLC and Capital Funding, Inc.), defrauded at least four known investors out of at least $775,000, by representing that they would use investor funds to procure various instruments (medium term notes, bank guarantees and standby letters of credit) worth millions of dollars. *See* Dixon Decl., ¶ 2. Fullard acted as a finder for Smith and Carswell, and referred at least one victim investor to them. *Id.*

Investors were told that those instruments would be "monetized", and that several million dollars of monetized proceeds would be loaned to investors in the form of non-recourse loans. *Id.*, ¶ 3. Further, investors were told that the balance of the monetized proceeds would be invested in instruments such as debentures, which would be traded in a manner that would produce returns of as much as 35% per week. *Id.* Investors were also told that those returns would be used to pay off investors' loans, and that the transactions were risk-free. *Id.*

After money was received from investors, it was disbursed to Smith, Carswell and Fullard, and individuals or entities connected to them, sometimes just hours after it was received. *Id.*, ¶ 4. The Commission's staff could not find any evidence that investor funds had been used to purchase or invest in any instruments. *Id.* None of the investors received the rates of return they were promised by Smith and Carswell. *Id.*, ¶ 5. None of the investors received loans from Smith, Carswell or Fullard. *Id.* Moreover, none of the investors were successful in recovering more than a small portion of their investment proceeds from Smith, Carswell or Fullard. *Id.* Their transactions were not risk-free. *Id.*

On October 11, 2017, a Final Judgment was entered by default against Smith, Carswell and Fullard, permanently enjoining Smith and Carswell from future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and

Smith, Carswell and Fullard from future violations of Section 15(a) of the Exchange Act. *See* Final Judgment (Exhibit C, attached hereto). A corrected Final Judgment was entered on December 20, 2017. *See* Corrected Final Judgment (Exhibit D, attached hereto); *see also* Dixon Decl., ¶ 6.

Accordingly, the Division now moves pursuant to Rules 155(a)(2) and 220(f) for a finding that Carswell and Fullard are in default, and the imposition of remedial sanctions. The Division submits that Carswell and Fullard should be barred from associating with a broker, dealer, investment advisor, transfer agent, nationally recognized statistical rating organization (NRSRO), or investment company, and be barred from participating in any offering of penny stock, including acting as a promoter, finder, consultant, agent or other person, or inducing or attempting to induce the purchase or sale of penny stock, pursuant to Section 15(b)(6) of the Exchange Act.

II. ARGUMENT

A. Carswell And Fullard Failed To Answer After Properly Being Served, And Are In Default

Because Carswell and Fullard never responded to the OIP, they are in default. Rule 155(a) of the Commission's Rules of Practice states that:

> A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: ...
>
> (2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding . . . .

Moreover, the OIP itself provides that "[i]f Respondent fails to file the directed answer . . . the Respondent may be deemed in default and the proceedings may be determined against him

upon consideration of this Order, the allegations of which may be deemed to be true . . . " (OIP ¶ IV).

Carswell and Fullard were properly served with the OIP and are on notice of these proceedings. Rule 141(a)(2)(i) sets forth permissible methods of service of the OIP upon individuals, which include "delivering a copy of the order instituting proceedings to the individual," and which defines "delivery" to include "handing a copy of the order to the individual; . . .". Here, both Carswell and Fullard were personally served with the OIP. See *Jeffrey D. Smith,* 2018 SEC LEXIS 93, at *1 & n.1.

The Division requests that Carswell and Fullard be found to be in default, as they failed to timely file and serve an Answer after having been served with the OIP. See *Jeffrey D. Smith,* 2018 SEC LEXIS 225, at *1.

B. The Facts Alleged In The OIP Must Be Deemed True

As stated in the OIP, failure to file a directed answer may result in Carswell and Fullard being deemed in default and the proceedings may be determined against them upon consideration of the OIP, the allegations of which may be deemed to be true. (OIP ¶ IV, *citing* Rules 155(a), 220(f), and 310). Those facts which may be deemed true include that:

1. In 2012 and 2013, Smith and Carswell engaged in securities fraud, and Smith, Carswell and Fullard acted as unregistered brokers or dealers. OIP ¶ II.B.4. *See also* Complaint.

2. Smith and Carswell used two fictitious companies (Atlanta Capital LLC and Capital Funding, LLC) to engage in a variation of a prime bank scheme and defrauded at least four known investors out of at least $775,000. *Id. See also* Dixon Decl., ¶ 2.

3. Smith and Carswell promised investors returns of as much as 35% per week and assured them that the transactions were risk-free. Fullard acted as a finder for Smith and Carswell and referred at least one victim investor to them. OIP ¶ II.B.4. *See also* Dixon Decl., ¶¶ 2, 3.

4. After investment proceeds came in, they were disbursed to Smith, Carswell and Fullard, and individuals or entities connected to them, in some cases just hours after the investments were received. OIP ¶ II.B.4. *See also* Dixon Decl., ¶ 4.

5. On October 11, 2017, a final judgment was entered by default against Smith, Carswell and Fullard in *Securities and Exchange Commission v. Jeffrey D. Smith d/b/a Atlanta Capital LLC a/d/b/a Capital Funding LLC., Joseph Carswell d/b/a Atlanta Capital LLC a/d/b/a Capital Funding LLC., and Michael W. Fullard,* Civil Action Number 1:16-CV-4171-TWT (United States District Court for the Northern District of Georgia). Smith and Carswell were permanently enjoined from future violations of Section 17(a) of the Securities Act and Section 10b of the Exchange Act and Rule 10b-5 thereunder, and Smith, Carswell and Fullard were permanently enjoined from future violations of Section 15(a) of the Exchange Act. OIP ¶ II.B.3. *See also* Final Judgment and corrected Final Judgment.

As stated in Section III of the OIP, the purpose of this proceeding is not only to determine whether the above allegations are true, but what remedial action is appropriate in the public interest against Carswell and Fullard pursuant to Section 15(b) of the Exchange Act. As the allegations may be deemed true because Carswell and Fullard are in default, the remaining issue is the appropriate remedies to be imposed on them in the public interest.

