

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**FIRAS A. HAMDAN, Individually and
Doing Business as FAH CAPITAL PARTNERS,**

Defendant,

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Case No.: 4:13-CV-215

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the “Commission”), files this Complaint and seeks emergency relief to halt an ongoing offering fraud conducted by Defendant, Firas A. Hamdan, individually and doing business as FAH Capital Partners (collectively, “Hamdan”), and alleges:

SUMMARY

1. Since 2007, Hamdan has illegally raised at least \$6.1 million from at least 33 investors by offering and selling fraudulent investments based on highly exaggerated claims about his prowess as a day trader in listed securities. Hamdan has targeted the fraud at fellow members of Houston’s Lebanese and Druze communities. Hamdan pitched his program by telling potential investors that he would pool their funds with his own funds, and those of other investors, in a brokerage account. He claimed that he would then use the combined funds to day trade using a proprietary algorithm that had proven success and limited risk and pay them guaranteed fixed annual returns of 30% or more. To lure investors, Hamdan used, among other

things, false brokerage documents allegedly demonstrating his past success. He also assured potential investors their principal was fully secured. However, the claims Hamdan made to entice investors and his promises of limited risk guaranteed returns were pure fiction.

2. To support his claims of the past success and limited risk of his program, Hamdan made several false claims to potential investors. For example: (a) he shared falsified TD Ameritrade, Inc. (“TD Ameritrade”) brokerage records that drastically overstated his trading gains and assets under management; (b) he lied to investors about the existence and use of a so-called cash reserve account (“Cash Reserve Account”) that limited his at-risk capital; (c) he falsely represented to potential investors that their investment was secured by a \$5 million “key-man” insurance policy issued by Northwestern Mutual Life Insurance Co. (“Northwestern Mutual”); and (d) he falsely claimed that at least one well-known Dallas hedge-fund manager had made a million-dollar investment in the MPP and had promised to invest more.

3. Although Hamdan did day trade at least some of the investors’ funds in his brokerage account, he was anything but successful. Between 2007 and 2011, during most of which time he continued to raise funds from investors, Hamdan lost almost \$1.5 million through trading activity. His trading patterns show that he lost money consistently throughout these years and thus could not have generated sufficient returns to fund the monthly distributions he was making to investors.

4. Despite his tremendous losses, Hamdan continued to solicit new money from investors throughout 2012. Starting as early as 2009, however, some investors stopped receiving returns and it appears Hamdan stopped paying any returns by October 2011. Throughout the remainder of 2011 and 2012, Hamdan continually provided various false excuses to investors for

his failure to pay promised returns, even as he continued to solicit new funds. Hamdan received new funds from existing investors at least as recently as January 2012, and in December 2012, told investors he was expecting up to \$700,000 in investments to start a new trading venture.

5. By engaging in the conduct described in this Complaint, Hamdan has engaged in a fraudulent scheme and has made materially false and misleading statements, in connection with the purchase of securities, and thus has violated and may be continuing to violate, the anti-fraud provisions of the federal securities laws, including specifically Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

6. The Commission asks the Court to enter: (1) a temporary, preliminary, and permanent injunction restraining and enjoining Hamdan; (2) an order directing Hamdan to disgorge all ill-gotten gains, with prejudgment interest; and (3) an order directing Hamdan to pay civil penalties.

JURISDICTION AND VENUE

7. The investments offered and sold by Hamdan are “securities” under Section 2(1) of the Securities Act [15 U.S.C. § 77(b)1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c(a)(10)].

8. The Commission brings this action under the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] to temporarily, preliminarily, and permanently enjoin Hamdan from future violations of the federal securities laws.

9. This Court has jurisdiction over this action under Section 22(a) of the Securities Act of 1933 [15 U.S.C. § 77v(a)] and Section 27 of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78u(e) and 78aa].

10. Hamdan has, directly or indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, transactions, practices, and courses of business described in this Complaint.

11. Venue is proper in this district because certain of the acts, transactions, practices, and courses of business constituting the violations alleged in this Complaint occurred in the Southern District of Texas and certain of the victims are located in this district.

