

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.
v.	:	
	:	<u>COMPLAINT</u>
K.C. SMITH,	:	
	:	
Defendant.	:	

Plaintiff Securities and Exchange Commission (“SEC”) alleges:

SUMMARY

1. This case involves the fraudulent offer and sale of securities over the Internet by Defendant, K.C. Smith (“Smith”). From May 2002 to February 2003, Smith raised \$102,554.49 from twenty-nine individuals by offering, in millions of e-mail messages and on two websites, investment opportunities that promised guaranteed double-digit monthly returns. Smith, who lived in Davie, Florida, Johnson City, Tennessee and Nashville, Tennessee during the time of the securities offerings, carefully designed his offerings to appeal to even the most risk-averse investors by claiming and implying that investment principal was government-insured. Smith even went so far as to create and incorporate into his scheme a third website which displayed the official SEC seal on each of its pages, and purported to be the official website of the “United States Deposit Insurance Corporation,” a fictitious entity that supposedly guaranteed Smith’s

investments. In reality, Smith never intended to use any of the funds he collected for any investment purpose. Instead, Smith planned to, and did, use the funds he collected to pay his personal expenses. By engaging in such conduct, Smith violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and is likely to commit such violations in the future unless the Court enjoins him from doing so. Accordingly, this action seeks injunctive relief, as well as disgorgement, prejudgment interest and civil penalties.

JURISDICTION AND VENUE

2. The Court has jurisdiction in this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)], and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

3. Smith made use of the means and instrumentalities of interstate commerce or of the mails in connection with the acts, practices, and courses of business alleged herein, certain of which occurred within the Eastern District of Tennessee.

THE PARTIES

4. The SEC brings this action pursuant to authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)], and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

5. Defendant Smith, age 20, currently resides in Oakville, Kentucky. During the time of the violations alleged herein, Smith was unemployed and lived in Davie, Florida, Johnson City, Tennessee and Nashville, Tennessee.

6. During the time of the violations alleged herein, Smith took extensive measures to conceal his identity and evade detection. These measures included: (1) using a disposable cellular telephone and numerous aliases to register for websites and communicate with prospective investors; (2) accessing the Internet through stolen Internet accounts; and (3) requiring investors to fund their purported investment accounts through online payment services that maintain payee confidentiality.

FIRST CLAIM

Violations of Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 by Smith in Connection with Smith's Offer and Sale of Maryland Investment Club Securities

7. Paragraphs 1 through 6 are realleged and incorporated herein by reference.

8. From May to September 2002, Smith created and maintained what purported to be an official website for the Maryland Investment Club (“MIC”), a fictitious investment club, which claimed to offer potential investors double-digit monthly returns on “high-yield international tax-free” investment opportunities. A true and correct copy of the website, as it existed on October 16, 2002, is attached as SEC Exhibit A (certain portions of the website are redacted to protect the identities of individuals not involved in this matter). Smith advertised the MIC website in approximately six million e-mail messages he sent from May through August 2002. Recipients of the e-mail messages who wished to learn more about the purported MIC investment opportunities were instructed to send a reply e-mail. Those who replied were sent a subsequent e-mail that contained a link to the MIC website.

9. Specifically, the MIC website advertised “high-yield international tax-free investing” where “[e]very dime you invest is 100% guaranteed” by the Canada Deposit Insurance

Corporation (“CDIC”). The website claimed that the “CDIC insures the entire principle [sic] investment with us up to \$60,000USD per account.” The MIC website promised returns of no less than ten to twenty percent per month to individuals willing to invest as little as \$500. The website also claimed that MIC had “1,300 monthly investors world-wide and a seven year track record” with “a strong monthly return never falling under 10% payout a month.” The MIC website further claimed that MIC was able to generate these extraordinary rates of return by trading “commodities and currency tax-free thought [sic] all markets.” All of these claims were false.

10. The MIC website also stated, on each of its pages, that MIC was “In group with” an established hedge fund company located in Ontario, Canada. The MIC website included the name and biographical information of the hedge fund company’s manager, and implied that this individual was working with MIC. In fact, MIC never had any relationship with this individual or any other securities industry professional.

11. As a result of the MIC offering, Smith collected \$78,909.41 from twenty-six investors.

12. Smith used substantially all of the proceeds of the MIC offering to pay personal expenses.

13. Smith never intended, nor did he, use any of the proceeds in a manner consistent with the representations on the MIC website.

14. By reason of the foregoing, Smith, directly and indirectly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the offer, purchase and/or sale of securities: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices or courses of business which

operated or would operate as a fraud or deceit upon the purchasers of the securities offered and sold by Smith and thereby violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 thereunder.

SECOND CLAIM

Violations of Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 by Smith in Connection with Smith's Offer and Sale of Kryer Financial Securities

15. Paragraphs 1 through 14 are realleged and incorporated herein by reference.

16. From September 2002 to February 2003, Smith created and maintained what purported to be an official website for Kryer Financial (“Kryer”), a fictitious investment company which claimed to offer potential investors double-digit monthly returns on investments “insured against loss of value” by the “United States Deposit Insurance Corporation.” A true and correct copy of the website, as it existed on October 16, 2002, is attached as SEC Exhibit B (certain portions of the website are redacted to protect the identities of individuals not involved in this matter). Smith advertised the Kryer website in approximately three million e-mail messages he sent from September 2002 to February 2003. Recipients of the e-mail messages who wished to learn more about the purported Kryer investment opportunities were instructed to send a reply e-mail. Those who replied were sent a subsequent e-mail that contained a link to the Kryer website.

17. According to the website, Kryer was seeking individuals willing to invest a minimum of \$2,000 to participate in an “exclusive high-yield investment club.” Specifically, the Kryer website advertised investment opportunities in six high-yield investment funds, of which four purportedly had historically generated triple-digit annual returns. The website claimed that

one of the funds had returned over 1,184% since its inception in 1994. The website further stated

that Kryer was a “specialist international fund manager that applies unique trading methods, hedge funds and private gold-related investment methodology to the objective of achieving above average returns for its clients.” All of these claims were false.

18. The Kryer website also presented pictures and biographies of individuals who purportedly founded the company in 1992. Smith copied these biographies and pictures from the website of an established European investment company. In fact, Kryer never had any relationship with the individuals whose identities appeared on the Kryer website, or with any other securities industry professional.

19. The Kryer website falsely advertised that investment principal was fully insured up to “\$250,000USD per certificate” by an entity named the “United States Deposit Insurance Corporation” (“USDIC”). The Kryer website falsely claimed that Kryer was “registered and an active Corporate holder with USDIC” and that Kryer had approximately \$1.2 million in “Current Holdings” and approximately \$1.6 million in “Asset Holdings” with USDIC. The Kryer website included a hyperlink to what purported to be the official USDIC website.

20. Around the same time that he created the Kryer website, Smith created, and then maintained, what purported to be the official website for the USDIC. The USDIC website bore the official SEC seal, the official seal of the Investment Dealers Association of Canada and a modified version of the official seal of the United States Agency for International Development on every page. A true and correct copy of the website, as it existed on October 16, 2002, is attached as SEC Exhibit C. The USDIC website claimed that USDIC guaranteed the investment principal of its “member institutions” against loss and listed “Kryer Group” and “Kryer Financial” as USDIC member institutions. In fact, USDIC did not exist, and all of the claims and implications on the USDIC website that Kryer investments were insured or guaranteed against loss were false.

21. As a result of the Kryer offering, Smith collected \$23,645.08 from three investors.

22. Smith never intended, nor did he, use any of the proceeds in a manner consistent with the representations on the Kryer website.

23. By reason of the foregoing, Smith, directly and indirectly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the offer, purchase and/or sale of securities: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of the securities offered and sold by Smith and thereby violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SEC, respectfully requests that this Court enter a judgment that:

I.

permanently restrains and enjoins Smith, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder;

II.

orders Smith to disgorge all monies obtained through the illegal activities described above, plus prejudgment interest thereon, and to pay civil penalties pursuant to Section 20(d) of the Securities Act, and Section 21(d) of the Exchange Act; and

III.

grants such other relief as this Court deems just and proper.

Dated: May 12, 2003

Respectfully submitted,

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