Chief Accounting Officer Resigns from Two UDF REITs

David Hanson has voluntarily resigned from his positions at United Development Funding IV (OTCMKTS: UDFI) and United Development Funding Income Fund V, two real estate investment trusts sponsored by UDF.

Hanson served as chief accounting officer of UDF IV, a non-traded REIT, and chief accounting officer and chief operating officer of UDF V, a public REIT that now trades on the over-the-counter market after being delisted from Nasdaq in October 2016. Both REITs noted that his resignation was not the result of any disagreement with the companies or their respective boards.

UDF recently filed a lawsuit in a Dallas County Court against hedge fund manager Kyle Bass and his firm Hayman Capital, which held a short position in one of UDF's entities. In late 2015, Bass anonymously authored and posted a series of online reports on an investor networking website that detailed unsubstantiated claims against UDF that sent stock prices plummeting.

The lawsuit claims that the UDF funds were "extensively" damaged due to disparaging statements made by defendants Bass and Hayman, including that UDF operated as a Ponzi scheme.

In July, the Securities and Exchange Commission charged two UDF funds and four executives, including Hanson, for allegedly misleading investors by failing to disclose that it could not pay its distributions and was using money from a newer fund to pay distributions to investors in the older fund. The SEC also charged a fifth executive for allegedly signing false SEC filings.

In addition to Hanson, the SEC's complaint named UDF III, a limited partnership, UDF IV, co-founder and CEO Hollis Greenlaw, president Benjamin Wissink, chairman and co-founder Theodore Etter, chief financial officer Cara Obert.

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UDF Executives Ordered to Pay $8.3 Million to Settle SEC Charges

The Securities and Exchange Commission has charged two real estate investment funds and four executives for allegedly misleading investors by failing to disclose that it could not pay its distributions and was using money from a newer fund to pay distributions to investors in the older fund. The SEC also charged a fifth executive for allegedly signing false SEC filings.

United Development Funding is a family of private and publicly-traded investment funds that deploys investor capital as loans to homebuilders and land developers. The SEC said that UDF allegedly solicited investors by advertising annualized returns of up to 9.75 percent as well as regular distributions.

The SEC’s complaint named UDF III, UDF IV, and various UDF executives including co-founder and CEO Hollis Greenlaw, president Benjamin Wissink, chairman and co-founder Theodore Etter, chief financial officer Cara Obert, and David Hanson, the chief accounting officer of UDF IV.

The regulators claim that for nearly five years, UDF did not tell investors that it lacked the monthly cashflow at times to cover investor distributions in one of its older funds, UDF III, a publicly registered non-traded limited partnership.

Instead, to pay these distributions, the company's newer public REIT, UDF IV, allegedly loaned money to developers who had also borrowed money from UDF III. Rather than using those funds for development projects that were underwritten by UDF IV, UDF directed the developers to use the loaned money to pay down their older loans from UDF III.

The SEC claims that in most of these cases, the developer never received the borrowed funds, and UDF transferred the money between funds so that UDF III could make the distributions to its investors.

The complaint also alleges that UDF III failed to appropriately impair loans in violation of GAAP, and that UDF IV did not adequately disclose the status of real property within its portfolio.

Finally, the complaint accuses David Hanson of signing false and misleading SEC filings and management representation letters without taking sufficient actions to ensure their accuracy.

Without admitting or denying the allegations, Greenlaw, Wissink, Etter, and Obert agreed to pay $7.2 million in disgorgement and prejudgment interest, as well as a $1.1 million fine, while Hanson agreed to pay a $75,000 fine. The defendants also agreed to orders enjoining them from violating certain federal securities law provisions in the future.

In a statement, Greenlaw said "We believe that it was time to put this matter behind us and that this settlement is in the best interests of UDF and its investors. UDF IV had already undergone an independent investigation conducted by the law firm Thompson & Knight LLP with the assistance of independent forensic accountants from a global accounting firm."

The company's commissioned investigation concluded in May 2016 and found no evidence of fraud or misconduct.

