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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

PLAINTIFF,

v.

GAYLEN DEAN RUST, an individual, and  
RUST RARE COIN, INC., a Utah corporation,

DEFENDANTS.

**COMPLAINT**

Case No.: 1:18-cv-00147-TS

Judge Ted Stewart

Plaintiff, Securities and Exchange Commission (the “Commission”), for its Complaint against defendants Gaylen Dean Rust (“Rust”) and Rust Rare Coin, Inc. (“RRC”) (collectively, “Defendants”) alleges as follows:

**INTRODUCTION**

1. This matter involves a fraudulent silver trading program operated by Rust and RRC. Since at least January 1, 2017, Rust has been soliciting investors to invest in a scheme purportedly involving the trading of silver bullion.

2. Rust has raised funds from approximately 300 investors across the country for the silver trading program, and has been doing so since at least January 1, 2017. From that date through August 2018 alone, he may have raised approximately \$85.7 million from investors in the silver trading program.

3. Rust solicits investors by making material misrepresentations and omissions. The misrepresentations about the silver trading program relate to, among others, the amount of silver he maintains in safekeeping for investors at Brink's Global Services USA ("Brink's"); his silver trading methods; his past performance; the use of investor funds; and the safety of the investment.

4. In fact, Rust does not maintain any amount of silver in storage with Brink's; is not employing the sophisticated silver trading strategies he advertises to investors; is not achieving the returns he is representing to investors; and is putting investor funds at risk by spending them on his personal businesses and on himself and his family members.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction by authority of Sections 20 and 22 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77t and 77v] and Sections 21 and 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u and 78aa.

6. Defendants, directly and indirectly, singly and in concert, have made use of the means and instrumentalities of interstate commerce and the mails in connection with the transactions, acts and courses of business alleged herein, certain of which have occurred within the District of Utah.

7. Venue for this action is proper in the District of Utah under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]

because certain of the transactions, acts, practices, and courses of business alleged in this Complaint took place in this district and because Defendants reside in and transact business in this district.

8. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged herein and in transactions, acts, practices, and courses of business of similar purport and object.

9. Defendants' conduct took place in connection with the offer, purchase and/or sale of investment contracts issued by Rust, which are securities.

### **DEFENDANTS**

10. Gaylen Dean Rust, 59 ("Rust"), is a resident of Layton, Utah. He is the president and sole director of RRC, and also controls a number of other businesses. Rust operates the RRC retail store in downtown Salt Lake City.

11. Rust Rare Coin, Inc. ("RRC"), is a Utah corporation with its principal office in Salt Lake City, Utah. It was founded in 1966 by Rust's father and is operated by Rust. RRC's retail store and website sells rare coins, collectible paper money and precious metal bullion. The store specializes in early Mormon currency. Its manager is Rust's son Joshua.

### **STATEMENT OF FACTS**

#### **Background – the silver trading program**

12. In addition to managing the retail coin business of RRC, Rust solicits investors to place their funds into a purported investment that is based on the purchase and sale of silver bullion (the "silver trading program"). Rust tells investors that he trades only physical silver, rather than silver futures.

13. The silver trading program is managed and controlled solely by Rust.

14. Rust represents that he uses 100% of investor funds to buy silver. Rust tells investors that he stores all the silver bullion that he has purchased with investor funds at Brink's Global Services USA ("Brink's") in either Salt Lake City or Los Angeles, with 85% of investor silver being stored in Salt Lake City.

15. Rust tells investors that he trades with only half the amount of silver he has bought for the investor, storing the other half in safekeeping.

16. In the fall of 2018, Rust told investors he was storing almost \$80 million of silver at Brink's.

17. Rust represents to investors that he conducts all of the silver trades for the program through an account in the name of RRC at HSBC Bank Plc ("HSBC"). He states that he trades using an algorithm generated by HSBC that enables him to sell at the point when the price of silver begins to fall and to buy the silver back just before the price recovers.

18. Rust represents that he uses the profit he has generated in his trades to repurchase a larger amount of silver at the lower price, thereby continually increasing the amount of silver he holds for the investor.

19. Rust represents to investors that by using the HSBC algorithm he has never experienced a losing month, much less a losing year. He told one prospective investor that in his worst year he had still earned 12% a year for his investors, and that he averaged returns of 20 to 25% a year.

