

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. **'09 - CV - 00217** WDM-MJW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ENTERPRISES, LLC,  
BRIAN V. PRENDERGAST,  
WORLDWIDE EQUITY CORPORATION,  
DONALD R. SMITH, and  
YUAIL I. ENWIA,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

FEB 04 2009

**GREGORY C. LANGHAM**  
CLERK

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**COMPLAINT**

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Plaintiff, United States Securities and Exchange Commission ("SEC"), states and alleges as follows against Defendants:

**I. SUMMARY OF THE CASE**

1. From at least late 2008 through the present, Brian V. Prendergast, through his entity Enterprises, LLC, has solicited senior citizens in Colorado to invest in a fraudulent prime bank scheme in coordination with Donald R. Smith and Yuail I. Enwia, principals of Worldwide Equity Corporation ("WEC").
2. Prendergast represented to investors that monies invested in Enterprises would be pooled with other investors' funds to create a \$2.5 million fund, and that the pooled funds would then be invested in WEC and managed by its president, Enwia.

3. Prendergast told investors that the Enterprises investment was “a once in a lifetime opportunity,” and that the funds wired from Enterprises to WEC would be traded in “investment grade securities through international banks.” Prendergast further represented to investors that the Enterprise investments will generate “guaranteed” returns of four to 20 percent per month, depending on the amount invested, for a total return of 48 to 240 percent per year from the trades conducted by WEC. Investors in Enterprises were also warned to keep information about the investment “strictly confidential” since WEC’s transactions were “sensitive in nature.”

4. Based on these representations, a 73-year old investor invested \$300,000 in Enterprises for the WEC program in December 2008. Upon information and belief, as many as 14 other investors, including seniors, have invested in Enterprises and WEC as well.

5. The representations to investors concerning Enterprises and WEC have all the hallmarks of a fraudulent prime bank scheme, including trading in fictitious financial instruments through foreign banks; a promise of excessive guaranteed returns that are risk free; a claim that the investment program is secretive, sensitive, and confidential; and a lack of specificity and transparency about how the investment operates.

6. The SEC seeks to immediately halt this fraudulent offering, and to freeze Defendant Prendergast’s and Enterprises’ assets to: (1) preserve funds of investors pending the final disposition of this litigation; and (2) stop the use of investor funds to perpetrate any additional fraudulent offerings. Therefore, the SEC requests that the Court enter the emergency and other relief detailed below in the prayer for relief.

## II. JURISDICTION AND VENUE

7. The SEC brings this civil enforcement action seeking a temporary restraining order, preliminary and permanent injunctions, disgorgement plus prejudgment interest, and civil penalties for violations of Sections 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q]; Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 under the Exchange Act [17 C.F.R. §240.10b-5].

8. The Court has jurisdiction pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u (d) and (e) and 78aa].

9. In connection with the acts described in this Complaint, the Defendants have used the mails, other instruments of communication in interstate commerce, and means or instrumentalities of interstate commerce.

10. Venue lies in this Court pursuant to 15 U.S.C. §§ 77u(a) and 78aa and 28 U.S.C. §1391(b)(1) & (2). During the period of conduct alleged herein, Enterprises maintained offices in Colorado, and Enterprises and WEC engaged in the offer and sale of securities in Colorado. Additionally, many of the acts and practices described in this Complaint occurred in Colorado. Moreover, Defendant Prendergast is a resident of Castle Rock, Colorado and Defendant Smith is a resident of Aurora, Colorado.

### III. DEFENDANTS

11. **Enterprises, LLC (“Enterprises”)** is a Colorado limited liability corporation formed on April 26, 2008, with its principal place of business in Castle Rock, Colorado, is operated by Prendergast.

