ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT FOWLER and US CAPITAL FUNDING II SERIES TRUST 1, INC.,

Defendants.

SCJ

Civil Action No.

1:13-CV-1656

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Securities and Exchange Commission (the "Commission"), files its complaint and alleges that:

OVERVIEW

1. This matter involves an on-going "prime bank" scheme, in which Defendant Robert Fowler promised to have his company, US Capital Funding II Series Trust 1, Inc. ("US Capital), issue standby letters of credit or bank guarantees on behalf of investors to a "prime bank," which would purportedly grant the investors loans backed by the letters of credit.

2. Among its misrepresentations to investors, US Capital's website claims that it has assets "valued in the Trillions"

3. Fowler targeted foreign-born investors who were aspiring entrepreneurs and small business owners. Fowler promised that, because of the relationship between US Capital and the designated bank and because of US Capital's substantial assets, the "prime" bank would lend the investor company hundreds of millions of dollars with the letter of credit as security. Fowler represented to investors that at least a portion of the loan proceeds would be invested under the control of Fowler, sometimes using affiliated "traders" and "trading platforms," in order to achieve a high return. He promised that the investment returns would be used to pay off the loan and the leftover profits would be split between Fowler and the investor.

4. Fowler demanded an up-front fee from the investors for this service. In some instances, Fowler promised to return the fee if the investor was ultimately unable to procure the promised loan.

5. In fact, the letters of credit created by Fowler from US Capital were worthless, fictitious instruments, and US Capital had no relationships with financial institutions to obtain loans for individuals or entities based on letters of credit from US Capital.

6. Beginning at the latest in August 2012, Fowler, as CEO of US Capital, has raised at least $350,000 for this scheme from at least three investors, each of whom were foreign-born professionals or small business owners with little or no experience in finance or investing.

7. Rather than using the fees to facilitate the promised transaction, Fowler used the up-front fees he received to pay personal and business expenses.

8. As part of his fraudulent scheme, Fowler provided investors and or potential investors with a copy of a letter from Commission staff, indicating that the staff had closed a prior investigation into US Capital. Fowler has misrepresented to investors and or potential investors that the letter was proof that the SEC did not have any concerns regarding US Capital and that he and his business were legitimate.

VIOLATIONS

9. Defendants have engaged and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b)] and Rules 10b-5(a), (b), and (c) thereunder [17 C.F.R. § 240.10b-5 (a), (b), & (c)].

10. Additionally, Defendants have violated Section 26 of the Exchange Act [15 U.S.C. § 78z] by utilizing the termination of a prior SEC investigation into US Capital to communicate to investors that the SEC approved of Defendants' securities offerings.

JURISDICTION AND VENUE

11. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§78u(d) and 78u(e)] to enjoin defendants from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object.

12. This Court has jurisdiction over this action pursuant to 15 U.S.C. §§ 77t, 77v, 78u(d), 78u(e), and 78aa, and pursuant to 28 U.S.C. § 1345.

13. Defendants, directly and indirectly, made use of the mails, and the means and instruments of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

14. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the

Northern District of Georgia. Fowler resides in this district and US Capital has its principal place of business in this district. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and 15 U.S.C. § 78aa.

The Defendants

15. Robert Fowler age 51, resides in Duluth, Georgia, and is the CEO and control person of U.S. Capital Funding II Series Trust 1, Inc. (a/k/a US Capital Investments II (HK) Limited) ("US Capital") and the control person of US Capital's bank accounts.

16. US Capital was a Georgia corporation formed in October 2008. During the relevant period, Robert Fowler was the company's control person, alternatively serving as the company's CFO and, later, CEO. US Capital's last known place of business was identified as Fowler's home address in Duluth, Georgia. US Capital was officially dissolved in February 2012, but Fowler continues to use the company's name in his solicitation of prospective investors.

THE PRIME BANK SCHEME

17. Beginning at the latest in August 2012, Fowler, as CEO of US Capital, raised at least $350,000 from at least three investors, each of whom were foreign-born professionals or small business owners with little or no experience in finance or investing.

18. Fowler, in exchange for investors' initial "down payment" for a stand-by letter of credit ("SBLC") or bank guarantee to be issued by US Capital, offered (1) to assist in the procurement of commercial loans to companies owned or operated by the investors, and (2) to control the investment of at least a portion of the eventual (fictitious) loan proceeds, sometimes using affiliated "traders" and "trading platforms" in unspecified "instruments," in order to derive shared profits.

19. US Capital's website, http://www.uscapitalfundingii.com/, misrepresents that US Capital "has an S&P Triple-A (AAA) rating." In fact, an unaffiliated trust by the same name actually maintains such a credit rating. US Capital's website also claims that it has assets "valued in the Trillions" and maintains "precious assets in safe keeping depositories and banks around the world[.]" In fact, US Capital does not own or control any assets, other than the funds raised from investors.

20. The website further misrepresents that US Capital's "innovative investment vehicles enable our clients to maximize the value of their assets while mitigating their financial risk."

21. Through oral statements and related transaction documents, Fowler has entered separate investment contracts with at least three investors. The details of each investment were fundamentally the same: First, the investor wired money

into a bank account held in the name of US Capital over which Fowler had signatory authority. Second, US Capital claimed that it would issue a SBLC or "bank guarantee" and, using its supposed connections with major financial institutions (e.g., "a TOP 25 Bank" such as "Credit Suisse"), would obtain a loan for the investor. Third, US Capital and Fowler claimed that the loan proceeds would be wired to a bank account controlled by US Capital, an affiliated "trader" of US Capital, or, in one instance, the investor. Fourth, Fowler and US Capital represented that they would exercise control over all or a portion of the loan proceeds in order to generate shared investment returns, sometimes with the use of affiliated "traders" and "trading platforms."

