

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78876 / September 19, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32266 / September 19, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17555

In the Matter of

KENNY PHU,

Respondent.

**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,
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 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 Kenny Phu (“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, and except as provided herein in Section V, Respondent consents to the entry of this 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, 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 extensive failures by Crucible Capital Group, Inc. ("Crucible"), a formerly registered broker-dealer, to maintain minimum net capital and to accurately make and preserve certain required records. Respondent willfully aided and abetted and caused Crucible's violations, which occurred between December 2012 and September 2013 (the "relevant period").

Respondent

1. Phu, age 28, resides in East Elmhurst, New York. He holds Series 7 and 63 licenses and was a registered representative associated with Crucible from February 1, 2012 to March 17, 2014.

Other Relevant Entity and Person

2. Crucible, located in New York, New York, was formed in 2003 and was registered with the Commission as a broker-dealer from September 2005 until August 2015. Crucible's business consisted of assisting microcap issuers in raising capital. Crucible was wholly owned by Charles Moore, its founder, president, and sole shareholder. The firm was the subject of several disciplinary actions, all of which involved books-and-records violations. In August 2008, the Financial Industry Regulatory Authority ("FINRA") approved a Letter of Acceptance, Waiver, and Consent, under which Crucible was censured, fined \$10,000, and consented to, without admitting or denying, findings that it maintained inaccurate financial books and records and filed inaccurate Financial and Operational Combined Uniform Single Reports ("FOCUS Reports") in each of six months in 2006. In January 2011, Crucible and Moore were censured by FINRA and fined \$10,000 and \$7,500, respectively; and both consented to, without admitting or denying, findings that Crucible, acting through Moore, maintained inaccurate financial books and records and filed inaccurate FOCUS Reports in each of three months in 2008. In April 2013, FINRA approved a settlement, under which Crucible and Moore were censured and fined \$12,500 and \$10,000, respectively; and both consented to, without admitting or denying, findings that, among other things, Crucible had maintained inaccurate financials and books and records and filed inaccurate FOCUS Reports. On August 8, 2014, the Commission instituted proceedings against Crucible in connection with the conduct described below. On March 21, 2016, the Commission dismissed those proceedings on the ground, among others, that Crucible had withdrawn its registration as a broker-dealer effective August 31, 2015.

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.

3. Moore, age 63, resides in East Brunswick, New Jersey. He was the founder, president, and sole shareholder of Crucible. At all relevant times, he held Series 7, 24, 28, 62, and 63 licenses and was a registered representative associated with Crucible. As noted above, Moore has been censured by FINRA and has settled charges with FINRA relating to Crucible's maintenance of inaccurate books and records. On November 9, 2015, Moore pleaded guilty to obstructing a regulatory examination in violation of 18 U.S.C. § 1519 for the conduct described below. On February 18, 2016, Moore was sentenced to a six-month term of imprisonment. That day, the Commission issued an order imposing associational and penny stock bars and an investment company prohibition on Moore.

Background

4. From 2009 until August 2015, Crucible's business consisted of assisting customers, which were primarily if not exclusively microcap issuers, with their long-term capital-structure plans and capital-raising activities. Crucible's claimed capital-raising services included arranging private equity financing and debt facilities; private debt and bank debt via unsecured loans and/or credit facilities; and bank debt, including but not limited to revolving lines of credit, asset-based loans, and other types of credit facilities.

5. Rule 15c3-1 under the Exchange Act [17 CFR 240.15c3-1] requires broker-dealers generally effecting transactions in securities to "at all times have and maintain net capital" no less than the greatest of the highest minimum requirement applicable to its business. Under Rule 15c3-1(c)(2) [17 CFR 240.15c3-1(c)(2)], a broker-dealer's "net capital" is defined to mean its "net worth," subject to certain adjustments. A broker-dealer's net worth, in turn, is calculated by subtracting its liabilities from its assets.

6. The net capital rule requires broker-dealers to maintain different minimum amounts of net capital based on the nature of a firm's business. The minimum net capital requirement is the greater of a fixed-dollar amount specified in the rule or an amount determined by applying one of two financial ratios. The minimum fixed dollar amount for Crucible during the relevant period was \$5,000. Based on the application of this rule, Crucible's required net capital amount from December 2012 through September 2013 ranged from \$5,000 to \$5,396.

7. The net capital rule requires a broker-dealer to perform two calculations: (i) a computation of the minimum amount of net capital the broker-dealer must maintain; and (ii) a computation of the amount of net capital the broker-dealer is maintaining.

8. Generally, a broker-dealer computing net capital first calculates its net worth, computed in accordance with generally accepted accounting principles; deducts the value of certain illiquid assets; and also takes haircuts from the market value of certain securities it holds. The resulting figure must be above the firm's required minimum net capital to comply with the net capital rule. This figure is then reported to FINRA on a FOCUS Report, which discloses the broker-dealer's financials generally. FOCUS Reports include, among other things, the broker-dealer's balance sheet, income statement, and a statement of any changes in ownership equity.

9. From December 2012 through September 2013, Crucible operated with significant net capital deficiencies, but submitted FOCUS Reports to FINRA asserting it had the required net capital.

10. In 2013, during an examination conducted by staff from the Commission's Office of Compliance Inspections and Examinations ("OCIE staff"), Phu, acting at Moore's direction, prepared and provided the exam staff with altered documents that substantially understated Crucible's liabilities to vendors. The alterations to these documents had the effect of disguising the firm's net capital deficiency.

11. In addition, Phu, acting at Moore's direction, used his personal email account to correspond with customers concerning payments owed to Crucible and with vendors concerning certain invoices. Phu understood that if he used his personal email for these communications they would not be saved by Crucible's email archivist and, therefore, would be unavailable to regulators, including the OCIE staff. Some of the communications conducted over personal email might have called into question the firm's net capital position.

12. As a result of the conduct described above, Phu willfully aided and abetted and caused Crucible's violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1, which require broker-dealers to maintain minimum net capital.

13. Also as a result of the conduct described above, Phu willfully aided and abetted and caused Crucible's violations of Section 17(a)(1) of the Exchange Act and Rules 17a-3(a)(2), 17a-4(b)(3), 17a-4(b)(4), 17a-4(j), 17a-5(a), and 17a-11(b)(1), which require broker-dealers to make and keep current and preserve books and records, to furnish promptly copies of broker-dealer records to representatives of the Commission, and to make certain reports and filings with the Commission.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Phu'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 Phu cease and desist from committing or causing any violations and any future violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 promulgated thereunder, and Section 17(a)(1) of the Exchange Act and Rules 17a-3(a)(2), 17a-4(b)(3), 17a-4(b)(4), 17a-4(j), 17a-5(a), and 17a-11(b)(1) promulgated thereunder.

B. Respondent Phu shall 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,

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 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 civil penalties of \$10,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: eleven (11) equal monthly payments in the amount of \$833.33, due on the 15th day of the month, commencing on the first such date after the entry of this Order, and a twelfth and final payment in the amount of \$833.37 due on the first anniversary of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued 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 Phu 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 Lara S. Mehraban, Associate Regional Director, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281-1022.

E. 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