

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, FEBRUARY 14, 2023

SEC - CIVIL RIGHTS OFFICE
SECURITIES CENTER

2023 FEB 14 A 10:25

COMMONWEALTH OF VIRGINIA, *ex rel.*

2023 FEB 14 A 10:25

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2020-00009

METROPOLITAN CAPITAL STRATEGIES, LLC,
SHARON SNOW,
DAVID SCHOMBERT and
S SQUARED CAPITAL PARTNERS, LP,
Defendants

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of Metropolitan Capital Strategies, LLC ("Metropolitan"), Sharon Snow ("Snow"), David Schombert ("Schombert"), and S Squared Capital Partners, LP ("S Squared") (collectively, "Defendants") pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia ("Code").

Metropolitan was a Virginia limited liability company with a principal office address at 11951 Freedom Drive, Suite 1300, Reston, Virginia 20190. Metropolitan was an investment advisory firm first registered in Virginia on January 18, 2007, and continuously registered in Virginia from August 2, 2013 until December 22, 2021. Snow was the Chief Executive Officer and Chief Compliance Officer of Metropolitan and was registered in Virginia as an investment advisor representative with Metropolitan from April 23, 2009 until December 22, 2021.

Schombert was the President and Chief Investment Officer of Metropolitan and was registered in Virginia as an investment advisor representative with Metropolitan from April 26, 2007 until December 22, 2021. S Squared is a limited partnership formed in Delaware on

February 11, 2013 and at all relevant times acted as a private investment fund operated and managed by Metropolitan, Snow, and Schombert.

Based on its investigation, the Division alleges that from 2015 until 2018, Snow and Schombert obtained funds from investors by means of untrue statements of a material fact in violation of § 13.1-502 (2) of the Act. The Division alleges that in or around July 2015, Snow and Schombert began operating S Squared. Metropolitan was the investment manager of S Squared. The Division alleges that from July 2015 to May 2018, Snow, Schombert, and S Squared solicited funds from certain investors for investments in the S Squared fund. The Division alleges that in connection with the offer and sale of these S Squared securities, Snow and Schombert provided prospective investors with a Private Placement Memorandum that contained untrue statements of a material fact and omissions of a material fact, in violation of § 13.1-502 (2) of the Act.

The Division further alleges that Metropolitan, as an investment advisor, made unsuitable recommendations to certain clients in violation of Rule 21 VAC 5-80-200 A 1 of the Commission's rules regarding investment advisors, 21 VAC 5-80-10 *et seq.* ("Rules"), by recommending that these clients invest a significant portion of their retirement assets into S Squared – an unsuitable recommendation given the clients' ages, financial situations, risk tolerances, and needs. The Division also alleges that Metropolitan violated Rule 21 VAC 5-80-200 A 10 by charging an unreasonable investment advisory fee to a client (the "Virginia Client") in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services. The Division further alleges that Snow and Schombert, as investment advisor representatives, violated Rule 21 VAC 5-80-200 B 1 by making unsuitable recommendations to certain clients, given the clients' investment objectives, financial situations, and needs. The Division also alleges that Snow and Schombert, as

investment advisor representatives, violated Rule 21 VAC 5-80-200 B 10 by, again, failing to act primarily for the benefit of the Virginia Client in charging the Virginia Client an unreasonable investment advisory fee, in light of the fees charged by other investment advisor representatives providing essentially the same services.

If any provisions of the Act or Rules are violated, the Commission is authorized by § 13.1-519 of the Act to issue temporary or permanent injunctions; by § 13.1-521 A of the Act to impose a civil penalty; by § 13.1-521 C of the Act to order a defendant to make rescission and restitution; and by § 12.1-15 of the Code to settle matters within its jurisdiction.

The Defendants neither admit nor deny the allegations made herein but admit to the Commission's jurisdiction and authority to enter this Settlement Order ("Order").

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Division wherein the Defendants will abide by and comply with the following terms:

(1) Within ninety (90) days after the entry of this Order, the Defendants will pay, jointly and severally, a restitution payment in the amount of Forty Thousand Dollars (\$40,000) to the Virginia Client;

(2) Within one hundred and twenty (120) days after the entry of this Order, the Defendants will submit proof to the Division of the restitution payment made to the Virginia Client;

(3) Metropolitan agrees not to apply or reapply for registration in Virginia as an investment advisor, broker-dealer, or issuer;

(4) Snow agrees not to apply or reapply for registration in Virginia as an investment advisor representative, broker-dealer agent, or agent of the issuer;

(5) Schombert agrees not to apply or reapply for registration in Virginia as an investment advisor representative, broker-dealer agent, or agent of the issuer;

(6) The Defendants will pay, jointly and severally, to the Treasurer of Virginia, contemporaneously with the entry of this Order, the amount of Twenty-Five Thousand Dollars (\$25,000) in monetary penalty;

(7) The Defendants will pay, jointly and severally, to the Treasurer of Virginia, contemporaneously with the entry of this Order, the amount of Two Thousand Dollars (\$2,000) to defray the costs of investigation in this matter; and

(8) The Defendants will not violate the Act in the future.

The Division supports the Defendants' settlement offer and has recommended that the Commission accept the settlement.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the settlement should be, and is hereby, accepted.

Accordingly, IT IS ORDERED THAT:

(1) The settlement is accepted.

(2) The Defendants shall fully comply with the terms of the settlement stated herein.

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate on account of the Defendants' failure to comply with the terms of the settlement.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent by the Clerk of the Commission by electronic mail to: Daniel G. Viola, Esquire, Sadis & Goldberg LLP, at dviola@sadis.com, 551 Fifth Avenue, 21st Floor, New York, New York 10176; and a copy shall be delivered to the Commission's Office of General Counsel and the Division of Securities and Retail Franchising.

STATE CORPORATION COMMISSION

IN RE: METROPOLITAN CAPITAL STRATEGIES, LLC, et al.

STATE CORPORATION COMMISSION

CASE NO. SEC 2000-00019

METROPOLITAN CAPITAL STRATEGIES, LLC,
SHARON SNOW,

DAVID SCHOMBERT, and

S S SQUARED CAPITAL PARTNERS, LP,

Defendants

ADMISSION AND CONSENT

Metropolitan Capital Strategies, LLC, Sharon Snow, David Schombert, and S Squared Capital Partners, LP (collectively "the Defendants") submit to the jurisdiction of the State Corporation Commission, Commission in its capacity and effect in the past and future, that under the provisions of the Revised Code of Virginia, Chapter 13, Article 1, Section 13-1-1, the Defendants do hereby consent to the jurisdiction of the State Corporation Commission in the above captioned matter and to the entry of an order of admission and consent by the Commission in the above captioned matter. The Defendants do hereby consent to the entry of an order of admission and consent by the Commission in the above captioned matter. The Defendants do hereby consent to the entry of an order of admission and consent by the Commission in the above captioned matter.

Sharon Snow



David Schombert