C. The Appropriate Remedial Sanctions That Should Be Imposed Upon Carswell And Fullard In This Case

Pursuant to Section 15(b)(6) of the Exchange Act, Carswell and Fullard should be: (1) barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO); and (2) barred from participating in any offering of penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. It is in the public interest to impose these sanctions against them.

There are several well-recognized factors that are to be considered in determining the

appropriate remedy in the public interest. Those factors are: (1) the egregiousness of Carswell's and Fullard's actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) the sincerity of Carswell's and Fullard's assurances against future violations; (5) Carswell's and Fullard's recognition of the wrongful nature of their conduct; and (6) the likelihood that Carswell's and Fullard's occupations will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979); *In the Matter of Bernath*, Initial Decision Release No. 993 at 4, 2016 SEC LEXIS 1222 *10-11 (April 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest, in a case where sanctions were imposed by summary disposition). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *Bernath*, at 4 and *11, *citing In the Matter of Schield Mgmt Co.*, 58 S.E.C. 1197, 1217 n.46, 2006 SEC LEXIS 195, at *35-36 (Jan. 31, 2006) (revoking adviser's registration and barring majority owner from association), and *In the Matter of Melton*, 56 S.E.C. 695, 698, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003). The Commission has held that "conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." *In the Matter of Siris*, Exchange Act Rel. No. 71068, 2013 SEC LEXIS 3924 *23 (Dec. 12, 2013), *quoting In the Matter of Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012) (imposing industry and penny stock bars), *quoting Melton*, 56 S.E.C. at 713.

All of the *Steadman* factors are present in this case, as are the additional factors considered by the Commission. First, pursuant to Rules 155(a) and 220(f), the allegations of the OIP are deemed true when a Respondent fails to timely answer and is in default. The allegations against Carswell and Fullard include that, on October 11, 2017, a final judgment was entered by

default against Smith, Carswell and Fullard in *Securities and Exchange Commission v. Jeffrey D. Smith d/b/a Atlanta Capital LLC a/d/b/a Capital Funding LLC., Joseph Carswell d/b/a Atlanta Capital LLC a/d/b/a Capital Funding LLC., and Michael W. Fullard,* Civil Action Number 1:16-CV-4171-TWT (United States District Court for the Northern District of Georgia). *See* OIP ¶ II.B.3; *see also* Final Judgment. A corrected Final Judgment was entered on December 20, 2017. *See* Corrected Final Judgment; *see also* Dixon Decl., ¶ 6.

As a result, Smith and Carswell were permanently enjoined from future violations of Section 17(a) of the Securities Act and Section 10b of the Exchange Act and Rule 10b-5 thereunder, and Smith, Carswell and Fullard were permanently enjoined from future violations of Section 15(a) of the Exchange Act. *See* OIP ¶ II.B.3.

The Complaint alleged that in 2012 and 2013, Smith and Carswell engaged in securities fraud, and Smith, Carswell and Fullard acted as unregistered brokers or dealers. *See* Complaint. Smith and Carswell did so by using two fictitious companies (Atlanta Capital LLC and Capital Funding, LLC) to engage in a variation of a prime bank scheme which defrauded at least four known investors out of at least $775,000. *See* Dixon Decl., ¶ 2. They promised investors returns of as much as 35% per week and assured investors that the transactions were risk-free. *Id.*, at ¶ 3. Fullard acted as a finder for them and referred at least one victim investor to them. Id., at ¶ 2. After investment proceeds came in, they were disbursed to Smith, Carswell and Fullard, and individuals or entities connected to them, in some cases just hours after the investments were received. *Id.*, at ¶ 4.

Although no one factor is dispositive in determining the appropriate relief in the public interest, the record in the District Court action and the attached declaration from a member of the Commission's staff establishes the presence of each of the six *Steadman* factors, as well as each

of the three additional factors considered by the Commission.

1. Carswell's And Fullard's Violations Were Egregious

Smith and Carswell fraudulently conducted a variation of a prime scheme and defrauded at least four known investors of at least $775,000. *Id.*, at ¶ 2. Fullard acted as a finder for them with at least one known investor. *Id.* Smith and Carswell misrepresented that investor funds would be used to purchase various instruments, and that those instruments would be "monetized." *Id.*, at ¶ 3. They also misrepresented that several million dollars of monetized proceeds would be loaned to investors in the form of non-recourse loans. *Id.* Smith and Carswell falsely told investors that the balance of the monetized proceeds would be invested in instruments such as debentures, and that they would be traded in a manner that would produce returns of as much as 35% per week. *Id.* Further, they falsely assured investors that the returns would be used to pay off their loans, and that their transactions were risk free. *Id.* Although Smith, Carswell and Fullard had numerous opportunities to cease their fraudulent behavior, they did not do so. Their misconduct was severely egregious.

2. Carswell's And Fullard's Violations Were Recurrent

The misconduct in this case occurred over the span of two years and impacted at least four known investors. *Id.*, at ¶ 2. Given the length of their fraudulent conduct, the amount of the loss, and that none of the investors were successful in recovering more than a small portion of their investment proceeds, *id.*, at 5, Carswell's and Fullard's violations were recurrent.

3. Carswell And Fullard Acted With High Scienter

As set forth above, given the number of victims, the length of Smith's, Carswell's and Fullard's fraudulent conduct, the amount of the loss, and that investors' funds were not used as they had been told, but instead, were disbursed to Smith, Carswell and Fullard, and individuals

and entities connected to them, *id.* at ¶ 4, Carswell and Fullard acted with high scienter.

4. Carswell And Fullard Have Made No Assurances Against Future Violations

Carswell and Fullard have not made any assurances against future violations by them. Indeed, since they defaulted on the underlying District Court action, and failed to provide this Court with their availability for a prehearing conference or show cause why this proceeding should not be determined against them, there is every reason to believe that they may engage in this sort of misconduct again.

