

**STATE OF ARKANSAS
SECURITIES DEPARTMENT**

IN THE MATTER OF

GARY MARCUS SMITH,
REX WHITE, TAL CAPITAL
MANAGEMENT, AND TAL GROUP

CEASE & DESIST ORDER
S-05-027-05-CD01

CEASE AND DESIST ORDER

The Arkansas Securities Department ("Department") has received information and has in its possession certain evidence that indicates that Gary Marcus Smith ("Smith"), Rex White ("White"), TAL Capital Management ("TAL"), and TAL Group have violated provisions of the Arkansas Securities Act ("Act"), Ark. Code Ann. § 23-42-101 *et seq.*

FINDINGS OF FACT

Smith has been operating a business from his home in Pine Bluff, Arkansas using the names TAL Capital Management and TAL Group that purported to generate financial profits for investors through the purchase and sale of securities in a trading account with a broker dealer.

In order to induce investors to enter into investment contracts with Smith, investors were told of Smith's long term track record of generating high returns, that he was a licensed broker and he used a highly profitable strategy of investing in option contracts. Investors were told that Smith had generated annual returns exceeding 20% to 80% in prior years. Smith represented to some investors that he managed all of the retirement funds for a Pine Bluff bank. Some investors were told they could never lose their principal investment while invested with Smith.

Investors were promised profits based upon each investor's pro rata share of the total amount of profit Smith realized from investing the cumulative investments with a brokerage firm. Smith received funds from individual investors and from groups of investors. Individuals with less resources were encouraged to pool their savings in an "investment group" in order to meet a minimum investment amount required by Smith.

Investment groups were solicited by another Pine Bluff resident, White, who represented himself as an associate of Smith. White conducted meetings with groups of investors where he promoted the investment scheme. He told investors of Smith's qualifications as a licensed broker and investment success with option contracts. White told investor groups Smith had earned annual returns ranging from 20% to 80% over the previous three years. White told investors that he traded options as well, but only in his personal account because only Smith was licensed to trade on behalf of others. White told investors that Smith's compensation is performance based and he was only compensated if he exceeded a target, 20%, annual return. The investment groups gave White their pooled money in the form of checks made out to TAL Capital to invest for them. It was their understanding that White delivered their checks to Smith. Some members of the investment groups met with Smith at his office, located at his home address, prior to giving checks to White.

Investors were told that they could receive a monthly check in the amount of the return Smith generated that month, or they could choose to roll over their earnings with their investment to achieve greater profits. White told investors that

any requests for withdrawals of funds would need to coincide with the underlying option contract expiration dates that fell at the end of each month.

Investors received monthly statements from Smith regarding their account activity. The monthly statements generated and sent by Smith report profits each month without exception. The statements, although appearing to be on the letterhead of a California based broker dealer, were fabricated by Smith and misrepresented profits and account balances to investors.

The Department has received information indicating at least ninety individuals have invested a total amount exceeding \$15.4 million with Smith during the last three years. Investor funds given to Smith were deposited into bank accounts where they were commingled with other investors' funds. Some funds were later transferred from the bank accounts to a brokerage account. For each of the financial institution accounts, Smith is the only owner listed on the account records and he is the only individual authorized to initiate transactions in any of the accounts examined.

While some payments have been made to investors, broker dealer account documents reflect over \$2 million in net losses from brokerage trading during the last twenty-four month period. Documents also indicate that contrary to representations made to investors, Smith has used a large amount of investors' funds for personal expenditures by Smith. Personal spending has included over \$380,000 in cash withdrawals, over \$150,000 in personal credit card payments, over \$130,000 in improvements to Smith's real property, as well as automobile and jewelry purchases. Less than one half of the total funds Smith received from investors was ever actually transferred into the brokerage account

and used to purchase securities. Current account balances are insufficient to return principal investments to investors.

Records obtained by the Department indicate that White received checks from Smith exceeding \$100,000. The Department found no documents indicating White invested money with Smith or TAL.

Records of the Arkansas Securities Department reflect that none of the parties named in this order, Smith, White, TAL Capital Management, or TAL Group, are registered in Arkansas as a broker dealer, broker dealer agent, investment adviser or investment adviser representative. In addition, records of the Department do not reflect a registration filing or exemption filing for the investment contracts sold by Smith and White.

APPLICABLE LAW

Ark. Code Ann. § 23-42-102(15)(A)(xi) defines "Security" to include any investment contract.

Ark. Code Ann. § 23-42-209 provides in part that whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, he may summarily order the person to cease and desist from the act or practice.

Ark. Code Ann. § 23-42-301 states that it is unlawful for any person to transact business in this State as a broker-dealer, agent, investment adviser or representative unless such person is registered under the terms of the Act.

Ark. Code Ann. § 23-42-501 states that it is unlawful for any person to offer or sell any security in Arkansas unless it is registered or exempt from registration.

Ark. Code Ann. § 23-42-507 provides in part that it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

CONCLUSIONS OF LAW

This matter has been properly brought before the Arkansas Securities Commissioner in accordance with Ark. Code Ann. §§ 23-42-201 and 209.

From the facts known by the Department, the Commissioner has reason to believe that Smith, White, TAL Capital Management, and TAL Group have engaged in activity in violation of the Act by transacting business in this State as a broker dealer, agent, investment adviser or representative without registering as required under Ark. Code Ann. § 23-42-301.

Information obtained by the Department also indicates that investment contracts offered and sold to investors by Smith, White, TAL Capital Management, and TAL Group constitute securities under Ark. Code Ann. § 23-42-102(15)(A). The investment contracts are unregistered, non-exempt securities sold in the State of Arkansas and the offer and sale of such securities by Smith and White constitute violations of Ark. Code Ann. § 23-42-501.

The offer and sale of securities by means of the false and misleading representations made by Smith, White, TAL Capital Management, and TAL Group constitute violations of Ark. Code Ann. § 23-42-507.

OPINION

This Order is in the public interest.

Pursuant to Ark. Code Ann. § 23-42-209(a)(1), the Arkansas Securities Commissioner can and should order Smith, White, TAL Capital Management, and TAL Group to immediately Cease and Desist from further actions in the State of Arkansas in connection with the offer and sale of investment contracts and other securities transactions.

ORDER

IT IS THEREFORE ORDERED that Smith, White, TAL Capital Management, and TAL Group CEASE AND DESIST from any further actions in the State of Arkansas in connection with the offer and sale of investment contracts and other securities and related activities as described in this Order.

WITNESS MY HAND AND SEAL THIS ²² DAY OF DECEMBER, 2005.



MICHAEL JOHNSON
Securities Commissioner