# The House of Cards: Why the SEC's Case Against Par Funding Should Have Been Thrown Out

By: Freedom Fighters of America

When the federal government decides to target a successful business, the headlines are always loud, but the actual legal foundation is often surprisingly fragile. A close examination of the SEC's Amended Complaint against Par Funding reveals a case built on generalized accusations, overreach, and a glaring absence of logic.

Here is a breakdown of exactly why the motion to dismiss should have been the end of the road for this deeply flawed complaint.

**The "Scienter" Void: You Can't Have Fraud Without Intent**

To establish a violation of the antifraud provisions of the federal securities laws, the SEC must prove "scienter" a mental state embracing the intent to deceive, manipulate, or defraud. This is where the government's narrative completely collapses.

Par Funding did not operate in the shadows. The company retained some of the most prestigious and respected legal minds in the country to structure its operations. We are talking about powerhouse law firms: DLA Piper, Fox Rothschild, Haynes Boone, Offit Kurman, and Philip Rutledge from Bible Rutledge. These top-tier attorneys were the ones who created the security documents. They provided the legal advice. They structured the framework. The fundamental question the SEC completely failed to answer is this: Where is the scienter if the defendants hired the absolute best legal counsel available to ensure they were doing things by the book? If a company relies on the guidance of elite law firms to draft its agreements and ensure compliance, the premise that the business was operating a deliberate, intentional scheme to deceive investors is illogical. You do not hire DLA Piper and Fox Rothschild to help you break the law; you hire them to make sure you follow it.

**Phase I Notes Weren't Even Securities**

The SEC has no authority to bring an enforcement action unless the action pertains to the offer or sale of securities. A massive portion of the SEC's case focuses on what it calls "Phase I" of Par Funding's operations. There is just one massive problem: the notes issued during this period were not legally securities.

Under the Supreme Court's Reves "family resemblance" test, certain notes are expressly exempt from the 1933 and 1934 Securities Acts. This includes short-term notes secured by a lien on a small business's assets or an assignment of accounts receivable.

The Par Funding promissory notes issued during Phase I fell squarely into this exempt category. They were short-term (with interest paid over 12 months) and were secured by a lien on Par Funding's assets, including accounts receivable. Because these notes were not securities, the SEC fundamentally lacked the jurisdiction to enforce claims over this entire phase of the business.

EXHIBIT: Letter to Ms. Lori Boyogueno - PA Department of Banking from G. Phillip Rutledge at Bybel Rutledge LLP, Securities Counsel for Complete Business Solutions Group/ DBA Par Funding regarding under U.S. Supreme Court in Reves v. Ernst & Young, the ***Notes are not securities in that they represent a short-term note secured by an assignment of contracts receivable.***

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September 25, 2018

***Via Hand Delivery***

Ms. Lori Boyogueno
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Enforcement Administrator
Bureau of Securities Compliance and Examinations
Pennsylvania Department of Banking and Securities
17 N. Second Street, Suite 1300
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**RE: Complete Business Solutions Group, Inc. ("CBSG")**
**Docket No. 2017-12-4**

Dear Ms. Boyogueno:

This responds to your letter dated September 7, 2018 wherein you request certain additional information from CBSG. I will address each request *ad seriatim*.

1. CBSG advises that it does not possess any further documents within the scope of this request other than those submitted to the Pennsylvania Department of Banking and Securities (the "Department") with my February 5, 2018 letter to Mr. Glenn Skreppen ("Skreppen Letter") (see Folder 2.0 included with the Skreppen Letter).

As I noted in the Skreppen Letter, the promissory notes issued by CBSG contained in that production represented a non-negotiable, non-transferable debt instrument whose term does not exceed 18 months ("Note") as to which payment of principal and interest is secured by execution of a security agreement in favor of the purchaser of the Note with respect to all tangible and intangible personal property of CBSG which consists of merchant receipts pledged to CBSG by merchants under a Future Receipts Sales Agreement. Therefore, it is arguable that, under the holding of the U.S. Supreme Court in *Reves v. Ernst & Young*, 494 U.S. 56 (1990), the Notes are not securities in that they represent a short term note secured by an assignment of contracts receivable.

Even if the Notes were deemed to be securities, the Notes would be exempt from registration under the Securities Act of 1933, as amended ("1933 Act") in reliance on rule 506(b) of SEC Regulation D as CBSG had a reasonable basis to believe that all of the purchasers of the Notes met the definition of Accredited Investor. Therefore, with respect to Accredited Investor status, CBSG's statutory duty is one of reasonable belief, not verification.