5. Carswell and Fullard Have Not Recognized The Wrongful Nature Of Their Conduct

Carswell and Fullard have not recognized the wrongful nature of their conduct at all. Instead, they have repeatedly demonstrated their flagrant disregard for the judicial process by ignoring this Court and the District Court.

6. There Is A Likelihood That Carswell And Fullard Will Have Opportunities For Future Violations

Given their misconduct and refusal to participate in any judicial proceedings related to it, and since their present occupations are unknown, Carswell and Fullard will likely have opportunities for future violations.

7. The Violations Are Sufficiently Recent

Smith, Carswell and Fullard engaged in fraudulent activity in 2012 and 2013. *Id.*, at ¶ 2. A civil action was filed against them in District Court in November 2016, and a final judgment was entered against them on October 11, 2017. *See* Complaint; *see also* Final Judgment. A corrected Final Judgment was entered on December 20, 2017. *See* Corrected Final Judgment; *see also* Dixon Decl., ¶ 6.

The Commission instituted this follow-up action on October 31, 2017.

8. Investors Were Significantly Harmed

The harm to investors in this case was significant. At least four known investors were defrauded of at least $775,000. *See* Dixon Decl., ¶ 2.

9. Administrative Sanctions Will Have A Deterrent Effect

Previously, the Commission has rejected arguments that the imposition of remedial sanctions in addition to those posed by a district court simply adds to the sanctions already imposed and is therefore not in the public interest. In particular, the Commission explained in *Bugarski* that:

> While the sanctions imposed by the district court – the permanent injunction, disgorgement, and third-tier civil penalties – are severe, this simply underscores the seriousness of Respondents' misconduct. . . . As we have previously held, an injunction against violations of the antifraud provisions of the securities laws "has especially serious implications for the public interest," and "ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . suspend or bar from participation in the securities industry . . . a respondent who is enjoined from violating the antifraud provisions.

2012 SEC LEXIS *17-18, *quoting Melton*, 56 S.E.C. at 713.

Here, Smith and Carswell were enjoined from future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Smith, Carswell and Fullard were enjoined from future violations of Section 15(a) of the Exchange Act. *See* Final Judgment. Accordingly, Carswell and Fullard should be permanently barred from associating with individuals and entities in the securities industry, and from participating in any offering of penny stock, as specified herein.

III. CONCLUSION

For the reasons set forth herein, Respondents Carswell and Fullard should be found in default, and associational bars should be imposed against them.

Dated: February 26, 2018

Respectfully submitted,

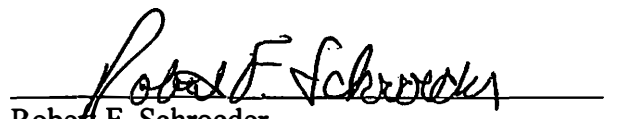

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EXHIBIT

A

JS44 (Rev. 6/16 NDGA)

CIVIL COVER SHEET

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

SECURITIES AND EXCHANGE COMMISSION

DEFENDANT(S)

JEFFERY D. SMITH d/b/a ATLANTA CAPITAL LLC a/d/b/a CAPITAL FUNDING, INC., JOSEPH CARSWELL d/b/a ATLANTA CAPITAL LLC a/d/b/a CAPITAL FUNDING, INC., and MICHAEL W. FULLARD

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT FULTON CO., GA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

W. Shawn Murnahan
Securities and Exchange Commission
950 East Paces Ferry Road, Suite 900
Atlanta, GA 30326

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN "X" IN ONE BOX ONLY)

- ☑ 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)
(FOR DIVERSITY CASES ONLY)

PLF	DEF		PLF	DEF	
☐ 1	☐ 1	CITIZEN OF THIS STATE	☐ 4	☐ 4	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
☐ 2	☐ 2	CITIZEN OF ANOTHER STATE	☐ 5	☐ 5	INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
☐ 3	☐ 3	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	☐ 6	☐ 6	FOREIGN NATION

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☑ 1 ORIGINAL PROCEEDING
- ☐ 2 REMOVED FROM STATE COURT
- ☐ 3 REMANDED FROM APPELLATE COURT
- ☐ 4 REINSTATED OR REOPENED
- ☐ 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
- ☐ 6 MULTIDISTRICT LITIGATION - TRANSFER
- ☐ 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGMENT
- ☐ 8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

15 U.S.C. § 77q(a)(1), (2) and (3), 15 U.S.C. § 78j(b) (and 17 C.F.R. § 240.10b-5(a), (b) and (c) thereunder), and 15 U.S.C. § 78o(a)

(IF COMPLEX, CHECK REASON BELOW)

- ☐ 1. Unusually large number of parties.
- ☐ 2. Unusually large number of claims or defenses.
- ☐ 3. Factual issues are exceptionally complex
- ☐ 4. Greater than normal volume of evidence.
- ☐ 5. Extended discovery period is needed.
- ☐ 6. Problems locating or preserving evidence
- ☐ 7. Pending parallel investigations or actions by government.
- ☐ 8. Multiple use of experts.
- ☐ 9. Need for discovery outside United States boundaries.
- ☐ 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT $ _____ APPLYING IFP _____ MAG. JUDGE (IFP) _____

JUDGE _____ MAG. JUDGE _____ NATURE OF SUIT _____ CAUSE OF ACTION _____
(Referral)

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

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- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

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- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
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OTHER STATUTES - "8" MONTHS DISCOVERY TRACK
- ☐ 410 ANTITRUST
- ☑ 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK
- ☐ 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND $_____

JURY DEMAND ☑ YES ☐ NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE_____ DOCKET NO._____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)
- ☐ 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- ☐ 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- ☐ 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- ☐ 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- ☐ 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- ☐ 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

☐ 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. , WHICH WAS DISMISSED. This case ☐ IS ☐ IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

J. Shaw Murdaugh 11-8-16

SIGNATURE OF ATTORNEY OF RECORD DATE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **JEFFERY D. SMITH d/b/a ATLANTA CAPITAL LLC a/d/b/a CAPITAL FUNDING, INC., JOSEPH CARSWELL d/b/a ATLANTA CAPITAL LLC a/d/b/a CAPITAL FUNDING, INC., and MICHAEL W. FULLARD,** **Defendants.**	**Civil Action No.** **JURY TRIAL DEMANDED**

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, Securities and Exchange Commission (the "Commission"), files its complaint and alleges that:

SUMMARY

1. In 2012 and 2013, Defendant Jeffery D. Smith ("Smith") and Joseph Carswell ("Carswell") defrauded at least four known investors out of at least a total of $775,000 using a variation of a prime bank scheme.

