

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

v.

DARAYL D. DAVIS,

Defendant,

and

AFFLUENT ADVISORY GROUP, LLC,

Relief Defendant.

Civil Action No. _____

Jury Trial Demanded

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the “Commission”), alleges as follows:

NATURE OF THE ACTION

1. This matter involves fraudulent securities offerings and a Ponzi-like scheme conducted by DaRayl D. Davis, a former securities industry professional who has held himself out to be an investment adviser and life coach.

2. From at least 2003 through the present, Davis recommended and sold unregistered “corporate bond notes” and “guarantee bonds,” or similar products (collectively, the “Davis Securities”), to approximately 30 individuals, taking in more than \$5 million.

3. Davis assured investors that the Davis Securities were safe, stable investments. Based on representations made by Davis, people believed that they were investing in legitimate investment products that would preserve and grow their money. Indeed, many told Davis that the money they were using to invest was their retirement savings.

4. But the Davis Securities were not stable or safe. In fact, they were a fabrication. Davis did not use the money he received from the sale of these products to make investments for his clients.

5. Instead, Davis used the money primarily for his own benefit—funding a lavish lifestyle that included a rented mansion in the Hollywood Hills, a home in Maryland, exotic cars, trips to night clubs, and frequent travel—and to further his scheme.

6. Davis used his affiliation with a religious organization to gain victims' trust and many victims were members of the church to which he belonged.

7. To conduct and conceal the fraud, Davis created and distributed fake investment documents and account statements, and used nearly \$1 million of investors' money to make payments to prior investors.

8. By engaging in the conduct described in this complaint, Davis violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. § 77t(b) and 77t(d)]; Sections 21(d) and (e) of the Exchange Act [15

U.S.C. § 78u(d) and 78u(e)]; and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-9(e)], to enjoin acts, transactions, practices, and courses of business, and to obtain disgorgement, prejudgment interest, civil penalties, and such other and further relief as the Court may deem just and appropriate.

10. The Court has jurisdiction over 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)]; Sections 21(d), 21(e), and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa(a)]; and Sections 209(d), 209(e), and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), and 80b-14]. Davis has, directly or indirectly, made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, practices, and courses of business alleged in this complaint.

11. Venue lies in this judicial district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]; Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)]; and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. Among other things, certain of the acts, practices, and courses of business constituting the violations of the federal securities laws alleged herein occurred within this district, including that Davis made misrepresentations and sold fake investment products to a client residing within this district.

DEFENDANT

12. DaRayl D. Davis is a resident of Maryland. From 2005 to 2008, Davis was a registered representative and investment adviser. Davis held Series 7 and 66 licenses. He is not currently registered with the Commission in any capacity.

RELIEF DEFENDANT

13. Affluent Advisory Group, LLC (“AAG”) is a Delaware limited liability company, with its principal place of business in Beverly Hills, California. AAG is owned and controlled

by Davis. AAG has never registered an offering or class of securities under the Securities Act or the Exchange Act. AAG purports to manage investment portfolios for a fee.

RELEVANT ENTITY

14. Financial Assurance Corporation (“FAC”) is a Delaware corporation headquartered in Washington, D.C. FAC is owned and controlled by Davis. FAC has never registered an offering or class of securities under the Securities Act or the Exchange Act.

FACTS

I. Davis’s Background

15. Starting in about 2000, Davis worked primarily as an insurance salesman, and from 2005 to 2008 he maintained securities licenses and was associated with a dually-registered broker-dealer and investment adviser.

16. More recently, he has portrayed himself as life coach and media personality, as well as an investment adviser. Davis bills himself as a “‘Financial Coach’ who guides people to recognize their true wealth and rethink the way they see money and their relationship with it.”

17. Davis has held seminars about financial planning marketed as the “Smart Money Academy” and “The Smart Money Millionaire Experience.”

18. In 2009, he self-published what he has claimed to be a best-selling book about saving for retirement, “Economic Secrets of The New Retirement Environment.”

