

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9280 / November 16, 2011

SECURITIES EXCHANGE ACT OF 1934
Release No. 65760 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14630

In the Matter of

DANIEL J. GALLAGHER,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE –AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, AND SECTIONS 15(b) AND 21C OF
THE SECURITIES EXCHANGE ACT OF
1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Daniel J. Gallagher (“Respondent” or “Gallagher”).

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. This action arises out of Gallagher’s fraudulent offering of securities of Nano Acquisition Group, LLC (hereafter “NAG” or “the company”). From October 2009 through July 2010, Gallagher raised at least \$427,000 from twelve investors through the sale of securities of NAG, an entity that Gallagher formed. Notwithstanding Gallagher’s oral representations to investors that their funds would be used by NAG to acquire or develop certain nanotechnology assets, and written representations to the same effect contained in NAG’s offering materials,

Gallagher withdrew approximately \$392,000 – or 92% of the funds raised – for his personal use. He began to do so almost as soon as NAG was formed and even as he continued to raise additional money from investors. Gallagher never informed investors that he intended to misappropriate, or had already misappropriated, virtually all of their funds for his personal use.

RESPONDENT

2. **Gallagher**, age 46, resides in Port Washington, New York. Gallagher has been in the securities industry since 1990. From May 2001 until January 2010, Gallagher was a registered representative of Vision Securities, Inc. and, through a holding company, was one of Vision’s two controlling shareholders. Gallagher has been the subject of a number of prior disciplinary actions, including a prior Commission enforcement action, SEC v. Christopher Castaldo et al., No. 08-Civ-8397 (JSR) (S.D.N.Y.), for his role in permitting Vision to employ an unlicensed securities salesman in connection with a private placement of Nanodynamics’ securities.

RELATED ENTITIES

3. **Nano Acquisition Group, LLC** is a Delaware limited liability company formed in September 2009 with its principal place of business in Port Washington, New York. NAG has never been registered with the Commission in any capacity.

4. **Nanodynamics, Inc.** is a Delaware corporation that had its principal place of business in Buffalo, New York. On July 27, 2009, Nanodynamics filed for Chapter 7 bankruptcy. Nanodynamics owned and developed several patented technologies relating to the energy, environmental, and infrastructure markets, including certain nanotechnology and a fuel cell technology that NAG was interested in acquiring.

FACTS

Gallagher Formed NAG and Solicited Investors on Its Behalf

5. In September 2009, Gallagher formed NAG, for the ostensible purpose of raising capital, through an offering of securities, to be used to acquire the stock or assets, in whole or in part, of Nanodynamics, which was then in bankruptcy.

6. Although he had no formal role at NAG other than as a purported consultant, Gallagher had substantial influence over the management of NAG’s affairs. He directed or conducted all aspects of NAG’s securities offering, including retaining counsel, participating in the preparation of the offering materials, and soliciting all of the investments obtained in the offering.

7. Gallagher’s involvement was not disclosed in NAG’s offering materials. Instead, the offering materials, which included a Subscription Agreement and an Operating Agreement dated September 2009, as well as an undated Confidential Term Sheet (collectively, “offering materials”), designated a single “Managing Member” who was responsible “for the overall management of the company.” During the relevant period, two individuals, appointed by

Gallagher, served successively as NAG's Managing Member. Although, according to the terms of NAG's offering materials, the designated Managing Members were responsible for all of NAG's affairs, neither of them played a meaningful role in the management of the company.

8. Gallagher raised all the funds for NAG. Specifically, he solicited all of NAG's investors and told them that NAG had been formed to acquire the assets of Nanodynamics. Gallagher also caused NAG's offering materials, which contained clear limitations on the use of the offering proceeds, to be distributed to the investors. These materials contained certain representations that the sole purpose of the offering was "to acquire the stock or assets, in whole or in part, of Nanodynamics, Inc.," and that "[i]f the acquisition [of Nanodynamics' stock or assets] is unsuccessful the Company will return Members' investments, minus expenses not to exceed 3% of the funds raised not including any sales commission charges."¹ The offering memorandum and operating agreement also stipulated that "[n]o fees or salaries shall be paid to the Managing Member or any employees of the Company until at least \$1 million [of the \$7.5 million total offering] is raised." Gallagher worked closely with NAG's counsel in the preparation of the offering materials and was well aware of these restrictions.