PARTIES

12. Firas A. Hamdan, age 49, resides in Houston, Texas. His last known residence is 1407 Meadow Rue Court, Sugar Land, Texas 77479. Hamdan does business under the name of FAH Capital Partners, although FAH Capital Partners is not registered with the State of Texas as an entity or D/B/A.

STATEMENT OF FACTS

I. The Defendant

13. Hamdan is well-known in the Houston-area Lebanese and Druze communities and has enjoyed a reputation as a successful day trader. He is also a former treasurer of the Houston branch of the American Druze Society (“ADS”), a non-profit cultural organization to which many Houston-area members of the Druze religion belong.

II. The Managed Private Portfolio

14. Beginning in approximately June 2007, Hamdan started operating a trading vehicle with investors' funds, which he describes as a managed private portfolio ("MPP"). According to Hamdan, the MPP eventually had a total of 33 investors, and as of December 2012, the MPP had 29 investors. Hamdan told the Commission staff that the MPP's 33 investors invested a total of approximately \$6.1 million with him, but as of December 2012, all investor funds were depleted. Hamdan estimated that approximately \$3 million of the \$6.1 million total funds invested had been paid back to investors; \$100,000 had been "loaned" to him for his personal living expenses; \$1.5 million represented market losses; and the remaining \$1.5 million could not be accounted for. The Commission staff has not been able to verify these statements by Hamdan, but for purposes of this Complaint, assumes that he had at least \$6.1 million under management, raised money from at least 33 investors and that he cannot account for at least \$1.5 million.

15. Hamdan found investors for the MPP, among other ways, by talking with his friends and family, particularly those in the Houston Lebanese and/or Druze communities. As word of his purported success began to spread, he began to solicit and accept investments from friends of friends and friends of family. He also encouraged existing investors to solicit their friends and family as new investors, and paid at least one investor a "finder's fee" for identifying a new investor. It is believed that most of Hamdan's investors are of Lebanese descent and/or members of the Druze religion.

16. Hamdan told investors that he had developed a proprietary trading algorithm to target consistent returns while minimizing risk for the MPP investors. Hamdan explained to investors that his algorithm was "plugged into" his trading account at TD Ameritrade to further

minimize investor loss. Hamdan promised investors that, as a result of this algorithm, he could guarantee the fixed monthly return based on the amount they invested with him. Hamdan told investors that he would keep all trading profits he made in excess of the agreed monthly distribution and that he would also cover any losses below the agreed monthly distribution.

17. Once investors agreed to make their investments, Hamdan and the investor would execute “secured promissory notes” for the principal balance of each investment. Under the promissory notes, Hamdan agreed to pay the investor a fixed monthly distribution for the life of the note, and agreed that the last monthly distribution payment would include the investors’ principal amount. Although the precise terms of the notes appear to vary among investors, the notes generally provide for returns of approximately 30% per year. In addition, in the promissory notes, Hamdan expressly acknowledged that the investor’s money was for an investment in the MPP and that he was prohibited from using the investment proceeds to make the monthly distributions to investors.

18. After the promissory notes were executed, it was Hamdan’s general practice to instruct investors to wire their principal investment to his personal bank accounts at either Bank of America or Chase Bank or his brokerage account at TD Ameritrade. It was then Hamdan’s general practice to transfer most of the investor funds to his personal brokerage accounts at either TD Ameritrade or Interactive Brokers, LLC (“Interactive Brokers”). It appears Hamdan would conduct all of his trading activity under his own name, rather than FAH or the names of individual investors.

19. Hamdan maintained and traded through his personal brokerage account at TD Ameritrade from 1996 until May 2011. According to Hamdan, TD Ameritrade closed his

account in May 2011 “because of monitoring activity.” At the time Hamdan left TD Ameritrade, his account had a balance of \$.02. After leaving TD Ameritrade, he opened an account with Interactive Brokers in June 2011 with a balance of \$200,000, but according to Hamdan that account was later closed after he was asked to leave the brokerage firm. At the time Hamdan left Interactive Brokers in November 2011, his account had negative \$6.98 balance.