"The settlement will allow the companies to avoid the time, expense and distraction of a potential dispute with the SEC, which will enable UDF to focus on returning value to its investors," added Greenlaw. "Furthermore, UDF believes their business was injured by Kyle Bass and Hayman Capital, and it intends to pursue that litigation with all the more vigor now that this SEC matter is resolved."

In early 2016, hedge fund manager Kyle Bass publicly accused UDF IV of operating a "Ponzi-like real estate scheme," by using new investor money to pay existing investors. It was later revealed that Bass held a short position in the company's common stock.

UDF filed a lawsuit against Bass and his Hayman Capital hedge funds late last year, claiming that their funds were financially damaged by their accusations. UDF believes that Bass and his funds raked in profits of an estimated $60 million or more as a result of their short position. A Dallas court recently denied a motion by Bass to dismiss the lawsuit, allowing it to proceed to trial.

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Judge Allows UDF Lawsuit Against Kyle Bass and Hayman Capital to Move Forward

A Dallas County Court has denied a motion by hedge fund manager Kyle Bass to dismiss a lawsuit filed by United Development Funding against him and his firm Hayman Capital, which held a short position in one of UDF's entities. UDF sponsors several non-traded real estate investment trusts, as well as a traded REIT, United Development Funding IV (NASDAQ: UDF).

The lawsuit claims that the UDF funds were "extensively" damaged due to disparaging statements made by defendants Bass and Hayman, including that UDF operated as a Ponzi scheme.

In late 2015, Bass anonymously authored and posted a series of online reports on an investor networking website that detailed unsubstantiated claims against UDF that sent stock prices plummeting.

It was later revealed that Bass and Hayman Capital were shorting UDF IV after he launched the website www.UDFexposed.com. UDF believes that Bass and his funds raked in profits of an estimated $60 million or more as a result of their short position.

UDF claims that following the Ponzi accusations, it lost access to credit and capital markets and was forced to sell its assets at reduced prices and to pay off many of its loans. The company also noted that it lost builder and developer customers and future investors, which allegedly caused damages in the hundreds of millions of dollars.

Bass and Hayman attempted to have UDF's lawsuit dismissed by filing a motion under the Texas Citizen's Participation Act, known as an anti-SLAPP motion, arguing that they were exercising their rights of free speech in publishing negative material concerning UDF's business, and that the speech was made without actual malice.

In March, the court authorized limited discovery, including the production of some documentary evidence. After an extended evidentiary hearing, the court ruled in favor of UDF, allowing the lawsuit to proceed to trial.

"We are very pleased with the court's ruling and the court's allowance of limited discovery prior to the ruling," said UDF's Hollis Greenlaw. "The limited discovery granted by the court allowed us to see this coordinated plan documented in the emails and texts of Bass and Hayman. We intend to pursue the lawsuit to trial as expeditiously as possible, and we look forward to our day in court."

The ruling enables UDF to move beyond the initial, limited discovery into full discovery on the merits of the case. However, Bass and Hayman can further delay discovery by appealing the ruling, if they are unwilling to proceed with the trial court case at this time.

UDF has submitted 11 affidavits to the court that included testimony from developers, a banker, brokers, investors, executives, and a forensic accounting expert who was formerly Ernst & Young's fraud investigations practice leader in the Americas.

Bass's Hayman Capital hedge funds focus primarily on short-selling stocks, or betting that a company's stock price will decline. Bass is best known for betting against subprime mortgages and securing massive profits for himself in 2008 following the housing market crash, and was profiled in the bestselling book, *The Big Short* by Michael Lewis.

UDF claims that Bass was under pressure to hit another big payout after a series of losses and made UDF his target, engaging in a "short-and-distort" scheme where a "short seller spreads false and damaging information about the target company it is betting against in order to harm the business and its stock price."

In December 2015, UDF disclosed that it was the subject of a non-public fact-finding SEC investigation that started in April 2014, and a few months later its Grapevine, Texas headquarters was raided by the FBI.

UDF believes that Hayman's general counsel Christopher Kirkpatrick, a former branch chief of the SEC's enforcement division, contacted his old employer, as well as the FBI and the United States Attorney's Office in Dallas "to prompt those agencies to take some public action against UDF that defendants understood and hoped would spook investors."

