

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

**SECURITIES ACT OF 1933**  
**Release No. 10553 / September 19, 2018**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 84196 / September 19, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18787**

**In the Matter of**  
**MICHAEL L. LAPENNA,**  
**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST  
PROCEEDINGS PURSUANT TO SECTION  
8A OF THE SECURITIES ACT OF 1933 AND  
SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, IMPOSING REMEDIAL  
SANCTIONS, AND IMPOSING A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Michael L. LaPenna (“LaPenna” or “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 Respondent 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 Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, Imposing Remedial Sanctions, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### **III.**

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

#### **Summary**

1. This matter involves material misstatements and omissions by Michael L. LaPenna in the fraudulent sale of securities.

2. LaPenna, a credit repair and loan brokerage firm operator in Niagara Falls, New York, helped Leroy K. "Lee" Young and Young Capital Management, LLC obtain \$198,000 from 14 investors between June 2016 and December 2017. Young falsely represented that he would use investors' money for fees associated with selling bonds or, alternately, for fees associated with launching a hedge fund, when in reality he simply spent the investors' money on personal expenses.

3. LaPenna advertised Young's investment program to his clients through emails that included his material misrepresentations about how investors' funds would be used and falsely promising investors a "10:1 return . . . in less than 60 days." LaPenna also made materially false statements that investors' money would be held in an escrow account until disbursed to pay for the proposed offerings, when in fact, investors' money was transferred immediately to Young, or on two occasions, directly to LaPenna. Even when directly asked about Young's track record, LaPenna did not disclose Young's failure to deliver the promised returns to any prior investors. To date, Young and LaPenna have not paid investors the promised returns nor returned any of their principal investments.

4. As a result of the conduct described herein, LaPenna violated antifraud provisions of the federal securities laws, specifically Section 17(a)(2) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5(b) thereunder.

#### **Respondent**

5. **Michael L. LaPenna**, age 57, is a Canadian citizen residing in Ontario, Canada. He is the sole member of New World Brokerage LLC, a credit repair and loan brokerage firm in Niagara Falls, New York.

---

<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.

## **Related Individual and Entity**

6. **Leroy “Lee” K. Young**, age 56, resides in Solana Beach, California and is the sole member and owner of Young Capital Management, LLC. Young is not currently registered with, or associated with any entity registered with the Commission.

7. **Young Capital Management, LLC** (“YCM”) is a single-member limited liability company formed in Delaware in 2016, and located in Carlsbad, California. Although Young told some investors that YCM was a hedge fund, it never operated as such and has never been registered with the Commission in any capacity.

## **Facts**

8. From January 2013 through December 2017, Young and YCM raised at least \$362,000 from at least 32 investors through false promises of high returns on their principal investment. Of that total, LaPenna helped Young and YCM obtain \$198,000 from 14 investors, between June 2016 and December 2017. In exchange for referring clients to Young, LaPenna received at least \$22,500.

9. Young told LaPenna that he was conducting a bond offering in partnership with several large broker dealers and that he was looking for investors to pay the fees associated with the offering. Young said that he would pay investors a return of ten times their principal investment in sixty days from the proceeds of the bond offering. LaPenna agreed to help Young solicit investors in exchange for referral fees. Additionally, early in his relationship with Young, LaPenna invested \$5,000 in Young’s investment program. However, LaPenna did nothing to investigate the truth of Young’s representations about the use of investor funds and the promised returns on their principal investments.

10. To recruit investors, LaPenna drafted and sent numerous emails repeating and embellishing the misrepresentations that Young made about using investor funds for fees associated with a bond offering and promising a “ten times” return in sixty days. For example, in July 2017, LaPenna emailed his client list, writing: “This is a 144A bond offer and our endorsing partner is Wells-Fargo [sic] who will be given the mandate to sell all \$10M worth of bonds via Bloomberg electronically as soon as the underwriting is complete” and “EVERY INVESTOR WILL RECEIVE A 10:1 PAYOUT ON THEIR INVESTMENT AMOUNT!!! . . . IN LESS THAN 60 DAYS!” LaPenna also sent follow-up emails urging additional investments. For example, LaPenna wrote: “We brought in another \$10,000 last night and are now just \$10,000 away from going IMMEDIATELY into underwriting . . . as soon as we conclude that 30-45 days later EVERY INVESTOR WILL RECEIVE A 10:1 PAYOUT ON THEIR INVESTMENT AMOUNT!!!” Aside from Young’s representations, LaPenna had no basis to believe that the statements in his emails were true.