20. Brokerage records maintained by TD Ameritrade for Hamdan’s account confirm that he traded a significant volume of stocks in his 2007 to 2011, but also show that, contrary to his claims, he was not a successful trader. Hamdan appears to have deposited about \$4.5 million of the \$6.1 million total investor funds into his TD Ameritrade account, but as reflected in the chart below, he experienced a \$1.4 million trading loss from 2007 to 2011:

Year	Trading Gain/(Loss)
2007	\$ (209,270.81)
2008	\$ 293,842.62
2009	\$ (437,048.82)
2010	\$ (437,431.16)
2011	\$ (601,597.12)
Total	\$ (1,391,505.29)

III. Hamdan Entices Investors by Making Various False Representations

A. Hamdan Shows Investors Falsified Brokerage Account Statements

21. To solicit investments in the MPP, Hamdan engaged in a series of fraudulent misrepresentations. Hamdan would solicit potential investors by showing them documents that purported to be from his TD Ameritrade brokerage account. These documents reflected that Hamdan had a consistent history of significant profits and significant assets under investment. The actual TD Ameritrade records obtained by the Commission staff show that Hamdan was unable to generate consistent positive returns, and routinely lost money.

22. A side-by-side comparison of Hamdan’s authentic TD Ameritrade records to the records provided by Hamdan to investors show that Hamdan altered the authentic records before providing them to investors. For example, Hamdan provided investors with a document that he alleged was a statement received from TD Ameritrade for the first quarter of 2010. As reflected in the document excerpts below, this document listed an opening cash balance of \$2,327,970.76, quarterly trading gains of \$2.7 million, and a closing cash balance of \$5,148,210.02 for the first quarter of 2010. The actual first quarter 2010 statement provided to the Commission staff by TD Ameritrade, however, shows an opening cash balance of \$27,970.76, quarterly trading losses of \$(7,452.80), and a closing cash balance of only \$148,210.02. Accordingly, it appears that Hamdan altered a copy of the actual statement, among other ways, by adding “2,3” to the front of the opening cash balance and a “5” to the front of the closing cash balance.

Excerpt of fake first quarter 2010 TD Ameritrade statement provided to investors by Hamdan

Cash Activity Summary		
	Current	YTD
Opening Balance	\$2,327,970.76	\$2,327,970.76
Securities Purchased	(349,658,662.81)	(349,658,662.81)
Securities Sold	352,384,815.10	352,384,815.10
Funds Deposited	80,000.00	80,000.00
Funds Disbursed	-	-
Income	14,101.20	14,101.20
Expense	(14.24)	(14.24)
Other	-	-
Closing Balance	\$5,148,210.02	\$5,148,210.02

Excerpt of real first quarter 2010 TD Ameritrade statement for Hamdan’s account

Cash Activity Summary		
	Current	YTD
Opening Balance	\$27,970.76	\$27,970.76
Securities Purchased	(49,658,662.81)	(49,658,662.81)
Securities Sold	49,651,210.01	49,651,210.01
Funds Deposited	240,000.00	240,000.00
Funds Disbursed	(112,297.48)	(112,297.48)
Income	3.78	3.78
Expense	(14.24)	(14.24)
Other	-	-
Closing Balance	\$148,210.02	\$148,210.02

23. Similarly, Hamdan provided potential investors a purported TD Ameritrade statement for the second quarter of 2012 that listed an opening cash balance of \$5,148,210.02, quarterly trading gains of \$4.2 million, and a closing cash balance of \$6,927,168.88 for the second quarter of 2010. The actual TD Ameritrade statement for the second quarter of 2010

reflects significantly different figures. It shows an opening cash balance of \$148,210.02, quarterly trading losses of \$(167,329.50), and a closing cash balance of only \$53.71, almost \$7 million less than the balance provided by Hamdan in the falsified statement.