2. Defendants Smith and Carswell used two fictitious companies to defraud investors: Atlantis Capital, LLC ("Atlantis Capital") and Capital Funding, LLC ("Capital Funding"). These companies do not appear to have ever been legally formed, and thus, were nothing more than "doing business as" entities.

3. Smith and Carswell represented to victim investors orally and in documents that Smith could procure medium term notes, bank guarantees, and standby letters of credit worth millions of dollars for fees ranging between $100,000 and $250,000.

4. Investors were told that those instruments would then be "monetized," that several million dollars of the monetized proceeds would be loaned to the investors in the form of non-recourse loans, and that Smith would invest the balance of the monetized proceeds in instruments such as debentures that would be traded in a manner that would produce returns of as much as 35% per week. Those returns would be used to pay off the investors' loans.

5. Investors were also assured by Smith and Carswell that the transactions were risk-free.

6. Defendant Michael W. Fullard acted as a finder for Smith and Carswell.

7. Fullard referred at least one victim investor to Smith and Carswell, recommended their services, and assisted with that victim's investment by forwarding executed documents from the victim to the escrow agent. Bank documents show that, after investment proceeds came in, they were disbursed to Smith, Carswell, and Fullard (collectively, the "Defendants"), in some cases just hours after the investments were received.

8. None of the investors received the rates of return promised by Smith and Carswell, and none has been successful in recovering more than a small portion of their investment proceeds from Smith or Carswell.

VIOLATIONS

9. Smith and Carswell engaged in, and, unless restrained and enjoined by this Court, will continue to engage in, acts, practices, schemes, and courses of business that constituted and will constitute violations of Sections 17(a)(1), (2) and (3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)(1), (2) and (3)], as well as Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5(a), (b) and (c) thereunder [17 C.F.R. § 240.10b-5(a), (b) and (c)].

10. Smith, Carswell and Fullard engaged in, and, unless restrained and enjoined by this Court, will continue to engage in, acts, practices, schemes, and

courses of business that constituted and will constitute violations of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

JURISDICTION AND VENUE

11. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)], to enjoin Defendants from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and transactions, acts, practices, and courses of business of similar purport and object, and for civil penalties and other equitable relief.

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

13. Defendants Smith, Carswell and Fullard, directly and indirectly, made use of the mails, the means and instruments of transportation or communication in interstate commerce, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this Complaint, and made use of the mails and means of instrumentality of interstate commerce to effect transactions, or to induce or to attempt to induce the purchase or sale of securities alleged in this Complaint.

14. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the Northern District of Georgia. The known investors were solicited in this district. In addition, some of the defrauded investors and Defendants Smith and Carswell reside in the Northern District of Georgia.

15. As such, venue is proper under Section 22 of the Securities Act [15 U.S.C. § 77v] and under Section 27 of the Exchange Act [15 U.S.C. § 78aa].

16. Defendants Smith, Carswell and Fullard, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this Complaint, and in transactions, acts, practices and courses of business of similar purport and object.

THE DEFENDANTS

17. **Jeffrey D. Smith,** age 35, resides in Lithonia, Georgia. Smith does not appear to have ever held any professional licenses or been associated with a registered broker-dealer or investment adviser.

18. **Joseph Carswell,** age 47, resides in Marietta, Georgia. Carswell does not appear to have ever held any professional licenses or been associated with a registered broker-dealer or investment adviser.

19. **Michael W. Fullard**, age 47, resides in Myrtle Beach, South Carolina. Fullard does not appear to have ever held any professional licenses or to ever have been associated with a registered broker-dealer or investment adviser.

RELATED ENTITIES

20. **Atlanta Capital LLC** is the name that appears in many of the agreements signed by investors and related correspondence. The Commission has found no other evidence of its legal existence. As such, it appears to be an unregistered and unlicensed d/b/a of Smith and Carswell.

21. **Capital Funding, Inc.**, also appears to be an unregistered and unlicensed d/b/a of Smith and Carswell. Capital Funding, along with Atlanta Capital, appears in many of the documents and related correspondence utilized by Carswell and Smith with investors. The Commission has found no other evidence of its legal existence, and thus, it also appears to be an unregistered and unlicensed d/b/a of Smith and Carswell.

DEFENDANTS' PRIME BANK SCHEME

A. Investor Entity 1

22. In 2012, a Managing Director of a Hong Kong-based energy company ("Investor Entity 1") was seeking capital for energy-related investments. An

acquaintance referred the Managing Director to Fullard, who informed him that Fullard regularly used bank guarantees to raise capital.

23. Fullard introduced the Managing Director of Investor Entity 1 to Smith, who represented that Smith and Atlanta Capital could arrange for Investor Entity 1 to "lease" a $10 million bank guarantee for $150,000. Smith further represented that once the leased bank guarantee was "monetized," $3.5 million would be given to Investor Entity 1 in the form of a non-recourse loan.

24. Smith represented that he would then, after deducting his 1% – 2 % fee, invest and trade the remaining approximately $6.3 million on private trading platforms – generating enough profit to pay off Investor Entity 1's non-recourse loan.