19. Davis represents that he is a Certified Estate Planner (CEP) and a Registered Financial Consultant (RFC). However, Davis’s CEP registration lapsed in 2009 and his RFC registration lapsed in 2011.

20. Since at least the mid-2000s, Davis has been a member of a large religious institution based in Suitland, Maryland, a suburb of Washington, D.C.

21. Davis has used FAC for his insurance sales business as well as in connection with the fraudulent scheme described herein. FAC filed for Chapter 7 bankruptcy in June 2017.

22. Davis also used AAG to perpetrate his fraudulent scheme. Although AAG's website claims that it "manages investment portfolios on a fee-only, discretionary and non-discretionary basis for individuals, families, businesses, institutions and foundations," AAG does not in reality manage any investment portfolios on behalf of clients.

II. Davis Fraudulently Obtained Over \$5 Million By Recommending His Clients Invest In The Davis Securities

23. From at least 2003 to 2017, Davis raised more than \$5 million from approximately 30 individuals through the unregistered offer and sale of securities that he recommended to clients as favorable investments.

24. Davis's victims live in Chicago, Illinois; Pennsylvania; California; and the Washington, D.C. area. Davis targeted members of the church to which he belonged and individuals he met through church members.

25. Davis acted as an investment adviser. He offered such services through FAC and AAG. For example, a flyer for FAC provided to a victim advertised "Investment Advisory" services. As noted above, AAG claimed to offer advisory services.

26. For at least one investor, this advisory relationship was formalized in an engagement agreement in which the investor agreed to pay Davis a fee and, in exchange, Davis agreed to review of the individual's "current investment portfolio," "develo[p] an asset management strategy," and provide "recommendations designed to meet [the investor's] stated goals and objectives."

27. Davis also conducted financial planning workshops, including the "Smart Money Academy," to recruit investors.

28. The Smart Money Academy's website claims that the program is accredited through AdvancED. However, AdvancED is a non-profit organization that conducts reviews of Pre-K-12 schools and school systems. The Smart Money Academy is not, and has never been, accredited by AdvancED.

A. Davis Recommended and Sold Fraudulent Corporate Bond Notes

29. Since at least 2003, Davis recommended and sold securities he characterized as "Corporate Bond Notes."

30. The notes guaranteed interest rates of between 7% and 20%, while some offered a purported "bonus" of another 5% to 8% if the investor held the note to maturity.

31. Although the notes had terms of one year or more, investors purportedly could accelerate the payment of the note in full at any time.

32. Davis told victims that FAC would invest the money obtained from the sale of these Corporate Bond Notes in order to return the contractual interest to investors, describing the notes to investors as "investment loan[s] with Financial Assurance Corporation."

33. For some, Davis packaged information about the notes with a brochure for a well-known insurance company ("Company A"), reflecting that the principal would be invested in or through this reputable company. Some victims purchased the notes using money obtained by surrendering legitimate annuities investments because Davis assured them that the returns on the notes would offset fees or losses from surrendering the annuities.

34. When one investor attempted to retrieve her money from Davis, he told her that her principal had been invested in a "bond portfolio" through a company called Dimension Funds Advisors. No such bond portfolio or firm exists.

35. Davis lied to this and other investors about the status of their Corporate Bond Notes—including blaming his inability to repay the notes on the illiquid nature of the supposed “bond portfolio” in which the money purportedly was invested, and other false excuses.

36. Davis did not send any of the money he took from investors to Company A, nor did he invest in any “bond portfolio,” or otherwise make investments on their behalf. Davis took the money for his own use.

B. Davis Recommended and Sold Fraudulent Guarantee Bonds

37. Starting in approximately 2012, Davis began selling a purported “multi-year guarantee bond” or “multi-year interest guarantee account” that promised interest rates of 6% to 10%, with the potential for a supposed 5% to 20% “Cash Bonus” for making an initial deposit.