Since listing on NASDAQ in June 2014 until December 2015, UDF IV had traded in a range of $16.02 to $19.95 per share. By mid-February 2016, UDF IV traded below $4 per share, before trading was halted by NASDAQ. The company was delisted in October 2016 for failing to file its 2015 annual financial reports and subsequent quarterly reports with the SEC.

UDF alleges that the delisting was part of Hayman Capital's plan to buy discounted shares of UDF IV in the over-the-counter market from institutional investors, since UDF IV was no longer in the Russell 2000 Index.

The UDF funds had previously raised more than $1.2 billion in investor capital between 2003 and December 2015. UDF V, a non-traded REIT seeking to raise $1 billion, terminated its offering in March 2016.

The complaint alleges multiple counts including business disparagement, tortious interference, civil and conspiracy. Plaintiffs demand a trial by jury on all issues and seek monetary relief in excess of $1 million for damages, disgorgement, pre-judgment interest, attorney's fees, and other relief.

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UDF IV Agrees to Proposed Settlement in Investor Lawsuit

United Development Funding IV, a publicly traded real estate investment trust (OTCMKTS: UDFI), has disclosed that a federal court in Texas has preliminarily approved a proposed settlement stemming from an investor lawsuit that accused the company of breach of fiduciary duty, unjust enrichment, and aiding and abetting.

UDF IV is one company within the United Development Funding family of funds that include the non-traded limited partnership United Development Funding III L.P. and non-traded REIT United Development Funding V.

In early 2016, hedge fund manager and founder of Hayman Capital Management, Kyle Bass, publicly accused the REIT of operating a "Ponzi-like real estate scheme," by using new investor money to pay existing investors. Hayman held a short position in the company's common stock.

Less than two weeks after the accusations were revealed, the FBI raided UDF's corporate office and seized multiple boxes from the premises. UDF has vehemently denied the Ponzi allegations and has since sued Hayman Capital and Bass.

Defendants in the shareholder lawsuit include UDF IV; chairman and CEO Hollis Greenlaw; independent trustees Philip Marshall, J. Heath Malone, and Steven Finkle. The complaint also named the REIT's advisor UMTH General Services LP; its asset manager UMTH Land Development LP; and Todd Etter, executive vice president of the asset manager and chairman of UMT Services Inc., the general partner of the asset manager and advisor.

In the complaint, plaintiff Richard Evans alleged that the board allowed UDF IV to engage in related-party transactions that were against company policy and "detrimental" to the company. Specifically, the plaintiff alleged that UDF IV had been permitted to pay "excessive sums" to entities owned and/or controlled by Greenlaw.

The plaintiff claimed that a lack of board oversight resulted in UDF IV operating in a manner similar to that of a Ponzi scheme, and that the board allowed the company to become overly concentrated on a limited number of borrowers. Lastly, UDV IV is accused of paying its advisor and asset manager "improper and/or inflated advisory or management fees to which they were not entitled."

UDF IV believes that the plaintiff's claims are without merit, and agreed to the settlement "to avoid the distraction and expense of defending the lawsuit through trial."

The settlement maintains that the defendants will deposit $1.5 million into an escrow account to be used to pay any attorney's fees awarded to the plaintiff and to implement certain governance measures.

These measures, which must be implemented for three years, include adding a new independent trustee to the board who must qualify as an audit committee financial expert as defined by the SEC.

In addition, the new trustee must have had at least three years of relevant real estate experience at a public company. The new trustee will serve as chairman of the audit committee to be appointed before the company's next annual stockholder meeting.

UDF IV agreed to appoint a new chief compliance officer for UDF IV and United Development Funding V, and potentially other affiliated entities, who will report directly to the audit committee.

The company also agreed to revise its related-party transaction policy, as well as other stipulations that include director training and an enhanced whistleblower policy.

The proposed settlement is subject to final approval at a hearing which is currently scheduled to take place on April 16, 2018 at 9:00 a.m. before Judge Barbara Lynn in the United States District Court for the Northern District of Texas.

UDF IV previously traded on NASDAQ under the ticker “UDF” from June 2014 until December 2015. The company was delisted in October 2016 for failing to file its 2015 annual financial reports and subsequent quarterly reports with the SEC.

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