

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79692 / December 27, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17747

In the Matter of

BRIAN C. ROSE,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934,
AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Brian C. Rose (“Respondent” or “Rose”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. At all times relevant to these proceedings, Rose, age 37, was a resident of Tennessee. During the period January 2011 through June 2014, Rose actively solicited investors and sold them securities in the form of limited liability partnership interests issued by New Century Coal Inc. (“New Century Coal”). These limited liability partnerships were organized by New Century Coal for the purported purpose of buying interests in, and participating in profits from, the development of various coal mines. Rose acted as an unregistered broker-dealer in connection with the offer and sale of these securities.

2. Rose did not receive a salary and took a large portion of all sales to pay himself.

3. Rose used the mail and private interstate carriers to deliver offering documents related to the investments to these investors. The investors and potential investors were residents of a number of states.

B. ENTRY OF THE RESPONDENT'S CRIMINAL CONVICTION

4. On December 1, 2014, Rose pleaded guilty to one count of conspiring to commit wire fraud and mail fraud in violation of 18 U.S.C. §§ 1349, 1341 and 1343 before the United States District Court for the Eastern District of Tennessee in United States of America v. Brian C. Rose AKA John Hankins, Case No. 2:14-CR-76. On March 30, 2016, a judgment in the criminal case was entered against Rose. He was sentenced to a prison term of 108 months followed by three years of supervised release and later ordered to make restitution in the amount of \$14,902,205.04 (joint and several with other co-defendants).

5. In connection with that plea, Respondent admitted, inter alia, that:

- a. Rose marketed New Century Coal as an issuer/sponsor of partnerships with individual investors for the purpose of placing investors in limited liability partnerships in specific coal mine operations, and as the partnership mine operator of each specific coal mine.
- b. During the course of the conspiracy to commit mail fraud and wire fraud, Rose diverted investor funds away from the exploration, development, and production of coal and used investor funds to compensate staff, to fund his own personal expenses, and for other uses which were not related to the exploration, development, or production of coal. At all relevant times, Rose acted with the intent to defraud investors and willfully participated in the conspiracy to commit mail fraud and wire fraud with knowledge of its fraudulent nature.
- c. Rose solicited investors for New Century Coal and made material misrepresentations and false statements to investors and potential investors.
- d. The misconduct underlying the conspiracy to commit wire fraud and mail fraud occurred between January 2011 and June 2014.

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 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;
- C. Whether, pursuant to Section 15(b) of the Exchange Act, it is appropriate and in the public interest to bar Rose from participating in any offering of 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.

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 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 Rose as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2), the Administrative Law Judge shall issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; (B) Where the hearing officer has determined that no hearing is necessary, upon completion of briefing on a motion pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250; or (C)

The determination by the hearing officer that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155 and no hearing is necessary.

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