

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76979 / January 27, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17070

In the Matter of

**3C ADVISORS &
ASSOCIATES, INC.,
STEPHEN JONES, and
DAVID PROLMAN**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against 3C Advisors & Associates, Inc. (“3C”), Stephen Jones (“Jones”), and David Prolman (“Prolman”) (collectively “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

A. Summary

From 2013 through the present, Jones and Prolman through their company 3C violated Section 15(a) of the Exchange Act by engaging in unregistered broker activity. Through 3C, Jones and Prolman solicited small- and medium-sized businesses by marketing “capital advisory services.” In particular, 3C held itself out as “arrang[ing] private placement of debt and equity securities” and facilitating capital raises. 3C undertook extensive responsibilities for its customers including analyzing customers’ financial needs, recommending and designing financing methods, playing a role in negotiations with capital sources, and making recommendations about proposed funding terms. Moreover, 3C’s engagement agreements provided that its customers pay performance fees which were calculated as a percentage of the capital raised, with greater potential

payouts for equity investments. Thus, 3C falls within the definition of a “broker” because 3C is “engaged in the business of effecting transactions in securities for the account of others.” Jones and Prolman willfully aided and abetted and caused the firm’s violations of Section 15(a) of the Exchange Act, by engaging in such broker conduct through 3C without registering as or establishing an association with a registered broker-dealer.

B. Respondents

1. Respondent 3C is a California corporation headquartered in Rancho Santa Fe, California, which was launched in June 2010. 3C provides a range of consulting services to small- and mid-sized companies including the capital advisory services at issue in this action.

2. Jones is a resident of Rancho Santa Fe, California. Jones founded 3C in June 2010 and is 3C’s senior managing director. Jones has never held any securities licenses. Prior to launching 3C, Jones performed valuation analysis, litigation support, and restructuring consulting for over two decades at several consulting firms. Jones’s positions at two of these firms, were within those firms’ registered broker-dealer segments, but he never obtained a securities license and did not perform any of the transactional and capital advisory services provided by those firms

3. Prolman is a resident of Del Mar, California. In June 2013, Prolman joined 3C as a senior managing director and leader of capital advisory services. Prolman has never held any securities licenses. Prior to joining 3C, Prolman had three decades’ experience in providing consulting services including financial, operational and corporate management, capital finance, growth strategies, turnarounds, loan workouts, and bankruptcy reorganizations.

C. Background

4. In June 2010, Jones organized 3C as a holding company with the goal of providing comprehensive consulting services through various sub-LLCs, each independently operated by consultants with whom Jones was affiliated. In addition to the valuation services and litigation consulting that Jones himself provided, he planned to have 3C offer “capital advisory services” under a sub-LLC known as the “Capital Advisory LLC.”

5. The capital advisory services business did not commence until Prolman joined the firm in June 2013, operating as a segment of 3C rather than as a separate LLC. Upon joining the firm, Prolman prepared a business plan for the capital advisory services segment, which included an “industry overview and competitive analysis” identifying six competing firms, all of which were registered broker-dealers.

6. Since Prolman joined 3C, the firm has touted its capital advisory business segment. 3C has taken on at least five engagements to perform capital advisory services since Prolman’s arrival, and has earned approximately \$160,000 in compensation for such services during this time frame.

D. 3C's Capital Advisory Services Business

7. 3C has solicited customers for its capital advisory services online, in one-on-one presentations with prospective customers, and at industry conferences. 3C also has marketed its capital advisory services to law firms that would then introduce 3C to potential customers for the services.

8. According to 3C's website and other marketing materials, under 3C's capital advisory services business segment, the firm offered broker services for its customers including private placement of debt and equity securities, acquisition financing, growth capital, recapitalizations, and restructuring.

9. 3C's capital advisory proposals and agreements were based on standard language, initially prepared by Prolman at his prior firm and adopted by 3C. As with the firm's marketing materials, the agreements indicated that 3C was offering to perform broker services for its customers.

10. For example, in August 2013, 3C initiated an engagement with Company A, an investment company, for purposes of "identifying and introducing you to total capital liquidity in an amount approaching \$35,000,000" in connection with an acquisition of a medical manufacturing company. 3C indicated it would "[f]ind and introduce [q]ualified [c]apital [s]ources," "assist[] you in the determination of an appropriate capital structure for the Company on a go forward basis," and "assist[] you in connection with the preparation and dissemination, as appropriate, of confidential materials for any potential or actual [t]ransaction."

11. In the proposal for Company A and several of 3C's other engagements, 3C agreed to "assist[] you in all phases of the negotiation process, including establishment of price, terms and structure."