Excerpt of fake second quarter 2010 TD Ameritrade statement provided to investors by Hamdan

Cash Activity Summary		
	Current	YTD
Opening Balance	\$5,148,210.02	\$2,327,970.76
Securities Purchased (867,589,432.10)	(1,217,248,049.91)	
Securities Sold	871,699,521.19	1,224,084,336.29
Funds Deposited	350,000.00	430,000.00
Funds Disbursed	(2,700,000.00)	(2,700,000.00)
Income	18,921.82	33,023.03
Expense	(52.05)	(66.29)
Other	-	-
Closing Balance	\$6,927,168.88	\$6,927,168.88

Excerpt of real second quarter 2010 TD Ameritrade statement for Hamdan's account

Cash Activity Summary		
	Current	YTD
Opening Balance	\$148,210.02	\$27,970.76
Securities Purchased (132,163,139.28)	(181,821,802.09)	
Securities Sold	131,995,809.78	181,647,019.79
Funds Deposited	128,000.00	368,000.00
Funds Disbursed	(108,800.00)	(221,097.48)
Income	25.24	29.02
Expense	(52.05)	(66.29)
Other	-	-
Closing Balance	\$53.71	\$53.71

24. As further proof of his trading success, Hamdan provided potential investors with his purported TD Ameritrade Realized Capital Gain/Loss Reports from 2007 to 2010. These reports, which were on TD Ameritrade letterhead, purported to show that Mr. Hamdan experienced trading profits of \$3,964,810.79 in 2007, \$5,718,079.31 in 2008, \$7,412,012.51 in 2009, and \$14,119,486.45 in 2010. In reality, actual TD Ameritrade Realized Capital Gain/Loss Reports from 2007 to 2010 provide that Hamdan had trading profits of -\$171,046.70 in 2007, \$279,605.51 in 2008, -\$430,004.86 in 2009, and -\$475,155.53 in 2010. In other words, Hamdan appears to have exaggerated his trading prowess to potential investors by several million dollars.

B. Hamdan Falsely Represents That He Maintains a Cash Reserve Account

25. To further lure investors, starting in 2007, Hamdan represented to investors both before and after they invested that he maintained a separate Cash Reserve Account in which he

kept two-thirds of his available capital at all times. Hamdan would tell investors that, as a result, on a given trading day, he was trading with only one-third of his available capital, giving investors assurance that their capital would not be put at significant risk. However, there is no evidence of any Cash Reserve Account under either Hamdan's or FAH's names, and the Commission staff has concluded that, in all likelihood, such an account does not exist.

C. Hamdan Falsely Represented That Investments Are Secured By an Insurance Policy

26. Starting in 2007, Hamdan represented to potential, new and existing investors, and some of the promissory notes reviewed by the Commission's staff provide, that investors' funds were secured with beneficiary rights in a \$5 million key man insurance policy held by Hamdan at Northwestern Mutual. However, Northwestern Mutual records show that although Northwestern had entered into a life insurance *contract* with Hamdan, no beneficiaries were listed in the contract and the *policy* was never issued. The contract was terminated by Northwestern Mutual on February 21, 2011.

D. Hamdan Falsely Represented That J. Kyle Bass Was an Investor

27. Starting in at least 2010, Hamdan also enticed investors by representing to them that he had received a \$1 million investment from J. Kyle Bass, the founder and principal of Hayman Capital LP ("Hayman Capital"), a well-known Dallas-based hedge fund. Further, Hamdan told investors that Mr. Bass had agreed to place a second \$1 million under investment if Hamdan continued to successfully generate the promised returns. Despite these claims, representatives of Mr. Bass have confirmed that that Mr. Bass has no knowledge of either Hamdan or FAH and Mr. Bass never invested with Hamdan, either individually or through Hayman Capital.

IV. Hamdan's Scheme Begins To Unravel

28. Based on his consistent trading losses and the Commission's staff's understanding of the returns Hamdan did pay to investors, Hamdan could not have paid investors from profits generated through his trading activity or through the remaining investor principal balance. Instead, it appears that he used new investor funds to make the required monthly distribution payments. It appears that Hamdan stopped paying some investors as early as 2009, and last paid any returns in the fall of 2011.

