

## Financial Fraud Alert

**Who:** *Plaintiffs:* Securities and Exchange Commission

*Defendant:* Small Business Capital Corp., Mark Feathers, Investors Prime Fund, LLC, and SBC Portfolio Fund, LLC

**What:** This complaint stems from a “Ponzi-like scheme” allegedly perpetrated by Mark Feathers and three entities he controls: Small Business Capital Corp. (“SB Capital”), and two mortgage investment funds managed by SB Capital and Feathers, Investors Prime Fund, LLC (“IPF”) and SBC Portfolio Fund, LLC (“SPF”) (IPF and SPF are collectively referred to in the complaint as the “Funds”). According to the complaint, the defendants “represented to prospective investors that the Funds would pay ‘Member Returns’ of at least 7.5% from profits generated by the Funds’ mortgage loan portfolios.” However, the complaint alleges that “[c]ontrary to those representations, since at least 2010 for IPF and since 2011 for SPF, Feathers and SB Capital have paid returns to investors in excess of net profits of the Funds, in a Ponzi-like scheme in which the returns were partially funded with money from new investors.”

The allegations further state that the defendants “represented to investors that the Funds would use between 96% and 98% of offering proceeds to make or invest in mortgages, that the Funds had conservative lending standards and for the most part were prohibited from making loans to SB Capital, and that the Funds were secured, performing and current.” Notwithstanding these representations, the complaint alleges that “Feathers and SB Capital caused the Funds to transfer over \$6 million to SB Capital . . . [and] SB Capital used the money to pay its operating expenses, including over \$485,850 paid to Feathers and companies he controls.” The defendants also allegedly “caused the Funds to record the amounts taken [by SB Capital] as assets in the form of receivables, . . . borrowed additional money from IPF to make interest payments on these receivables, . . . [and] were not able to assess the collectability of these receivables because of the uncertainty of SB Capital’s cash flow.” In addition, the allegations state that “Feathers and SB Capital caused SPF to sell eight mortgage loans to IPF at substantial premiums over the outstanding balance of the loans, and then caused SPF to use the premiums to pay over \$570,000 in management fees to SB Capital.”

Based on these allegations, the complaint asserts four causes of action: (i) fraud in the offer or sale of securities in violation of the Securities Act of 1933; (ii) fraud in connection with the purchase or sale of securities in violation of the Securities Exchange Act of 1934; (iii) with respect to SB Capital, violation of the broker-dealer registration provisions of the '34 Act; and (iv) with respect to Feathers, controlling person liability under the '34 Act. In the complaint, the plaintiff seeks the following: (i) judgments enjoining the defendants from violating the '33 Act and the '34 Act; (ii) a temporary restraining order and preliminary injunction freezing the defendants' assets, appointing a temporary and permanent receiver over SB Capital, IPF, and SPF, prohibiting the defendants from destroying documents, granting expedited discovery, and requiring an accounting of each defendant; (iii) the disgorgement of ill-gotten gains from the alleged illegal conduct; and (iv) the payment of civil penalties by Feathers.

On June 26, 2012, United States District Judge Edward J. Davila of the United States District Court for the Northern District of California granted the plaintiff's Application for a Temporary Restraining Order and Orders: (1) Freezing Assets, (2) Appointing a Temporary Receiver, (3) Prohibiting the Destruction of Documents, (4) Granting Expedited Discovery, and (5) Requiring Accountings. On the same date, Judge Davila further granted the plaintiff's Order to Show Cause Re Preliminary Injunction and Appointment of a Permanent Receiver.

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**Where:** United States District Court of the Northern District of California

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**When:** June 21, 2012

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For additional information, please contact:

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