

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78877 / September 19, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17070

In the Matter of

**3C ADVISORS &
ASSOCIATES, INC.,
STEPHEN JONES, and
DAVID PROLMAN**

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, AS
TO RESPONDENT DAVID PROLMAN**

I.

On January 27, 2016, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against 3C Advisors & Associates, Inc. (“3C”), Stephen Jones (“Jones”), and David Prolman (“Prolman”) (collectively “Respondents”)

II.

Respondent Prolman 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 Prolman 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, as to Respondent David Prolman (“Order”), as set forth below.

III.

On the basis of this Order and Prolman's Offer, the Commission finds¹ that:

A. Summary

From 2013 through December 2015, Prolman willfully aided and abetted and caused 3C's violation of Section 15(a) of the Exchange Act by engaging in unregistered broker activity. Through 3C, Prolman solicited small- and medium-sized businesses by marketing "capital advisory services." In particular, 3C held itself out as "arrang[ing] private placement of debt and equity securities" and facilitating capital raises. 3C undertook extensive responsibilities for its customers including analyzing customers' financial needs, recommending and designing financing methods, playing a role in negotiations with capital sources, and making recommendations about proposed funding terms. Moreover, 3C's engagement agreements provided that its customers pay performance fees which were calculated as a percentage of the capital raised, with greater potential payouts for equity investments. Thus, 3C falls within the definition of a "broker" because 3C is "engaged in the business of effecting transactions in securities for the account of others." Prolman willfully aided and abetted and caused the firm's violation of Section 15(a) of the Exchange Act, by engaging in such broker conduct through 3C without registering as a broker or associating with a registered broker.

B. Respondents

1. 3C is a California corporation headquartered in Rancho Santa Fe, California, which was launched in June 2010. 3C provides a range of consulting services to small- and mid-sized companies including the capital advisory services at issue in this action.

2. Jones is a resident of Rancho Santa Fe, California. Jones founded 3C in June 2010 and is 3C's senior managing director. Jones has never held any securities licenses. Prior to launching 3C, Jones performed valuation analysis, litigation support, and restructuring consulting for over two decades at several consulting firms. Jones's positions at two of these firms, were within those firms' registered broker-dealer segments, but he never obtained a securities license and did not perform any of the transactional and capital advisory services provided by those firms.

3. Prolman is a resident of Solana Beach, California. In June 2013, Prolman joined 3C as a senior managing director and leader of capital advisory services. Prolman has never held any securities licenses. Prior to joining 3C, Prolman had three decades' experience in providing consulting services including financial, operational and corporate management, capital finance, growth strategies, turnarounds, loan workouts, and bankruptcy reorganizations.

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

C. Background

4. In June 2010, Jones organized 3C as a holding company with the goal of providing comprehensive consulting services through various sub-LLCs, each independently operated by consultants with whom Jones was affiliated. In addition to the valuation services and litigation consulting that Jones himself provided, he planned to have 3C offer “capital advisory services” under a sub-LLC known as the “Capital Advisory LLC.”

5. The capital advisory services business did not commence until Prolman joined the firm in June 2013, operating as a segment of 3C rather than as a separate LLC. Upon joining the firm, Prolman prepared a business plan for the capital advisory services segment, which included an “industry overview and competitive analysis” identifying six competing firms, all of which were registered broker-dealers.

6. Since Prolman joined 3C, the firm has touted its capital advisory business segment. 3C has taken on at least five engagements to perform capital advisory services since Prolman’s arrival, and has earned approximately \$160,000 in compensation for such services during this time frame.

D. 3C’s Capital Advisory Services Business

7. 3C has solicited customers for its capital advisory services online, in one-on-one presentations with prospective customers, and at industry conferences. 3C also has marketed its capital advisory services to law firms that would then introduce 3C to potential customers for the services.

8. According to 3C’s website and other marketing materials, under 3C’s capital advisory services business segment, the firm offered broker services for its customers including private placement of debt and equity securities, acquisition financing, growth capital, recapitalizations, and restructuring.

9. 3C’s capital advisory proposals and agreements were based on standard language, initially prepared by Prolman at his prior firm and adopted by 3C. As with the firm’s marketing materials, the agreements indicated that 3C was offering to perform broker services for its customers.

10. For example, in August 2013, 3C initiated an engagement with Company A, an investment company, for purposes of “identifying and introducing you to total capital liquidity in an amount approaching \$35,000,000” in connection with an acquisition of a medical manufacturing company. 3C indicated it would “[f]ind and introduce [q]ualified [c]apital [s]ources,” “assist[] you in the determination of an appropriate capital structure for the Company on a go forward basis,” and “assist[] you in connection with the preparation and dissemination, as appropriate, of confidential materials for any potential or actual [t]ransaction.”

