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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 DEREK J. SLATTERY AND
18 TRADESMART SOFTWARE RIC
19 CORPORATION,

20 Defendants.

Case No.

COMPLAINT

21 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

JURISDICTION AND VENUE

22 1. The Court has jurisdiction over this action pursuant to Sections 20(b),
23 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
24 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the
25 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
26 78u(d)(3)(A), 78u(e) & 78aa(a).

27 2. Defendants Derek J. Slattery (“Slattery”) and TradeSmart Software RIC
28 Corporation (“TradeSmart”) have, directly or indirectly, made use of the means or

1 instrumentalities of interstate commerce, of the mails, or of the facilities of a national
2 securities exchange in connection with the transactions, acts, practices and courses of
3 business alleged in this complaint.

4 3. Venue is proper in this district pursuant to Section 22(a) of the Securities
5 Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a)
6 because certain of the transactions, acts, practices, and courses of conduct
7 constituting violations of the federal securities laws occurred within this district. In
8 addition, venue is proper in this district because Defendant Slattery in this district,
9 and Defendant Tradesmart is domiciled in this district.

10 **SUMMARY**

11 4. This matter involves an offering fraud orchestrated by Slattery through
12 his company TradeSmart. From October 2018 to March of 2020, Slattery and
13 TradeSmart raised over \$1.8 million from as many as 300 investors in the United
14 States, Europe, Asia, and Australia through a fraudulent offering of securities in the
15 form of “redeemable units” purportedly in a “fixed portfolio” consisting solely of
16 Apple, Inc. stock options.

17 5. Slattery and Tradesmart falsely claimed that TradeSmart used
18 specialized, proprietary software that he created to trade Apple options and generate
19 guaranteed annual returns of 30% or more.

20 6. In fact, Defendants were not trading in Apple options or any other
21 securities.

22 7. Slattery and TradeSmart induced investors to invest by making
23 materially false and misleading statements and omissions concerning, among other
24 things, that investor proceeds would be used to trade Apple options, and that
25 investors could withdraw profits, sell or redeem units, or “cash out” and withdraw
26 their entire investment every 15-30 days.

27 8. Contrary to these representations, Slattery misappropriated all of the
28 investor funds and used them to pay his living expenses, to pursue other potentially

1 illicit “business” activities like credit card fraud, and to make small Ponzi-like
2 payments to investors requesting withdrawals from their accounts.

3 9. By their conduct, Defendants violated Section 17(a) of the Securities Act
4 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

5 10. The SEC seeks permanent injunctions against future violations of
6 Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule
7 10b-5 thereunder; disgorgement with prejudgment interest; and civil penalties against
8 all Defendants.

9 THE DEFENDANTS

10 11. **Derek Slattery**, age 42, is a resident of Las Vegas, NV. Slattery
11 founded TradeSmart and as its president, treasurer and director. Slattery has never
12 been registered with the SEC in any capacity or associated with a registered entity.

13 12. **TradeSmart Software RIC Corporation** is a Nevada corporation
14 formed in 2018 by Slattery, based in Las Vegas, NV. According to its website and
15 information given to prospective investors, TradeSmart is a “(UIT) Unit Investment
16 Trust Corporation.” In the “Frequently Asked Questions” tab of the website, under
17 the heading “Who Regulates us [sic.]?” TradeSmart claims to be “registered with the
18 Securities and Exchange Commission (SEC) as a Registered Investment Company
19 (RIC).” The website also indicates that TradeSmart Capital is the “product” of
20 TradeSmart Software. In communications with investors, the names TradeSmart
21 Capital and TradeSmart were frequently used interchangeably. TradeSmart and/or its
22 securities are not registered with the SEC in any capacity.

23 THE ALLEGATIONS

24 **A. The Offering**

25 13. Slattery formed and controls TradeSmart.

26 14. According to its website, TradeSmart utilized a fully “automated trading
27 platform” and purportedly offered a fixed portfolio that only traded Apple stock
28 options.

1 15. Investors were told they were purchasing redeemable units for a specific
2 time period, called a “Trade Cycle,” that purportedly lasted approximately 15-30
3 market trading days. Investors were told that at the end of each Trade Cycle, a
4 TradeSmart investor could elect to sell their units during a 48 hour period, which
5 would allow members to take profits every 15-30 market trading days.

