

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 63834 / February 3, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3152 / February 3, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14229

In the Matter of

JACK C. SMITH, JR.

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Jack C. Smith, Jr. (“Smith” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (the “Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

These proceedings arise out of Respondent's failure to supervise Dennis Lee Keating II ("Keating"), a part-owner and registered representative at Torrey Pines Securities, Inc. ("Torrey Pines"), a registered broker-dealer. Between August 2006 and November 2008, Keating acted as an unregistered broker-dealer by conducting an unregistered private securities offering outside the scope of his employment with Torrey Pines. By not separately registering as a broker-dealer for purposes of the offering, Keating violated Section 15(a) of the Securities Exchange Act, the broker-dealer registration provision of the federal securities laws.

Smith failed reasonably to supervise Keating in connection with his registration violations because Smith did not establish reasonable policies and procedures to assign responsibility for supervising Keating, causing Keating to supervise himself. Smith also failed to develop systems to implement the firm's procedures regarding outside business activities by registered representatives. In particular, Smith failed to develop systems for supervisors and the compliance department to monitor registered representatives' outside business activities to detect and remedy violations of Section 15(a) of the Exchange Act and NASD Rule 3040, which prohibits a registered representative from selling securities outside the authority of a firm. Smith also failed to develop systems to require supervisors and/or compliance staff to adequately follow-up on outside activities that might signal violations of the firm's prohibition against selling securities outside the authority of Torrey Pines. Had such systems been in place, Keating's outside activities that violated the broker-dealer registration provisions of the federal securities laws likely would have been prevented and detected.

Respondent

1. **Jack C. Smith, Jr.**, age 61, resides in San Diego, California. Smith has had an ownership interest in Torrey Pines since November 1987, and during the relevant period, he was president, chief executive officer, and had overall supervisory responsibility for the firm. In 2009, Smith sold the majority of his ownership interest in Torrey Pines.

Other Relevant Entity and Person

2. **Torrey Pines Securities, Inc.** is a broker-dealer headquartered in Del Mar, California. Torrey Pines has been registered with the Commission since 1985, and the firm is also registered in California and Nevada as an investment adviser.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

3. **Dennis Lee Keating, II**, age 46, resides in Highland, Utah. In April 2006, Keating joined Torrey Pines as a part-owner and registered representative, working in and supervising the Corona, California branch office. Keating resigned from Torrey Pines in November 2008, and sold his ownership interest. Keating was permanently enjoined on June 28, 2010 for violations of the securities and broker-dealer registration and antifraud provisions, specifically Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder. *SEC v. Dennis Lee Keating, II*, Case No. 2:10cv419 (Dist. Utah filed May 6, 2010). On July 6, 2010, the Commission barred Keating from associating with a broker-dealer or investment adviser. *Dennis Lee Keating, II*, Admin. Proc. File No. 3-13957 (July 6, 2010).

Background

4. Smith formed Torrey Pines in 1987 and was its sole owner until 2006 when Keating and a third individual purchased interests in Torrey Pines. These three individuals remained part-owners from 2006 through 2008. During the relevant period, Smith was the president and chief executive officer and had overall supervisory responsibility for the firm. Torrey Pines is headquartered in Del Mar, California, and had four branch offices, three in California and one in Florida.

Keating's Unregistered Offering

5. Keating joined Torrey Pines in April 2006, opening the Torrey Pines Corona, California branch office (the "Corona Office"). Keating, along with an office assistant, and, for a short time, one other representative, worked in the Corona Office. Keating had overall supervisory responsibility for the Corona Office.

6. In August 2006, Keating formed a privately-held company and until April 2007, he raised over \$17 million from friends, family, and Torrey Pines's customers in a private, unregistered offering of securities. Until at least November 2008, Keating also continued lulling investors with false assurances that they would receive a return on their investments. Keating acted as an unregistered broker-dealer in violation of Section 15(a) of the Exchange Act, as he conducted the offering outside the scope of his employment with Torrey Pines.

Smith Failed to Establish Reasonable Procedures and Systems to Supervise Keating; Keating Left to Supervise Himself

7. During the relevant period, according to Torrey Pines' written supervisory procedures manual (the "Manual"), Smith was responsible for establishing the firm's supervisory policies and procedures, as well as systems to implement them, at Torrey Pines. In practice, Smith also had the ability and authority to establish policies and procedures, and to implement supervisory systems that would apply to Keating.

8. Smith failed to establish reasonable policies and procedures to assign responsibility for supervising Keating. When Keating became a part-owner of Torrey Pines, Smith did not revise the Manual or create other policies or procedures for Keating to be

supervised reasonably at the firm's Corona Office. Although Smith delegated to the resident manager the responsibility of supervising Keating's trading activities, no one other than Keating oversaw the other daily activities of the Corona Office. No one reviewed Keating's daily correspondence or telephone calls, other than in cursory annual audits. Smith's delegation of most of the Corona Office's daily responsibilities to Keating resulted in Keating supervising himself. If Keating had not been left to supervise himself, his outside sales activities, which violated Section 15(a) of the Securities Exchange Act likely would have been prevented and detected.

**Smith Failed to Establish Systems to Implement and Enforce Policies
Regarding Outside Business Activities and Selling Away**

9. Although Torrey Pines had a policy prohibiting selling securities outside of the firm, to comply with Securities Exchange Act Section 15(a) and NASD Rule 3040, and a policy for registered representatives to report outside business activities, Smith failed to develop systems for supervisors and the compliance department to monitor for adherence with the provisions, e.g., reviewing documents relating to registered representatives' outside business activities to ensure that the activities did not involve selling any private securities transactions outside the scope of a representative's employment in violation of Section 15(a) of the Exchange Act. If Smith had established systems providing for better monitoring for adherence with those provisions at Torrey Pines, a supervisor or the compliance officer would reasonably have been expected to detect that Keating's outside real estate investment business was a private, securities-related offering and that Keating violated Section 15(a) by engaging in that business without registering as a broker-dealer.

10. From August 2006 through late 2007, Smith and/or the compliance officer had many encounters relating to Keating's outside business activities, including oral and written complaints to Smith and Torrey Pines, respectively, from an individual who had invested in Keating's private offering. If Smith had put procedures and systems in place at Torrey Pines requiring supervisors or the compliance officer to follow-up on outside activities that might signal violations of the firm's prohibition against selling securities outside the firm, Smith might have prevented and detected Keating's violations of Section 15(a)(1) of the Exchange Act.

Violations

11. As a result of the conduct described above, Keating violated Section 15(a) of the Exchange Act.

12. Section 15(b)(4)(E) of the Exchange Act requires broker-dealers reasonably to supervise persons subject to their supervision, with a view toward preventing violations of the federal securities laws. See, e.g., *Dean Witter Reynolds, Inc.*, Exchange Act Rel. No. 46578 (October 1, 2002). The Commission has emphasized that the "responsibility of broker-dealers to supervise their employees by means of effective, established procedures is a critical component in the federal investor protection scheme regulating the securities markets." *Id.* Section 15(b)(4)(E) of the Exchange Act provides for the imposition of a sanction against a broker or dealer who "has

failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to his supervision.” Section 15(b)(6)(A)(i) incorporates by reference Section 15(b)(4)(E) and provides for the imposition of sanctions against persons associated with a broker-dealer. Similarly, Section 203(f) of the Advisers Act, incorporating by reference Section 203(e)(6) of the Advisers Act, authorizes the Commission to sanction a person who is associated, or at the time of the alleged misconduct was associated, with an investment adviser for failing reasonably to supervise, with a view to preventing violations of the federal securities law, another person who commits such a violation, if that person is subject to the person’s supervision.

13. As a result of the conduct described above, Smith failed reasonably to supervise Keating within the meaning of Section 15(b)(4)(E) of the Exchange Act, and within the meaning of Section 203(f) of the Advisers Act, when he failed to supervise Keating with a view to preventing and detecting violations of Section 15(a) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest, to impose the sanctions agreed to in Respondent’s Offer.

Accordingly, pursuant to Sections 15(b) of the Exchange Act and Section 203(f) of the Advisers Act it is hereby ORDERED that:

A. Respondent Smith be, and hereby is, suspended from supervision associated with any broker or dealer or investment adviser for a period of nine (9) months, effective on the second Monday following the entry of this Order.

B. Respondent Smith shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier’s check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Smith as Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michele Wein Layne, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., 11th Floor, Los Angeles, California 90036.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
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