12. **Brian V. Prendergast**, 60, resides in Castle Rock, Colorado and is the manager of Enterprises. Between 1979 and 1996, Prendergast held various securities licenses, including at various times series 3, 4, 24, and 63. Between 1984 and 1994, he was associated with various broker-dealers. He filed for bankruptcy in 1997 and again in 2004. (Bankr. D. Colo., Case. Nos. 97-17759-PAC and 04-26888-HRT). Prendergast also has a lengthy regulatory and criminal history, including:

- a. On February 20, 1996, in an action brought against Prendergast by the Commodity Futures Trading Commission (“CFTC”), the U.S. District Court for the District of Colorado entered an ex parte order of preliminary injunction to freeze assets and granting access to books and records and other relief. (Case No. 1:96-cv-00389-WDM). The CFTC alleged, among other things, that Prendergast, through his entity Prism Financial Corporation, defrauded at least 34 investors of approximately \$1 million by making false, deceptive, or misleading representations (the “Prism fraud”). On January 27, 1997, the court entered an order permanently enjoining Prendergast from participating in commodities trading and violating the Commodity Exchange Act, 7 U.S.C. Section 1, et. seq.
- b. On November 19, 1997, Prendergast was censured and barred by the National Association of Securities Dealers, Inc. (“NASD”) from association with any

NASD member in any capacity on the basis of the Prism fraud. (NASD Complaint No. C3A960033; aff'd, National Adjudicatory Council, July 8, 1999). On August 1, 2001, the SEC upheld the NASD's decision. See Exchange Act Rel. No. 44632.

- c. On March 25, 2002, in a criminal action filed in Colorado state court by the Colorado Division of Securities, Prendergast was convicted on 12 felony counts of securities fraud and one felony count of theft. Among other things, Prendergast, without disclosing his past disciplinary history, solicited investors to invest in Falcon Financial Group, USA, Inc., a Colorado corporation formed by Prendergast in 1997. Prendergast promised returns, in part, based on trading in various government and foreign bonds. Prendergast failed to disclose material information about the investments and then misappropriated funds. He was sentenced to pay \$98,000 in restitution and a \$200,000 fine, and to 10 years probation. (Colorado v. Brian V. Prendergast, Colo. App. No. 02CA1148 (Oct. 9, 2003), cert. denied Apr.12, 2004). Upon information and belief, Brian Prendergast remains on court-supervised release.
- d. On June 4, 2003, the Colorado Commissioner of Insurance entered a final decision revoking Prendergast's Colorado insurance producer license, which he had held since 1976. (Order No. 0-03-285). The decision was based on the CFTC, NASD, and SEC matters described above.
- e. On September 10, 2008, the Colorado Division of Real Estate determined that Prendergast was engaged in the practice of brokering mortgages without being

licensed, and entered an order to cease and desist. (Complaint No. 2008060728).

The underlying facts included allegations that Prendergast had engaged in a fee splitting and kickback scheme involving Federal Housing Administration loans, and made false and misleading representations to borrowers and lenders.

13. **Worldwide Equity Corporation (“WEC”)** is a Nevada corporation formed on April 25, 1990, with its principal place of business in Las Vegas, Nevada.

14. **Donald R. Smith**, 62, resides in Aurora, Colorado. He is the secretary, treasurer, and executive vice president of WEC. Smith held series 22 and 39 securities licenses in the early 1980s, but they are not current and he is not associated with a broker-dealer. In 1986, the Colorado Division of Securities filed a civil action in Colorado state court against Smith alleging violations of Colorado’s broker-dealer registration and antifraud provisions in conjunction with the offer and sale of joint venture interests. Smith agreed to a permanent injunction from violating those provisions and to pay restitution of \$88,000. (Case No. 86-cv-1294, Denver Dist. Ct.).

15. **Yuail I. Enwia**, 50, resides in Ceres, California. He is the president and a director of WEC.

#### IV. FACTUAL ALLEGATIONS

##### **Background**

16. In 2006, Douglas Borchers, a 73 year-old retired telephone company worker, provided his contact information through the internet to various organizations and persons to learn more about an investment strategy that involved mortgaging home equity and using the proceeds to purchase annuities.

17. Shortly thereafter, Prendergast contacted Borchers and they discussed the possibility of mortgaging the equity from Borchers' two homes located in Grand Lake, Colorado and using the proceeds for investment in an annuity.

18. Prendergast developed a relationship with Borchers, and invited Borchers to attend a free lunch seminar that Prendergast was hosting in Grand Lake, Colorado regarding the investment strategy.

19. In late 2006 and early 2007, Prendergast helped Borchers obtain mortgages to "cash out" the equity in his two Grand Lake homes, which represented more than 80 percent of each home's value.

20. At Prendergast's instruction, Borchers used the mortgage proceeds to purchase a Flexible Premium Deferred Annuity contract (the "Annuity").

21. Specifically, in early 2007, Borchers received approximately \$489,000 in proceeds from the mortgages.

22. Borchers retained approximately \$22,000 from the proceeds to make payments on the mortgages during 2007 and purchased the Annuity on February 7, 2007, for approximately \$467,000.

#### **Offer and Sale of the Prime Bank Investment Program**

23. In approximately November 2008, Prendergast informed Borchers that he was starting a new investment program. Prendergast represented to Borchers that funds invested in his company, Enterprises, would be pooled with other investors' funds to create a \$2.5 million fund.

24. Prendergast further represented that the pooled funds would then be invested in WEC and managed by its president, Enwia.

25. Prendergast told Borchers, “this is a once in a lifetime opportunity.”
26. Borchers was intrigued by Prendergast’s description of the investment program and asked to meet with a representative from WEC to learn more.
27. Thereafter, in late November 2008, Prendergast arranged a meeting with himself, Borchers, and Smith, the executive vice president of WEC, at a restaurant in Denver, Colorado.
28. In advance of the meeting with Smith, Prendergast represented to Borchers that WEC had confidential relationships with foreign banks, and that such notables including the “United States Government” and “Dick Cheney” had each invested in programs similar to the one managed by WEC with great success.
29. Further, Prendergast had previously made clear that the investment program was “highly confidential” and that the transactions were “sensitive in nature” and told Borchers not to bother Smith with detailed questions about the investment program.
30. Additionally, Prendergast represented to Borchers orally and in a document titled “Joint Venture Agreement between Enterprises, LLC and Douglas Borchers,” dated December 5, 2008, that “Enterprises, LLC is engaged in a separate joint venture transaction with a private party investor sanctioned by certain foreign banks to facilitate the purchase and sale of investment grade bonds backed by their hard asset reserves.”
31. Prendergast told Borchers that the private party investor was WEC, and provided Borchers a copy of an agreement between Enterprises and WEC executed on December 22, 2008 (the “WEC Agreement”). Prendergast required Borchers to sign a non-disclosure agreement in order to obtain a copy of the WEC Agreement.

32. The WEC Agreement states that WEC, “on behalf of [Enterprises]”, will invest in “investment grade securities through international banks.”
33. The WEC Agreement further states that “Mr. Enwia shall structure, institute, and manage an investment program and shall invest [the \$2.5 million] into secure investments, for and on behalf of the Parties.”
34. Additionally, Prendergast told Borchers that Enwia traded in “gold certificates with individual CUSIP numbers on a leveraged basis” in transactions conducted through foreign banks and that the investments were secure.
35. The WEC Agreement states that the investment is for a period of 13 months commencing on the date of the final deposit of funds totaling \$2.5 million from Enterprises, and that during the 13-month term of the investment program, invested funds can not be withdrawn.
36. Prendergast represented to Borchers that the principal invested in Enterprises would be safe. In fact, the Joint Venture Agreement states that, “at the end of the 13 month term, [the investor] will receive back 100% of his or her original loan [investment] to Enterprises, LLC.”
37. Further, Prendergast told Borchers that returns from the investment in Enterprises were “guaranteed,” and provided Borchers with a written schedule of purported returns.
38. The schedule depicted set returns on principal invested ranging from 4 to 20 percent per month, depending on the amount of principal invested, for a total rate of return of 48 to 240 percent per year.
39. Prendergast told Borchers that Enwia was “dealing in billions of dollars with an average weekly return of one percent,” and thus the leveraged position would generate the promised returns on Borchers’ investment.

40. Prendergast, orally and in writing, represented to Borchers that payment of the guaranteed returns would begin 30 days after the full \$2.5 million from Enterprises was transferred to WEC.
41. As a result of Prendergast's oral and written representations, and the documents provided from WEC, Smith, and Enwia, Borchers agreed to invest \$300,000.
42. Borchers understood from Prendergast that his principal investment of \$300,000 would generate returns of \$792,000 in 13 months.
43. Thereafter, during approximately mid-December 2008, Prendergast assisted Borchers in liquidating the Annuity in order to invest in Enterprises.
44. The Annuity was worth approximately \$494,724 in December 2008, but Borchers paid a penalty of approximately \$117,000 for canceling the Annuity.
45. On or about December 20, 2008, Borchers received a check for the remaining balance of the Annuity in the amount of \$377,724.
46. To make his \$300,000 investment in Enterprises, Borchers' endorsed the \$377,724 check to Prendergast.
47. Prendergast then provided Borchers two cashiers' checks, one for \$40,000 and one of \$37,725, for a total of \$77,725, which Borchers requested to make his mortgage payments.
48. One of Borchers' Grand Lake, Colorado homes has been placed into foreclosure.
49. Prendergast represented to Borchers that he would wire the \$300,000 to WEC as part of the \$2.5 million pooled funds.