6 16. The Tradesmart Terms and Conditions on its website stated that “At the
7 end of each Trade Cycle a TradeSmart member may elect to sell their units during a
8 48 hour period, which allows members to take profits every 15-30 market trading
9 days.”

10 17. According to the Tradesmart website, at the end of each trading day,
11 depending on the number of units owned, every investor’s account would reflect the
12 amount of money that could be withdrawn from the account that day. The website
13 described this amount as the Net Asset Value (“NAV”), and the NAV Rate was
14 determined by dividing the NAV by the total number of units in the fund.
15 TradeSmart also defined NAV as money that is “settled” or not being traded.

16 18. The Tradesmart website indicated that when an investor submitted a
17 NAV withdrawal request, the funds would be “pulled to escrow” and transferred to
18 the member’s bank account within seven business days. TradeSmart claimed that it
19 used the NAV withdrawal process to maximize the amount of funds available for
20 trading for as long as possible, thereby maximizing profits. Depending on the value
21 of their account, investors were told that they might be required to make a few daily
22 withdrawals in order to “close out” their investments.

23 19. The Tradesmart website told prospective investors that withdrawing
24 funds would be very easy to do, and would typically take three to five business days.

25
26 20. Slattery also personally made this same representation to investors. He
27 indicated that the process was like any well-known investment fund.
28

1 21. Defendants also described the process of becoming a TradeSmart
2 investor as very simple and easy. According to TradeSmart’s website, those desiring
3 to become TradeSmart “members” could simply open accounts online and then
4 immediately begin buying “units” from TradeSmart and could later sell the “units”
5 back to TradeSmart at the end of the purported trade cycle.

6 22. Defendants did not circulate hardcopy documents such as offering
7 memoranda, investment contracts, monthly account statements, trade confirmations
8 or withdrawal requests. Instead, essentially all investor activity was purportedly
9 reflected electronically, by means of password protected, investor-specific
10 dashboards at Tradesmart’s website.

11 23. Investors accessed their accounts, bought and sold “units,” tracked
12 purported transactions and investment performance, and submitted withdrawal
13 requests through their own personal dashboards. Investors could also generate
14 account activity reports from their dashboards.

15 24. On the Tradesmart website, under the heading “How are the funds
16 invested and divided?” Defendants claimed that: “All units that are purchased get
17 bundled together to form the fund. These funds are invested from escrow, to our
18 trading accounts, positioned by our “Expert System,” and traded. The algorithm
19 determines the exact weighting strategy, but typically the Expert System straddle will
20 be approximately leaning towards one particular side in Apple futures during
21 trading.”

22 **B. Defendants Raised As Much As \$1.8 Million**

23 25. Between October 2018 and March 2020, Slattery and TradeSmart raised
24 as much as \$1.8 million from as many as 300 investors in amounts ranging from
25 \$2,000 to more than \$175,000 each.

26 26. Defendants tapped a variety of sources to solicit investors including
27 family, friends and acquaintances, referrals, online chat rooms, golf courses, casinos,
28 and employees as well as customers of bars and restaurants that Slattery frequented.

1 27. Investors remitted their funds to TradeSmart using a variety of methods
2 including credit cards, online money transfer platforms, money orders and wires to
3 bank accounts in Slattery's or TradeSmart's name.

4 28. None of the money raised by Defendants was used to trade securities.

5 29. The money raised by Defendants was misappropriated and dissipated by
6 Slattery for his personal living expenses, to fund other Slattery's other business
7 schemes and to make Ponzi-like payments to investors.

8 **C. Defendants Made Material Misrepresentations and Omissions**

9 **1. The Misrepresentation and Omissions**

10 30. Slattery and TradeSmart made numerous material misrepresentations of
11 fact and omitted material facts regarding what they were doing with investor funds
12 including that:

13 a. TradeSmart would pool investor funds to trade Apple options on
14 behalf of investors;

15 b. Slattery developed a proprietary software containing an algorithm
16 that enabled TradeSmart to make profits for investors by trading Apple
17 options, without risk to their principal, whether the price of the
18 underlying stock increased or decreased;

19 c. Investors could easily withdraw profits or liquidate their accounts
20 entirely on short notice;

21 d. TradeSmart was registered with the SEC as a registered
22 investment company;

23 e. Investors' accounts would be externally audited to verify funds
24 and trading activity; and

25 f. Investors would receive guaranteed returns of at least 30%.

