

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10796 / July 1, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19848

In the Matter of

DAVID RUMSEY,

Respondent.

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

I.

The Securities and Exchange Commission (the “Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (the “Securities Act”) against David Rumsey (“Rumsey” 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 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 finds¹ that:

Summary

1. This matter concerns Rumsey's negligence in making and disseminating materially false and misleading statements to investors in a series of real estate investment funds (the "Notes Funds") that were set up to help finance multifamily acquisition and development projects by Robert C. Morgan ("Morgan"). Working for Morgan's companies in an investor relations role, Rumsey assisted Morgan in setting up, structuring, and raising the Notes Funds, which generated more than \$80 million from primarily retail investors between 2013 and 2018. Rumsey told investors that the Notes Funds would use investor money they raised to make unsecured loans ("Portfolio Loans") to entities affiliated and owned by Morgan ("Affiliate Borrowers") so that these entities could either operate existing multifamily properties or acquire new properties. Rumsey further told investors that they would be paid a target return of 11% using the proceeds of these Portfolio Loans. Morgan personally guaranteed the payment of principal and interest on the Portfolio Loans.

2. By February 2016, Morgan was using later Notes Funds to make interest and principal payments on Portfolio Loans made by earlier Notes Funds. Nevertheless, between February 2016 and September 2018 (the "Relevant Period"), Rumsey told investors that all Portfolio Loans had always performed such that they had enabled Morgan to repay those loans and to make the 11% interest payments to Notes Fund investors. Rumsey knew or should have known, however, that certain of these Portfolio Loans had only performed because Morgan had used other Notes Funds to make the payments, which Rumsey did not disclose to investors.

Respondent

3. **Rumsey**, age 59, resides in Fairport, New York. Rumsey worked for Morgan and his companies from 2009 until the spring of 2019, during which time Rumsey helped Morgan raise capital for various real estate projects including the Notes Funds.

Other Relevant Individual

4. **Morgan**, age 63, resides in Pittsford, New York. Through his various companies, for more than thirty years, Morgan has owned, operated, and developed residential and commercial real estate, including multifamily properties, located primarily in the Northeastern United States. On May 21, 2019, Morgan was indicted on 46 counts of wire fraud, bank fraud, conspiracy to commit wire and bank fraud, and conspiracy to commit money laundering. *See United States v. Robert C. Morgan, et al.*, No. 18 Cr. 108 (W.D.N.Y.). On May 22, 2019, the Commission filed fraud charges against Morgan and two of his companies concerning the Notes Funds. *See SEC v. Robert C. Morgan, et al.*, No. 19 Civ. 661 (W.D.N.Y.) ("*SEC v. Morgan*").

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.

Background

5. Between October 2013 and September 2018, Morgan raised at least \$80 million from investors through four, separate Notes Funds. More than 200 individuals and entities across at least 17 states invested in the Notes Funds over time. These individuals and entities were primarily retail investors, many of whom invested using their retirement accounts and many of whom invested on multiple occasions.

6. Beginning in 2013, Rumsey worked with Morgan and other professionals hired by Morgan to set up and structure the Notes Funds, including by helping to draft the relevant offering documents and agreements provided to investors.

7. In the first three Notes Funds (Notes Fund I, II, and III), investors purchased membership interests in a limited liability company pursuant to a subscription agreement with the Morgan Mezzanine Fund Manager LLC (the “Fund Manager”), signed by Morgan.² Rumsey was an officer of the Fund Manager.

8. Rumsey typically sent potential Notes Fund investors a package of information about the investment opportunity by email. For the first three Notes Funds, this package included a copy of an offering memorandum.

9. Morgan and Rumsey met, spoke with, and/or emailed potential investors in the Notes Funds. Rumsey interfaced directly with current and potential investors in the Notes Funds and then relayed questions and other developments back to Morgan.

10. For the first three Notes Funds, through the offering memoranda and emails he sent, Rumsey told investors that their investments would be used to make Portfolio Loans to Affiliate Borrowers so that those Affiliate Borrowers could more efficiently acquire, manage, operate, hold, or sell multifamily properties, or in connection with their acquisition of real estate development projects.

11. Rumsey told investors that the Notes Funds would make Portfolio Loans at rates sufficient to make 11% interest payments to investors, which the Notes Funds paid in monthly installments. Rumsey further told investors that the Notes Funds would make interest payments using the interest income generated by the Portfolio Loans, which were interest-only until maturity. The maturities of the Portfolio Loans typically ranged from 18 to 24 months.

