

SEC: Florida Couple Defrauds Elderly Investors Through Sale of Unregistered Securities

On February 4, 2013, in U.S. District Court for the Southern District of Florida, the U.S. Securities and Exchange Commission (the “SEC”) charged a Florida husband and wife team with defrauding more than 400 senior citizens. Richard K. and Susan L. Olive (the “Olives”), both employed at We the People, Inc. (“We the People”), allegedly sold to seniors from June 2008 to April 2012 an unregistered investment mechanism which they marketed as charitable gift annuities (“CGAs”). We the People claimed to operate as a non-profit organization. Senior investors transferred assets such as stocks, annuities, real estate and cash to We the People in exchange for CGAs, based on the promise that their money would be used to make charitable contributions. However, the CGAs issued by We the People were quite different from those legally permissible as the sales principally benefitted both the Olives and third-party promoters and consultants. In one such instance, We the People publicly claimed it donated \$21.8 million to orphans suffering from AIDS in Zambia. In actuality, the organization made only a small contribution to a third-party organization providing charitable services to the country.

The SEC alleges that, in addition to siphoning funds for personal use, the Olives also procured more than \$1.1 million in salary and commissions. Further, the SEC alleges that the Olives falsely represented to senior investors the value and financial benefits of purchasing CGAs through We the People, and “lied about the safety and security of the investments.”

The SEC has charged both We the People and the Olives with, amongst other violations: (1) fraud violations of Section 17(a) of the Securities Act of 1933, as amended, Section 10(b) of the Securities and Exchange Act of 1934, as amended, and Rule 10b-5 thereunder; (2) the sale of unregistered securities in violation of Section 5(a) and Section 5(c) of the Securities Act of 1933, as amended.

The SEC’s complaint against We the People and the Olives may be accessed by following the link herewith: <http://www.sec.gov/litigation/complaints/2013/comp-pr2013-19-olives.pdf>.

SEC Approves PCAOB’s \$245.6 Million 2013 Budget

With the publication of Release 2013-21 on February 13, 2013, the U.S. Securities and Exchange Commission (the “SEC”) approved the 2013 \$245.6 million budget of the Public Company Accounting Oversight Board (“PCAOB”). The PCAOB, which was established through the Sarbanes-Oxley Act of 2002 (“SOX”), performs oversight of audits and auditors of financial statements filed by issuers and registered broker-dealers. “This budget review and approval process allows the SEC to determine appropriate funding levels and ensure that funds collected from issuers and broker-dealers are used efficiently and effectively,” noted recently appointed SEC Chairman Elisse B. Walter. In addition to the budget, the SEC also approved an accounting support fee totaling \$234 million, of which \$207.5 million will be assessed on issuers and \$26.5 million assessed on broker-dealers. The PCAOB, which increased its budget 8% over that in 2012, seeks to increase its audit inspections program by hiring additional staff to perform inspections of audits of SEC-registered broker dealers, perform international inspections, and implement improvements to the reporting and processes for assessing quality control remediation efforts.

The SEC Release 2013-21 may be accessed at: <http://www.sec.gov/news/press/2013/2013-21.htm>.

HIGHLIGHTS

SEC brings charges against Florida couple for sale of unregistered investment vehicles

PCAOB increases its budget by 8% over 2012

Illinois man charged with fraudulent selling securities in exchange for enhanced citizenship prospects

NY investment manager charged in cherry-picking trading scheme

SEC Brings Charges Against Illinois Investment Scheme Exploiting Foreign Immigration Program

On February 8, 2013, the U.S. Securities Exchange Commission (the “SEC”) filed charges against Anshoo R. Sethi (“Sethi”) in the U.S. District Court for the Northern District of Illinois (the “Court”) citing violations of Section 17(a) of the Securities Act of 1933, as amended, Section 10(b) of the Securities Exchange Act 1934, as amended, and Rule 10b-5 thereunder. Touting the promise of an enhanced path to U.S. citizenship through the U.S. Citizenship and Immigration Services (“USCIS”) EB-5 Immigrant Investor Pilot Program (the “EB-5 Program”), the SEC alleges that Sethi used two entities, A Chicago Convention Center (“ACCC”) and Intercontinental Regional Center Trust of Chicago (“IRCTC”), to persuade foreign investors to purchase upwards of \$145 million in securities in a fraudulent construction project in Chicago, Illinois. From the more than 250 foreign investors, Sethi also collected \$11 million in refundable administrative fees. The EB-5 Program provides foreign investors a pathway to citizenship by investing \$1 million, or \$500,000 in an area with high-unemployment, in U.S. projects that will create or preserve at least 10 jobs for U.S. workers.

In the complaint, the SEC misrepresented information concerning the project within both its selling documents and materials submitted to the USCIS. Further, the SEC alleges Sethi misappropriated the \$11 million in refundable administrative fees collected from investors either through spending or a transfer of \$2.5 million to a personal, offshore bank account in Hong Kong.

In addition to a Court ordered temporary restraining order and asset freeze, the SEC seeks permanent injunctions and other monetary relief against Sethi. The SEC press release may be found at: <http://www.sec.gov/news/press/2013/2013-20.htm>. The full complaint may be read at: <http://www.sec.gov/litigation/complaints/2013/comp-pr2013-20.pdf>.

Investment Adviser Charged in Connection with Cherry-Picking Scheme

On February 6, 2013, the U.S. Securities and Exchange Commission (the “SEC”) instituted administrative proceedings against Howard B. Berger (“Berger”),

alleging engagement in a fraudulent trade allocation scheme between July 2008 to March 2010. Berger, who managed and acted as investment adviser for two (2) hedge funds, Professional Traders Fund, LLC and Professional Offshore Opportunity Fund, allegedly “cherry-picked” profitable trades and allocated more than \$6.8 million in ill-gotten gains to his wife’s brokerage account. The complaint alleged that between July 2008 and March 2010, Berger and his wife’s account profited by at least \$6.8 million in ill-gotten gains from the cherry-picking scheme.

On January 15, 2013, the U.S. District Court for the Eastern District of New York issued a final judgment against Howard Berger for securities fraud and investment adviser fraud. The final judgment permanently bars Berger from future violations of Section 10(b) of the Securities Exchange Act of 1934, and Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940, each as amended.

Berger consented to administrative proceedings which would bar him from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent. Berger was also ordered to pay a disgorgement of \$5,399,456.16, an additional \$1,433,521.84 of disgorgement, \$22,776 of prejudgment interest, and a \$50,000 civil money penalty.

The SEC Administrative Proceeding may be found at: <http://www.sec.gov/litigation/admin/2013/ia-3548.pdf>

For more information, please speak to your relationship manager or visit jpmorgan.com/wss.

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