26 31. None of the above representations were true.

27 32. Defendants did not trade Apple options for investors, either by using a
28 proprietary software or by any other means.

1 33. The amounts shown on the investor “dashboards” were not real profits,
2 since Defendants had not made any trades on their behalf.

3 34. Defendants failed to disclose that they misappropriated investor funds,
4 making redemptions impossible.

5 35. Investors have been unable to obtain a return of their full investments, as
6 promised.

7 36. TradeSmart is not registered with the SEC in any capacity, and investors’
8 accounts were not subject to any outside audit.

9 37. Investors relied on Defendants’ misrepresentations and omissions.
10 Investors believed that Defendants would use their money to trade Apple stock
11 options on their behalf via Defendants’ proprietary trading platform, and that they
12 could withdraw their funds on short notice.

13 38. For example, based on Slattery’s personal representations, one investor
14 invested approximately \$12,000 with TradeSmart. In less than one year, Defendants
15 represented to her that the value of the investment had purportedly increased by more
16 than 60% to approximately \$20,000. When the investor sought to withdraw \$10,000
17 to buy a house, Slattery repeatedly promised to send the money within three to five
18 days. When the \$10,000 failed to arrive, Slattery cited illness or “software glitches,”
19 eventually sent the investor a few random payments of \$100 to \$300, and then
20 promised that the full amount would be forthcoming “any day” due to expected big
21 trading gains.

22 **2. Defendants’ Misrepresentations Were Material**

23 39. Defendants’ false and misleading statements to investors are material. A
24 reasonable investor would have considered it important to know that their funds were
25 not being used to trade securities but were instead being used to pay Slattery’s
26 personal expenses, fund other business activities, and make Ponzi payments.

27 **D. Defendants Engaged in a Fraudulent Scheme**

28 40. Defendants engaged in a fraudulent scheme by misappropriating investor

1 money.

2 41. Slattery used the investor funds raised to pay his personal expenses, to
3 fund other business activities, and to make Ponzi-like payments to investors.

4 42. From example, between August 2018, and December 2019, Slattery
5 disbursed \$471,422 of investor funds from a single JP Morgan Chase account under
6 his control as follows:

7 a. \$230,072 was transferred to Slattery's personal E-trade account
8 from March-November 2019;

9 b. \$88,120 was transferred to Slattery's personal TD Ameritrade
10 account from January-July 2019;

11 c. \$72,838 was transferred to the account of a Slattery affiliated
12 business from August-November 2018. Slattery is the sole signatory on the
13 account and is listed as the entity's president;

14 d. \$48,852 was transferred to Slattery's personal checking account
15 from January–December 2019;

16 e. \$17,254 was transferred to various other Slattery controlled
17 accounts at Chase from January-November 2019;

18 f. \$5,200 was transferred to a second Slattery affiliated business
19 account from July-November 2019;

20 g. \$4,786 was transferred to an unrelated software company account
21 in November 2019;

22 h. In June 2019 \$3,800 was transferred to a third party account
23 where Slattery was added as a signatory 2/20/2019; and

24 i. \$500 was paid to an investor in November 2019.

25 43. In total, Defendants used at least \$5,500 in funds received from new
26 investors to make Ponzi payments to investors requesting withdrawals.

27 **E. Defendants Acted With Scienter**

28 44. Defendants acted with scienter. Slattery knew, or was reckless in not

1 knowing, that he and Tradesmart were not trading Apple options or any other
2 securities for investors. They knew or were reckless in not knowing that they and
3 Tradesmart website made false statements regarding prospective and actual
4 investment returns.

5 45. Moreover, Slattery controlled the bank accounts that received and
6 disbursed investor funds; thus, he knew, or was reckless in not knowing, that he was
7 misappropriating investor funds for his own personal expenses and other illicit
8 purposes, and Ponzi payments.

9 46. In addition, Skinner failed to exercise reasonable care by, among other
10 things, misappropriating investor funds and making materially misleading
11 representations, and thus were negligent.

12 47. Because he controlled it, Skinner's scienter may be attributed to
13 Tradesmart.

14 **F. Slattery Acted as an Investment Adviser**

15 48. Section 202(a)(11) of the Advisers Act defines an investment adviser as
16 a person who, for compensation, engages in the business of advising others regarding
17 investments in securities. Here, Slattery engaged in the business of providing advice
18 regarding investments in securities to the investors and purportedly TradeSmart,
19 which were his clients, using the purported TradeSmart proprietary trading program.