Gallagher Misappropriated the Proceeds of NAG's Securities Offering

9. From October 2009 through July 2010, Gallagher obtained at least \$427,000 from twelve investors through the sale of interests in NAG. Gallagher first told investors that the money would be used to acquire the assets of Nanodynamics and, later, instead, to develop similar assets through a new company called Watt Fuel Cell Corporation.

10. Virtually none of the funds that Gallagher raised from NAG's investors were used to acquire the assets of Nanodynamics or develop similar assets through Watt Fuel Cell, yet no funds have been returned to the investors and none of the offering proceeds remain.

11. Instead, Gallagher misappropriated almost all of the funds he obtained from investors. Of the at least \$427,000 NAG raised from investors, Gallagher withdrew at least \$392,000 or 92% for his personal use. From October 2009 through July 2010, on an almost daily basis, Gallagher withdrew funds from NAG's bank accounts, by means of checks made out to himself or direct cash withdrawals, in amounts generally ranging from \$500 to \$3,000.

12. Gallagher began withdrawing funds for his personal use almost as soon as he began obtaining funds from investors and continued to do so even as he raised additional funds from investors. By the time he raised a total of \$45,000 from two investors in December 2009, Gallagher had already withdrawn \$44,250, or approximately 18%, of the \$252,222 that he had raised from investors by that point. By the time he raised an additional \$39,800 in June 2010, he

¹ In addition, the offering materials disclosed that Vision, as placement agent for the offering, would receive 7% of the total funds that it raised as a commission. Before any funds were raised, however, Vision was ordered by the Financial Industry Regulatory Authority ("FINRA") to cease selling securities.

had already withdrawn approximately 89% of the amount he had raised from investors for his personal use.

Gallagher Concealed From Investors His Use of Their Funds

13. Gallagher never disclosed to NAG's investors that he withdrew, or intended to withdraw, most of their funds for his personal use.

14. On May 27, 2010, Gallagher wrote to NAG's investors, telling them "[a]fter nearly a year of sifting through the bankruptcy process of NanoDynamics . . . it has become apparent that the greatest potential for a return on investment is to develop the next generation fuel cell." Gallagher told the investors that their membership interests in NAG would be replaced by founders' shares in a Watt Fuel Cell, which would develop its own nanotechnology. Gallagher further represented that "[t]o date, Nano Acquisition Group, LLC has expended approximately \$300,000 in connection with analyzing all the assets of NanoDynamics, Inc. and [the Nanodynamics subsidiary that owned the key technologies], participating in the bankruptcy process, maintenance of the LLC [NAG], and the development of the new company."

15. Gallagher's May 27, 2010 letter to investors was false and misleading. No more than approximately \$35,000 of the approximately \$300,000 that Gallagher had obtained from investors to that point had been spent in connection with analyzing the assets of Nanodynamics, participating in the bankruptcy process, maintaining itself, or developing a new company. Instead, Gallagher had used most of investors' funds – over \$262,000 at that point – to compensate himself, a fact that he never disclosed to investors. Reasonable investors would not have purchased securities in NAG if they had known that Gallagher intended to misappropriate their money or had already done so.

VIOLATIONS

16. As a result of the conduct described above, Gallagher willfully violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)(2)], and 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].

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to,

disgorgement, prejudgment interest and civil penalties pursuant to Sections 21B and 21C of the Exchange Act.

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement and prejudgment interest pursuant to Section 8A(e) of the Securities Act, and Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 CFR § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary