IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
BRIAN A. BJORK;	§	
ESTATE OF JOEL DAVID SALINAS;	§	
J. DAVID GROUP OF COMPANIES, INC.	§	**Civil Action No.: 11-cv-2830**
J. DAVID FINANCIAL GROUP, L.P.;	§	
SELECT ASSET MANAGEMENT, LLC;	§	
SELECT CAPITAL MANAGEMENT, LLC	§	
SELECT ASSET FUND I, LLC; and	§	
SELECT ASSET PRIME INDEX FUND LLC,	§	
	§	
Defendants.	§	
	§	

BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION *EX PARTE* TEMPORARY RESTRAINING ORDER, ASSET FREEZE, APPOINTMENT OF A RECEIVER, AND OTHER EMERGENCY AND ANCILLARY RELIEF

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I. PRELIMINARY STATEMENT

Plaintiff United States Securities and Exchange Commission ("Commission") submits this Brief in Support of its Motion for Preliminary Injunction and *Ex Parte* Temporary Restraining Order, Asset Freeze, Appointment of a Receiver, and other Emergency and Ancillary Relief to halt ongoing violations of the law and to protect the Commission's ability to recover investor funds obtained illegally in fraudulent securities schemes perpetrated by Defendant Brian A. Bjork; Defendant J. David Group of Companies, Inc. ("J. David Group"); Defendant J. David Financial Group LP ("J. David Financial"); Defendant Select Asset Management, LLC ("Select Asset"); Defendant Select Capital Management, LLC ("Select Capital"); Defendant Select Asset Fund I, LLC ("Fund I"); Defendant Select Asset Prime Index Fund, LLC ("Fund II"); and J. David Salinas, deceased. As to these Defendants and Defendant Estate of Joel David Salinas ("Salinas Estate"), the Commission seeks an asset freeze, the appointment of a receiver, and other emergency and ancillary relief described in this Brief.

The Statement of Fact section, below, reflects page-number citations to the accompanying Appendix, which consists of sworn declarations with supporting materials from the following professionals on the Commission's Staff: (1) Kathleen Galloway, Enforcement Attorney; (2) John Simigian, Securities-Compliance Examiner (Broker-Dealer Section); and (3) Carol Hahn, Accountant (Investment-Adviser Compliance Section). The Appendix also contains sworn declarations from persons who invested in the securities offerings at issue in this case and who otherwise have personal knowledge based on their direct dealings with Defendants. These declarants are Kevin Maley (Investor), Dan Kuhn (Investor), and Scott Jackson (Investor's Grandson).

Finally, the Commission has filed this case through the Court's electronic-filing system, as required under LR 5.1. Commission counsel is available by telephone at 817.978.6453 and by email at McColeT@sec.gov to provide the Court any additional information it may seek regarding the relief requested in the accompanying motion.

A. Fact Summary

From at least 2004 through the present, Defendant Bjork offered securities in two fraudulent securities schemes, raising approximately $52 million combined. In the first scheme, which defrauded more than 100 investors of approximately $39 million, Bjork offered investors corporate bonds through Defendants J. David Group and J. David Financial. Bjork offered the bonds alongside his business associate, Joel David Salinas, who founded J. David Group and served as its president until his death, apparently by suicide, on July 17, 2011. Bjork and Salinas promised investors safe, fixed income by investing in highly rated corporate and other bonds with annual yields up to 9%. In reality, the J. David Group corporate bond offering was bogus. Through his company, Defendant, Select Asset, Bjork provided investors account statements reflecting investments in bonds that, in truth, did not exist or that neither J. David Group nor J. David Financial ever acquired as promised.

In the second scheme, Bjork—through Defendant Select Asset and its subsidiary, Defendant Select Capital—offered securities issued by two private funds, Defendants Fund I and Fund II, raising approximately $13 million from at least 52 investors since August 2007. Defendant Select Capital served as the fund manager of both Fund I and Fund II. Bjork controlled Defendant Select Asset, serving as its CEO, and also controlled Defendant Select Capital, serving as one of its three "Principals" named in Fund I and Fund II private-placement memorandums ("PPMs"), which Bjork disseminated to investors.

