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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**U.S. SECURITIES AND EXCHANGE  
COMMISSION,**

Plaintiff,

v.

**PALM BEACH ATLANTIC FINANCIAL  
GROUP, LLC, and WILLIAM A. SMITH,**

Defendants.

**Civil Action No.** \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff United States Securities and Exchange Commission (the “SEC”) alleges as follows against Palm Beach Atlantic Financial Group, LLC (“PBAFG”) and William A. Smith (“Smith”) (collectively, the “Defendants”):

**SUMMARY**

1. These proceedings arise out of the fraudulent offer and sale by Smith and PBAFG of over \$1 million of securities issued by certain corporate entities that Smith had formed and for which PBAFG served as the managing member, ostensibly to obtain capital for the purchase, remodeling, and operation of real estate properties.

2. From at least 2014 through early 2017, Smith and PBAFG solicited investments in certain corporate entities by falsely and misleadingly representing that the funds invested in each corporate entity would be used for specific projects associated with each respective entity. Specifically, in private placement memoranda (“PPM”), written promotional materials, and online videos, Smith told investors that their funds would be used to purchase, remodel, and operate particular properties or businesses for each respective corporate entity.

3. Contrary to his representations, Smith failed to segregate investor funds between his various corporate entities. Smith transferred hundreds of thousands of dollars between the various bank accounts of his numerous corporate entities in order to support whatever property needed additional funding or to repay certain prior investors. As a result, Smith’s actions caused his representations about the use of funds to be false and misleading.

4. In addition, Smith and PBAFG misled investors about PBAFG’s supposedly successful track record of real estate investments by falsely claiming, among other things, to have vast experience and a proven strategy for success.

5. Smith offered and sold securities in the form of LLC member units (“LLC Units”), convertible promissory notes (“Convertibles”), and promissory notes (“Notes”) in unregistered transactions to at least thirty investors (collectively, the “securities offerings”). Through PBAFG, Smith solicited investors in many of the securities offerings on a nationwide basis without taking appropriate steps to verify that the investors were either sophisticated, based upon investing experience, or “accredited,” based upon net worth or other financial data.

6. By engaging in this conduct, Defendants violated the registration and antifraud provisions of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 10b-5 thereunder.

**NATURE OF THE PROCEEDING AND RELIEF SOUGHT**

7. 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)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] to enjoin the transactions, acts, practices, and courses of business alleged in this Complaint and to seek an order of civil penalties, and such other relief as the Court deems just and appropriate.

**JURISDICTION AND VENUE**

8. 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)] and Sections 21(d), 21(e), and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa(a)].

9. Venue is proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)]. Certain of the transactions, acts, practices, and courses of business constituting the violations alleged in this Complaint occurred within the Southern District of Florida and were effected, directly or indirectly, by making use of the means, instruments, or instrumentalities of transportation or communication in interstate commerce, or of the mails, or the facilities of national securities exchanges, including use of the Internet, interstate telephone calls, and emails. Defendant Smith resides in Palm Beach County, Florida, and Defendant PBAFG's principal place of business is in Palm Beach County, Florida.

**DEFENDANTS**

10. **Palm Beach Atlantic Financial Group, LLC** ("PBAFG"), organized under the laws of Florida with its principal place of business in West Palm Beach, Florida, purports to be a commercial business and real estate acquisition and sales company.

11. **William A. Smith**, age 54, resides in Lake Worth, Florida. During the relevant period, he was a managing member of PBAFG. Prior to becoming involved in PBAFG, Smith was a mortgage broker. He has an active Florida real estate broker's license.

### FACTS

12. Beginning in 2009, Smith formed a series of corporate entities, with PBAFG as the sponsor and managing member. Smith formed these entities to purchase, remodel, and manage various real estate properties and other businesses, including an office building, shopping center, apartment complexes, and single-family homes in Oklahoma and Florida.

13. From at least 2014 through early 2017, Smith raised over \$1 million from at least 30 investors who purchased LLC Units, Convertibles, and Notes. Through PBAFG, Smith offered and sold certain of the investments in illegal unregistered transactions.

14. Smith solicited investors on a nationwide basis, including personally narrating online promotional videos that were available on the Internet. Through PBAFG, Smith also furnished prospective investors with PPM that he helped to draft, which described the use of proceeds and specified that investor funds would be applied to projects owned by the respective corporate entity in which the investor invested. Smith also solicited investors through other oral presentations, networking meetings, and other written promotional materials.

15. Although accreditation questionnaires were sent to certain prospective investors, Smith did not take appropriate steps to verify that any of the actual investors either were sophisticated, based upon investing experience, or qualified as "accredited," based upon net worth or other financial data. Neither Smith nor PBAFG sent any accreditation queries to any Note investors.

16. Smith and PBAFG also made numerous misrepresentations about the use of investor funds by his various corporate entities. Smith said that funds received from investors would be used to purchase, remodel, and operate specific properties for the respective corporate entities in which the investor invested. For example, in August 2016, PBAFG solicited the investment of an \$80,000 Note issued by one PBAFG entity to a retiree, on the understanding that the funds would be used to renovate and re-sell a house. On another occasion, in May and June 2016, Smith and PBAFG solicited investors to raise capital to be used to renovate a shopping center in Oklahoma.

17. In reality, however, Smith failed to segregate investor funds between his various corporate entities. Smith transferred hundreds of thousands of dollars into and out of the bank accounts for his various corporate entities when he deemed it necessary to support whatever project needed funding and, in some instances, to repay prior Note investors. The PPMs failed to disclose past and ongoing commingling of monies amongst the various PBAFG entities.

18. On a number of occasions, within a short time of receiving investor funds, PBAFG transferred funds to other, related entities to repay another investor in another entity and to fund operations of another investment property. For example, in September 2014, Smith transferred \$51,000 from the bank account for one corporate entity to a different bank account for a different corporate entity, which then used the funds to pay franchise fees and home repair companies having no relation whatsoever to the original corporate entity, and to pay quarterly distribution payments to at least one Note holder. In November 2014, an additional \$67,000 from one corporate entity was used to repay another Note holder in a different corporate entity. In May and June 2016, Smith repeatedly transferred funds from one corporate bank account to

PBAFG and a third corporate entity for purposes unrelated to the original corporate entity's business.

19. During the course of his solicitation efforts, Smith and PBAFG also made misrepresentations in connection with the securities offerings about the historical performance of PBAFG. For example, on its website, PBAFG boasted of its successful track record of real estate investments and falsely claimed to have "vast experience and success" in real estate with a "proven strategy that protects the asset as well as the investor." PBAFG repeated similar claims in its PPM.

20. Contrary to PBAFG's written statements to investors and on its website, its management history was far from successful. PBAFG's first real estate venture in 2009, for example, was ultimately sold at a loss. Separately, by December 2016, one of the PBAFG managed corporate entities filed for Chapter 11 bankruptcy protection, which was converted to a Chapter 7 liquidation proceeding in May 2018. Although promotional efforts continued into 2017, Smith never notified any current or prospective investors of this bankruptcy.

### **COUNT I**

#### **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder**

21. The Commission realleges and incorporates by reference paragraphs 1 through 20 above.

22. As a result of the conduct alleged herein, Defendants 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 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.

23. By engaging in the foregoing conduct, Defendants violated, and unless restrained and enjoined will again 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].

## **COUNT II**

### **Violations of Section 17(a) of the Securities Act**

24. The Commission re-alleges and incorporates by reference paragraphs 1 through 20 above.

25. As a result of the conduct alleged herein, Defendants knowingly or recklessly, 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. employed devices, schemes, or artifices to defraud;
- b. 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. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchases or securities.

26. By engaging in the foregoing conduct, Defendants violated, and unless restrained and enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**COUNT III**

**Violations of Sections 5(a) and 5(c) of the Securities Act**

27. The Commission re-alleges and incorporates by reference paragraphs 1 through 20 above.

28. Defendants, directly or indirectly, by engaging in the conduct described above, made use of means or instruments or transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale.

29. No registration statement has been filed with the SEC or has been in effect with respect to certain of the securities offerings alleged herein, and no exemption from registration applies.

30. By engaging in the foregoing conduct, Defendants have violated, and unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

**RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests the Court find the Defendants committed the violations alleged, and:

**I.**

**Permanent Injunctive Relief**

Issue permanent injunctions pursuant to Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), restraining and enjoining Smith and PBAFG, their officers, agents, servants, employees, attorneys, representatives, and

all persons in active concert or participation with them, and each of them, from directly or indirectly violating Sections 17(a), 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77q(a), 77(e)(a) and 77(e)(c), and Section 10(b) of the Exchange Act, 15 U.S.C. §§ 78j(b), and Rule 10b-5(b), 17 C.F.R. §§ 240.10b-5(b).

**II.**

**Civil Penalties**

Issue an Order directing Smith and PBAFG to pay a civil money penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

**III.**

Granting such other and further relief as the Court may deem just and equitable.

Dated: December 11, 2019

Respectfully submitted,

/s/ Olivia S. Choe

Olivia S. Choe

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

U.S. Securities and Exchange Commission

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Olivia S. Choe, U.S. Securities and Exchange Commission, 100 F St. N.E., Washington, DC 20549, 202-551-4881

DEFENDANTS

Palm Beach Atlantic Financial Group, LLC, and William A. Smith

County of Residence of First Listed Defendant Palm Beach County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Ron Herman, Herman Law, P.A., 1601 Forum Pl. #201, West Palm Beach, FL 33401, 561-720-2417

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-headers like PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 77e(a), 77e(c), 77q(a), 78j(b), and 17 C.F.R. § 240.10b-5(b)

Brief description of cause: Securities fraud

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Inj. relief and civil penalty CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/11/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Olivia S. Choe

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.