38. Davis used different names to describe the various “guarantee bond” investment products, but all were structured similarly to the corporate bond notes. Investors chose an initial one, two, or three year term, with higher guaranteed interest rates offered for longer terms.

39. For some investors, Davis represented that their guarantee bond investment was being made through Company A. For example, Davis told one investor that Company A was FAC’s “primary investment partner” and that FAC “works directly with [Company A] to place investment funds.” Davis made similar claims to others. Although Davis had sold Company A’s annuity products in the past, these claims were false.

40. Davis created and distributed to investors numerous documents offering purported investment products that, in reality, did not exist.

41. For example, Davis had certain investors sign documents indicating they were investing in an “[Company A] Capital Preservation Plus® Plan.” The investment was supposedly “backed by the financial strength and claims-paying ability of [Company A].” This was a fictitious product.

42. Company A has no record of these documents and offers no such product. Moreover, the Capital Preservation Plus trademark is not registered to Company A. It is registered to Company B, another well-known insurance provider, which likewise has no record of any affiliation with Davis, FAC, or AAG.

43. Davis provided other investors documents marketing the guarantee bond investment as an “FAC Aggregate Bond Fund” that he claimed was an “[Company A] Preferred Partners Offering.” Similarly, he created an account summary marketing a supposed “Capital Preservation Plus®” account, which represented that investors’ principal was guaranteed, while also offering “guaranteed growth” and “the flexibility of access to your funds.” This document touted that the investment had “stock market type returns without the risks associated with downturns in the financial markets.” Again, this was a fictitious product.

44. Other documents Davis used to induce investors to purchase the investment products he recommended refer to a “FAC Capital Preservation Plus® Plan” being offered “exclusively for FAC Preferred™ distribution partners.” Similar to the supposed Company A investment, the FAC investments were purportedly “backed by the financial strength and claims-paying ability of Financial Assurance Corporation.” Similarly, this product did not exist.

45. In short, Davis fabricated fake investment products and documents using the names of actual entities to create the appearance of legitimacy so he could misappropriate investors’ money.

C. Davis Misappropriated Investors’ Money for his Own Use

46. Investors paid for the Davis Securities primarily by means of personal checks payable to FAC or AAG, or wires to FAC or AAG accounts.

47. Davis deposited all of the money he received from the sale of the Davis Securities into either FAC's or AAG's bank accounts, which Davis solely controlled, where it remained until he spent it.

48. Davis controlled all FAC and AAG bank accounts. He transferred money between the accounts and between entities at will. For example, in November 2016, Davis deposited into an AAG account more than \$388,000 received from two investors. Within a few days, he transferred \$25,000 to an FAC account and used the money to repay other investors.

49. Davis did not segregate investors' money, set up separate accounts, or acquire any actual investment products. Despite selling investors purported Company A products, he sent no money to Company A.

50. Rather than recommending to his clients investment products that would preserve and grow their money as he represented, Davis recommended they invest in fabricated securities to obtain money to perpetuate his extravagant lifestyle and finance his scheme.

51. Davis used about \$1 million to repay investors who received partial payments on their corporate bond notes or who had requested disbursements from their purported "accounts."

52. Davis spent the remainder of the money supporting his fraudulent scheme and on personal expenses.

53. For example, Davis rented offices and furniture for FAC and paid for utilities and web hosting services. Davis also used investors' money to rent office space and maintain a website for AAG. This appearance of legitimacy helped Davis market and sell the Davis Securities.

54. Investors' money also funded Davis's attempts to market himself as an investment adviser and self-help guru by financing the Smart Money Academy and paying for

Davis's participation in a small-business expo. Likewise, Davis spent investors' money on internet marketing and personal development programs.

55. Davis also spent nearly \$500,000 of investors' money renting a mansion in the Hollywood Hills—a house previously rented by various celebrities. In addition, Davis used investors' money to, among other things, rent a house in Maryland, rent numerous high-end sports cars, join a luxury sporting club, and visit night clubs. Additionally, Davis used approximately \$700,000 to pay his personal credit card bills.

