

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

**SECURITIES ACT OF 1933**  
**Release No. 10554 / September 19, 2018**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 84197 / September 19, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18788**

**In the Matter of**

**PHILLIP R. GROGAN, ESQ.,**

**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, AND IMPOSING REMEDIAL  
SANCTIONS AND 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 Phillip R. Grogan, Esq. (“Grogan” 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, 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 finds<sup>1</sup> that:

#### Summary

1. This matter involves the role of Kentucky-based lawyer Phillip R. Grogan, Esq. in the fraudulent sale of securities by Leroy "Lee" K. Young and his firm Young Capital Management, LLC ("YCM") from 2013 to 2016, a scheme which ultimately raised at least \$362,000 from at least 32 investors through false promises of high returns on their principal investment. Among other things, Young falsely told investors that he would use their funds to pay fees associated with the offering of bonds, or alternatively, a hedge fund. Instead, Young simply spent investors' money on himself.

2. In violation of the antifraud provisions of the federal securities laws, Young misled investors into thinking that their funds would be placed into and safely remain in an escrow account maintained by Grogan until a purported bond or hedge fund offering was complete. Young provided each investor with contracts which indicated that Grogan was a party to the investment agreement, acting in his professional capacity as attorney and trustee for the receipt and disbursement of funds.

3. Despite knowing that he was not serving as a trustee for investor funds, and despite telling Young to delete this misleading language from the investor contracts, Grogan received investor funds through his trust account and then immediately transferred those funds to Young. Through Grogan's assistance, Young gave investors the false and misleading impression that their principal was safely escrowed with an attorney. To date, Young has not paid his investors the promised returns nor returned any of their principal investments.

4. As a result of the conduct described herein, Grogan caused violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### Respondent

5. **Phillip R. Grogan**, age 74, resides in Bowling Green, Kentucky. Since 1995, he has been a self-employed attorney. In 1977, the Kentucky Bar Association disbarred Grogan after finding that he had converted a client's money for his own use; he was readmitted in 1985.

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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.

### **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 obtained a total of at least \$362,000 from at least 32 investors by selling them securities in the form of investment contracts that promised a return of ten times their initial investment in sixty days.

9. To induce individuals to invest, Young knowingly or recklessly made numerous false statements in telephone conversations and e-mails. Among other things, Young told investors that their principal would safely remain in an escrow account held by Grogan until the purported bond or hedge fund offering that Young was working on was complete. Between 2013 and 2016, Grogan agreed that Young could direct investors to wire their funds to an Interest on Lawyers Trust Accounts (“IOLTA”) account held by Grogan’s law firm.

10. Along with the wired funds, Grogan received each investor’s contract with Young. Typically, the contracts contained a fee agreement section which indicated that the agreement was between the investor and Grogan acting in his professional capacity as attorney and trustee for the receipt and disbursement of funds.

11. Several times in 2015 and 2016, Grogan told Young to delete this fee agreement section, because he did not want investors to think that he was involved in or approved of Young’s activities in any way. However, Young continued to use the agreement without making Grogan’s requested revisions. Although Grogan knew that Young continued to use the fee agreement section over his objections, Grogan nevertheless continued to receive investor funds along with the contracts containing the fee agreement clauses. Grogan also continued to transfer the investors’ money to Young’s personal bank account either on the day of receipt or the next day, pursuant to Young’s instructions.

12. Although Grogan was supposed to disburse the investors’ returns, he never received any money from Young for disbursement to investors. Grogan was also aware of specific “red flags” concerning the handling and safety of investor funds. For example, two investors called Grogan, informing him that they had never been paid the promised returns and asking for the return of their principal. Grogan never raised these investor concerns nor questioned Young about why he did not receive any money to disburse to investors.

13. Despite his awareness of mounting evidence that Young was not paying investors the promised returns, Grogan continued to receive investor funds through his IOLTA account and continued to transfer those funds immediately to Young. Through Grogan's affirmative assistance, Young gave investors the false and misleading impression that their principal was safely escrowed with an attorney.

14. Young's misrepresentations to investors about the investment being safe because the principal was deposited into an attorney's escrow account were material to investors.

15. For handling the transfer of investor funds to Young through his IOLTA account, Grogan's fee ranged from 0.5% to 2% of the investment. In total, he earned \$3,050 by causing Young's fraud from 2013 through 2016.

### **Legal Discussion**

16. To establish causing liability, the Commission must find: (1) a primary violation; (2) the respondent's act or omission contributed to the violation; and (3) the respondent knew or should have known that the act or omission would contribute to the violation. See 15 U.S.C. § 78u-3(a); Robert M. Fuller, 56 S.E.C. 976, 984 (2003), pet. denied, 95 F. App'x 361 (D.C. Cir. 2004). Negligence is sufficient to establish "causing" liability. VanCook, Exchange Act Rel. No. Rel. No. 61039A (Nov. 20, 2009) (Opinion of the Commission) (quoting KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1175 (2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002)).

17. Young and YCM violated Section 17(a)(2) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5(b) thereunder by, among other things, obtaining money from investors by making numerous materially false statements regarding the use of investor funds to initiate a bond or hedge fund offering and the expected "ten times" return in sixty days. In fact, Young and YCM never conducted any securities offering. Instead, Young spent investors' funds on personal expenses. Young and YCM also violated Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act, and Rules 10b-5(a) and (c) by funneling investor funds through Grogan's IOLTA account and immediately into Young's personal account, so that investors would believe their principal was safely held in an attorney escrow account.

18. As described above, Grogan facilitated the transfer of investor funds through his IOLTA account to Young, when he knew or should have known that doing so would contribute to the violations by Young and YCM of the antifraud provisions of the federal securities laws. Grogan continued to transfer investor funds to Young, despite his awareness of mounting evidence that Young was not paying investors the promised returns and despite knowing that Young continued to use the fee agreement section over his objections.

19. As a result, Grogan caused the violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder by Young and YCM.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Grogan'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 Grogan 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 Grogan shall pay disgorgement of \$3,050, prejudgment interest of \$248, and civil penalties of \$3,050 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$1,587 within 10 days of the entry of this Order, \$1,190.25 plus postjudgment interest within 90 days of the entry of this Order, \$1,190.25 plus postjudgment interest within 180 days of the entry of this Order, \$1,190.25 plus postjudgment interest within 270 days of the entry of this Order, and \$1,190.25 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 Grogan 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