20. Rust told one prospective investor that the only risk of an investment in the silver trading program was that the price of silver would "go to zero."

21. Rust tells investors that he does not charge a management fee, but compensates himself by keeping partial shares of silver left over from the trades.

22. Rust reassures investors that they can withdraw their funds at any time on approximately two weeks' notice.

23. Prospective investors in the silver trading program do not receive any kind of offering materials.

24. Rust provides account statements to investors. The statements consist only of a spreadsheet showing the purported transactions over a given month. They report the profits purportedly generated from Rust's trades during the month, the total ounces of silver owned by a given investor at month's end, and the total value of the investor's holdings based on the price of silver at the time.

25. The spreadsheet included in the account statement is prepared by Rust in a basic Excel format. Some of the statements were printed on the letterhead of RRC.

26. Rust has been soliciting investors for the silver trading program since at least January 2017, and the solicitation is ongoing.

27. Currently, there are approximately 300 investors in many states across the country.

28. From January 2017 through August 2018, Rust raised approximately \$85.7 million from investors in the silver trading program.

**Uses of investor funds.**

29. From January 1, 2017 through August 2018, Rust processed funds invested in the silver trading program through two accounts at Zions Bank. He used the first account ending in 7496 (the "investor account"), for almost all investor deposits and payments back to investors. He used another account, ending in 3564 (the "Rust coin account"), primarily for activity related

to his coin business, but also to some extent for investor transactions. Funds are heavily commingled among these accounts because Rust transferred funds to and from them frequently.

### **MATERIAL MISREPRESENTATIONS AND OMISSIONS**

#### **Rust and RRC did not store investor silver at Brink's.**

30. In the fall of 2018, Rust told investors he was storing \$80 million of investor silver at Brink's. Brink's, however, has not held any silver for Rust or any of his entities since late 2016.

#### **Rust and RRC do not have an account at HSBC, and do not use its algorithm to trade silver.**

31. Rust represents to investors that he pools investor funds in an account held by RRC at HSBC and that he trades silver using an algorithm developed by HSBC. He represented to investors that, thanks to this algorithm, he has never had a losing month trading silver. HSBC, however, has stated that it has never maintained an account in the name of Rust or RRC.

#### **Investor funds were not used to buy silver in the trading program.**

32. Rust represents to investors that he uses all investor funds to buy silver to be placed in the silver trading program. In fact, Rust is diverting most of the investor funds he receives to his other entities, to personal uses, and to make payments to other investors. From January 1, 2017 through August 2018 Rust took in approximately \$85.7 million from investors. Of this, approximately

- a. \$70,243,523 was paid out in checks and wires in payments to earlier investors in the silver trading program;
- b. \$2,667,700 was withdrawn in cash;
- c. \$1,162,000 was transferred to Rust's entity R Legacy Racing, which Rust uses for his horse racing business;
- d. \$9,165,969 was transferred to Rust's entity R Legacy Entertainment and its subsidiaries and used for payroll, vendors, equipment and other expenses related to Rust's music and production studio; and
- e. \$2,039,994 was transferred to Rust's entity R Legacy Investment.

33. These uses account for approximately 99% of the investor deposits into this account.

34. Investors were not told that their funds would be used for purposes other than to invest in the silver trading program.

**Average returns from the silver trading program, if any, were far less than 20% to 25%.**

35. Rust represents to investors that his average trading returns for the program are 20% to 25% a year or, as he told one investor, 40% a year. He also told an investor that his worst trading month had still achieved a return of 3%; and that his best trading month had achieved a return of 21%.

36. Very little silver trading, if any, is taking place in either the investor account or Rust coin account at Zions Bank. Evidence suggests the only likely silver-trading expenditures out of the investor account total less than \$100,000, involving transactions with precious metal and coin brokers. The Rust coin account expenditures are typical of the retail coin business at RRC, not of a silver trading program.

**The investor account statements provided by Rust are false.**

37. The account statements that Rust creates and provides to investors contain false statements. They show that Rust engages in various silver trades on behalf of each investor every month, resulting in a monthly increase in the number of ounces owned by each investor. They also show that the investor owns many ounces of physical silver. In fact, Rust does not trade silver through HSBC as he represents, nor does he store investor silver at Brink's.

