

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82688 / February 12, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18368

In the Matter of

JAY MAC RUST, Esq.,

Respondent.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS AND
IMPOSING TEMPORARY SUSPENSION
PURSUANT TO RULE 102(e)(3)(i)(A) OF
THE COMMISSION’S RULES OF
PRACTICE

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Jay Mac Rust (“Respondent” or “Rust”) pursuant to Rule 102(e)(3)(i)(A)¹ of the Commission’s Rules of Practice (17 C.F.R. § 200.102(e)(3)(i)(A)).

II.

The Commission finds that:

1. Rust is an attorney previously licensed in the State of Texas.

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney . . . who has been by name: (A) [p]ermanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder

2. On May 13, 2016, the Commission filed a complaint against Rust in the United States District Court for the Southern District of New York (the “Court”). SEC v. Jay Mac Rust, et al., Case Number 1:16-cv-03573 (S.D.N.Y.). That complaint charged that Rust violated Section 10(b) of the Securities Exchange Act of 1934 (“the Exchange Act”) and Rule 10b-5 thereunder. The Commission’s lawsuit sought a permanent injunction, disgorgement of unlawful proceeds with prejudgment interest, and a civil monetary penalty.

3. On November 13, 2017, the Court issued an amended default judgment against Rust that permanently enjoins him from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Court also ordered Rust to pay disgorgement in the amount of \$160,706.79, prejudgment interest in the amount of \$31,076.22, and a civil penalty in the amount of \$160,706.79.

4. The Commission’s complaint against Rust alleged, among other things, that from December 2010 through March 2012, Rust and a cohort – both attorneys residing in Texas – deceived approximately 30 individuals and businesses into depositing a total of approximately \$14 million with them ostensibly for the purpose of obtaining commercial loans through an entity called Atlantic Rim Funding Corp. (“Atlantic”). Serving as attorneys and escrow agents for Atlantic in each purported commercial lending transaction, Rust and his cohort assisted Atlantic in recruiting individuals and businesses interested in obtaining loans. Through this scheme certain individuals and businesses collectively lost approximately \$6 million.

Rust and his cohort advised these individuals and businesses (“Escrow Clients”) that Atlantic could arrange commercial loans for them if they deposited cash amounting to 10% of the anticipated loans with Rust and his cohort in their capacities as escrow agents and pursuant to written escrow agreements Rust and his cohort authored. Rust and his cohort misled these Escrow Clients into believing that their money would be used to buy liquid, “government-backed” securities that Atlantic would leverage to fund their loans. Rust and his cohort assured the Escrow Clients that if Atlantic did not procure the loans within an agreed-upon time, they would receive their deposits back promptly and, if Atlantic successfully closed the loans, they would receive their deposits back together with the loan proceeds. The governing escrow agreements provided for only nominal compensation to Rust and his cohort for transferring Escrow Clients’ funds as needed.

Contrary to what Rust and his cohort led the Escrow Clients to believe, they did not use Escrow Clients’ money to purchase liquid or “government-backed” securities, but rather: (1) siphoned off a significant amount of those funds as payments to themselves, Atlantic, and others (in an amount totaling approximately \$950,000 during the relevant period); and (2) with the remainder, and at the direction of Atlantic’s owner, purchased volatile, illiquid securities derivatives. Rust, in fact, had his own separate agreement with Atlantic (not disclosed to his Escrow Clients) providing that he was entitled to a percentage of trading profits on the securities purchased with his Escrow Clients’ money. Rust and his cohort also falsely represented to the broker-dealers where they opened accounts that the funds used to buy securities in the accounts were their own and not those of other people. Atlantic failed to arrange any loans for any of the

Escrow Clients at any time during the relevant period – a fact that became apparent to Rust and his cohort not long after they began soliciting deposits from Escrow Clients, but which they did not disclose to current Escrow Clients while they continued to solicit new Escrow Clients.

When the Escrow Clients began demanding the return of their deposits, Rust and his cohort were unable to do so because they had misappropriated a portion of those funds and the remainder were in securities they could not liquidate at the required amounts. Thus, as of May 2011, Rust began using deposits from newly-recruited Escrow Clients to repay earlier Escrow Clients who had demanded refunds when Atlantic did not procure the promised loans. Also, between December 2011 and June 2012, Rust's cohort used deposits from other newly-recruited Escrow Clients to repay earlier Escrow Clients who had demanded refunds when Atlantic did not procure the promised loans.

III.

Based upon the foregoing, the Commission finds that a court of competent jurisdiction has permanently enjoined Rust, an attorney, from violating the Federal securities laws within the meaning of Rule 102(e)(3)(i)(A) of the Commission's Rules of Practice. In view of this finding, the Commission deems it appropriate and in the public interest that Rust be temporarily suspended from appearing or practicing before the Commission as an attorney.

IT IS HEREBY ORDERED that Rust be, and hereby is, temporarily suspended from appearing or practicing before the Commission as an attorney. This Order will be effective upon service on the Respondent.

IT IS FURTHER ORDERED that Rust may, within thirty days after service of this Order, file a petition with the Commission to lift the temporary suspension. If the Commission receives no petition within thirty days after service of the Order, the suspension will become permanent pursuant to Rule 102(e)(3)(ii).

If a petition is received within thirty days after service of this Order, the Commission will, within thirty days after the filing of the petition, either lift the temporary suspension, or schedule the matter for a hearing at a time and place to be designated by the Commission, or both. If a hearing is ordered, following the hearing, the Commission may lift the suspension, censure Rust, or disqualify Rust from appearing or practicing before the Commission for a period of time, or permanently, pursuant to Rule 102(e)(3)(iii).

This Order shall be served upon Rust personally or by certified mail at his last known address.

By the Commission.

Brent J. Fields
Secretary