2. Other than the CBSG Credit Agreements previously provided to the Department (see Folder 2.1 included with the Skreppen Letter), CBSG advises that it has no other documents in its possession which individuals may have used in connection with the offer and sale of the Notes. However, CBSG advises that it is unaware that any general solicitation or general advertising was used by anyone in connection with the offer and sale of the Notes.

3. Other than the CBSG Credit Agreements previously provided to the Department (see Folder 2.1 included with the Skreppen Letter), CBSG advises that it has no other documents described in this request. It should be noted, however, that Rule 502(b) of SEC Regulation D states that an issuer is not required to provide specific disclosures to any Accredited Investor and CBSG advises that it has reason to believe that all persons purchasing the Notes were Accredited Investors.

4. This information was previously provided to the Department in Folders 6.0 and 7.0 included with the Skreppen Letter.

5. This information was previously provided to the Department in Folders 6.0 and 7.0 included with the Skreppen Letter.

6. CBSG advises that it was aware that the individuals who received compensation held licenses issued by the Commonwealth of Pennsylvania. Upon receipt of the Department's subpoena, CBSG took immediate steps to obtain the assistance of experienced securities counsel and, on advice of counsel, moved to terminate all agreements with individuals who had received compensation for the sale of the Notes. CBSG further advises its action can be confirmed with copies of communications with respect thereto which can be furnished upon request.

As it may be more likely than not that, under the U.S. Supreme Court's ruling in *Reves,* the Notes are not securities, the individuals who received compensation in connection with the sale of the Notes may not have been required to be registered under the securities laws.

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7. CBSG advises that its tax accounting firm has been in continuous discussions with the Internal Revenue Service ("IRS") regarding its 2016 federal income tax filing which will impact on how it prepares its 2017 federal income tax filing which, in turn, will affect its state income tax filing. CBSG states that it has been providing all information requested by the IRS and is hopeful that the IRS will provide definitive advice which will permit CBSG to file federal and state income tax returns for 2017 by the end of October 2018. When those filings have been made, CBSG undertakes to provide a copy to the Department promptly thereafter.

For ease of comparison, enclosed is a copy to the production schedule attached to the Skreppen Letter which describes the documents previously provided to the Department. If you wish this information to be re-furnished to the Department, please advise.

Very truly yours,

BYBEL RUTLEDGE LLP
By: G. Philip Rutledge

Enclosure
cc: Joe Cole, CFO
Complete Business Solutions Group, Inc.

**Lazy "Group Pleading" and Shotgun Tactics**
When the government accuses citizens of fraud, the Federal Rules of Civil Procedure (specifically Rule 9(b)) require them to state the circumstances with strict particularity. They must specify the "who, what, when, where, and how".

Instead of doing the hard work, the SEC filed what is known as a "shotgun pleading". They impermissibly lumped all the defendants together. The Freedom Fighters of America have already exposed the corruption by the SEC to bring this case based of fraud on the court. There is no surprise that the complaint was not thought out and thrown together with no meaningful investigation. The complaint is riddled with blanket statements attributing complex actions to "the Defendants" as a collective, making it impossible for any individual to distinguish the specific conduct ascribed to them. This tactic is not just sloppy; it deprives individuals of the ability to mount a proper defense against spurious charges.

**Ignoring the Statute of Limitations**
In its eagerness to build a massive case, the SEC overreached the boundaries of time. The

government sought penalties and disgorgement for conduct that allegedly occurred up to nine years ago.

However, under 28 U.S.C. § 2462, there is a strict five-year statute of limitations for SEC enforcement actions seeking civil penalties and disgorgement. By attempting to reach back nearly a decade, the SEC brazenly ignored the law that governs its own enforcement powers, rendering a significant portion of their claims time barred.

**The Bottom Line:** The SEC's case required courts to ignore the Supreme Court's definition of a security, overlook the government's failure to plead specific facts, bypass a strict five-year statute of limitations, and somehow believe that a company operating with the day-to-day guidance of America's top law firms was acting with a deliberate intent to defraud. The facts simply do not support the government's narrative.

Of course, the result of the motion was **DENIED** by the court!

This is exactly what the Democrat operatives do. They lie, cheat, and steal for whatever their cause is. Just a quick reminder to our readers that prosecutor Amie "Rigged It" Riggle Berlin is a member of the Democratic party.