

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73925 / December 23, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31399 / December 23, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16175

In the Matter of

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

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER 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 AS TO MARK S.
“MIKE” TOMICH**

I.

On September 25, 2014, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Administrative and Cease-and-Desist Proceedings 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 Mark S. “Mike” Tomich (“Respondent” or “Tomich”) (Rel. No. 34-73226).

II.

In connection with 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, and except as provided herein in Section V, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order 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 as to Mark S. “Mike Tomich (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ 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. One of the salespeople was Tomich, who raised \$969,848 from investors to invest with Snisky and received \$48,327 in commissions. 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. He was not registered with the Commission as a broker or associated with a registered broker-dealer during this time. Accordingly, Tomich violated Section 15(a) of the Exchange Act by effecting transactions as an unregistered broker.

RESPONDENT

3. 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

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.

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

4. 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”).² 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 March 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.

5. 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 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.

BACKGROUND

6. 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.

² 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.

7. 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.

8. 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.

9. 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).

10. 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.

11. In 2011, Tomich was introduced to Snisky and his programs by another salesperson who received a 1.5% commission on the total amount of funds brought in by the Respondent.

12. 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 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 investments in Arete to seven investors, all Michigan residents, securing approximately \$969,848 for Snisky, which funds were transferred

to bank accounts in Colorado. Tomich received a 5% commission on the invested funds and received \$48,327 in total commissions through the Cromarty Group on these sales.

13. In the course of his solicitation, 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.

14. At no point between August 2011 and October 2012 was Tomich registered with the Commission as a broker, nor was he associated with a registered broker-dealer at the time of these activities.

VIOLATIONS

15. 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).

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

IV.

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

Accordingly, pursuant to 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 Tomich cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Respondent Tomich 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; and

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 purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent 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 \$48,327.00, which represents profits gained as a result of the conduct described herein, prejudgment interest of \$2,976.87, and civil penalties of \$48,000.00 to the Securities and Exchange Commission. Payment shall be made in the following installments:

Within fourteen days of entry of the Order, Respondent shall pay \$55,303.87.

On January 15, 2015, Respondent shall pay \$4,000.00.

On February 15, 2015, Respondent shall pay \$4,000.00.

On March 15, 2015, Respondent shall pay \$4,000.00.

On April 15, 2015, Respondent shall pay \$4,000.00.

On May 15, 2015, Respondent shall pay \$4,000.00.

On June 15, 2015, Respondent shall pay \$4,000.00.

On July 15, 2015, Respondent shall pay \$4,000.00.

On August 15, 2015, Respondent shall pay \$4,000.00.

On September 15, 2015, Respondent shall pay \$4,000.00.

On October 15, 2015, Respondent shall pay \$4,000.00.

On November 15, 2015, Respondent shall pay \$4,000.00.

If any payment is not made by the date when the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

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

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

Payments by check or money order must be accompanied by a cover letter identifying Mark S. "Mike" Tomich as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas J. Krysa, Associate Regional Director, Securities and Exchange Commission, 1961 Stout St., Suite 1700, Denver, CO 80294-1961.

E. The Commission will hold funds paid in this proceeding pending a decision whether the Commission, in its discretion, will seek to distribute funds or transfer them to the U.S. Treasury. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. Regardless of whether a Fair Fund is created, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and

pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary