

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 80083 / February 22, 2017**

**INVESTMENT COMPANY ACT OF 1940**

**Release No. 32505 / February 22, 2017**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-17657**

**In the Matter of**

**Gregory J. Smith,**

**Respondent.**

**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**

**I.**

On November 1, 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”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Gregory J. Smith (“Smith” or “Respondent”).

**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 them 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 Sanction 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 (“Order”), as set forth below.

### III.

On the basis of this Order and the Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. Smith provides insurance and retirement planning services to clients in numerous states. From approximately December 2008 through September 2013, Smith solicited and induced at least 31 investors in three states to purchase approximately \$3,750,060 of promissory notes issued by the Rampart Fund LLP (“Rampart Fund Notes”). Among other things, Smith identified and solicited prospective investors, advised investors on the merits of the investment, took customer orders, collected investor paperwork, and received approximately \$384,712 in transaction-based compensation from the Rampart Fund. Throughout his fund-raising efforts on behalf of the Rampart Fund, Smith was not registered as a broker-dealer or associated with a registered broker-dealer. By virtue of this conduct, Smith willfully violated Section 15(a) of the Exchange Act.

#### **Respondent**

2. **Gregory J. Smith (“Smith”)**, age 70, resides in Winchester, California. From approximately July 1987 through September 2002, Smith was a registered representative associated with broker-dealers registered with the Commission. However, during the relevant period of misconduct, Smith was not registered with the Commission as a broker-dealer or associated with a registered broker-dealer. In October 2000, the California Division of Corporations issued a Desist and Refrain Order against Smith, ordering him to desist and refrain from, among other things, offering or selling securities in California and acting as a broker-dealer in California unless and until he was licensed as such. Smith never became licensed as a broker-dealer in California.

#### **Other Relevant Entity**

3. **Rampart Fund LP (“Rampart Fund”)** is a private fund organized as a Delaware limited partnership. Rampart Capital Management, LLC (“Rampart Capital”) is the investment adviser and general partner to the Rampart Fund, which raised money by offering and selling to investors the Rampart Fund Notes. The Rampart Fund and the Rampart Fund Notes have never been registered with the Commission in any capacity. In October 2015, the Commission filed a settled civil injunctive action against Rampart Capital, its two principals, and three other entities in the Eastern District of Pennsylvania. (*SEC v. Summit Trust Company, et. al.*, Civil Action No. 15-cv-05843(E.D. Pa., October 27, 2015)). The Rampart Fund was named as a relief defendant in the Commission’s settled civil injunctive action against Rampart Capital and consented to the appointment of a receiver in connection with that action.

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<sup>1</sup> 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.

## Background

### A. *The Rampart Fund Note Offering*

4. From approximately August 2008 through September 2013, the Rampart Fund raised approximately \$7.9 million through the sale of Rampart Fund Notes with various fixed interest rates and maturity dates. The Rampart Fund used so-called “Independent Trust Consultants” (“Independent Consultants”), including Smith, to actively solicit and induce investors to purchase Rampart Fund Notes.

5. The Rampart Fund represented that the proceeds of the offering would be used to invest in debt securities used to fund a third party’s mezzanine debt financing program. The third party began defaulting on its obligations to the Rampart Fund in November 2009. The Rampart Fund sued the third party in July 2010, and obtained a judgment on all claims and relief in March 2011, but was never able to collect on the judgment. However, Rampart Capital and its principals never disclosed the third party’s defaults or the resulting lawsuit to existing or prospective noteholders or the Independent Consultants selling the Rampart Fund Notes.

6. The Rampart Fund remained current on its quarterly interest obligations by paying approximately \$2.8 million to Rampart Fund Notes investors, until the Rampart Fund voluntarily halted the Rampart Fund Notes offering and quarterly payments in August 2014.

### B. *Respondent Acted as an Unregistered Broker in Connection with the Rampart Fund Note Offering*

7. From December 2008 through September 2013, Respondent solicited approximately \$3.7 million of the total \$7.9 million raised in the Rampart Fund Note offering.

8. Respondent identified prospective investors, and then affirmatively solicited them to invest in the Rampart Fund Notes in face-to-face meetings, phone calls, and emails. Respondent also advised prospective investors as to the purported merits of the investment. For example, in a January 2012 letter to an existing Rampart Fund Note investor, Respondent encouraged the investor to “show your friends this note program that has been set up for you.” He enclosed his business cards with the letter and noted that he could “come out and speak to them about this program that might help with making a good return with any monies [they] may have.”

9. It was Respondent’s general practice to meet or speak with Rampart Fund Note investors and to handle the mechanics of their investments. For example, when one potential investor indicated that he was uncomfortable with email, Respondent traveled to Texas and assisted the investor in liquidating retirement funds and purchasing Rampart Fund Notes with the proceeds. During these meetings, Respondent typically provided potential investors with a written description and FAQ of the Rampart Fund Note program that contained his contact information.

10. Respondent also directed his wife to complete the necessary paperwork on behalf of potential Rampart Fund Note investors. Respondent then handled routing investors’ funds to the Rampart Fund.

11. Following solicitation by Respondent, at least 31 investors from three states purchased a total of approximately \$3,750,060 in Rampart Fund Notes, constituting 46% of the total amount raised in the offering. In exchange for Respondent's role in soliciting and inducing investors to purchase Rampart Fund Notes, Respondent received transaction-based compensation in the form of commissions of a percentage of the amounts invested. Respondent received commissions totaling approximately \$384,712 from the Rampart Fund for his role in raising funds for the Rampart Fund Note offering.

### **Violations**

12. As a result of the conduct described above, Respondent willfully violated Section 15(a)(1) of the Exchange Act, which makes it unlawful for any broker or dealer 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, unless such broker or dealer is registered with the Commission in accordance with Section 15(b) of the Exchange Act or associated with a registered broker or dealer.

### **Civil Penalty**

13. Respondent has submitted a sworn Statement of Financial Condition dated December 6, 2016 and other evidence and has asserted his inability to pay a civil penalty.

## **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent'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 cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Respondent 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 Smith 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, within 14 days of the entry of this Order, pay disgorgement of \$384,712.54 and prejudgment interest of \$54,324.22 to the Receiver for the Estate of Rampart Fund LP, Ricardo J. Zayas (“Receiver”), appointed in *SEC v. Summit Trust Company*, et al., Civ. Action No: 15-cv-05843-JCJ (E.D.Pa.), for distribution to injured investors. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

Payment to the Receiver must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Receiver’s Account, Estate of Rampart Fund LP; detailed ACH transfer/Fedwire instructions upon request; or
- (2) Respondent may pay by certified check, bank cashier’s check, or United States postal money order, made payable to Estate of Rampart Fund LP and hand-delivered or mailed to:

Marcum LLP  
c/o Ricardo J. Zayas  
1600 Market Street, 32nd Floor  
Philadelphia, PA 19103

If, after discharge of the Receiver, payment in full has not been made, Respondent shall send payment to the Securities and Exchange Commission.

Payment to the Securities and Exchange Commission 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 Gregory J. Smith as 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 Kurt L. Gottschall, Associate Regional Director, U.S. Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

E. Based upon Respondent's sworn representations in his Statement of Financial Condition dated December 6, 2016 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

F. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

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 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