In addition to comingling investor money and failing to get financial-statement audits promised in the PPMs, each Fund transferred money to Fund-affiliated entities in related-party transactions undisclosed to investors. For example, less than a month after an investor deposited $1 million in Fund II in March 2010, Select Asset took $1 million from Fund II in exchange for an illiquid investment that Select Asset had acquired for the same amount in 2006. Similarly, in December 2010, Select Asset and Select Capital caused Fund II to transfer a $400,000 investor deposit to Defendant J. David Group as a purported loan. The Defendant Funds engaged in these and similar transactions, disregarding required due-diligence and loan-approval procedures set forth in the PPMs.

B. Summary of Violations and Relief Sought

By engaging in the conduct described above, the Defendants participated in fraudulent schemes involving the offer and sale of securities and have violated, and, unless enjoined, will likely continue to violate, anti-fraud provisions of the federal securities laws, as follows:

Bjork and Select Asset violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"); aided and abetted other Defendants' violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5; and, as a control person of other Defendants under Section 20(a) of the Exchange Act, are jointly and severally liable for the violations of Section 10(b) of the Exchange Act and Rule 10b-5 committed by other Defendants.

J. David Group and J. David Financial violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5.

Select Capital violated Sections 206(1) and 206(2) of the Advisers Act; aided and abetted other Defendants' violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and, as a control person of other Defendants under Section 20(a) of the Exchange Act, is jointly and severally liable for the violations of Section 10(b) of the Exchange Act and Rule 10b-5 committed by those other Defendants.

Fund I and Fund II violated Section 17(a) of the Securities Act and Section 10(b) Exchange Act and Rule 10b-5.

Based on the ongoing nature of this egregious scheme and the misappropriation and misapplication of investor funds, emergency relief is needed to prevent the Defendants from defrauding additional investors, to limit the potential for further financial harm to existing investors, and to recover assets for the Defendants' victims.

The Commission seeks a preliminary injunction as to each Defendant against future violations, pending final judgment, and orders providing for the following *ex parte* relief: (1) temporarily restraining the Defendants from engaging in conduct violative of the foregoing federal securities laws; (2) freezing the assets of Defendants; (3) appointing a Receiver as to each Defendant to marshal, conserve, and hold funds and assets subject to the Defendants ownership, possession, or control; (4) prohibiting Defendants from moving, altering, or destroying books, records, and accounts; (5), requiring each Defendant to provide a sworn interim accounting; (6) authorizing expedited discovery; and (7) providing for alternative service of pleadings and other papers.

II. DEFENDANTS

A. **Defendant Bjork**, 42, resides in Missouri City, Texas, is the CEO, managing member, chief investment officer, and chief compliance officer of Defendant Select Asset. Until July 2011, Bjork also served as a senior vice president of J. David Group.

B. **Defendant J. David Group** is a Texas corporation formed in 1987 and headquartered in Friendswood, Texas. J. David Group served as an umbrella organization for several interconnected insurance and financial-services companies under the common control of J. David Salinas (deceased), who served as its president, and Defendant Bjork, who served as its senior vice president. These companies included Defendant J. David Financial; Defendant Select Asset; Defendant Select Capital; Defendant Fund I; and Defendant Fund II.

C. **Defendant Salinas Estate** is composed of the property in which Salinas had an interest at the time of his death, including real, personal, or other property he owned, possessed, or controlled, whether directly or indirectly.

D. **Defendant Select Asset** is a Texas limited liability company formed in February 2006 and headquartered in Houston, Texas. Select Asset became registered with the Commission as an investment adviser effective September 2, 2010, and has been registered as an investment adviser with the State of Texas since July 23, 2008. Until March 2011, Select Asset was majority owned by the Salinas Trust. Defendant Bjork is Select Asset's managing member, CEO, chief investment officer, and chief compliance officer.

E. **J. David Financial** was formed in 2004 by Salinas, Bjork, Richardson, and the J. David Salinas Family Trust ("Salinas Trust") an entity Salinas controlled. Despite the "L.P." in its name, J. David Financial has never filed a chartering document to become a limited partnership under the laws of any state. Its initial partners were Salinas, Bjork, Richardson, and

the Salinas Trust. J. David Financial has never been registered with the Commission in any capacity, nor has it ever registered any offering of securities with the Commission.

F. **Defendant Select Capital**, a Texas limited liability company formed in 2006, is a wholly-owned subsidiary of Select Asset with offices in Houston, Texas, and Rock Island, Illinois. Select Capital serves as the fund manager to Fund I and Fund II, both private investment funds offered to investors through Select Asset. Bjork served one of Select Capital's three "Principals."

