

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73226 / September 25, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31266 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16175

In the Matter of

**Kenneth C. Meissner, James
Doug Scott, and Mark S.
“Mike” Tomich,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934 AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940**

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 Sections 15(b) 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 Kenneth C. Meissner (“Meissner”), James Doug Scott (“Scott”), and Mark S. “Mike” Tomich (“Tomich”) (collectively “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. This proceeding arises from a multi-million dollar investment scheme orchestrated by Gary Snisky (“Snisky”). From August 2011 to January 2013, Snisky raised approximately \$4.3 million from at least 40 investors across at least eight states through the sale of membership interests in Arete, LLC (“Arete”) and other LLCs he controlled. Snisky recruited active insurance agents to solicit prospective investors. These salespeople promised investors no-risk, profitable

alternatives to traditional annuities by offering investments in government agency bonds that were backed by the full faith and credit of the United States Government. However, Snisky never made any legitimate investments with investor funds. Instead, Snisky misappropriated approximately \$2.8 million of investor funds, mostly through cash withdrawals. He also used these funds to pay commissions to the salespeople and for his personal expenditures.

2. Three of these salespeople – Meissner, Scott and Tomich – raised more than \$1.47 million from investors to invest with Snisky and received more than \$87,000 in commissions. Meissner, Scott and Tomich directly or indirectly solicited current and prospective insurance clients for investments, advised prospective investors on the specific details and merits of the investments, received transaction-based compensation for bringing in money from investors, and participated at key points in the investment chain. None of the three was registered with the Commission as a broker or associated with a registered broker-dealer during this time. Accordingly, Meissner, Scott and Tomich violated Section 15(a) of the Exchange Act by effecting transactions as an unregistered broker.

RESPONDENTS

3. Meissner, age 73, is a resident of Fair Oaks Ranch, Texas. Meissner has held an insurance producer license in Texas for more than 30 years. Over the course of his career, Meissner also formerly held insurance producer licenses in at least 25 other states. Meissner also held a Series 1 license from 1968 until June 2000, when the NASD barred him from selling securities in any capacity for participating in a private securities transaction without providing his member firm written notice and information regarding whether he received compensation in connection with the transaction.

4. Scott, age 62, is a resident of Perkasio, Pennsylvania. Since 1978, Scott has held an insurance producer license in the state of Pennsylvania. He has also held insurance producer licenses in at least two other states. Additionally, Scott was previously employed by Brown Investment Advisors, Inc. (“Brown Advisors”), a Pennsylvania and New Jersey registered investment adviser, from 2005 through January 1, 2012. During that same time period, Scott also performed consulting services for Summit Trust Company (“Summit Trust”), a Nevada Trust self-directed IRA administrator and critical cog in the investment scheme at issue. Scott also controlled an entity called the Cromarty Group, which he used to funnel money to other salespeople in this matter.¹ Scott has never held any securities licenses, yet he has been the subject of two significant actions brought by the Pennsylvania Securities Commission (“PSC”), both of which resulted in severe penalties, including a permanent bar from offering or selling securities in Pennsylvania.²

¹ The Cromarty Group is a Nevada LLC formed in 2012, with its principal place of business in Hatfield, Pennsylvania. Although Scott’s wife, Linda F. Close, is the managing member of the Cromarty Group, Scott testified that he used the entity to engage in his consulting business and appear “more professional.” Scott also testified that his wife is the founder because his credit is “not good” and he wished to secure a line of credit for the entity at some point.

² In October 1999, the PSC ordered Scott to cease and desist from offering and selling unregistered and nonexempt promissory notes and acting as an unregistered broker-dealer (Docket No. 9910-06). In 2005, the PSC, in an administrative action against Scott related again to the sale of promissory notes, permanently barred him from: representing an issuer offering or selling securities in Pennsylvania; acting as a promoter, officer, director, or partner

5. Tomich, age 73, is a resident of Belmont, Michigan. Since 1982, Tomich has held an insurance producer license in Michigan, and currently holds producer licenses in at least two other states. Tomich held Series 6 and 63 securities licenses from 1987 to 1997, when he voluntarily separated from his last securities firm and the licenses lapsed. Tomich was an investment adviser registered with the state of Michigan through Michigan's Department of Licensing and Regulatory Affairs from 1999 to October 2010, at which time he voluntarily withdrew his registration. In November 2000, Tomich consented to a cease-and-desist order by the Office of Financial and Insurance Services of the Michigan Department of Consumer and Industry Services based on his illegal sales of viatical settlements. Tomich agreed to cease and desist from violations of the Michigan Uniform Securities Act, which included the prohibition against the sale of unregistered, nonexempt securities and omitting to state material facts in the offer and sale of securities. Tomich paid restitution to his victims and a \$2,000 civil penalty.