### **Additional Investors and On-Going Conduct**

50. Beginning in late December 2008, Prendergast used Borchers as a reference for other potential investors in Enterprises and WEC.
51. Borchers received calls from four potential investors whom he believes all live in Colorado and that at least three are seniors.
52. Borchers spoke with a woman from Silverthorne, Colorado in her eighties (although he could not recall her name) who said she intended to invest the rest of her life savings, \$80,000, in Enterprises.
53. Borchers told each of the investors that he invested \$300,000 in Enterprises.
54. In early January 2009, Prendergast told Borchers that he had obtained approximately 14 other investors in Enterprises.
55. Recent letters Prendergast sent to Borchers indicate that there are additional investors and that the scheme is ongoing.
56. Specifically, on December 31, 2008, Prendergast sent Borchers a "Progress Report" addressed generically to "Joint Venture Partner," which states: "As of to date (sic), we have \$2,200,000 committed funds and have wired \$1,075,000 to WEC . . . . As per our contract [with WEC], distributions will begin 30 days after the receipt of the balance of the \$2,500,000. Approximately \$932,000 of IRA rollover money is in the process of being transferred. This block of funds will take until at least January 15<sup>th</sup> to complete."
57. On January 9, 2009, Prendergast sent another letter to Borchers addressed to "Joint Venture Participant," which states: "This is a short letter to let you know that we have our commitment of \$2,500,000 completed. The final IRA monies should arrive around January 20<sup>th</sup>

and be wired out to Worldwide Equity Corp. I will advise you of the approx (sic) date distributions will begin in February. Thanks to all of you who have been patient and cooperative in initiating these IRA transfers and insurance company withdrawals.”

58. On or about January 20, 2009, Borchers’ daughter-in-law learned about the investments with Prendergast and discovered his NASD disciplinary action after searching the internet.

59. Borchers, who had not known any of Prendergast’s disciplinary history prior to this date, then asked Prendergast about the NASD action.

60. In response, Prendergast stated that the case was based on circumstantial evidence and was settled “without any charges.”

61. Prendergast failed to disclose to Borchers any additional details concerning his disciplinary history, especially Prendergast’s criminal conviction in 2002 for securities fraud and theft.

62. On January 30, 2009, Prendergast sent Borchers another letter stating that Enterprises had completed the transfer of \$2,500,000 to WEC during the prior week, and that he and Enterprises had not charged any fees or commissions on the transactions or kept any of the investors’ money.

63. Accordingly, it appears that Prendergast, Enterprises, and the others are currently or have recently been offering and selling investments in Enterprises and that the funds are being obtained in furtherance of the scheme.

**Material Misrepresentations**

64. The representations made by the defendants concerning the Enterprises and WEC investment were and are false and misleading.

65. The representations contained in the “Joint Venture Agreement between Enterprises, LLC and Douglas Borchers” dated December 5, 2008, that WEC is sanctioned by certain foreign banks to facilitate the purchase and sale of investment grade bonds backed by their hard asset reserves is false and misleading.
66. The representation contained in the WEC Agreement, signed by Prendergast, Enwia, and Smith, stating that Enwia will trade in “gold certificates with individual CUSIP numbers on a leveraged basis” in transactions conducted through foreign banks is false and misleading.
67. Among other things, the CUSIP Service Bureau, which provides unique identifiers for securities, and specifically U.S. and Canadian registered stocks and U.S. government and municipal bonds, does not issue CUSIP numbers for gold certificates.
68. The representations that the investments in Enterprises and WEC are safe and secure are false and misleading.
69. The representations that the investments in Enterprises and WEC will generate guaranteed returns are false and misleading.
70. The representations that the investment will generate returns of four to 20 percent per month, depending on the amount invested, for a total return of 48 to 240 percent per year from the trades conducted by WEC, are false and misleading.
71. The representations that payment of the guaranteed returns would begin 30 days after the pooled investor funds of \$2.5 million is transferred from Enterprises to WEC is false and misleading.
72. The representations that the Enterprises and WEC investment is similar to investments made by the United States Government or Dick Cheney is false and misleading.

