SEC Charges 10 Brokers for Roles in McGinn Smith Ponzi Scheme

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Washington D.C., Sept. 23, 2013 —

The Securities and Exchange Commission today announced charges against 10 former brokers at an Albany, N.Y.-based firm at the center of a $125 million investment scheme for which the co-owners have received jail sentences.

The SEC filed an emergency action in 2010 to halt the scheme at McGinn Smith & Co. and freeze the assets of the firm and its owners Timothy M. McGinn and David L. Smith, who were later charged criminally by the U.S. Attorney's Office for the Northern District of New York and found guilty.

The SEC's Enforcement Division alleges that 10 brokers who recommended the unregistered investment products involved in the scheme made material misrepresentations and omissions to their customers. The registered representatives ignored red flags that should have led them to conduct more due diligence into the securities they were recommending to their customers.

"As securities professionals, these brokers had an important duty to determine whether the securities they recommended to customers were suitable, especially when red flags were apparent. These registered representatives performed inadequate due diligence and failed to fulfill their duties," said Andrew M. Calamari, Director of the SEC's New York Regional Office.

The SEC's order names 10 former McGinn Smith brokers in the administrative proceeding:

- Donald J. Anthony, Jr. of Loudonville, N.Y.
- Frank H. Chiappone of Clifton Park, NY.
- Richard D. Feldmann of Delmar, N.Y.
- William P. Gamello of Rexford, N.Y.
- Andrew G. Guzzetti of Saratoga Springs, N.Y.
- William F. Lex of Phoenixville, Pa.
- Thomas E. Livingston of Slingerlands, N.Y.
- Brian T. Mayer of Princeton, N.J.
- Philip S. Rabinovich of Roslyn, N.Y.
- Ryan C. Rogers of East Northport, N.Y.

According to the SEC's order, the scheme victimized approximately 750 investors and led to $80 million in investor losses. Guzzetti was the managing director of McGinn Smith's private client group from 2004 to 2009, and he supervised brokers who recommended the firm's offerings. The SEC's Enforcement Division alleges that despite his knowledge of serious red flags, Guzzetti failed to take any action to investigate the offerings and instead encouraged the brokers to sell the notes to McGinn Smith customers.

The SEC's Enforcement Division alleges that the other nine brokers charged in the administrative proceeding should have conducted a searching inquiry prior to recommending the products to their customers. The brokers continued to sell McGinn Smith notes even after being told that customers placed in some of the firm's offerings could only be redeemed if a replacement customer was found. This was contrary to the offering documents. In January 2008, the brokers learned that four earlier offerings that raised almost $90 million had defaulted, yet they failed to conduct any inquiry into subsequent offerings and continued to recommend McGinn Smith notes.

The SEC's order alleges that the misconduct of Anthony, Chiappone, Feldmann, Gamello, Lex, Livingston, Mayer, Rabinovich, and Rogers resulted in violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. The order alleges that Guzzetti failed to reasonably supervise the nine brokers, giving rise to liability under Section 15(b)(6) of the Exchange Act, incorporating by reference Section 15(b)(4).

The SEC's civil case continues against the firm as well as McGinn and Smith, who were sentenced to 15 and 10 years imprisonment respectively in the criminal case.

The SEC's investigation was conducted by David Stoelting, Kevin P. McGrath, Lara Shalov Mehraban, Haimavathi V. Marlier, Joshua Newville, Kerri Palen, Michael Paley, and Roseann Daniello of the New York office. Mr. Stoelting, Ms. Marlier and Michael Birnbaum will lead the Enforcement Division's litigation.

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