20 49. As compensation, Slattery misappropriated investor money for his own
21 personal use. Slattery's misappropriation of investor funds satisfies the
22 "compensation" element of the Advisers Act definition of an investment adviser.

23 **FIRST CLAIM FOR RELIEF**

24 **Fraud in Connection with the Purchase or Sale of Securities**

25 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

26 **(Against All Defendants)**

27 50. The SEC realleges and incorporates by reference paragraphs 1 through
28 49 above.

1 51. Defendants made false representations to investors that they would trade
2 securities on their behalf, and that the investments could be redeemed on short notice.

3 52. Despite their representations to investors, Defendants did not trade
4 securities on their behalf. Instead, they misappropriated investor funds to cover
5 Slattery's personal expenses, expenses related to other businesses, and to make Ponzi
6 payments.

7 53. By engaging in the conduct described above, Defendants, and each of
8 them, directly or indirectly, in connection with the purchase or sale of a security, and
9 by the use of means or instrumentalities of interstate commerce, of the mails, or of
10 the facilities of a national securities exchange: (a) employed devices, schemes, or
11 artifices to defraud; (b) made untrue statements of a material fact or omitted to state a
12 material fact necessary in order to make the statements made, in the light of the
13 circumstances under which they were made, not misleading; or (c) engaged in acts,
14 practices, or courses of business which operated or would operate as a fraud or deceit
15 upon other persons.

16 54. By engaging in the conduct described above, Defendants violated, and
17 unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange
18 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

19 **SECOND CLAIM FOR RELIEF**

20 **Fraud in the Offer or Sale of Securities**

21 **Violations of Sections 17(a) of the Securities Act**

22 **(Against All Defendants)**

23 55. The SEC realleges and incorporates by reference paragraphs 1 through
24 49 above.

25 56. Defendants made false representations to investors that they would trade
26 securities on their behalf, and that the investments could be redeemed on short notice.

27 57. Defendants did not trade securities on their behalf. Instead, they
28 misappropriated investor funds to cover Slattery's personal expenses, expenses

1 related to other businesses, and to make Ponzi payments.

2 58. By engaging in the conduct described above, Defendants, and each of
3 them, directly or indirectly, in the offer or sale of securities by the use of means or
4 instruments of transportation or communication in interstate commerce or by use of
5 the mails (a) employed devices, schemes, or artifices to defraud; (b) obtained money
6 or property by means of untrue statements of a material fact or by omitting to state a
7 material fact necessary in order to make the statements made, in light of the
8 circumstances under which they were made, not misleading; or (c) engaged in
9 transactions, practices, or courses of business which operated or would operate as a
10 fraud or deceit upon the purchaser.

11 59. By engaging in the conduct described above, Defendants violated, and
12 unless restrained and enjoined will continue to violate, Section 17(a) of the Securities
13 Act, 15 U.S.C. §§ 77q(a).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the SEC respectfully requests that the Court:

16 **I.**

17 Issue findings of fact and conclusions of law that Defendants committed the
18 alleged violations.

19 **II.**

20 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
21 Civil Procedure, preliminarily and permanently enjoining Defendants, and each of
22 them, and their officers, agents, servants, employees and attorneys, and those persons
23 in active concert or participation with any of them, who receive actual notice of the
24 judgment by personal service or otherwise, and each of them, from violating Section
25 17(a) of the Securities Act [15 U.S.C. §77q(a)], and Section 10(b) of the Exchange
26 Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

27 **III.**

28 Order Defendants to disgorge all funds received from their illegal conduct,

1 together with prejudgment interest thereon.

2 **IV.**

3 Order Defendants to pay civil penalties under Section 20(d) of the Securities
4 Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §
5 78u(d)(3)].

6 **V.**

7 Retain jurisdiction of this action in accordance with the principles of equity and
8 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
9 all orders and decrees that may be entered, or to entertain any suitable application or
10 motion for additional relief within the jurisdiction of this Court.

11 **VI.**

12 Grant such other and further relief as this Court may determine to be just and
13 necessary.

14 Dated: May 4, 2022

15 */s/ Lynn M. Dean*

16 _____
Lynn M. Dean

17 Jennifer Barry

18 Attorneys for Plaintiff

19 Securities and Exchange Commission
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