

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Case No.

Plaintiff,

v.

HON.

JOHN C. MACCOLL,

Defendant.

_____ /

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (“Commission”) alleges as follows:

SUMMARY OF THE ACTION

1. The Commission brings this civil law enforcement action to address Defendant John C. Maccoll’s (“Maccoll”) multi-million-dollar securities fraud. Between approximately 2008 and March 2018, Maccoll defrauded at least 15 of his retail brokerage customers out of nearly \$4 million. During that time period, Maccoll worked as a registered representative associated with a large, nationwide broker-dealer and investment adviser dually registered with the Commission (“Broker-Dealer A”).

2. Maccoll lied and used high pressure sales tactics to solicit at least 15 of his customers to invest in what he described as a highly-sought-after, alternative, private fund investment. Maccoll represented to customers that by investing in the purported fund, they could diversify their portfolios, receive annual investment returns as high as 20%, and have investment growth potential that was better than on the securities that they held at Broker-

Dealer A. Maccoll convinced the customers to sell or borrow against their securities at Broker-Dealer A and to transfer nearly \$4 million of the proceeds to him to fund the investments. Maccoll's statements to his customers were false. Maccoll did not invest the customers' money but stole the money for his own personal use. He spent nearly \$3.6 million on personal expenses and paid over \$400,000 to certain of his customers in Ponzi-like payments to keep his fraudulent scheme alive.

3. By engaging in this conduct, Maccoll violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

4. In connection with this lawsuit, the Commission seeks a permanent injunction against Maccoll to enjoin him from future violations of the above-cited provisions of the federal securities laws. The Commission further seeks an order requiring Maccoll to pay disgorgement, plus prejudgment interest, of the ill-gotten gains that he received through his fraud, along with the imposition of civil penalties pursuant to Section 20 of the Securities Act [15 U.S.C. § 77t] and Section 21 of the Exchange Act [15 U.S.C. § 78u].

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa]. Defendant Maccoll, directly or indirectly, has made use of the means or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any

national securities exchange in connection with the acts, practices and courses of business alleged in this Complaint.

6. Venue is proper in this Court pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. §78aa] because certain of the acts, practices and courses of business constituting the violations alleged in this Complaint occurred within the jurisdiction of the United States District Court for the Eastern District of Michigan. In addition, during the relevant time period, Defendant Maccoll resided and conducted business within the Eastern District of Michigan.

THE DEFENDANT

7. John C. Maccoll is 65 years old and resides in Rochester Hills, Michigan. Between January 2006 and his termination on March 15, 2018, Maccoll worked as a registered representative in the Birmingham, Michigan branch office of Broker-Dealer A, a large, nationwide broker-dealer and investment adviser dually registered with the Commission. Maccoll has worked for registered broker-dealers since July 1977 and during the relevant time period, he held Series 5, 6, 7, 8, 63 and 66 securities licenses.

FACTS

Maccoll's Offering Fraud and Misappropriation Scheme

8. Starting in 2008, Defendant Maccoll began soliciting certain of his brokerage customers to invest in a purported private, alternative, hedge-type fund that Maccoll claimed was highly-profitable, exclusive, and outside of Broker-Dealer A's investment platform. Between 2008 and March 2018, Defendant Maccoll fraudulently convinced at least 15 customers to sell and/or borrow against securities in their brokerage accounts and transfer the proceeds to him for investment in the purported private

investment. In reality, Maccoll used all of the funds that he raised for his own personal use and to make Ponzi-like payments to certain customers.

9. Most of the customers targeted by Maccoll were elderly, retired, and from working-class or middle-class backgrounds. Maccoll had long-standing relationships with these customers, who trusted him completely to manage their investments.

10. The customers Maccoll targeted held tax-advantaged retirement accounts at Broker-Dealer A, including IRA accounts, a pension fund conversion, and a federal government Thrift Savings Plan account rollover. One customer account included the customer's life savings and money from her deceased husband's life insurance payout, which she intended to use to pay for college expenses for her three children. Maccoll knew that the funds invested in his customers' accounts were intended for their retirement and for college expenses.

11. When touting his fictitious fund investment, Maccoll used the name of a real family of alternative investment funds to cloak his fraudulent securities offering with legitimacy. Certain customers were aware of and took comfort from the fact that an alternative fund investment in the name used by Maccoll actually existed. But, in reality, Maccoll had nothing to do with the real, established fund family.

12. Maccoll told some of his customers that an investment in the purported fund would diversify their portfolios.

13. He also told customers that the purported fund paid returns on investment ranging from 10% to 20% each year and that the potential for investment growth was better than the investments they had made in their accounts with Broker-Dealer A.

14. Maccoll also told customers that the purported investment fund was exclusive and that he had a unique opportunity to place them in a fund that otherwise would not be open to small, retail investors.

15. Maccoll told customers that that they were privileged to have an opportunity to invest because Maccoll was only offering the opportunity to a limited number of select clients.

16. Maccoll applied pressure by telling customers that they had to act fast because the investment opportunity he offered was only open during short windows of time. Maccoll told one customer that if she decided not to invest, she would lose the opportunity in the future and he would find someone else.