G. **Defendant Fund I** is a Delaware limited liability company formed in April 2007 to provide investors with an alternative fixed-income investment opportunity. Fund I has never registered a securities offering with the Commission. Fund I has never registered with the Commission as an investment company. Unregistered investment funds such as Fund I and its sister Fund II are commonly referred to as "hedge funds." Bjork served on Fund I's investment committee.

H. **Defendant Fund II** is a Delaware limited liability company formed in February 2009 to provide investors with an alternative fixed-income investment opportunity. Fund I has never registered a securities offering with the Commission. Fund I has never registered with the Commission as an investment company. Bjork served on Fund I's investment committee.

III. RELATED PARTIES

A. **Joel David Salinas**, deceased, was a resident of Friendswood, Texas and the president and a director of J. David Group. Salinas had been a licensed insurance agent in Texas since 1983.

B. **Online Insurance Services, Inc.** ("Online Insurance"), is a Florida corporation formed in 2003 and currently is a wholly-owned subsidiary of Selected Market.

C. **Selected Market Insurance Group, LLC** ("Selected Market"), is a Texas limited liability company formed in January 2008 and dually headquartered in Orange Park, Florida, and Friendswood, Texas.

IV. STATEMENT OF FACTS

A. The Fake-Bond Offering

As early as the 1990s, Salinas purported to acquire highly rated corporate bonds through his company Defendant J. David Group, an insurance and financial-services company he operated. [App at 205-206; 210-213; 472]. Salinas in turn offered and sold the bonds to J. David Group's investor clients. [Id.]. Defendant Bjork joined J. David Group as an employee in or about 1995, ultimately becoming the company's senior vice president. [App at 523; 473]. In or about 2004, J. David Group began to provide financial services to clients, including the bond offering, through Defendant J. David Financial, a J. David Group affiliate controlled by Salinas and Bjork. [App at 226; 209]. From J. David Financial, Bjork held the titles "Managing Partner" and "Chief Investment Officer." [App at 226].

Beginning in at least 2004, Bjork offered and sold investors corporate bonds, purportedly acquired for them through, and held for them on account at, J. David Financial. [App at 205; 209; and 211]. For example, in the first half of 2004, Bjork became the account executive for a new J. David Financial account opened by investor Kevin Maley. [App at 205]. Maley deposited $225,000 into the account and instructed Bjork to choose suitable investments for him. [Id.]. Bjork purported to invest $150,000 of Maley's initial investment into corporate bonds issued by IBM and Ford and held on account for Maley at J. David Financial. [App at 209]. From 2004 through December 2006, Bjork purported to acquire additional corporate and other bonds for Maley through J. David Financial at a cost of approximately $440,000. [App at 211].

From the bond offering's early years through December 2006, J. David Financial issued bond investors monthly account statements purporting to reflect their bond holdings. [App at - 209-211]. For each investor, the statement showed that the investor held corporate or other bonds in a numbered account at J. David Financial. [Id.]. The statement further showed the investor's basis in each bond held in the account and also showed the bond's market value. [Id].

B. The Fake-Bond Offering Continued through Defendant Select Asset

In or about 2006, Bjork and Salinas formed yet another company, Defendant Select Asset, to become a financial-services provider under the J. David Group umbrella. [App at 224(*Get a dec to put in chartering docs.*)]. On January 1, 2007, J. David Financial transferred most, if not all, of its investor accounts to Select Asset, where Bjork served as CEO and chief investment officer. [Id.; App at 211-213]. At Select Asset, Bjork continued to offer investors corporate bonds as he had done at J. David Financial. [App at 107-108]. For example, in early 2007, Bjork sold investor Joe Kuhn a "safe," "highly rated corporate bond" for $200,000. [Id.; App at 111; 115]. Only now, Bjork offered the J. David Financial bonds through Select Asset. [Id.].

In January 2007, Select Asset began issuing monthly account statements to the bond investors who previously held accounts at J. David Financial. [App at 211; 213]. The Select Asset account statements were virtually identical to those previously issued by J. David Financial, including a reference to Bjork as the person responsible for the account. [Id.]. The January 2007 statements carried over the bond-holdings and other information from investors' December 2006 J. David Financial statements. [Id.] In the bond section, however, under the heading "Account Type," all the new statements listed "J. David Financial Group," suggesting that, after the transition on January 1, 2007, J. David Financial retained actual custody of the

investors' bonds. [Id.].

In reality, J. David Group did not retain actual custody of the bonds. Indeed, neither Salinas nor Bjork, through J. David Group, J. David Financial, Select Asset, or otherwise, had ever actually acquired the bonds reflected in the account statements. [App at 2; 276-277; 517]. The bond offering was a sham. [Id.]. As of June 30, 2011, Salinas and Bjork had swindled more than 100 investors out of more $39 million through the fraudulent bond offering. [App. at 511-512].

C. Bjork Lied to Investors When Confronted about the Bonds

Knowing the bonds were fake, Bjork reassured concerned investors that their J. David Financial bonds were an appropriate part of their investment portfolios. [App at 206-207]. For example, in late 2009 or early 2010, Maley tried to use the bonds Bjork sold him as collateral for a business loan from a bank. [Id.]. After the bank raised concerns about the legitimacy of the bonds listed on Maley's Select Asset statement, Maley obtained CUSIP numbers for the bonds from Select Asset and provided the CUSIP numbers to the bank. [Id.]

Bank personnel informed Maley that they found a number of discrepancies between the bonds listed in his Select Asset statements and actual bonds, including errors in the bond descriptions and market value. [Id.]. Maley met with Bjork to clear up the discrepancies. [Id.]. Bjork told Maley that Salinas bought the bonds in bulk and distributed them among his clients, providing them a return higher than market rates, and that J. David Financial kept track of who actually owned the bonds. [Id]. He also told Maley that there had been an audit and that he need not worry. [Id]. These statements were false. [App at 2; 276-277; 517]. Salinas did not buy bonds in bulk. [Id.]. And because the bonds were fake, Bjork had obviously never verified, by third-party confirmation or otherwise, that Salinas purchased bonds in bulk. [Id.]. Likewise, the

J. David Financial bond offering had never been audited. [Id.]. And Bjork had obviously never verified that any bond-offering audit had taken place. [Id.].

Similarly, in November 2010, an elderly investor's grandson met with Bjork, challenging him about the market values for the bonds on his grandmother's Select Asset account statement. [App at 218]. The grandson, who had some finance experience, pressed Bjork that the high bond values appeared too good to be true. [Id.]. Bjork assured the grandson that the values were correct and that Bjork knew how the values were determined, conveying the false impression that Bjork had actually purchased the bonds. [App at 218-219].

D. Bjork Concealed the Fake Bond from Examiners

In January 2011, Bjork lied to examiners from the Commission's Fort Worth Office, concealing the scheme's existence. [App at 272-273;276; 516]. Examiners met with Bjork in his Houston office during a compliance examination of Bjork's brokerage and investment-advisory activities at Select Asset. [App at 272; 515]. At the time, the examiners knew nothing about the bond offering and were therefore not intentionally seeking information about it. [App at 272; 514-515]. In response to the examiners' questions, Bjork told the examiners that Select Asset clients only received a statement from the broker holding the advised assets and did not receive a separate statement from Select Asset. [App at 272; 516]. Bjork concealed the existence of the Select Asset account statements, preventing the examiners from discovering the fictitious bond holdings at J. David Financial. [Id.].

E. The Fraudulent Select Asset Private Fund Offerings: Fund I and Fund II

In the second scheme, Bjork—through Defendant Select Asset and its subsidiary, Defendant Select Capital—offered securities in the form of units of preferred limited liability company membership interests ("Units") issued by two private funds, Defendants Fund I and

Fund II. [App at 108; 111; 119-203; 514; 630-714; 715-797;]. Defendant Select Capital served as the fund manager of both Fund I and Fund II. [App at 637; 722]. Both Select Asset and Select Capital were investment advisers who owed fiduciary duties to Fund I and Fund II as clients. [App at 272; 637; 722]. As mentioned above, Bjork controlled Defendant Select Asset, serving as its CEO, and also controlled Defendant Select Capital, serving as one of its three "Principals" named in Fund I and Fund II offering documents, specifically the PPMs. [Id.]. As stated in the PPMs, he also served on a five-member investment committee responsible for reviewing and approving the investments the Funds would make. [App at 638; 723].

The Fund I and Fund II PPMs said the Funds intended to build a commercial-loan portfolio by originating short-term commercial loans, purchasing loan participations and syndications, and investing in commercial-loan funds. [App at 636; 721]. Each PPM also said the Fund manager would seek loan opportunities with relatively short durations, focusing on asset classes that either pay in full or re-price in six to 36 months. [App at 644; 729].

Although the Fund I and Fund II PPMs directed investors to send their subscription documents to Select Capital's office in Rock Island, Illinois, Select Capital did not maintain its own bank accounts. [App at 514; 551-554; 556; 591-617; 800-808; 675; 759]. Instead, investor funds were deposited into bank accounts maintained and controlled by Select Asset, Fund I, or Fund II in Houston. [App at 486; 514; 551-554; 556; 591-617; 800-808].

The Fund I offering, which began in August 2007, raised at least $8.6 million from 28 investors. [App at 515]. The Fund II offering, which began in September 2009, raised approximately $5.3 million from 24 investors from September 2009 through December 2010. [App at 274]. Through Select Asset and Select Capital, Bjork offered and sold the Fund I and Fund II offerings to investors, including clients of Select Asset and J. David Financial. [App at

107-109; 206]. In the offering process, Bjork provided investors information about the offerings orally and in writing and by giving them the PPMs. [Id. App at 108-109; 119].

F. Undisclosed Related-Party Transactions

The Fund I and Fund II PPMs did not disclose that investor money would be used to make loans to or from affiliates. [App at 630-712; 715-797]. But both Funds loaned money to affiliates. [App at 275; 514-516;]. First, in November and December 2007, just two months after its initial receipt of funds, Fund I loaned $300,000 to Online Insurance. [App at 515]. Soon thereafter, Selected Market—a Fund I affiliate owned 51% by Salinas, whose family trust owned a majority of Select Asset—acquired Online Insurance. [Id.; App at 272]. In March 2008, Fund I began loaning money to Selected Market, ultimately transferring $2 million to that entity. [App at 515]. Second, Fund II loaned approximately $780,000 to Selected Market in late 2009 and early 2010. [App at 516]. Third, Fund II loaned J. David Group $400,000 on December 27, 2010, just days after receiving a $400,000 investment from a Fund II investor. [App at 275].

Fund II also engaged in a major undisclosed transaction directly with Select Asset. In March 2010, an investor deposited $1 million in Fund II. [App at 274]. Less than a month later, Select Asset transferred $1 million from Fund II to Select Asset. [Id]. In exchange for the $1 million, Select Asset gave Fund II shares of the Global Leveraged Capital Credit Opportunity Fund I ("GLC Fund"), which Select Asset had purchased in 2006 for $1 million. [Id]. Although Fund II's PPM said it would focus on short-term loans of six to 36 months, the GLC Fund shares were highly illiquid. [App at 379]. The GLC Fund has no obligation to redeem the shares until December 2018. [App at 501].

In undisclosed, related-party transactions, Select Asset and Select Capital also comingled investor funds raised in Fund I and Fund II. [App at 274; 514-516]. Almost all of the nearly

$2.1 million Fund II raised in late 2009 and early 2010 was initially deposited in Fund I's bank account. [App at 274; 516]. In early 2010, Fund I transferred $970,000 to Fund II, but retained approximately $330,000 of Fund II's money. [App at 274]. Moreover, in January 2010, Fund I purportedly opened a $2 million line of credit from Fund II. [Id].

Fund I and Fund II made the foregoing undisclosed affiliate loans, comingling transactions, and related-party transactions without complying with the due-diligence and investment-committee approval process described in their respective PPMs. [App at 273-275]. Moreover, the PPMs provided to investors after those transactions did not include updated information describing those transactions or the inherent conflicts of interest they presented. [App at 630-712; 715-797].

G. Fund I and Fund II Failed to Have Promised Audits

The Fund I and Fund II limited liability company agreements, attached as exhibits to their respective PPMs, provided that annual audited financial statements and quarterly unaudited balance sheets would be given to investors. [App at 703; 787]. Neither Fund's financial statements, however, has ever been audited. [App at 515-516; 273]. And Bjork admitted to Commission examiners that Select Asset and Select Capital have never provided the investors even the unaudited quarterly balance sheets for the Funds. [App at 516]. The Funds, however, failed to disclose in the PPMs provided to later investors that the earlier investors had not been given the promised financial information. [App at 630-712; 715-797].

V. LEGAL DISCUSSION AND ARGUMENT

A. <u>The Investments are Securities</u>

1. The J. David Group Bonds

The purported bond investments through J. David Group, J. David Financial, and Select

Asset are securities. Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act both define the term "security" to include bonds. Moreover, the investments also meet the definition of "investment contracts," which also are securities under Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act. An investment contract is (1) an investment of money (2) in a common enterprise (3) with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. *See SEC v. W.J. Howey Co.,* 328 U.S. 293, 301 (1946).