56. In all, Davis has spent nearly all of the money he obtained from his sales of the Davis Securities.

D. Davis Created and Sent Investors Misleading Account Statements

57. In order to perpetuate the fraud, Davis mailed or emailed several of his investors materially misleading account statements.

58. Regardless of the purported structure of an investment, Davis provided statements using the same basic format. The statements indicate that the investors had put their money in a “Capital Preservation Plus®” account, each with a unique “Contract Number.” The statements show the amount of the principal investment and the supposed value of the account at the end of the relevant period based on the contractual interest rate and applicable bonuses. Some statements provide a purported projection of the account's value for subsequent years.

59. However, there were no “Capital Preservation Plus®” accounts and the Contract Numbers are not associated with any separately held account with any outside entity.

60. The account statements also falsely portrayed the economic reality of the investments. Davis had not, as the account statements suggested, preserved investors' capital, nor did he have the ability to repay investors at the contractual interest rates shown because, instead of investing, he spent investors' money.

61. The statements misled investors by giving them a false sense of security that their money was safe and thereby helped Davis perpetuate his scheme.

62. Several individuals made additional investments with Davis after receiving these fraudulent documents.

E. The Extent of Davis's Scheme

63. Davis's scheme ensnared approximately 30 investors who made at least \$5 million of known investments. Of that amount, Davis repaid approximately \$1 million to earlier investors. Based on known principal investment amounts, individuals have lost at least \$4 million of principal, after taking into account partial payments Davis made to some investors.

64. Davis's scheme has continued to the present, with Davis obtaining approximately \$150,000 from investors in the last three months, a portion of which he used to repay prior investors.

III. Davis Violated the Securities Laws

65. The corporate bond notes and guarantee bonds Davis recommended, offered, and sold to investors are securities within the meaning of the Securities Act and Exchange Act.

66. Davis sold the Davis Securities as investments and the purchasers of these instruments invested with the expectation of profit.

67. Davis sold the Davis Securities to individual members of the general public, not to commercial investors, and these instruments are not subject to a regulatory scheme that significantly reduced the risks inherent in their purchase.

68. Davis engaged in the conduct described herein, including the sales and offers to sell the Davis Securities, by use of the means or instruments of transportation or communication in interstate commerce, the instrumentalities of interstate commerce, and/or by use of the mails.

69. Davis made material untrue statements 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.

70. A reasonable investor would consider the misrepresented facts and omitted information—among other items, misrepresentations and omissions regarding the use of investors' money, including using investors' money to pay prior investors and finance Davis's extravagant lifestyle; the fabricated nature of the investment products; and the false and misleading account statements—important in deciding whether to purchase the Davis Securities.

71. The untrue statements and omissions to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading described herein were made in connection with and in the offer, purchase, or sale of securities.

72. In connection with the conduct described herein, Davis acted knowingly and recklessly. Davis knew or was reckless in not knowing that he was making material misrepresentations and omitting to state material facts necessary to make certain statements not misleading under the circumstances.

73. Davis was the maker of the false and misleading statements because he made the misstatements directly to investors. To the extent any statements were made by FAC or AAG, Davis also made these statements because he owned and controlled all aspects of the operation of FAC and AAG.

74. Davis obtained money or property from investors through his material untrue statements and omissions to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Davis obtained more

than \$5 million in principal investments from investors, which includes more than \$4 million in principal investments lost by investors due to Davis's fraud.

75. Davis used devices, schemes, and artifices to defraud investors, and engaged in acts, transactions, practices, or courses of business that operated as a fraud or deceit upon investors. In addition to the numerous misrepresentations discussed herein, Davis created fake investment products that he sold to investors, created and distributed to prospective investors offering materials advertising these fake investment products, and set up an infrastructure intended to deceive investors that included two separate companies and the Smart Money Academy. Furthermore, after obtaining investors' money, Davis fabricated and distributed misleading account statements showing fake account balances.

