

1 MICHAEL A. PIAZZA, *pro hac vice*
LISA A. GOK, Cal. Bar. No. 147660
2 DAVID J. VAN HAVERMAAT, Cal. Bar. No. 175761
ROBERTO A. TERCERO, Cal. Bar No. 143760

3 Attorneys for Plaintiff
4 Securities and Exchange Commission
Randall R. Lee, Regional Director
5 Sandra J. Harris, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
6 Los Angeles, California 90036
Telephone: (323) 965-3998
7 Facsimile: (323) 965-3908

8
9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13
14 **SECURITIES AND EXCHANGE**
COMMISSION,

15 Plaintiff,

16 vs.

17 **RC INVESTMENT CORP.,**
18 **PINNACLE INVESTMENT CORP.,**
19 **ROBERT A. COBERLY, JR., and**
CURTIS D. SOMOZA,

20 Defendants.

Case No.

**COMPLAINT FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

21
22 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
23 follows:

24 **JURISDICTION AND VENUE**

25 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
26 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
27 §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(1)(3)(A), 21(e) and 27
28 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),

1 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of
2 the means or instrumentalities of interstate commerce, of the mails, or of the
3 facilities of a national securities exchange, in connection with the transactions,
4 acts, practices, and courses of business alleged in this complaint.

5 2. Venue is proper in this district pursuant to Section 22(a) of the
6 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
7 § 78aa, because certain of the transactions, acts, practices, and courses of conduct
8 constituting violations of the federal securities laws occurred within this district.

9 **SUMMARY**

10 3. This case involves the fraudulent, unregistered offering of securities –
11 specifically a \$6.7 million “prime bank” Ponzi scheme – perpetrated by two
12 issuers, RC Investment Corp. (“RC”) and Pinnacle Investment Corp. (“Pinnacle”),
13 and their principals, Robert A. Coberly, Jr. (“Coberly”) and Curtis D. Somoza
14 (“Somoza”)(collectively, “defendants”). “Prime bank” is an umbrella term for a
15 wide variety of supposedly high-yield, low-risk, investment instruments.
16 Typically, they are presented as exclusive investment opportunities that are highly
17 confidential, often purportedly in accordance with the general rules and
18 “governances” of the International Chamber of Commerce. In a typical “prime
19 bank” scheme, securities law violators offer and sell securities with materially false
20 misleading claims that they will use investor funds to purchase “prime bank”
21 instruments or, as here, products having their characteristics. In fact, these
22 instruments are fictitious and are used a means of defrauding investors.

23 4. In just a nine-month period, from September 2002 through May 2003,
24 the defendants raised approximately \$6.7 million selling securities in the form of
25 notes. The defendants represented that RC and Pinnacle would pool investor funds
26 to finance a trading program in products with the characteristics of a prime bank
27 instrument. Specifically, the defendants claimed that investor proceeds would be
28 used to purchase high-grade AA and AAA-rated bank notes that returned a

1 “guaranteed” 120% per year. The defendants also represented that the investment
2 was safe because (1) the bank notes were high-grade instruments, (2) Coberly and
3 Somoza would provide written guaranties, (3) the trader in charge of the program
4 would purchase the bank notes at a discount to the prevailing market price, and (4)
5 the trader would not buy bank notes until he had a ready buyer willing to purchase
6 them at the market price. But contrary to their representations, the defendants
7 instead operated a Ponzi scheme – using \$3.11 million to do so – whereby existing
8 investors were paid with new investor funds rather than from the purported trading
9 program. Coberly and Somoza also misappropriated another \$2.61 million in
10 investor funds to support their lavish lifestyles, such as down payments on luxury
11 homes and weekends at posh resorts, and to finance other business ventures. The
12 defendants also placed \$300,000 in the purported trading program, but they
13 received no funds in return. As a result, no profits were ever realized or
14 distributed.

15 5. The defendants, by engaging in the conduct described in this
16 complaint, have violated, and unless enjoined will continue to violate, the
17 securities registration and antifraud provisions of the Securities Act and the
18 Exchange Act. By this complaint, the Commission seeks permanent injunctions
19 and civil penalties.

20 **THE DEFENDANTS**

21 6. RC Investment Corp. is a Nevada corporation based in Westlake
22 Village, California. RC is not registered with the Commission, and no registration
23 statement was filed or was in effect with respect to its note offering during the
24 relevant time period.

25 7. Pinnacle Investment Corp. is a Nevada corporation based in Westlake
26 Village, California. Pinnacle is not registered with the Commission, and no
27 registration statement was filed or was in effect with respect to its note offering
28 during the relevant time period.