25. Smith also told the Managing Director that such deals were "rock solid" and that nothing could go wrong, in part, because the loan was non-recourse and, in part, because Investor Entity 1 would have the bank guarantee that was worth $10 million in its possession as soon as it paid the leasing fee.

26. Among the documents involved in the transaction was a "Letter of Commitment" on Atlanta Capital letterhead stating that Investor Entity 1 had submitted an application "for the purpose of securing an SBLC [standby letter of credit] in the amount of $10,000,000.00 ("Instrument") from the National

Westminster Bank in the UK (NatWest), or other bank mutually agreed upon by the parties, for business related activities."

27. The terms of the "Letter of Commitment" document required Investor Entity 1 to escrow funds with Atlanta Capital in order to secure the investment. The document also represented that Atlanta Capital had the ability to arrange such an "instrument." When Investor Entity 1 agreed to proceed, emails written by Fullard indicate that he prepared a document entitled "escrow agreement."

28. On December 10, 2012, the Managing Director of Investor Entity 1 wired $150,000 to an escrow account designated by Smith and waited for the bank guarantee to be deposited in Investor Entity 1's account. Approximately one week later, Smith informed the Managing Director that Smith had obtained the bank guarantee and had confirmed that it was legitimate.

29. Smith subsequently sent the Managing Director of Investor Entity 1 a document purportedly showing that a bank guarantee issued by National Westminster Bank for $10 million would be transferred to Investor Entity 1's account as soon as Investor Entity 1 instructed the escrow agent to release the funds necessary to lease it.

30. On December 19, 2012, Fullard emailed an executed authorization to release Investor Entity 1's funds from escrow to Carswell. Fullard then served as

the contact person for Investor Entity 1 during the purported "monetization" process.

31. Investor Entity 1, however, never received the promised funds.

32. In an effort to uncover why Investor Entity 1 had not received the promised funds, the Managing Director contacted Carswell because Carswell had been copied on an email regarding the escrowed funds. Carswell assured the Managing Director that although he knew nothing about this particular transaction, he had dealt with Smith for years and knew that Smith had a good track record of successfully completing such transactions.

33. Carswell, who promised to help the Managing Director of Investor Entity 1 recover its principal, convinced the Managing Director that Investor Entity 1 could do so by leasing a $2 million certificate of deposit ("CD") from a "top American bank." Carswell represented that the leased CD would generate a non-recourse loan sufficient to cover Investor Entity 1's losses, and that the loan would be paid off by the trading of the CD in a market similar to the one described by Smith.

34. Carswell told the Managing Director, however, that in order to participate in this transaction, Investor Entity 1 would have to escrow another $32,000. Carswell arranged for the Managing Director of Investor Entity 1 to

receive the appropriate documents. Investor Entity 1 then escrowed the additional $32,000, but never received the non-recourse loan and, to date, has only received $10,000 of its principal from Carswell despite repeated efforts to collect.

35. The escrow agent's records indicate that on December 19, 2012, $12,000 of Investor Entity 1's escrowed funds were disbursed to Fullard, $112,000 were disbursed to Smith and $12,000 were disbursed to Carswell.

B. Investor Entity 2

36. In 2013, the CEO and the two managing partners of a Florida-based real property company ("Investor Entity 2") were seeking financing for the acquisition of a coal mine in Pennsylvania.

37. The CEO was told by a business associate that the acquisition could be financed using standby letters of credit. When one of the managing partners expressed an interest in learning more about the process that had been described to him by the CEO, the CEO's business associate arranged for representatives of Investor Entity 2 to meet Smith and Carswell.

38. On or around April 3, 2013, the CEO and one of the managing partners attended a meeting with Smith in Atlanta, Georgia. The other managing partner participated in the meeting by telephone. During that meeting, Smith stated that, following the investment by Investor Entity 2, Atlanta Capital would

obtain a "fresh cut" or "slightly seasoned" standby letter of credit that would be monetized for $10 million, that 60% of the proceeds of the monetization would go to Investor Entity 2 in the form of a non-recourse loan, and that the remainder of the proceeds would be traded on "private placement platforms."

39. Smith represented that trading the monetized proceeds that were not loaned to Investor Entity 2 would generate 35% profit each week and would be used to repay Investor Entity 2's non-recourse loan. Documents given to Investor Entity 2 describing the process state that either a medium term note or a standby letter of credit could be used to generate that capital. At various times, Smith stated that the principal was "100% safe" and could not be lost because it was "impossible to lose" any money.

40. The documents involved in the transaction included one entitled "Letter of Commitment" on Atlanta Capital letterhead that stated Investor Entity 2 had submitted an application "for the purpose of securing an MTN [medium term note] or SBLC/BG [standby letter of credit/bank guarantee] in the amount of $10,000,000.00 ("Instrument") from the top World European Banks for business related activities." That document also stated that Atlanta Capital had the ability to arrange such an instrument.

41. On April 5, 2013, Investor Entity 2, having received and executed the required documents from Smith and Carswell, deposited $150,000 to obtain the financing described by Smith with the escrow agent designated by Smith.

42. After Investor Entity 2 authorized the release of funds from escrow so that they could be used to acquire the standby letter of credit, the escrow agent's records indicate that on April 18, 2013, $5,000 was disbursed to Fullard, $12,500 was disbursed to Carswell, and $71,500 was disbursed to Smith. On April 26, 2013, an additional $12,000 was disbursed to Carswell, $12,000 was disbursed to Smith, and $6,000 was disbursed to Fullard.

43. Investor Entity 2 has never received the non-recourse loan and has only managed to recover approximately $52,000 of its principal.

C. Individual Investor 1

44. In 2013, a man residing in Buford, Georgia ("Individual Investor 1), who was raising capital to fund religious and other non-profit activities, was introduced to Carswell by an associate. Carswell told Individual Investor 1 that Carswell was an ordained minister and that he and Smith could help Individual Investor raise capital.