11. LaPenna also falsely stated that investors’ money would be held in an escrow account. In June 2017, the day before investing, one investor emailed LaPenna to ask, “if it

doesn't go through, then the funds are lost all together or will they get returned?" LaPenna emailed in response, "Rest assured we will deliver. We have back-up funds in escrow in event anything went awry." In fact, Young and LaPenna had no "back-up funds in escrow." Two investors wired their funds directly to LaPenna's personal bank account. The other investors' money was transferred directly to Young.

12. At the same time he was making these misrepresentations, LaPenna asked Young for proof that the money was being spent on fees related to the bond offering. LaPenna never received any such proof to address his concerns about the use of investor funds. Similarly, before making these misrepresentations, LaPenna never spoke with anyone at the broker-dealer firms with whom Young claimed to be in contact or received any documentation about the supposed bond offering. During the relevant period, LaPenna's clients informed him that they had not received the promised returns.

13. Despite his awareness of mounting evidence that Young was not paying investors the promised returns, LaPenna continued to promote Young's investment opportunity through December 2017. LaPenna also continued to conceal from investors Young's failure to pay returns to any previous investors.

14. LaPenna also continued to misleadingly reassure investors that they would be paid, when he knew or was reckless in not knowing that Young had not paid any investors the promised returns by that point in time. For example, in June 2017, one investor asked LaPenna via email if he had ever seen the investment actually paid out as promised and if he was sure that Young was trustworthy. LaPenna replied that he had known Young for years "and I know he delivers firsthand" and that "he's paid me out several times." By that time, LaPenna had referred five clients to Young and none had been paid anything, although LaPenna had received \$9,000 in commissions.

15. LaPenna's misrepresentations and omissions about the use of investor funds, the false promises of high returns, the safety of the escrowed funds, and Young's failure to pay prior investors the promised returns were material to investors.

### **Legal Discussion**

16. Section 17(a)(2) of the Securities Act prohibits any person, in the offer or sale of a security, from directly or indirectly, obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. 15 U.S.C. § 77q(a)(2).

17. Section 10(b) and Rule 10b-5(b) thereunder prohibit any person, in connection with the purchase or sale of any security, from directly or indirectly making any untrue statement of material fact or omitting to state a material fact necessary in order to make the statements made, in

the light of the circumstances under which they were made, not misleading. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(b).

18. To establish a violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the Commission must prove that the defendant acted with scienter. Aaron v. SEC, 446 U.S. 680, 695 (1980). Scienter has been defined as “a mental state embracing intent to deceive, manipulate, or defraud.” Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976). Scienter can be established by knowledge or recklessness. See SEC v. Infinity Grp. Co., 212 F.3d 180, 192 (3d Cir. 2000). Negligence is sufficient to establish a violation of Section 17(a)(2); no finding of scienter is required. Aaron, 446 U.S. at 696-97.

19. As described above, LaPenna obtained money from investors by making materially false statements and material omissions regarding the use of investor funds, the false promises of high returns, the safety of the escrowed funds, and Young’s failure to pay prior investors the promised returns. In doing so, he knew or was reckless in not knowing that Young had not paid prior investors as promised.

20. As a result, LaPenna violated Section 17(a)(2) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5(b) thereunder.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent LaPenna’s Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent LaPenna cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

B. Respondent LaPenna shall pay disgorgement of \$22,500, prejudgment interest of \$583.55, and civil penalties of \$22,500 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$9,116.71 within 10 days of the entry of this Order, \$9,116.71 plus postjudgment interest within 90 days of the entry of this Order, \$9,116.71 plus postjudgment interest within 180 days of the entry of this Order, \$9,116.71 plus postjudgment interest within 270 days of the entry of this Order, and \$9,116.71 plus postjudgment interest within 364 days 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 disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and/or pursuant to 31 U.S.C. 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 separately identifying LaPenna 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 Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in paragraph IV.B above. 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