The investments satisfy the first element of the *Howey* test—"an investment of money"—since investors paid cash for the purported bonds. The second element is satisfied as well. Some courts require a showing of "horizontal commonality," which involves the pooling of assets from multiple investors so that all share in the profits and risks of the enterprise. *See, e.g., Wals v. Fox Hills Dev. Corp.,* 24 F.3d 1016, 1018 (7th Cir. 1994). In the Fifth Circuit, horizontal commonality is not required. *See SEC v. Koscot Interplanetary, Inc.* 497 F.2d 473, 479 (5th Cir. 1974). Instead, the "common enterprise" element can be met in the Fifth Circuit with "broad vertical commonality," which requires only that investors' fortunes be linked to the efforts or expertise of the promoter, and is not limited to "narrow vertical commonality," where there must be a correlation between the promoter's success or failure and the investors' profits or losses. *See Long v. Schultz Cattle Co.*, 881 F.2d 129, 140-41 (5th Cir. 1989); *SEC v. Continental Commodities Corp.,* 497 F.2d 516 (5th Cir. 1974); *see also SEC v. Unique Financial Concepts, Inc.*, 196 F.3d 1195, 1199-1200 (11th Cir. 1999). In this case, horizontal commonality exists because at least some bond investors were told that their investments were pooled to purchase bonds in larger denominations at a discount. Broad vertical commonality exists since investors relied on Bjork or Salinas's purported knowledge and expertise in the bond market to purchase

bonds at an advantageous price. Moreover, narrow vertical commonalty also exists because the bond investors were dependent on Bjork and Salinas's success in purchasing bonds at an advantageous price to produce high fixed-income returns. Thus, the bonds were part of a "common enterprise."

Finally, bond investors had a reasonable expectation of profits to be derived from the managerial or entrepreneurial efforts of others. Investors were to be wholly passive. Bjork and Salinas determined what investments to make. Therefore, *Howey's* third element is satisfied.

2. The Select Asset Fund Investments

The preferred limited liability company interests in Fund I and Fund II also are "investment contracts," and therefore securities under Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act. Investors paid cash for the units, thus satisfying the "investment of money" prong of the *Howey* test. The "common enterprise" element of the *Howey* test is also satisfied. Horizontal commonality exists because investor funds were pooled in order to create Fund I and Fund II and, through the funds, to make commercial loans. Broad vertical commonality exists since fund investors relied on Select Asset and Select Capital's purported knowledge and expertise in the commercial lending to earn the promised returns. Moreover, narrow vertical commonalty also exists because the Fund I and Fund II investors were dependent on Select Asset's and Select Capital's success in making and purchasing commercial loans that provided high fixed-income returns. Thus, the Fund I and Fund II units were part of a "common enterprise." Finally, the Fund I and Fund II investors had a reasonable expectation of profits to be derived from the managerial or entrepreneurial efforts of others, since their distributions were dependent on Select Asset and Select Capital making loans and investments that paid a high fixed return. Consequently, all three prongs of the *Howey* test are satisfied and

the Fund I and Fund II investments are securities.

B. Anti-Fraud Violations

1. Legal Standards: Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 Thereunder

a. Primary Liability

Section 17(a) of the Securities Act makes it unlawful for any person, in the offer or sale of a security, to, among other things, obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Similarly, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder make it unlawful for any person, in connection with the purchase or sale of a security, to, among other things, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The "in connection with" requirement of Section 10(b) and Rule 10b-5 is satisfied if the fraud touches upon a securities transaction. *See SEC v. Zandford*, 535 U.S. 813, 819-20 (2002).

Violations of Sections 17(a)(1) and 10(b) and Rule 10b-5 require a showing of *scienter*, the mental state embracing intent to deceive, manipulate, or defraud. *Aaron v. SEC*, 446 U.S. 680, 691 (1980). But such a showing is not required for Sections 17(a)(2) and (3). *Id.* at 696-97. *Scienter* is established by showing that the defendants acted intentionally or with severe recklessness. *See Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 961 (5th Cir. 1981) (*en banc*), *cert. denied*, 454 U.S. 965 (1981). The *scienter* of a company's management may be imputed to the company. *See, e.g., SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082 (2d Cir. 1972).