45. Carswell represented that, if Individual Investor 1 escrowed $200,000, the funds would be used to lease a standby letter of credit or bank guarantee valued

at $10 million. The leased instrument would then be "monetized" for $8 million, of which $7.2 million would be loaned to Individual Investor 1 within 45 days in the form of a non-recourse loan. The remaining $800,000 would be traded by Smith.

46. Carswell also explained that Smith would invest that $800,000 in debentures that would be traded on a daily basis, and that the profit from those trades would be used to repay the $7.2 million loaned to Individual Investor 1. Carswell, who was at this point plainly aware of Smith's nonperformance with respect to Investor Entity 1, assured Individual Investor 1 that he knew Smith, had worked with him on similar transactions before, and that Smith always "performed" and always "pays."

47. Carswell also personally guaranteed that the transaction would work as he had described, and repeatedly said that there was "no risk." During their initial meeting, which took place in Buford, Georgia, Carswell called Smith and let Individual Investor 1 talk to him. Smith repeated much of Carswell's description of the capital raising process and stated repeatedly that there was "no risk" associated with it.

48. Among the documents involved in the transaction was one entitled "Capital Funding Letter of Commitment," on the letterhead of Capital Funding,

stating that Individual Investor would submit an application "for the purpose of securing an MTN or SBLC/BG in the amount of $10,000,000.00 ("Instrument") from the top World European Banks for business related activities. This document states that "Capital Funding has the ability to arrange such INSTRUMENT . . . ."

49. Carswell subsequently informed Individual Investor 1 that Smith had leased a standby letter of credit for someone else with a face value of $100 million – ten times the value of the instrument that Individual Investor 1 was considering leasing. Carswell told Individual Investor 1 that if he quickly escrowed $200,000, it could be used to lease a portion of that instrument. Moreover, because of the size of that instrument, the $7.2 million to be loaned to Individual Investor 1 would be available in less than 45 days.

50. Individual Investor 1 escrowed $200,000 on July 12, 2013, and simultaneously authorized its release so that the "instrument," (i.e., the medium term note, standby letter of credit, or bank guarantee) could be obtained. Smith then informed Individual Investor 1 that the funds had been released to Smith and that everything was proceeding as planned.

51. Individual Investor 1 never received the funding that he was promised. Despite persistent inquiries, Individual Investor 1 only managed to recover $17,500 of the $200,000 that he invested.

52. The escrow agent's records indicate that on July 12, 2013, $134,000 of the funds escrowed by Individual Investor 1 was disbursed to Smith and $25,000 was disbursed to Carswell. Another $35,000 was disbursed to Carswell on July 15, 2013.

D. Individual Investor 2

53. In 2012, a Mexican national ("Individual Investor 2") invested approximately $250,000 with Atlanta Capital.

54. The documents involved in the transaction included a "Letter of Commitment" on Atlanta Capital letterhead that stated Individual Investor 2 had submitted an application "for the purpose of securing an MTN or SBLC in the amount of $20,000,000.00 ("Instrument") from the top World European Banks for business related activities."

55. The document also stated that Atlanta Capital had the ability to arrange such an instrument.

56. On July 25, 2012, Individual Investor 2 deposited $249,970 in escrow with an escrow agent known to work with Smith and Carswell.

57. The escrow agent's records indicate that, after the funds were deposited into escrow, $115,000 was disbursed to Carswell between July 30, 2012

and August 15, and another $45,000 was disbursed to Smith in the same time frame.

COUNT I – FRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

(Defendants Smith and Carswell)

58. Paragraphs 1 through 56 are hereby re-alleged and incorporated herein by reference.

59. During 2013 and 2014, Defendants Smith and Carswell, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

60. Defendants Smith and Carswell knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

61. While engaging in the course of conduct described above, Defendants Smith and Carswell acted with scienter, that is, with an intent to deceive, manipulate, or defraud, or with a severely reckless disregard for the truth.

62. By reason of the foregoing, Defendants Smith and Carswell, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II – FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

(Defendants Smith and Carswell)

63. Paragraphs 1 through 56 are hereby re-alleged and incorporated herein by reference.

64. From at least March 2013 through September 2015, Defendants Smith and Carswell, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

65. By reason of the foregoing, Defendants Smith and Carswell, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III – FRAUD

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a), (b), and (c) Thereunder
[15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(a), (b) and (c)]

(Defendants Smith and Carswell)

66. Paragraphs 1 through 56 are hereby re-alleged and incorporated herein by reference.

67. During 2013 and 2014, Defendants Smith and Carswell, in connection with the purchase or sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud;

b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

68. Defendants Smith and Carswell knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes, and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices, and courses of business. In engaging in such conduct, Defendants Smith and Carswell acted with scienter; that is, with an intent to deceive, manipulate, or defraud or with a severely reckless disregard for the truth.

69. By reason of the foregoing, Defendants Smith and Carswell, directly and indirectly, have violated and, unless enjoined, will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT IV – FAILURE TO REGISTER AS SECURITIES BROKER

Violations of Section 15(a) of the Exchange Act
[15 U.S.C. § 78o(a)]

(All Defendants)

70. Paragraphs 1 through 56 are hereby re-alleged and incorporated herein by reference.

71. By their conduct as alleged above, during 2013 and 2014, Defendants violated Section 15(a)(1) of the Exchange Act, which makes it unlawful for a broker "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security . . . unless such broker . . . is registered" with the Commission pursuant to Section 15(b) of the Exchange Act or, in the case of a natural person, is associated with a registered broker-dealer.

72. During 2013 and 2014, as alleged above, Defendants Smith, Carswell and Fullard participated in the sale of over $750,000 of securities to multiple investors.

73. Defendants, during that time, actively solicited investors, handled customer funds and securities, and gave advice as to the merits of the investments they offered.

74. During 2013 and 2014, none of the Defendants were registered with the Commission as a broker pursuant to Section 15(b) of the Exchange Act, nor were any of them associated with a registered broker-dealer.

75. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by acting as unregistered brokers.

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendants committed the violations alleged herein.

II.