OTHER RELEVANT PARTIES

6. Snisky, age 46, was a resident of Longmont, Colorado. He was the sole managing member of Arete, along with four pooled investment vehicles which made offerings as a part of his scheme: (1) CMG Offering – 12PO5i, LLC; (2) CMG Offering – 12PO10i, LLC; (3) Summit Offering – 12PO5i, LLC; and (4) Summit Offering – 12PO10i, LLC (collectively “Snisky PIVs”).³ For orchestrating the scheme described herein, Snisky was indicted by a federal grand jury on November 19, 2013 on charges of mail fraud and money laundering. The next day, he was arrested. Additionally, on February 28, 2013, Colorado's Department of Regulatory Agencies, Division of Securities (“DORA”) filed a Complaint for Injunctive and Other Relief against Snisky, Colony Capital, Colony Capital Group, Colony Capital Investments, Colony Capital Holdings, and others alleging various violations of the Colorado Securities Act on the basis that Snisky and others carried out a “private equity fund” scheme to defraud dozens of investors of at least \$3.2 million. Trial is set for February 2015 in this matter. Furthermore, Snisky formerly held an ownership interest in Arete, Ltd., a/k/a Sky Peak Capital Management (SEC No. 801-77422), a Cheyenne, Wyoming-based investment adviser registered with the Commission. Snisky formerly held Series 7, 62, and 63, licenses, which all expired in 1999.

7. Arete was a Colorado limited liability company with its principal place of business in Longmont, Colorado. Snisky was Arete's sole and managing member. Arete functioned both as

of an issuer offering or selling securities in Pennsylvania or of a person who controls or is controlled by an issuer; being registered as, or being an affiliate of, a broker-dealer, investment adviser, or investment adviser representative; or relying on various offering exemptions (Docket No. 0102-36).

³ The Snisky PIVs shared the following characteristics: (1) all had principal place of business in Longmont, CO; (2) Snisky was the sole and managing member of all the entities; (3) all were formed in April 2012 as “placement LLC” or pooled investment vehicle by which investors invested funds for the Arete investment; (4) none of the Snisky PIVs were ever registered as an offering of securities under the Securities Act or as a class of securities under the Exchange Act; and (5) none of the Snisky PIVs have ever been registered with the Commission in any capacity. Although the investment contracts offered by Snisky identified the Snisky PIVs and Arete separately, all of the investors believed they were investing in Arete. Additionally, all investor funds flowed through bank accounts held in Arete's name.

the entity through which Snisky engaged in his overall business operations and as the primary issuer, or pooled investment vehicle, whose interests were offered and sold to investors. Snisky formed Arete in June 2011 and voluntarily dissolved the entity in late April 2012. Arete has never registered an offering of securities under the Securities Act of 1933 or a class of securities under the Exchange Act. Arete has never been registered with the Commission in any capacity.

FACTS

8. From August 2011 through January 2013, Snisky offered and sold membership interests in LLCs he created, managed and controlled (Arete, LLC and the Snisky PIVs) to investors across the country. Investors were told that money from their membership purchases in Arete or the Snisky PIVs would be pooled together to purchase government-backed agency bonds.

9. Snisky did not personally solicit the investments from the investors. Rather, he recruited and trained veteran insurance salespersons across the country to solicit investments from their current and prospective client bases. Snisky persuaded the salespeople to market and sell the investments by, among other things, showing them fraudulent investor account statements, an Excel-based financial model that calculated “guaranteed returns” based on a given investment amount and provided a print out for investors, and screenshots from a Bloomberg software purportedly showing the bond investments.

10. In order to entice the investors to invest their money in Arete and the Snisky PIVs, Snisky instructed his salespeople to communicate the following information to investors: (1) these investments would purportedly generate a guaranteed annual return of 6% or 7% annually; (2) Snisky could use his status as an “institutional trader” to engage in overnight banking sweeps to generate even larger returns for the investors; (3) investors would receive a 10% bonus to compensate them for any early withdrawal penalties from their existing investments; (4) investors received assurances that their investments would be “safe” and “guaranteed” because the investments in the bonds were backed by the “full faith and credit” of the United States Government and the investments were structured in a way that permitted withdrawal of principal and interest much earlier than traditional annuities. Relying on the promises of a purportedly safe and more profitable alternative to annuities, individuals from across the country invested approximately \$4.3 million in the scheme.