1 12. Coberly and Somoza represented to investors that the trading program
2 generated more funds than necessary to pay the investor the represented return, and
3 RC and Pinnacle would keep the remaining funds as their share of the profits from
4 the program. Financial statements did not accompany the offering materials.

5 13. The defendants also represented to potential investors that their funds
6 were safe. First, the defendants represented that the bank notes were high-grade
7 instruments. Second, Coberly and Somoza provided investors with written
8 guaranties of the represented 120% per year returns. Third, the defendants claimed
9 that the investment was safe because the trader in charge of the program would
10 purchase the bank notes at a discount to the prevailing market price. Indeed, the
11 defendants touted the trader's ability and claimed that he received a discount on the
12 bank notes if he purchased them in bulk. Fourth, the defendants claimed that the
13 trader would not buy bank notes until he had a ready buyer committed to
14 purchasing the bank notes at the market price. This practice supposedly allowed
15 the trader to make a profit simply by purchasing bank notes at a discount and then
16 reselling them at the higher market price.

17 **THE SALES EFFORT**

18 14. The defendants offered and sold the RC and Pinnacle notes to at least
19 fifty investors nationwide, raising approximately \$6.7 million, and they
20 commingled approximately \$2 million between the RC and Pinnacle bank
21 accounts. Coberly and Somoza solicited and sold the notes to investors in person,
22 over the telephone, and by e-mail. Some of the investors were not accredited.
23 Coberly, Somoza, or both signed the program agreements, notes, and guaranties.
24 In some instances, Coberly provided investors with additional written materials
25 that explained how bank trading programs operated. These materials touted the
26 profit-making potential of such programs and emphasized the secrecy of the bank
27 note industry. The supplementary materials that Coberly provided cautioned
28 readers that even the banks themselves that issued the bank notes disclaimed their

1 existence and the existence of the market in which the bank notes were traded.
2 The supplementary materials, like the offering materials, recite many of the
3 characteristics of “prime bank” instruments.

4 15. The defendants made monthly payments to investors equal to
5 approximately a 10% per month return. At least eighteen investors made
6 additional investments after they began to receive monthly payments.

7 **MISREPRESENTATIONS AND OMISSIONS: THE PONZI SCHEME**

8 16. While the defendants claimed that RC and Pinnacle would use
9 investor funds to provide capital for a bank note trading program, they instead
10 operated a Ponzi scheme. There were no revenues generated by the trading
11 program to make monthly interest payments to investors because no trading
12 program existed. Indeed, the only way that RC and Pinnacle were able to meet the
13 promised returns to existing investors was by using funds from new investors or
14 additional investments made by existing investors.

15 17. From September 2002 to May 2003, RC and Pinnacle generated no
16 revenues from the supposed bank note trading program. The defendants did send
17 at least \$300,000 in January 2003 to the purported bank note trader, but they never
18 received any funds back. Not including investor funds, RC and Pinnacle together
19 had only about \$180,000 in their accounts during the period of the note offerings
20 but paid out approximately \$3.29 million in monthly interest payments to
21 investors. Therefore, RC and Pinnacle used approximately \$3.11 million of new
22 investor funds, or 46% of the total amount of investor funds raised, to make the
23 monthly payments. The undisclosed use of new investor funds to pay existing
24 investors constitutes a Ponzi scheme.

25 18. Coberly and Somoza knew, or were reckless in not knowing, that
26 they, RC, and Pinnacle operated a Ponzi scheme. Coberly and Somoza controlled
27 RC’s and Pinnacle’s bank accounts and had signatory authority for the accounts.
28 They signed the checks and authorized the wire transfers to make the monthly

1 payments to investors. In addition, Coberly deposited the investor checks and
2 received RC's and Pinnacle's monthly account statements, so he knew, or was
3 reckless in not knowing, what funds were deposited into the accounts and how
4 investor funds were used.

5 **MISREPRESENTATIONS AND OMISSIONS: THE MISAPPROPRIATION**

6 19. In addition to conducting a Ponzi scheme, the defendants
7 misappropriated approximately \$2.61 million for their personal use. Rather than
8 using investor funds for the bank note trading program, the defendants used the
9 funds to (1) make down payments on luxury homes in Southern California for
10 Coberly and Somoza; (2) pay Coberly's and Somoza's personal expenses,
11 including weekends at posh resorts; and (3) finance Coberly's and Somoza's other
12 business ventures. Coberly and Somoza knew, or were reckless in not knowing,
13 that investor funds were misappropriated because they controlled the bank
14 accounts where investor funds were deposited and then misused these funds
15 through checks that they wrote and wire and telephone transfers that they made.