12. Morgan personally guaranteed the repayment of each Portfolio Loan, including all principal and interest due by the Affiliate Borrower, back to the Notes Funds.

13. The offering memoranda for Notes Funds II and III stated that Portfolio Loans made by prior Notes Funds were performing such that the interest generated by these Portfolio Loans had always been sufficient to fund the 11% interest payments to investors.

² The fourth Notes Fund was structured differently than the other three. Morgan, on behalf of another entity, entered into a loan agreement with each investor and issued a promissory note to each investor in the amount of the loan. Though Rumsey was also involved in the administration of this fourth Notes Fund, it is not a subject of this Order.

14. For example, the offering memorandum for Notes Fund III stated that “[a]ll of the Fund I Portfolio Loans are paying the 11% target return on schedule,” “[a]ll of the Fund II Portfolio Loans are paying the 11% target return on schedule,” and “[s]ince its inception Fund I and Fund II have paid, and are paying, investors the 11% target return as projected therein totaling more than \$5.0 million in distributions to date.”

15. Rumsey sent the offering memorandum for Notes Fund III to potential investors throughout the Relevant Period, during which time Notes Fund III raised more than \$21 million.

16. In late 2017 and early 2018, Rumsey sent a supplement to the Notes Fund III offering memorandum (the “Supplement”) to investors in connection with the closing of Notes Fund III, which Rumsey also helped draft. The Supplement reiterated the statements in the Notes Fund III offering memorandum concerning the timely performance of all Portfolio Loans made by Notes Fund I and Notes Fund II. With respect to the Portfolio Loans that had already been made by Notes Fund III, the Supplement further stated that “[e]ach of the Affiliate Borrowers has been paying the 11% target return on schedule according to the terms of the Portfolio Loans.”

17. Rumsey also made email representations to investors during the Relevant Period about the pattern of timely payments of Notes Fund Portfolio Loans separate and apart from his dissemination of copies of offering memoranda and the Supplement.

18. With respect to the ongoing administration of the Notes Funds, Rumsey was copied on emails sent by Morgan’s accounting personnel, other executives at Morgan’s companies, and Morgan concerning various transfers to and from the Notes Funds. Rumsey also typically prepared, or caused to be prepared, promissory notes that memorialized the terms of each Portfolio Loan after it was made.

19. Beginning in February 2016, Morgan used later Notes Funds to pay off certain Portfolio Loans made by earlier Notes Funds, either to facilitate the redemptions of earlier investors or to pay off non-performing or maturing loans. Rumsey was copied on contemporaneous emails concerning many of these transfers.

20. By at least April 2016, Morgan used the Notes Funds to make interest payments on Portfolio Loans owed by Affiliate Borrowers back to other Notes Funds, in order to enable those Notes Funds to make 11% interest payments to investors. Rumsey was copied on contemporaneous emails concerning many of these transfers as well.

21. Rumsey knew or should have known that Morgan used other Notes Funds to make payments on certain Portfolio Loans. Nevertheless, Rumsey did not disclose to the investors with whom he interfaced, including those to whom he sent the offering memoranda or the Supplement, that the reason certain Portfolio Loans had performed to date was because of payments by other Notes Funds. As a result, Rumsey should have known that the statements he made or disseminated about the performance of the Notes Funds were false or misleading.

22. During the Relevant Period, Rumsey received cash bonuses from Morgan and his companies based in part on the amounts Rumsey helped raise for the Notes Funds.

23. As of May 2019, investors in the Notes Funds were owed more than \$63 million in principal. On January 21, 2020, the court in *SEC v. Morgan* granted the court-appointed receiver's motion to distribute more than \$63 million to these investors.

Violations

24. As a result of Rumsey's negligent conduct described above, Rumsey violated Section 17(a)(2) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

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

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Rumsey cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent Rumsey shall pay a civil money penalty in the amount of \$80,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: (a) \$16,000, within ten days of the entry of this Order; (b) \$16,000, within 90 days of the entry of this Order; (c) \$16,000, within 180 days of the entry of this Order; (d) \$16,000, within 270 days of the entry of this Order; and (e) \$16,000, within 360 days of the entry of this 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

Payment by check or money order must be accompanied by a cover letter identifying the Respondent and the file number of this proceeding; a copy of the cover letter and check or money order must be sent to Daniel Michael, Chief, Complex Financial Instruments Unit, and Osman Nawaz, Assistant Director, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

C. 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 civil penalties 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