29. After Hamdan stopped making all monthly distribution payments in the fall of 2011, Hamdan began offering several excuses as to why he could no longer make the distribution payments or access the purported Cash Reserve Account. Hamdan told investors that he held an account at the commodities brokerage firm MF Global that he used as collateral for a credit default swap on Greek sovereign debt that he had purchased through an account he held at Goldman Sachs. Hamdan told investors that after MF Global filed for bankruptcy in or about October 2011, Goldman Sachs asked him to re-collateralize the debt using his TD Ameritrade trading account as collateral and that, as a result, he was unable to remove the funds from his TD Ameritrade account. Further, on December 8, 2011, Hamdan sent an email to his investors addressing the lack of customer distributions, explaining that the MF Global bankruptcy had frozen his cash reserve account and that this was preventing him from making regular distribution payments. All of these statements and excuses were a complete fiction. In December 2012, Hamdan informed the Commission's staff that he has never held accounts with MF Global or Goldman Sachs. MF Global and Goldman Sachs have also confirmed that no such accounts exist.

30. In the summer of 2012, Hamdan represented to investors that he was being sued in federal court in Dallas, Texas by Kyle Bass of Hayman Capital and that his trading account was therefore “locked up,” preventing him from making monthly distribution payments to investors. However, there is no record of, and Hayman Capital has confirmed, that neither Mr. Bass nor Hayman Capital was ever involved in any lawsuit with Hamdan.

V. Hamdan Has Continued to Solicit Investments

31. Even after Hamdan stopped paying monthly returns in the fall of 2011, he continued to solicit new funds from existing investors in his promissory note scheme. In January 2012, he received a \$25,000 additional investment from an existing investor. Throughout 2012, Hamdan sent at least one investor text messages, discussing his solicitation of new investments. He also told another investor’s counsel that he was anticipating a new investment of \$700,000 from overseas investors, which he said he would use for a new trading program.

32. On or about December 21, 2012, upon being contacted by the Commission staff, Hamdan promised in writing that he would stop soliciting any funds of any kind from existing and potential investors. However, in specific contradiction to his representations, Hamdan immediately started soliciting new funds from current investors, purportedly to fund his legal defense. Most recently, Hamdan has continued to lie to investors by telling them he is unable to make monthly distribution payments because he is under investigation by the Commission.

CLAIMS

FIRST CLAIM
Violations of Section 17(a) of the Securities Act

33. The Commission repeats and incorporates paragraphs 1 through 32 of this Complaint as if set forth verbatim.

34. Hamdan, directly or indirectly, singly, in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, has: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which he were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

35. Hamdan engaged in the above-referenced conduct, knowingly or with severe recklessness. Hamdan was also negligent in his actions regarding the representations and omissions alleged herein.

36. For these reasons, Hamdan violated, and unless restrained and enjoined, will continue to violate Section 17(a) of the Securities Act.

SECOND CLAIM
Violation of Section 10(b) of the Exchange Act and Rule 10b-5

37. The Commission repeats and incorporates paragraphs 1 through 32 of this Complaint by reference.

38. Hamdan, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (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 operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

39. Hamdan engaged in the above-referenced conduct, intentionally, knowingly or with severe recklessness regarding the truth.

40. For these reasons, Hamdan violated and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

RELIEF REQUESTED

The Commission seeks the following relief:

- 1) An order of the Court that temporarily, preliminarily, and permanently restrains and enjoins Hamdan, and, as appropriate, his agents, servants, employees, attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act, Section 10(b) the Exchange Act, and of Rule 10b-5 and from directly or indirectly soliciting or accepting funds from any person or entity for any unregistered offering of securities.
- 2) An order of the Court directing Hamdan to disgorge an amount equal to the funds and benefits he obtained illegally as a result of the violations alleged, plus prejudgment interest on that amount.
- 3) An order of the Court directing Hamdan to pay civil monetary penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for his violations of the federal securities laws.

- 4) Such further relief as this Court may deem just and proper.

Dated: January 29, 2013

Respectfully Submitted,

s/ Bret Helmer

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