73. The representations that Enwia deals in billions of dollars with an average weekly return of one percent are false and misleading.

74. Prendergast's failure to disclose his criminal and regulatory history, including that he is a felon and was criminally convicted of securities fraud and theft, was a material omission and was false and misleading.

75. Smith's failure to disclose his regulatory history, including that he had settled with the Colorado Securities Commission based on allegations of securities fraud, was a material omission and was false and misleading.

**FIRST CLAIM FOR RELIEF**  
**Fraud - Violations of Securities Act Section 17(a)(1)**  
**[15 U.S.C. § 77q(a)(1)]**

76. The SEC incorporates the allegations of paragraphs 1 through 75 as if fully set forth herein.

77. Defendants Enterprises, Prendergast, WEC, Smith, and Enwia, directly and indirectly, with scienter, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme or artifice to defraud.

78. Defendants Enterprises, Prendergast, WEC, Smith, and Enwia have violated, and unless restrained and enjoined will in the future violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

**SECOND CLAIM FOR RELIEF**  
**Fraud – Violations of Securities Act Sections 17(a)(2) and 17(a)(3)**  
**[15 U.S.C. §§ 77q(a)(2) and (3)]**

79. The SEC incorporates the allegations of paragraphs 1 through 75 as if fully set forth herein.

80. Defendants Enterprises, Prendergast, WEC, Smith, and Enwia, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of untrue statements of material facts or omissions of material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

81. Defendants Enterprises, Prendergast, WEC, Smith, and Enwia engaged in transactions, practices or courses of business which operated as a fraud or deceit upon the purchaser of securities.

82. Defendants Enterprises, Prendergast, WEC, Smith, and Enwia have violated, and unless restrained and enjoined will in the future violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)].

### **THIRD CLAIM FOR RELIEF**

#### **Fraud – Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder [15 U.S.C. §§ 78j(b) and 17 C.F.R. § 240.10b-5]**

83. The SEC incorporates the allegations of paragraphs 1 through 75 as if fully set forth herein.

84. Defendants Enterprises, Prendergast, WEC, Smith, and Enwia, acting with scienter, by use of means or instrumentalities of interstate commerce or of the mails, or of any facility of a national securities exchange, used or employed, in connection with the purchase or sale of a security, a manipulative or deceptive device or contrivance in contravention of the rules and regulations of the SEC; employed devices, schemes or artifices to defraud; 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; or

engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person, in violation Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. [15 U.S.C. §§ 78j(b) and 17 C.F.R. § 240.10b-5].

85. Defendants Enterprises, Prendergast, WEC, Smith, and Enwia have violated, and unless restrained and enjoined will in the future violate Sections 10(b) and Rule 10b-5 of the Exchange Act [15 U.S.C. §§ 78j(b) and 17 C.F.R. § 240.10b-5].

#### **PRAYER FOR RELIEF**

WHEREFORE, the SEC respectfully requests that the Court:

1. Enter an Order finding that each of the Defendants Enterprises, Prendergast, WEC, Smith, and Enwia committed the violations alleged in this Complaint, and unless restrained will continue to do so;

2. Enter Injunctions, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, temporarily and permanently restraining and enjoining Defendants Enterprises, Prendergast, WEC, Smith, and Enwia, and their officers, agents, servants, employees, attorneys, fictitious trade name entities, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from violating or any of the violations alleged;

3. Enter an Order freezing the assets of Defendants Enterprises and Prendergast;

4. Order that Defendants Enterprises, Prendergast, WEC, Smith, and Enwia disgorge all illegal gains, together with prejudgment and post judgment interest;

5. Order that Defendants Enterprises, Prendergast, WEC, Smith, and Enwia pay civil money penalties pursuant to pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)];

6. Order that Defendants Enterprises, Prendergast, WEC, Smith, and Enwia and any entities that they control, each prepare a sworn accounting of their receipt, disbursement and/or use of any funds received directly or indirectly from any investor; and

7. Order such other relief as this Court may deem just or appropriate.

Dated: February 4, 2009

Respectfully submitted,

s/Julie K. Lutz

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