E. Transaction-Based Compensation for Capital Advisory Services

12. 3C's agreements required capital advisory services customers to pay a combination of flat fee retainers and performance-based success fees, which entitled 3C to a percentage of any successful fund raising efforts. Certain of 3C's contracts assigned a higher percentage for the performance fee upon equity versus debt financing.

13. For example, one customer agreed to pay an initial retainer fee of \$15,000 along with a performance fee of 4% of the funded investment amount with respect to the issuance of any equity securities (which dropped to 2% if any debt instruments were issued).

14. At least one of 3C's capital advisory services engagements, an engagement for a restaurant franchising business, Company B, resulted in a successful debt financing arrangement for the customer with funds provided by a capital source identified by 3C. For the Company B engagement, 3C received \$125,000, of which \$90,000 constituted a performance fee amounting to roughly 1% of the total funding.

15. Between 2013 when Prolman joined 3C through 2014, 3C collected roughly \$160,000 in fees from five customers for its capital advisory services, including \$90,000 of which was transaction-based compensation. During that time frame, the firm received total revenue from its services of \$517,420.32. Thus, over a quarter of 3C's revenue during this period was generated through fees from its capital advisory engagements.

F. Respondents' Broker Conduct During Capital Advisory Services Engagements

16. For each of its capital advisory services customers, 3C analyzed the customer's funding needs and advised the customer regarding funding options. For example, 3C, through Jones, prepared a document analyzing one of its customer's funding structure. 3C, through Prolman, also performed a review of that customer's overall financial condition in which Prolman commented on the customer's forecast model and supporting data for inconsistencies, missing data, and assumptions. Prolman also gave informal advice to 3C's customers regarding desired funding structure, potential return on investment for equity investments, and advice about the appropriate amounts of funding to seek.

17. For each of its capital advisory services customers, 3C also prepared materials to attract capital sources on behalf of its customers. This included creating marketing books with details about the customer and the customer's desired funding. 3C, through Prolman, also generated so-called "teasers," which contained summaries of the marketing books. For some of the engagements, 3C edited materials generated by the customer, and for other engagements, 3C drafted the materials.

18. For at least two of its customers, 3C, through Prolman, also engaged in outreach to potential capital sources, including disseminating the marketing books and teasers described above. When Prolman sent the materials to potential capital sources, he targeted sources drawn from his industry contacts and from referrals from the intermediaries with which 3C collaborated. Prolman also conferred with the customers to identify and pre-screen potential capital sources that fit the funding goals. If the potential capital source expressed interest in the project, 3C's outreach also included facilitating introductions between the customer and the capital source. Prolman was present during meetings between customers and capital sources, and on at least one instance Prolman acknowledged responding to substantive questions from a potential capital source during such a meeting.

19. Finally, for at least two of its customers, 3C also played a role in negotiating terms of the funding. Capital sources corresponded with both the customer and Prolman while crafting potential deal terms during the two engagements. Even where 3C's personnel were not present during meetings with capital sources regarding deal terms, Prolman and Jones advised the customers as to the terms' advisability. 3C also corresponded with the capital sources separately from the customer during the course of negotiations to ascertain the status of the pending deal and shared these updates with the customer.

G. Inadequate Attempts to Remediate Non-Registration

20. In October 2014, after receiving a subpoena from the Commission, 3C removed references to its capital advisory services from its website. However, after October 2014, the firm took on another capital advisory engagement raising capital for a distressed company.

21. Additionally, after October 2014, Jones and Prolman sought advice from counsel regarding the need for registration. 3C, Jones, and Prolman took steps to sit for the Series 79 (investment banking representative) exam and obtain registered status by establishing an association with a registered firm. To date, however, 3C, Jones, and Prolman, remain unregistered and still have no association with any registered entity.

H. Violations

22. As a result of the conduct described above, 3C willfully violated Section 15(a) of the Exchange Act, which prohibits a broker from making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of securities without first being registered as or associated with a registered broker-dealer.

23. As a result of the conduct described above, Jones willfully aided and abetted and caused 3C's violation of Section 15(a) of the Exchange Act, which prohibits a broker from making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of securities without first being registered as or associated with a registered broker-dealer.

24. As a result of the conduct described above, Prolman willfully aided and abetted and caused 3C's violation of Section 15(a) of the Exchange Act, which prohibits a broker from making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of securities without first being registered as or associated with a registered broker-dealer.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of

Section 15(a) of the Exchange Act, whether Respondents should be ordered to pay civil penalties pursuant to Section 21B of the Exchange Act, and whether Respondents should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, Respondents may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary