

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10742 / January 10, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19648

In the Matter of

JOHN JAMES SHEEHAN,
Jr.,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, 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”), against John James Sheehan, Jr. (“Sheehan” 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 him 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, Making Findings, 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 finds¹ that:

Summary

1. This matter concerns John Sheehan's role as a figurehead spokesperson for Saivian LLC which offered and sold unregistered securities in a fraudulent Ponzi and pyramid scheme. Sheehan held himself out to Saivian LLC's Members and prospective Members as Saivian's President despite having no executive, operational or financial control over the enterprise, and was unreasonable in making statements about the Saivian business model that were not accurate. Sheehan's actions also misled investors by masking Eric Dalius's total control of the Saivian enterprise. Sheehan violated Securities Act Section 17(a)(3) as a result.

Respondent

2. **Sheehan**, 51 years old, is a resident of Olean, New York. From November 2015 through October 2016, Sheehan was an independent contractor with Saivian LLC.

Other Relevant Entities and Individuals

3. **Saivian LLC** is a Delaware limited liability company with a principal place of business in Pennsylvania. Saivian LLC is one of seven connected entities based in the United States, Hong Kong and the United Kingdom that collectively operated under the business name Saivian ("Saivian"). Saivian LLC is not registered with the Commission, and has not registered any offering or class of its securities with the Commission. On October 3, 2018, the Commission filed a complaint in the United States District Court for the Central District of California against Eric Dalius, Saivian LLC, and the six other Saivian-related entities controlled by Dalius, alleging that Dalius masterminded a Ponzi and pyramid scheme through those entities: *SEC v. Eric J. "EJ" Dalius, et al.*, 2:18-cv-08497-CJC.

4. **Eric J. "EJ" Dalius** ("Dalius"), 48 years old, is a resident of Florida. Dalius is the sole indirect owner of Saivian LLC, and the direct or indirect owner of the additional six corporate entities that comprised the Saivian offering. Dalius was indicted in the Eastern District of Pennsylvania in January 2000 on mail fraud, wire fraud, and conspiracy charges in connection with a long distance phone card scam. *United States v. Dalius*, 2:00-cr-00026-FVA-I (E.D. Pa). Dalius is a defendant in the related litigation *SEC v. Eric J. "EJ" Dalius, et al.*

Respondent's Role at Saivian LLC

5. From October 2015 through September 2017, Saivian solicited persons in the United States and around the world to purchase "Cashback Memberships" with Saivian. The

¹ 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.

Memberships, which cost \$125 every 28 calendar days, offered the opportunity to profit by obtaining 20% cashback on Cashback Members' shopping purchases in exchange for submission of their point-of-sale ("POS") receipts for those purchases to Saivian. Saivian claimed that the funds used to pay the 20% to Cashback Members were derived from the sale of the Cashback Members' POS receipts to third parties, called "marketing partners" or "advertising partners," who purchased or otherwise monetized the data embedded in the receipts that Saivian had verified and processed. This was false. Saivian made no revenue from the sale or monetization of POS receipts. Instead, Saivian's revenue was generated almost exclusively from the \$125 fees paid by Saivian Cashback Members themselves.

6. Saivian also urged Cashback Members to become "Affiliates" and profit by selling Saivian Cashback Memberships to others, which Saivian claimed would provide the Affiliates with substantial financial benefits based on their Membership sales and recruiting efforts—both directly and indirectly—through their "downline" recruits. Saivian's Cashback Memberships and Affiliate Program memberships were each investment contracts and securities.

7. Dalius created and owned Saivian, had exclusive control of its operations and finances, and hired its public-facing management team. To serve as President of Saivian LLC, Dalius recruited Sheehan, a long-time business acquaintance who had served as a corporate spokesperson for at least one of Dalius's earlier multilevel marketing companies. In November 2015, Sheehan executed an independent contracting agreement with Saivian LLC in which he agreed to serve as President of Saivian LLC and, among other duties, to "personally participate in conference calls, corporate meetings or events concerning products and services of Saivian LLC when requested."

8. Sheehan was featured prominently as President on the "Meet the Saivian Corporate Team" webpage of the Saivian website, and was the only individual on that webpage with a title suggesting the responsibilities of a chief executive. In his website biography, Sheehan was described as having "achieved success" in a "career spanning more than 20 years" in "complex organizations such as network marketing, retail, and non-profits." Sheehan's biography also noted that he "enjoys serving his church, his beautiful wife of 15 years and 2 precious children and now YOU!"

9. Sheehan was also identified as Saivian's President on weekly conference calls available to Saivian's Members and prospective Members. On one call, Sheehan told participants that "I wanted to let you know that as President of Saivian I am committed to your success and to the long term stability of the company."

10. Sheehan did not have any actual responsibility for, or role in administering, Saivian's operations or finances, and never worked out of Saivian's corporate offices. Instead, Dalius exercised complete control over Saivian. Sheehan allowed himself to be presented to the public as the President of Saivian despite the fact that his primary role at Saivian LLC was to deliver scripted remarks to investors and prospective investors on conference calls and at live events. In performing this role, Sheehan took exclusive direction from Dalius who drafted or approved Sheehan's public remarks.

11. Beginning on his first call on November 16, 2015, and throughout the first month of the Saivian scheme, Sheehan—reading a script drafted by Dalius—incorrectly stated: “Saivian makes that Point of Sale data available to their marketing partners who in turn purchase advertising. However, instead of keeping all of those advertising dollars, Saivian funnels that money back to their members in the form of 20% cashback on their shopping.” Later, on an April 4, 2016 call, Sheehan announced that “our marketing partners are established right now!”

12. When Sheehan was presented to the public as Saivian’s President, Dalius was presented as a “lead consultant,” not as a member of its corporate management team. Sheehan was aware of Dalius’s role as a controlling person of the Saivian enterprise. Sheehan should have known that statements about Sheehan’s position as President and leader of Saivian were materially misleading to Saivian LLC members and prospective members because they presented Sheehan as the President of Saivian LLC, when he had no actual authority over its operations or finances.

13. Sheehan acted unreasonably when he made false statements on multiple occasions concerning the monetization of Saivian’s POS data without taking sufficient steps to verify the accuracy of those statements. Sheehan relied solely on Dalius’s representations about the funding of the Cashback Program. He should have recognized the risk of misleading Members when he made statements about Saivian’s business model as the President of Saivian, without independently verifying their accuracy.

14. As a result of the conduct described above, Respondent violated Section 17(a)(3) of the Securities Act, which makes it unlawful for any person in the offer or sale of any securities to engage in any transaction, practice, or course of business that operates or would operate as a fraud or deceit upon the purchaser.

Undertakings

Respondent has undertaken to:

15. Refrain from offering, operating, or participating in any marketing or sales program in which a participant is compensated or promised compensation solely or primarily (1) for inducing another person to become a participant in the program, or (2) if such induced person induces another to become a participant in the program.

16. In connection with this proceeding and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, (i) appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) accept service (either personally or through counsel) by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; and (iii) consent to personal jurisdiction in any United States District Court for purposes of enforcing any such subpoena. In determining whether to accept the Offer, the Commission has considered this undertaking.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Sheehan cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act.

B. Respondent shall comply with the undertaking enumerated in paragraph 15 above.

C. Respondent shall pay a civil money penalty in the amount of \$37,500 to the Securities and Exchange Commission. Respondent shall pay \$10,000 within 10 days after the entry of the Order; an additional payment of \$10,000 within 30 days after the entry of the Order, and the remaining \$17,500 within 60 days after the entry of the Order. Payments shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-Order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 identifying John James Sheehan, Jr. 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 Melissa R. Hodgman, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5561.

D. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this Order in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury.

E. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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.

Vanessa A. Countryman
Secretary