22. Fowler and US Capital have not used the investor proceeds as represented. Shortly after US Capital's bank accounts received investors' funds, Fowler spent the funds at restaurants, grocery stores, gas stations, and clothing stores, and also withdrew thousands of dollars through ATM transactions.

23. Fowler has misrepresented to actual and or prospective investors that the Commission has blessed US Capital's operations. Specifically, the Commission staff had previously opened an investigation into Fowler and US Capital styled *In the Matter of US Capital Funding II*, A-3199 (conducted between December 2009

and September 2012). The staff elected to close that investigation without recommending the any enforcement action.

FOWLER MISREPRESENTS THAT THE COMMISSION APPROVED THE SECURITIES HE WAS SELLING

24. In connection with closing that investigation, the staff sent Fowler a "termination letter" on August 12, 2012, which stated, "[t]his investigation has been completed as to you, Robert I Fowler, against whom we do not intend to recommend any enforcement action by the Commission."

25. The letter attached Securities Act Release No. 5310, entitled "Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations." That release stated, in relevant part, that the staff "may advise a person under inquiry that . . . the investigation has been terminated", but specifically cautioned:

> Even if such advice is given . . . . it must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff's investigation of that particular matter. All that such a communication means is that the staff has completed its investigation and that at that time no enforcement action has been recommended to the Commission.

26. After the staff closed its investigation, Fowler represented to at least one investor that the Commission had investigated him and determined that his investment program was legitimate.

27. In an attempt to dampen negative information about US Capital that was circulated on various investor blogs and to solicit investor funds, Fowler told at least one prospective investor that the SEC had investigated him and found nothing wrong. Fowler also sent a copy of the termination letter to investors and prospective investors.

28. Fowler further justified not returning one investor's funds by falsely claiming that the Commission had frozen US Capital's assets. To support his claim, Fowler forwarded the investor a copy of an investigative subpoena issued by the Commission staff.

29. Fowler is actively soliciting new investors. On at least two occasions in March 2013, Fowler solicited investments from prospective investors via e-mails.

COUNT ONE –FRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

30. Paragraphs 1 through 29 are hereby realleged and are incorporated herein by reference.

31. From at least August 2012 to the present, Defendants, in the offer and sale of the securities described herein, by use of means and instruments of transportation

and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

32. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

33. While engaging in the course of conduct described above, defendants acted with scienter, that is, with intent to deceive, manipulate or defraud or with reckless disregard for the truth.

34. By reason of the foregoing, defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT TWO – FRAUD

Violations of Sections 17(a)(2) and 17(a)(3)
of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

35. Paragraphs 1 through 29 are hereby realleged and are incorporated herein by reference.

36. From at least August 2012 to the present, Defendants, in the offer and sale of the securities described herein, by use of means and instruments of transportation

and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and 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

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

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

COUNT THREE –FRAUD

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]and Rules 10b-5(a), (b), and (c) thereunder [17 C.F.R. § 240.10b-5 (a), (b), & (c)]

38. Paragraphs 1 through 29 are hereby realleged and are incorporated herein by reference.

39. From at least August 2012 to the present, defendants, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud;

b. made untrue statements of material facts and omitted 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

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

40. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

41. By reason of the foregoing, defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act

[15 U.S.C. § 78j(b)] and Rules 10b-5(a), (b), and (c) thereunder [17 C.F.R. § 240.10b-5(a), (b), & (c)].

COUNT FOUR – UNLAWFUL REPRESENTATION OF SEC APPROVAL

Violations of Section 26 of the Exchange Act [15 U.S.C. § 78z]

42. Paragraphs 1 through 29 are hereby realleged and are incorporated herein by reference.

43. From at least August 2012 to the present, Defendants have communicated to investors that the SEC had approved the investment program of the Defendants.

44. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate Section 26 of the Exchange Act [15 U.S.C. § 78z].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

A temporary restraining order, preliminary and permanent injunctions enjoining defendants, their officers, agents, servants, employees, and attorneys from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77 q(a)], and Sections 10(b) and 26 of the Exchange Act [15 U.S.C. §§ 78j(b) and

78z] and Rule 10b-5(a), (b), and (c) thereunder [17 C.F.R. § 240.10b-5(a), (b), & (c)].

II.

An order freezing the assets of the Defendants.

III.

An order requiring an accounting by Defendants of the use of proceeds of the fraudulent conduct described in this Complaint and the disgorgement by Defendants of all ill-gotten gains with prejudgment interest, to effect the remedial purposes of the federal securities laws.

IV.

An order pursuant to Section 24 of the Securities Act [15 U.S.C. § 77x] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] imposing civil penalties against Defendants.

V.

An order providing for expedited discovery.

VI.

An order requiring the Defendants to repatriate any funds transferred outside the United States.

VII.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

DATED: May 16, 2013[1]

Respectfully submitted,

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[1] Pursuant to Local Rule 7.1D, counsel for the Commission certifies that this Complaint has been prepared in 14 point Times New Roman font, which is approved by the Court in LR 5.1B.