17. Maccoll told customers that their funds would be “locked up” and unavailable for withdrawals for a certain amount of time, and that they only could make additional investments in the fund when it was open for investment. He also told customers that they should expect little information directly from the fund including a prospectus, trade confirmations, or account statements.

18. In order to hide his fraud from Broker-Dealer A and others, Maccoll instructed his customers not to tell others about the fact that they had invested their funds in the purported fund investment because he could not open the offering to everyone.

19. Maccoll fraudulently convinced his customers to sell securities held in their accounts or to open and draw down on a line of credit within their accounts, using their securities as collateral, in order to finance the investments. He then instructed his customers to deposit or wire the proceeds from these transactions into their personal bank accounts. Once the funds were in his customers’ personal bank accounts, Maccoll told the

customers to write checks for their investments payable to “Mac 011” or “Mac 01.”

Maccoll picked up the checks from his customers’ homes, added his first name to the payee line, and then deposited the checks into his personal bank account, over which he had sole control.

20. Most of Maccoll’s customers did not ask for account statements or other documentation related to their purported investment and instead, accepted Maccoll’s oral descriptions of the performance of the investment.

21. However, as part of his scheme, Maccoll created and provided some of his customers with fake account statements reflecting fictitious returns in connection with his fraudulent fund offering.

22. Maccoll acted deliberately, with the intent to deceive. He knew that the investment he described to his customers did not exist, and he never invested any of the money he raised from his customers in the promised investment.

23. As a result of Maccoll’s false and misleading statements, at least 15 customers transferred nearly \$4 million to Macoll.

Maccoll’s Misappropriation of Investor Funds

24. Instead of using his customers’ funds as promised, Maccoll misappropriated the nearly \$4 million he raised, including at least \$3,406,003 between August 2018 and March 2018. In an attempt to keep the scheme alive, Maccoll used approximately \$411,529 of the funds to make Ponzi-like payments to at least six of his customers between November 2013 and March 2018. He used the remaining funds for his personal benefit.

25. By April 2018, Maccoll had less than \$7,000 remaining in his bank accounts.

Maccoll's Scheme Was Uncovered

26. Maccoll's scheme began to crumble in the fall of 2017, when one of his customers began asking Maccoll to provide him with documentation and online access for his investment. In February 2018, after numerous requests, Maccoll finally sent the customer a fax containing a purported account statement for the purported fund investment that contained several obvious errors and misspellings. This phony account statement caused the customer to have concerns about the legitimacy of the investment, and to contact Broker-Dealer A and the Financial Industry Regulatory Authority ("FINRA") to express his concerns.

27. After Broker-Dealer A and FINRA were notified about Maccoll's likely fraud, they requested to interview him. However, Maccoll failed to appear and on or about March 10, 2018, Broker-Dealer A received an 11-page letter from Maccoll addressed to "Regulators and FINRA" in which Maccoll confessed to misappropriating funds from his customers. Broker-Dealer A terminated Maccoll shortly thereafter.

COUNT ONE

**Violations of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act
[15 U.S.C. §§ 77q(a)(1), 77q(a)(2) and 77q(a)(3)]**

28. The Commission realleges and incorporates by reference paragraphs 1 through 27.

29. Maccoll, in the offer or sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly, Defendant Maccoll knowingly, willfully or recklessly: (a) employed devices, schemes and artifices to defraud; (b) obtained money or property by means of an untrue statement of material fact or omitted to state a material fact necessary in

order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon the purchasers and prospective purchasers of such securities.

30. By engaging in the conduct described above, Maccoll, directly or indirectly, violated, and unless restrained and enjoined, will continue to violate, Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(2) and 77q(a)(3)].

COUNT TWO

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78 j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

31. The Commission realleges and incorporates by reference paragraphs 1 through 27.

32. Maccoll, directly or indirectly, by the use of the means and instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) used or employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud and deceit upon purchasers and prospective purchasers of the securities offered and sold by Maccoll.

33. By engaging in the conduct described above, Maccoll has violated, and unless restrained and enjoined, will continue to violate, 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].

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

I.

Enter an Order finding that Defendant Maccoll committed, and unless restrained, will continue to commit, the violations alleged in this Complaint.

II.

Permanently restrain and enjoin Defendant Maccoll from, directly or indirectly, violating or aiding and abetting violations of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(2) and 77q(a)(3)] 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.

Order Defendant Maccoll to disgorge the ill-gotten gains that he received as a result of the violations alleged in this Complaint, plus prejudgment interest;

IV.

Order Defendant Maccoll to pay civil penalties pursuant to Section 20 of the Securities Act [15 U.S.C. § 77t] and Section 21 of the Exchange Act [15 U.S.C. § 78u];

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders

and decrees that may be entered or to entertain any suitable applications or motions for additional relief within the Court's jurisdiction;

VI.

Granting such other and further relief as the Court deems necessary and appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

Dated: August 9, 2018

Respectfully Submitted,

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION**

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