In *Janus Capital Group, Inc., et al. v. First Derivative Traders,* 564 U.S. ___ (2011), the Supreme Court construed "[t]o make any untrue statement of a material fact" under Rule 10b-

5(b) narrowly, holding that Janus Capital Management LLC ("JCM"), a mutual fund adviser, and its parent company, Janus Capital Group, Inc. ("JCG"), were not liable for misstatements in the fund prospectuses of funds JCM advised because the funds, which are separate legal entities, "made" the misstatements. Although JCM employees drafted and reviewed the fund prospectuses and disseminated them via JCG's website, the Court reasoned that, "[f]or Rule 10b-5 purposes, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it. Without control, a person or entity can merely suggest what to say, not 'make' a statement in its own right." The Court specifically noted that "[o]ne who prepares or publishes a statement on behalf of another is not its maker," and emphasized the significance of attribution of a statement in determining its "maker."

In addition to material misrepresentations and omissions, the antifraud provisions encompass not only material misstatements and omissions, but deceptive "practices," *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 475-76 (1977), deceptive "conduct," *id.* at 475 n. 15; *United States v. O'Hagan*, 521 U.S. 642, 659 (1997); and deceptive "acts," *Central Bank,* 511 U.S. at 173; *see Bankers Life*, 404 U.S. at 9. In *SEC v. Zandford*, 535 U.S. 813, 815 (2002), addressing a fraudulent scheme under Rule 10b-5(a) and a fraudulent course of business under Rule 10b-5(c), the high court concluded: "Indeed, each time respondent 'exercised his power of disposition (of his customers' securities) for his own benefit,' that conduct, 'without more,' was a fraud." (emphasis added); *see Affiliated Ute Citizens of Utah v. United States,* 406 U.S. 128, 152 (1972) (noting that while Rule 10b-5(b) targets false statements or omissions, paragraphs (a) and (c) "are not so restricted").

b. Aiding and Abetting Liability

In *Janus,* the Court acknowledged that the Commission may pursue secondary liability claims for aiding and abetting against persons and entities that contribute "substantial assistance" to the making of a statement. *Id.* To establish aiding and abetting liability in the Fifth Circuit, where the proposed action would be filed, the Commission must establish: 1) a securities law violation by a primary party; 2) a "general awareness" on the part of the aider and abettor of his role in the violation; and 3) that the aider and abettor "knowingly rendered substantial assistance" in the violation. *Abbott v. Equity Group, Inc.*, 2 F.3d 613, 621 (5th Cir. 1993); *SEC v. Morris*, 2005 WL 2000665, *9-10 (S.D. Tex., Aug. 18, 2005) (requiring SEC to allege facts that would show knowledge of participation in improper activity or establish red flags or suspicious events that should have notified defendant of the underlying violations). Section 20(e) of the Exchange Act provides that a person who knowingly provides substantial assistance to another person in violation of the Exchange Act and its rules is in violation of those same provisions as the person to whom assistance is provided.

c. Control Person Liability

The Commission may also allege liability based on a control-person theory under Section 20(a) of the Exchange Act.

Section 20(a) of the Exchange Act provides that:

> Every person, who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts

constituting the violation or cause of action.

15 U.S.C. § 78t(a). In the Fifth Circuit, control-person liability requires a primary violation by the controlled person and control of the violator by the defendant. *G.A. Thompson & Co., Inc. v. Partridge*, 636 F.2d 945, 957-58 (5th Cir. 1981); *In re Dynegy, Inc. Sec. Litig.*, 339 F.Supp. 2d 804, 877 (S.D. Tex. 2004). Lack of participation in the wrongful transaction and good faith are affirmative defenses for which the defendant bears the burden of proof. *G.A. Thompson & Co.*, 636 F.2d at 958. Control over the violator may be established by showing that the defendant possessed the "power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." 17 C.F.R. 240.12b-2. As discussed below, Bjork, Select Asset, and Select Capital controlled the private funds.

2. Legal Standards: Sections 206(1) and 206(2) of the Advisers Act

Sections 206(1) and 206(2) of the Advisers Act prohibit an investment adviser from employing any device, scheme, or artifice to defraud clients or from engaging in any transaction, practice, or course of business that defrauds clients. A showing of *scienter* is required to establish violations of Section 206(1), but not violations of Section 206(2). *See Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979); *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (a violation of Section 206(2) "may rest on a finding of simple negligence"). Additionally, an investment adviser is a fiduciary who owes his clients "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients." *SEC v. Capital Gains Research Bureau, Inc.*, *375* U.S. 180, 194 (1963); *see also Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979). Unlike the antifraud provisions of the Exchange Act,

however, Section 206 of the Advisers Act does not require that the activity be "in connection with" the purchase or sale of any security. *See* Advisers Act Release No. 1092, 6 Fed. Sec. L. Rep. (CCH) ¶ 56,156E, at 44,057-7 to 44,058 (Oct. 8, 1987).