11. In the proposal for Company A and several of 3C’s other engagements, 3C agreed to “assist[] you in all phases of the negotiation process, including establishment of price, terms and structure.”

E. Transaction-Based Compensation for Capital Advisory Services

12. 3C's agreements required capital advisory services customers to pay a combination of flat fee retainers and performance-based success fees, which entitled 3C to a percentage of any successful fund raising efforts. Certain of 3C's contracts assigned a higher percentage for the performance fee upon equity versus debt financing.

13. For example, one customer agreed to pay an initial retainer fee of \$15,000 along with a performance fee of 4% of the funded investment amount with respect to the issuance of any equity securities (which dropped to 2% if any debt instruments were issued).

14. At least one of 3C's capital advisory services engagements, an engagement for a restaurant franchising business, Company B, resulted in a successful debt financing arrangement for the customer with funds provided by a capital source identified by 3C. For the Company B engagement, 3C received \$125,000, of which \$90,000 constituted a performance fee amounting to roughly 1% of the total funding.

15. Between 2013 when Prolman joined 3C through 2014, 3C collected roughly \$160,000 in fees from five customers for its capital advisory services, including \$90,000 of which was transaction-based compensation. During that time frame, the firm received total revenue from its services of \$517,420.32. Thus, over a quarter of 3C's revenue during this period was generated through fees from its capital advisory engagements.

F. Broker Conduct During Capital Advisory Services Engagements

16. For each of its capital advisory services customers, 3C analyzed the customer's funding needs and advised the customer regarding funding options. For example, 3C, through Jones, prepared a document analyzing one of its customer's funding structure. 3C, through Prolman, also performed a review of that customer's overall financial condition in which Prolman commented on the customer's forecast model and supporting data for inconsistencies, missing data, and assumptions. Prolman also gave informal advice to 3C's customers regarding desired funding structure, potential return on investment for equity investments, and advice about the appropriate amounts of funding to seek.

17. For each of its capital advisory services customers, 3C also prepared materials to attract capital sources on behalf of its customers. This included creating marketing books with details about the customer and the customer's desired funding. 3C, through Prolman, also generated so-called "teasers," which contained summaries of the marketing books. For some of the engagements, 3C edited materials generated by the customer, and for other engagements, 3C drafted the materials.

18. For at least two of its customers, 3C, through Prolman, also engaged in outreach to potential capital sources, including disseminating the marketing books and teasers described above. When Prolman sent the materials to potential capital sources, he targeted sources drawn from his industry contacts and from referrals from the intermediaries with which 3C collaborated. Prolman also conferred with the customers to identify and pre-screen potential capital sources that fit the funding goals. If the potential capital source expressed interest in the project, 3C's outreach also

included facilitating introductions between the customer and the capital source. Prolman was present during meetings between customers and capital sources, and on at least one instance Prolman acknowledged responding to substantive questions from a potential capital source during such a meeting.

19. Finally, for at least two of its customers, 3C also played a role in negotiating terms of the funding. Capital sources corresponded with both the customer and Prolman while crafting potential deal terms during the two engagements. Even where 3C's personnel were not present during meetings with capital sources regarding deal terms, Prolman and Jones advised the customers as to the terms' advisability. 3C also corresponded with the capital sources separately from the customer during the course of negotiations to ascertain the status of the pending deal and shared these updates with the customer.

G. Inadequate Attempts to Remediate Non-Registration

20. In October 2014, after receiving a subpoena from the Commission, 3C removed references to its capital advisory services from its website. However, after October 2014, the firm took on another capital advisory engagement raising capital for a distressed company.

21. Additionally, after October 2014, Jones and Prolman sought advice from counsel regarding the need for registration. 3C, Jones, and Prolman took steps to sit for the Series 79 (investment banking representative) exam and obtain registered status by establishing an association with a registered firm. To date, however, 3C, Jones, and Prolman, remain unregistered and still have no association with any registered entity.

H. Violations

22. As a result of the conduct described above, Prolman willfully aided and abetted and caused 3C's violation of Section 15(a) of the Exchange Act, which prohibits a broker from making 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 securities without being registered as broker or associated with a registered broker.

IV.

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

Accordingly, pursuant to Sections 15(b)(6) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Prolman shall cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Respondent Prolman be, and hereby is:

suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of twelve (12) months, effective on the second Monday following the entry of this Order; and

suspended 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 for a period of twelve (12) months, effective on the second Monday following the entry of this Order.

C. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$7,500.00 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). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

D. 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

E. Payments by check or money order must be accompanied by a cover letter identifying Prolman 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 Dabney O'Riordan, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

F. 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, they shall not argue that they are entitled to, nor shall they 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, 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