Permanent injunctions enjoining Defendants Smith and Carswell, their officers, directors, agents, servants, employees, and attorneys from violating, directly or indirectly, Section 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(1), (2) and (3)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a), (b) and (c) thereunder [17 C.F.R. § 240.10b-5(a), (b) and (c)].

III.

Permanent injunctions enjoining Defendants, their officers, directors, agents, servants, employees, and attorneys from violating, directly or indirectly, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

IV.

An order requiring the disgorgement by Defendants of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

V.

An order 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)] imposing civil penalties against all Defendants.

VII.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Commission demands trial by jury in this action of all issues so triable.

Dated this 8th day of November, 2016.

Respectfully submitted,

/s/ W. Shawn Murnahan
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EXHIBIT

B

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

ADMINISTRATIVE PROCEEDING
File No. 3-18265

In the Matter of **JEFFREY D. SMITH, JOSEPH CARSWELL and MICHAEL W. FULLARD** **Respondents.**	**MOTION BY DIVISION OF ENFORCEMENT FOR A FINDING THAT RESPONDENTS JOSEPH CARSWELL AND MICHAEL W. FULLARD ARE IN DEFAULT AND FOR IMPOSITION OF REMEDIAL SANCTIONS**

DECLARATION OF WILLIAM S. DIXON

I, William S. Dixon, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a Senior Counsel in the Division of Enforcement of the U.S. Securities and Exchange Commission ("Commission"). I conducted the Commission's investigation of Jeffrey D. Smith d/b/a Atlanta Capital LLC a/d/b/a Capital Funding, Inc. ("Smith"), Joseph Carswell d/b/a Atlanta Capital LLC a/d/b/a Capital Funding, Inc. ("Carswell"), and Michael W. Fullard (Fullard") (collectively, "the Respondents"), which led to the filing of a complaint against them in the United States District Court for the Northern District of Georgia, and, thereafter, the institution of this matter. The following information is based upon my personal knowledge of facts obtained during the investigation and from a review of the Commission's files in this matter.

2. In 2012 and 2013, Smith and Carswell, using two fictitious companies (Atlanta Capital LLC and Capital Funding, Inc.) raised at least $775,000 from at least four known investors, representing to those investors that Respondents would use investor funds to procure

various instruments (medium term notes, bank guarantees, and standby letters of credit) worth millions of dollars. Fullard acted as a finder for Smith and Carswell, and referred at least one victim investor to them.

3. Investors were told that those instruments would be "monetized," and that several million dollars of monetized proceeds would be loaned to investors in the form of non-recourse loans. Further, investors were told that the balance of the monetized proceeds would be invested in instruments such as debentures, which would be traded in a manner that would produce returns of as much as 35% per week. Investors were also told that those returns would be used to pay off the investors' loans, and that the transactions were risk-free.

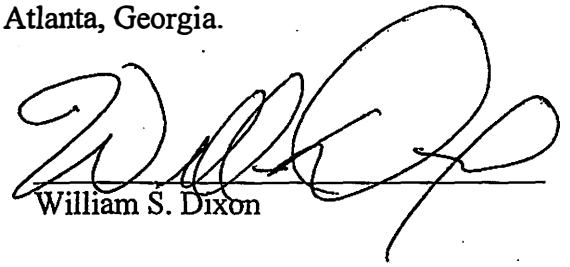
4. As part of the investigation that led to filing the District Court action against Smith, Carswell and Fullard, I reviewed bank and escrow records that reflected the receipt of investor funds from the scheme alleged in the District Court action. After money was received from investors, it was disbursed to Respondents and individuals or entities connected to them, sometimes just hours after it was received. I could not find any evidence that investor funds were used to purchase or invest in any instruments.

5. None of the investors received the rates of return that they were promised by Smith or Carswell. None of the investors received loans from Respondents. Moreover, none of the investors were successful in recovering more than a small portion of their investment proceeds from Respondents. Their transactions were not risk-free.

6. On November 8, 2016, a Complaint for Injunctive and Other Relief was filed against Smith, Carswell and Fullard, and, on October 11, 2017, a Final Judgment was entered by default against them. A corrected Final Judgment was entered on December 20, 2017.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on February 26, 2018, at Atlanta, Georgia.



William S. Dixon

EXHIBIT

C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **JEFFERY D. SMITH d/b/a ATLANTA CAPITAL LLC a/d/b/a CAPITAL FUNDING, INC., JOSEPH CARSWELL d/b/a ATLANTA CAPITAL LLC a/d/b/a CAPITAL FUNDING, INC., and MICHAEL W. FULLARD,** **Defendants.**	**Civil Action No. 1:16-CV-4171-TWT**

FINAL JUDGMENT AS TO DEFENDANTS SMITH, CARSWELL AND FULLARD

The Clerk of the Court having entered a default against Defendants Jeffery D. Smith, d/b/a Atlanta Capital LLC a/d/b/a Capital Funding, Inc. ("Defendant Smith"), Joseph Carswell, d/b/a Atlanta Capital LLC a/d/b/a Capital Funding, Inc. ("Defendant Carswell"), and Michael W. Fullard ("Defendant Fullard") (collectively, "the Defendants"); the Securities and Exchange Commission (the

"Commission") having filed a Motion for Default Judgment Against Defendants with supporting memorandum of law; and for good cause shown:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants Smith and Carswell are permanently restrained and enjoined from e violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b)e to obtain money or property by means of any untrue statement of ae material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c)e to engage in any transaction, practice, or course of business whiche operates or would operate as a fraud or deceit upon the purchaser

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

(A) any investment strategy or investment in securities,

(B) the prospects for success of any product or company,

(C) the use of investor funds, e

(D) compensation to any person, or

(E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Smith and Carswell are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state aa material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; ora

(c)a to engage in any act, practice, or course of business which operates ora would operate as a fraud or deceit upon any persona