11. These representations were false. Snisky did not purchase any agency bonds, nor did he engage in any overnight banking sweeps. Rather, he misappropriated approximately \$2.8 million of investor funds, mostly through cash withdrawals. He then used these funds to pay commissions to his sales staff, as well as make personal expenditures (such as mortgage payments).

12. The salespeople were actively involved in the recommendation and advising process concerning the Arete and Snisky PIV investments by investors, and participated in the order taking process to initiate the purchases. In exchange for soliciting the investors, the salespeople were promised transaction-based compensation, which amounted to a percentage of the funds invested with Snisky through his companies.

13. In July 2011, Scott learned about the Snisky investment scheme from an insurance agent acquaintance. At the time, Scott was working for Brown Advisers and Summit Trust, marketing trust services to life insurance agents and financial advisors. After talking directly with Snisky on multiple occasions, Scott reached an agreement with Snisky that he would recruit other salespeople to solicit investments.⁴ Scott introduced Meissner, Tomich and other agents Scott knew through Brown Advisers and Summit Trust to Snisky starting in December 2011. Scott provided the salespeople with information and documents regarding Arete. Scott also met with advisors to explain Summit Trust's role in the scheme. In return, Scott, through Cromarty Group, received a 1.5% commission on the total amount of funds brought in by the Respondents. Cromarty Group then paid the commissions to the salespeople that directly solicited the investments. Scott received \$21,000 in commissions for his role in the scheme.

14. Meissner advertised his "Safe Money Strategies" to investors that "protect your Principal and increase[] your annual income so that you never again suffer a loss." Meissner traveled to Colorado with Scott in early 2012 to meet Snisky and learn about the Arete investments. From April 2012 to June 2012, Meissner solicited current and prospective insurance clients to invest in the scheme and advised clients on the merits of the investment. He sold Arete to four investors, all Texas residents, securing \$355,242.09 for Snisky. Meissner received a 5% commission for all invested funds, and received \$17,737.00 in total commissions through Cromarty Group on these sales.

15. Tomich operated his business Strategic Planning Services, where he marketed his investment strategies as one to "protect [your] financial assets and maintain [your] standard of living." Tomich also offered a seminar called ABC Conservative Investing concerning life insurance and fixed annuities at a local college, where he gained some of his clients. Tomich traveled to Colorado with Scott in early 2012 to meet Snisky and learn about the Arete investments. From April 2012 to October 2012, Tomich solicited current and prospective insurance clients and advised clients on the merits of the investment. He sold Arete to seven investors, all Michigan residents, securing approximately \$1.12 million for Snisky. Tomich received a 5% commission on the invested funds and received \$48,327 in total commissions through the Cromarty Group on these sales.

16. In the course of their solicitation, Meissner and Tomich: (1) directly and regularly solicited current and prospective insurance clients for investments in Arete and the Snisky PIVs; (2) advised prospective investors on the specific details and merits of the investments; (3) received transaction-based compensation for bringing in money from investors; (4) participated at key points in the investment chain; and (5) sold multiple issuers to multiple investors.

17. Although Scott relied on Tomich and Meissner to solicit investors, he satisfied a number of other hallmarks for an individual acting as a broker, such as receiving transaction based compensation and regularly participating in the transactions. Scott performed many of the

⁴ The consulting agreement between Scott's company, Cromarty Group, and Summit Trust (the self-directed IRA administrator used by Snisky) included a specific provision that Scott (through Cromarty Group) was not to provide investment advice. However, Scott could refer investors to insurance agents that could provide investment advice.

necessary acts to make the sales operation possible for Meissner and Tomich. Additionally, Scott served as the conduit through which Tomich and Meissner received documents and information about the Arete investment to advise prospective and current clients on the merits of the investment.

18. At no point between August 2011 and April 2012 was Meissner, Scott or Tomich registered with the Commission as a broker, nor were they associated with a registered broker-dealer at the time of these activities.

VIOLATIONS

19. Section 15(a) of the Exchange Act, among other things, prohibits a broker or a natural person not associated with a broker (other than such a broker whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker is registered in accordance with Section 15(b). Scienter is not an element of a violation of Section 15(a). SEC v. Rabinovich & Assocs., LP, 2008 U.S. Dist. LEXIS 93595, at *14 (S.D.N.Y. 2008).

20. As a result of the conduct described above, Respondents willfully violated Section 15(a) of the Exchange Act.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

D. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 15(a) of the Exchange Act, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, 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 as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary