

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9373 / December 6, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 68373 / December 6, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30294 / December 6, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15125

In the Matter of

David R. Smith,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES
ACT OF 1933, SECTIONS 15(b) and 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933, Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against David R. Smith (“Smith” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the

Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

These proceedings arise out of Smith’s role in selling IV Capital, a Ponzi scheme investment. Between 2006 and 2009, Smith raised at least \$2.6 million from 8 investors and earned at least \$139,000 in commissions from selling IV Capital. In March 2011, the Commission brought an action relating to IV Capital, Ltd. (“IV Capital”) alleging that Larry Michael Parrish, a recidivist, operated a Ponzi scheme through his trading company IV Capital from November 2005 through October 2009 which raised \$9.2 million from at least 70 investors across the country for purported trading in commodities, stocks, and options. Smith acted as an unregistered broker for IV Capital. Smith also negligently ignored numerous red flags of fraud when selling the IV Capital investment to his investors.

Respondent

1. David R. Smith, age 35, is currently a resident of Seattle, Washington. He was the co-owner of S&Y Strategies, Inc. (“S&Y”), which handled investors’ funds that had been invested in IV Capital. Smith is not registered with the Commission as a broker-dealer or investment adviser and is not associated with a registered broker-dealer or investment adviser, but he acted as an unregistered broker in selling the IV Capital investments.

Other Relevant Entities and Individuals

2. **IV Capital, Ltd. (“IV Capital”)** is a Nevis corporation owned and managed by Parrish. IV Capital purported to be a proprietary trading company with traders in the U.S. and U.K. IV Capital has never registered with the Commission. The Commission brought a federal court action against Parrish on March 7, 2011 alleging that IV Capital was a Ponzi scheme. The Commission obtained a default judgment against Parrish on September 25, 2012.

3. **S&Y Strategies LLC (“S&Y”)** is a Nevada LLC that was owned and operated by Smith and a partner. S&Y was involved in the entertainment industry, and also handled funds in connection with Smith acting as a broker for the IV Capital investment. S&Y has never registered with the Commission.

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

4. **Richard Dalton (“Dalton”)**, age 65, is a resident of Golden, Colorado. Dalton was the Director of Finance, general manager and only employee of Universal Consulting Resources, LLC (“UCR”). Dalton never registered with the Commission as a broker-dealer or investment adviser and was not associated with a registered broker-dealer or investment adviser. The Commission brought a federal court action against Dalton and UCR on November 16, 2010 and received a default judgment against him on December 7, 2011. SEC v. Universal Consulting Resources and Richard Dalton, 10-cv-2794-REB-KLM (D. Colo). Dalton is currently in federal custody awaiting his criminal trial in connection with his UCR Ponzi scheme.

5. **Larry Michael Parrish (“Parrish”)**, age 47, is a resident of Walkersville, Maryland. Parrish was the President and sole Director of IV Capital, Ltd. The Commission brought an action against Parrish in connection with his IV Capital Ponzi scheme on March 7, 2011 and the Court granted the Commission’s motion for default judgment on September 25, 2012. SEC v. Larry Michael Parrish, Civil Action No. 11-cv-00558-WJM-MJW (D. Colo.). Parrish is now out on bond awaiting his criminal trial in connection with his IV Capital Ponzi scheme. Previously, in April 2005, the Commission alleged that Parrish and others engaged in another fraudulent scheme which raised \$8.2 million from investors. In May 2005, Parrish consented to a preliminary injunction and an asset freeze, under which he returned \$7.5 million to investors. In May 2007, Parrish consented to a permanent injunction and administrative order barring him from associating with any broker or dealer with the right to reapply after at least five years.

6. **John “Jay” O. Young (“Young”)**², age 69, is a resident of Superior, Colorado. Young is not registered with the Commission as a broker-dealer or investment adviser and is not associated with a registered broker-dealer or investment adviser, but he acted as an unregistered broker in selling the IV Capital and UCR investments.

Facts

7. In 2005, Smith was approached by Young, a family friend, who told him about the IV Capital investment and asked him whether he would be interested in investing. Dalton had introduced Young to Parrish around 2005 and Young had spoken with Parrish about the investment. In 2005, Smith was working as an assistant golf professional in California and had insufficient funds to invest in IV Capital. Smith had no prior investment experience. Young introduced Smith to Dalton, who was acting as a sales agent for IV Capital at that time.

8. Smith had a series of additional conversations about IV Capital with Young and Dalton in 2005 and 2006, and they suggested that Smith could market the IV Capital investment to potential investors and receive a commission for any sales. Smith started selling the IV Capital investment in 2006.

² Jay Young is the subject of a separate litigated Commission enforcement action being brought at the same time as this action against Smith.