76. Davis acted as an investment adviser during the relevant period by engaging in the business of providing investment advisory services to individual clients for compensation, including but not limited to the money he misappropriated from the sale of the Davis Securities in which he recommended his clients invest.

77. By engaging in the conduct described herein, Davis breached the fiduciary duty he owed to his investment advisory clients.

78. AAG received funds procured through Davis's material misrepresentations and omissions in connection with his recommendation, offer, and sale of the Davis Securities over which AAG has no legitimate claim.

79. AAG obtained these profits above as part, and in furtherance of, the securities law violations alleged herein. Therefore, AAG has been unjustly enriched.

FIRST CLAIM FOR RELIEF
Violations of Section 17(a) of the Securities Act
(Against Defendant Davis)

80. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 79, inclusive, as if they were fully set forth herein.

81. As a result of the conduct alleged herein, Defendant Davis in the offer or sale of securities, directly or indirectly, by the use of the means or instruments of transportation or communication in interstate commerce, or the mails:

- a. knowingly or recklessly employed devices, schemes, or artifices to defraud;
- b. knowingly, recklessly, or negligently obtained money or property by means of any untrue statements of material fact, or 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/or
- c. knowingly, recklessly, or negligently engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities.

82. By engaging in the foregoing conduct, Davis violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
(Against Defendant Davis)

83. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 82, inclusive, as if they were fully set forth herein.

84. As a result of the conduct alleged herein, Defendant Davis knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use of the means or instrumentality of interstate commerce or of the mails, or of a facility of a national securities exchange:

- a. employed devices, schemes, or artifices to defraud;
- b. made untrue statements of material fact, or 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/or
- c. engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

85. By engaging in the foregoing conduct, Davis violated, and unless enjoined will continue to violate, 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].

THIRD CLAIM FOR RELIEF
Violations of Section 206(1) and 206(2) of the Advisers Act
(Against Defendant Davis)

86. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 86, inclusive, as if they were fully set forth herein.

87. By engaging in the conduct described above, Defendant Davis, while acting as an investment adviser, by the use and means and instrumentalities of interstate commerce and of the mails, directly or indirectly, knowingly or recklessly has employed and is employing devices, schemes, and artifices to defraud his clients and prospective clients, and has engaged and is

engaging in transactions, practices, and courses of business which operate as a fraud or deceit upon his clients and prospective clients.

88. By engaging in the foregoing conduct, Davis has violated, and unless restrained will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

FOURTH CLAIM FOR RELIEF
(Against Relief Defendant AAG)

89. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 88, inclusive, as if they were fully set forth herein.

90. Relief Defendant AAG received funds procured through Defendant Davis's material misrepresentations and omissions in connection with his recommendation, offer, and sale of purported FAC and/or AAG products, over which AAG has no legitimate claim.

91. AAG obtained the gains described above as part, and in furtherance of, the securities law violations alleged above, under circumstances where it is not just, equitable, or conscionable for it to retain the funds.

92. By reason of the foregoing, AAG has been unjustly enriched and must disgorge the amount of its ill-gotten gains.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment:

A. Permanently restraining and enjoining Defendant Davis from violating Section 17(a) of the Securities Act [15 U.S.C § 77q(a)]; 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]; and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)];

B. Ordering Defendant Davis to disgorge any and all ill-gotten gains derived from his unlawful conduct, together with prejudgment interest thereon;

C. Ordering Defendant Davis to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act, [15 U.S.C. § 78u-1], Section 20(d) of the Securities Act [15 U.S.C. § 77t], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)];

D. Ordering Relief Defendant AAG to disgorge all ill-gotten gains to which it does not have a legitimate claim that it received as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon;

E. Retaining jurisdiction of this action for purposes of enforcing any final judgment and orders; and

F. Granting such other and further relief as this Court may deem just and appropriate.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the Commission hereby requests a trial by jury.

Dated: December 22, 2017

Respectfully submitted,



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