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or

information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

(A) any investment strategy or investment in securities,

(B) the prospects for success of any product or company,

(C) the use of investor funds,

(D) compensation to any person, or

(E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Smith, Carswell and Fullard are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by effecting any transactions in, or inducing or attempting toe induce the purchase or sale of, any security without registering with thee Commission.e

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph alsoe binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS HE EBY FURTHER ORDERED, ADJUDGED, AND DECREED that (1) Defendant Smith is liable for disgorgement of $355,520.00, representing the profit gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $59,995.31, for a total

disgorgement amount of $415,245.31. Defendant Smith is further liable for a civil penalty in the amount of $ 100,000.00 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u(3)(B). Defendant Smith shall satisfy this obligation by paying a total of $515,245.31 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment; (2) Defendant Carswell is liable for disgorgement of $132,570.00, representing the profit gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $22,388.69, for a total disgorgement amount of $154,958.69. Defendant Carswell is further liable for a civil penalty in the amount of $ 100,000.00 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u(3)(B). Defendant Carswell shall satisfy this obligation by paying a total ofa $254,958.69 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment; and (3) Defendant Fullard is liable for disgorgement of $23,000.00, representing the profit gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $3,884.27, for a total disgorgement amount of $26,884.27. Defendant Fullard is further liable for a civil penalty in the amount of $ 5,000.00 pursuant to Section 21A of the

Exchange Act [15 U.S.C. § 78u(3)(B). Defendant Fullard shall satisfy this obligation by paying a total of $31,884.27 to the Securities and Exchangea Commission within 14 days after entry of this Final Judgment.

Payment may be transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment maya also be made directly from a bank account or by credit or debit card via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Payment may also be made by certified check, bank cashier's check, or United States postala money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard a
Oklahoma City, OK 73169 a

and shall be accompanied by a letter identifying the case title, civil action number, and name of the Court; the respective Defendant's name (Jeffery D. Smith d/b/a Capital Funding, Inc., or Joseph Carswell, d/b/a Atlanta Capital LLC a/d/b/a Capital Funding, Inc., or Michael W. Fullard) as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Each defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendants. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VI.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: October 11, 2017

Thomas W. Thrash

HONORABLE THOMAS W. THRASH
UNITED STATES DISTRICT JUDGE

EXHIBIT

D

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **JEFFERY D. SMITH d/b/a ATLANTA CAPITAL LLC a/d/b/a CAPITAL FUNDING, INC., JOSEPH CARSWELL d/b/a ATLANTA CAPITAL LLC a/d/b/a CAPITAL FUNDING, INC., and MICHAEL W. FULLARD,** **Defendants.**	**Civil Action No. 1:16-CV-4171-TWT**

CORRECTED FINAL JUDGMENT AS TO DEFENDANTS SMITH, CARSWELL AND FULLARD

The Clerk of the Court having entered a default against Defendants Jeffery D. Smith, d/b/a Atlanta Capital LLC a/d/b/a Capital Funding, Inc. ("Defendant Smith"), Joseph Carswell, d/b/a Atlanta Capital LLC a/d/b/a Capital Funding, Inc. ("Defendant Carswell"), and Michael W. Fullard ("Defendant Fullard") (collectively, "the Defendants"); the Securities and Exchange Commission (the

"Commission") having filed a Motion for Default Judgment Against Defendants with supporting memorandum of law; and for good cause shown:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants Smith and Carswell are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

(A) any investment strategy or investment in securities,

(B) the prospects for success of any product or company,

(C) the use of investor funds,

(D) compensation to any person, or

(E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Smith and Carswell are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) 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

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person

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information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

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III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Smith, Carswell and Fullard are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security without registering with the Commission.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that (1) Defendant Smith is liable for disgorgement of $355,520.00, representing the profit gained as a result of the conduct alleged in the Complaint,

together with prejudgment interest thereon in the amount of $59,995.31, for a total disgorgement amount of $415,515.31. Defendant Smith is further liable for a civil penalty in the amount of $100,000.00 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u(3)(B)]. Defendant Smith shall satisfy this obligation by paying a total of $515,515.31 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment; (2) Defendant Carswell is liable for disgorgement of $132,570.00, representing the profit gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $22,388.69, for a total disgorgement amount of $154,958.69. Defendant Carswell is further liable for a civil penalty in the amount of $100,000.00 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u(3)(B)]. Defendant Carswell shall satisfy this obligation by paying a total of $254,958.69 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment; and (3) Defendant Fullard is liable for disgorgement of $23,000.00, representing the profit gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $3,884.27, for a total disgorgement amount of $26,884.27. Defendant Fullard is further liable for a civil penalty in the

amount of $5,000.00 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u(3)(B)]. Defendant Fullard shall satisfy this obligation by paying a total of $31,884.27 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Payment may be transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account or by credit or debit card via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Payment may also be made by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of the Court; the respective Defendant's name (Jeffery D. Smith d/b/a Capital Funding, Inc., or Joseph Carswell, d/b/a Atlanta Capital LLC a/d/b/a

Capital Funding, Inc., or Michael W. Fullard) as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Each defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendants. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VI.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated:December 20, 2017

/s/Thomas W. Thrash
HONORABLE THOMAS W. THRASH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on February 26, 2018, I caused the foregoing **MOTION BY DIVISION OF ENFORCEMENT FOR A FINDING THAT RESPONDENTS JOSEPH CARSWELL AND MICHAEL W. FULLARD ARE IN IN DEFAULT AND FOR IMPOSITION OF REMEDIAL SANCTIONS** to be served on the following persons by the method of delivery indicated below:

By UPS and email:

Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2585
Washington, D.C. 20549-2585

By UPS and facsimile

Secretary Brent J. Fields
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

By UPS

Mr. Jeffrey D. Smith
[redacted]
Lithonia, Georgia [redacted]

Mr. Joseph Carswell
901 Roswell Street
Marietta, Georgia 30060

Mr. Michael W. Fullard
[redacted]
Apartment [redacted]
Sedona, Arizona [redacted]

Robert F. Schroeder