16 **MISREPRESENTATIONS AND OMISSIONS: THE "PRIME BANK" – OR BANK**
17 **NOTE – TRADING PROGRAM DOES NOT EXIST**

18 20. Contrary to their representations made during the note offerings, there
19 was no bank note, or "prime bank," trading program, nor did it have the
20 represented safety features, such as the presence of AA or AAA-rated bank notes
21 or bank notes purchased at a discount. While the defendants transferred \$300,000
22 to the supposed bank note trader in January 2003, they did not have any
23 documentation regarding the program or its existence. Furthermore, the
24 defendants never received either the \$300,000 back nor any revenues generated by
25 the program. Even though the defendants never received any communications or
26 funds from the trader, and even though they had no due diligence files regarding
27 the bank note trading program, they nevertheless continued to solicit investors.

28 ///

1 **THE DEFENDANTS' SETTLEMENTS WITH THE INVESTORS**

2 21. The Commission contacted the defendants in April 2003 about their
3 activities concerning the RC and Pinnacle note offerings. In June 2003, the
4 defendants executed settlement agreements with the investors and returned the
5 outstanding principal balance along with a 10% return to each investor. As a
6 result, the Commission does not seek disgorgement of ill-gotten gains from the
7 defendants, although their scheme was so egregious and raised so much money
8 from investors, that the Commission does seek permanent injunctive relief and the
9 imposition of civil penalties.

10 **FIRST CLAIM FOR RELIEF**

11 **UNREGISTERED OFFER AND SALE OF SECURITIES**

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

13 22. The Commission realleges and incorporates by reference paragraphs 1
14 through 21 above.

15 23. The defendants, and each of them, by engaging in the conduct
16 described above, directly or indirectly, made use of means or instruments of
17 transportation or communication in interstate commerce or of the mails, to offer to
18 sell or to sell securities, or to carry or cause such securities to be carried through
19 the mails or in interstate commerce for the purpose of sale or for delivery after
20 sale.

21 24. No registration statement has been filed with the Commission or has
22 been in effect with respect to the offerings alleged herein.

23 25. By engaging in the conduct described above, each of the defendants
24 violated, and unless restrained and enjoined will continue to violate, Sections 5(a)
25 and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

26 ///

27 ///

28 ///

1 security, by the use of means or instrumentalities of interstate commerce, of the
2 mails, or of the facilities of a national securities exchange, with scienter:

- 3 a. employed devices, schemes, or artifices to defraud;
- 4 b. made untrue statements of a material fact or omitted to state a
5 material fact necessary in order to make the statements made,
6 in the light of the circumstances under which they were made,
7 not misleading; or
- 8 c. engaged in acts, practices, or courses of business which
9 operated or would operate as a fraud or deceit upon other
10 persons.

11 31. By engaging in the conduct described above, each of the defendants
12 violated, and unless restrained and enjoined will continue to violate, Section 10(b)
13 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.
14 § 240.10b-5.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, the Commission respectfully requests that the Court:

17 **I.**

18 Issue findings of fact and conclusions of law that the defendants committed
19 the alleged violations.

20 **II.**

21 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),
22 permanently enjoining the defendants and their officers, agents, servants,
23 employees, and attorneys, and those persons in active concert or participation with
24 any of them, who receive actual notice of the judgment by personal service or
25 otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the
26 Securities Act, 15 U.S.C. §§ 77e(a), 77e(c) & 77q(a), and Section 10(b) of the
27 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
28 240.10b-5.

1 **III.**

2 Order each of the defendants to pay civil penalties under Section 20(d) of the
3 Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15
4 U.S.C. § 78u(d)(3).

5 **IV.**

6 Retain jurisdiction of this action in accordance with the principles of equity
7 and the Federal Rules of Civil Procedure in order to implement and carry out the
8 terms of all orders and decrees that may be entered, or to entertain any suitable
9 application or motion for additional relief within the jurisdiction of this Court.

10 **V.**

11 Grant such other and further relief as this Court may determine to be just and
12 necessary.

13
14 DATED: September ____, 2004

15 _____
16 MICHAEL A. PIAZZA
17 ROBERTO A. TERCERO
18 Attorneys for Plaintiff
19 Securities and Exchange Commission
20
21
22
23
24
25
26
27
28