### **Materiality of Misrepresentations**

38. Rust's misrepresentations to investors and potential investors are material because investors would certainly find it important to know that Rust does not maintain a trading account

at HSBC for investors; does not store quantities of investor silver at Brink's; is conducting little if any silver trading; and is using investor funds for a variety of undisclosed purposes, including funding his related entities and paying returns to earlier investors.

#### **Scienter of Rust**

39. Rust knew his representations were false and misleading at the time he made them because he has at all times been in possession of the true facts, namely, that he is not storing investor silver bullion at Brink's; that he does not have a trading account at HSBC; that he is not using an HSBC algorithm to trade; that he is carrying out little or no silver trading at all; that he is preparing and transmitting false account statements to investors; and that he is using investor funds not for silver trading but to make payments to his related entities and to prior investors.

#### **The Investments in the Silver Trading Program Are Securities Being Sold in Unregistered Transactions.**

40. The purchase of an interest in the silver trading program involves an investment of money.

41. Investor funds are aggregated together in the investor account and, to a lesser extent, in the Rust coin account.

42. Payment of the purported investor returns is entirely dependent on Rust's execution of the trades in silver bullion. Investors have no role in the silver trading.

43. Rust sold millions of dollars of investments in the silver trading program in an unregistered continuous offering to dozens of investors across the United States.

44. Rust provided no offering materials to prospective investors.

45. Rust never took any steps to determine whether a prospective investor was accredited. He never asked investors questions concerning their income or net worth.

46. The investments in the silver trading program were offered and sold to persons who were not accredited within the meaning of the federal securities laws.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF EMPLOYMENT OF A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD Violation of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]**

47. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 46 above.

48. Defendants Rust and RRC, by engaging in conduct described above, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, with scienter, employed devices, schemes, or artifices to defraud.

49. By reason of the foregoing, Rust and RRC, directly or indirectly, violated, and unless restrained and enjoined by this Court, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

#### **SECOND CLAIM FOR RELIEF FRAUD IN THE OFFER OR SALE OF SECURITIES Violations of Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)]**

50. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 46 above.

51. Defendants Rust and RRC, by engaging in the conduct described above, directly and indirectly, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

52. By reason of the foregoing, Rust and RRC, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)].

**THIRD CLAIM FOR RELIEF**

**FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES  
Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a), (b),  
and (c) thereunder [17 C.F.R. § 240.10b-5(a), (b), and (c)]**

53. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 46 above.

54. Defendants Rust and RRC, by engaging in the conduct described above, directly or indirectly, by the use of means or instrumentalities of interstate commerce or use of the mails, in connection with the purchase or sale of securities, with scienter, employed devices, schemes, or artifices to defraud, or engaged in acts, practices, or courses of business that operated or would operate as a fraud and deceit upon other persons.

55. By reason of the foregoing, Rust and RRC violated, and unless restrained and enjoined will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a), (b), and (c) thereunder [17 C.F.R. § 240.10b-5(a), (b), and (c)].

**FOURTH CLAIM FOR RELIEF**

**OFFER AND SALE OF UNREGISTERED SECURITIES  
Violation of Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)]**

56. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 46 above.

57. Defendants Rust and RRC, by engaging in the conduct described above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or the mails, offered to sell or sold securities or, directly or indirectly, or

carried such securities through the mails or in interstate commerce, for the purpose of sale or delivery after sale.

58. No registration statement has been filed with the Commission or has been in effect with respect to these securities.

59. By reason of the foregoing, Defendants directly or indirectly violated, and unless enjoined will continue to violate, Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)].

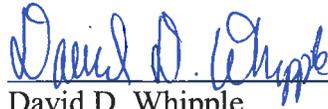
### **RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court:

- a) Permanently enjoin Defendants and their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, from violating, directly or indirectly, Sections 5(a), (c), and 17(a) of the Securities Act [15 U.S.C. § 77q] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];
- b) Order Defendants to disgorge all ill-gotten gains and/or unjust enrichment realized by them, plus prejudgment interest;
- c) Order Defendants to each pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and/or Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and
- d) Grant such further relief as this Court may deem just and proper.

Dated: November 15, 2018.

Respectfully submitted,



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Securities and Exchange Commission