9. Between 2006-2008, Smith recruited 8 investors into the IV Capital Ponzi scheme. These investors invested over \$2.6 million in IV Capital. Smith sold the IV Capital investment to them, and he encouraged his investors to find other new potential investors.

10. When Smith discussed IV Capital with potential investors, he explained the basics of the purported investment to them, including that it involved trading by a highly experienced trader, investor funds were held in escrow, the investment had minimal risk, and investors were guaranteed a return of 2.5 % per month. Smith also provided investors with various investment documents and forwarded those documents to Parrish.

11. Smith also recommended the investment to some investors, describing its strong performance history and its safety.

12. Smith's investors generally sent their money directly to IV Capital to make an investment. In 2006 and 2007, Smith's investors received their monthly earning payments from Dalton.

13. At the end of 2007, Dalton told Smith that he no longer wanted to be involved with IV Capital, and Smith took over making monthly payments to his own investors. Smith formed an entity, S&Y Strategies LLC, to handle return payments to investors. IV Capital would send him the monthly returns for his investor group, and he would then send the profit payments to the individual investors.

14. Smith paid out over \$450,000 to IV Capital investors from 2007 through 2009. Smith also prepared monthly statements for investors.

15. Smith was compensated for his work in soliciting investors for IV Capital and handling the payout of profits. On a monthly basis, Smith was paid 20% of his investors' earnings as a commission. In addition, Young also had a compensation arrangement with Smith to compensate him for his role in introducing Smith to Parrish. Specifically, Young received 30% of the all the commission payments received by Smith every month from Parrish. After paying 30% of his commission payments to Young, Smith earned approximately \$139,000 between 2007 and 2009. These payments represented the majority of Smith's income between 2007 and 2009.

16. Smith sent monthly emails to Parrish telling him the commissions he was owed and the amount his investors were owed. Smith prepared a spreadsheet for Parrish detailing these calculations based on the purported rate of return Parrish told him IV Capital had earned in any particular month.

17. Smith also negligently ignored red flags of fraud when selling the IV Capital investment. To begin with, Smith ignored the unreasonably high rates of return and commissions guaranteed by IV Capital, which Smith testified made him concerned that the investment was "too good to be true." Smith also ignored: a) Parrish's refusal to provide any

detailed information about the trades being made to support the high guaranteed monthly profits, b) the fact that IV Capital never produced any monthly or yearly statements documenting his clients' investments, and c) that Parrish required him to prepare a spreadsheet every month for calculating what his investors were owed. Finally, after one of Smith's investors alerted Smith to a 2005 Commission complaint against Parrish, Smith negligently dismissed that concern after Parrish denied he was the same Parrish named in the Commission complaint. In that action, SEC v. Larry Michael Parrish, et al., 05 Civ. 1031 (D. Md.), the Commission had obtained a temporary restraining order against Parrish in April 2005. The Commission's complaint alleged that Parrish and others raised approximately \$8.2 million through the sale of fictitious prime bank debt instruments. In a follow-on Administrative Proceeding, Parrish consented to a bar from association with any broker or dealer with the right to reapply after five years.

18. At the time of the offers and sales of the securities in the IV Capital program, there were no registration statements filed and in effect for them. No registration exemption applied to the IV Capital securities.

19. As a result of the conduct described above, Smith willfully³ violated Sections 17(a)(2) and (a)(3) of the Securities Act, which prohibit negligent conduct in the offer or sale of securities.

20. As a result of the conduct described above, Smith willfully violated Section 15(a) of the Exchange Act, which makes it unlawful for any broker or dealer to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security, unless such broker or dealer is registered or associated with a registered broker-dealer.

21. As a result of the conduct described above, Smith willfully violated Sections 5(a) and (c) of the Securities Act, which makes it unlawful for any person, directly or indirectly, to sell or to offer to sell a security for which a registration statement is not filed or not in effect or there is not an applicable exemption from registration.

Disgorgement and Civil Penalties

22. Respondent has submitted a sworn Statement of Financial Condition dated August 3, 2012 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest.

23. Respondent has submitted a sworn Statement of Financial Condition dated August 3, 2012 and other evidence and has asserted his inability to pay a civil penalty.

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

IV.

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

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

A. Respondent Smith cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), 17(a)(2) and 17(a)(3) of the Securities Act, and Section 15(a) of the Exchange Act.

B. Respondent Smith be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor or principal underwriter;

Barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for the purposes of issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock;

With the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Smith will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

- D. Respondent shall pay disgorgement of \$139,407 and prejudgment interest of \$19,234, but that payment of such amount is waived based upon Respondent's sworn representations in his Statement of Financial Condition dated August 3, 2012 and other documents submitted to the Commission.
- E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.
- F. Based upon Respondent's sworn representations in his Statement of Financial Condition dated August 3, 2012 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

By the Commission.

Elizabeth M. Murphy
Secretary