3. The Bond Offering

Bjork, Salinas, Select Asset, J. David Group, and J. David Financial made false and misleading statements regarding the bond offering in violation of Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act. As described above, they represented to investors that they would use the funds investors entrusted to them to purchase safe, highly rated, and, lucrative corporate bonds. In fact, they did not purchase such bonds, but issued investors false account statements over many years to give the appearance they had purchased the bonds. Salinas, Bjork, J. David Group, and J. David Financial therefore misapplied and misappropriated the money investors had earmarked for bonds—more than $39 million.

Their misrepresentations were material to investors, who would not have invested their money had the true facts been known—namely, that the investments were a sham and the Defendants were misappropriating their money. The misrepresentations also were made "in" the offer and sale, and "in connection with" the purchase and sale, of securities because the purpose of the investment scheme was to induce investors to provide cash and invest in the recommended securities.

In addition, J. David Financial and, later, Bjork and Select Asset lulled existing investors into holding, and in some cases increasing, their investment by making oral statements reassuring investors concerning their investments, sending materially false and misleading representations concerning the existence and status of their investments, and by convincing

investors that there would be a return on their investment when, in fact, Defendants had diverted their funds. *See SEC v. Holschuh*, 694 F.2d 130 (7th Cir. 1982) (a scheme to defraud includes later efforts to avoid detection of the original fraudulent conduct); *Local 875 I.B.T. Pension Fund v. Pollack*, 992 F. Supp. 545, 565 (E.D.N.Y. 1998) (misrepresentations made after decision to invest actionable because they induced customers to maintain investment).

Bjork and Select Asset also made false and misleading statements in connection with the offer and sale of the so-called bonds. Bjork recommended the bonds to at least two investors both orally and in a letter he signed, assuring one elderly investor that his money would be invested in safe, highly rated corporate bonds. In addition, Bjork lulled investors both orally and through the dissemination of Select Asset statements reflecting the bonds. Further, Bjork and Select Asset participated in a fraudulent scheme in which customers and clients entrusted their money to J. David Financial and Select Asset in order to purchase safe, high grade bonds. Defendants instead used at least a portion of the scheme's fraudulent proceeds to fund their businesses and to maintain an aura of success to attract new victims.

Bjork and Salinas acted with *scienter*. Salinas knew that he had not purchased bonds for investors as represented. He therefore acted with *scienter*. Bjork was long associated with J. David Group and J. David Financial, serving in the roles of vice president, senior vice president, managing partner, and chief investment officer during his more than fifteen years with Salinas-affiliated companies. His investment expertise, however, was not limited solely to those companies, however. He was associated with various broker-dealers throughout that period and knew or was severely reckless in not knowing that that unregistered entities such as J. David Group and J. David Financial typically do not offer and sell large amounts of bonds to customers. He also knew or was severely reckless in not knowing that carrying on the business

of buying and selling bonds for the accounts of investors is activity that typically requires registration with the Commission as a broker. See Exchange Act Sections 3(a)(4) and 15(a). Neither J. David Group or J. David Financial had ever done. He also knew or was severely reckless in not knowing that that customer bonds were not purchased as promised.

Further, beginning as early as January 2007, Select Asset and Bjork issued client statements that reflected the J. David Financial bonds, lending the investments credibility. Indeed, Bjork vouched for the bond investments when some investors questioned the bond descriptions on their Select Asset statements. And Bjork maintained that the bonds were legitimate despite the questions and concerns raised by another investor's bank. At a minimum, Bjork acted with severe recklessness, ignoring numerous red flags that should have alerted him that the J. David Group bond investments were not legitimate. *See SEC v. Gann*, 565 F.3d 932, 936-37 (5th Cir. 2009) (severe recklessness satisfies the *scienter* requirement for Section 10(b) and Rule 10b-5).

Bjork's false statement to Commission examiner regarding the Select Asset client statements, however, is powerful evidence that Bjork was actively complicit in the fake-bond scheme. In either event, his conduct is sufficient to prove *scienter* in connection with his offers and sales of the bond investments. Bjork and Salinas's *scienter* is imputed to J. David Group, J. David Financial, and Select Asset. *See, e.g., SEC v. Management Dynamics, Inc.,* 515 F.2d 801, 812-13 (2d Cir. 1975) (broker-dealer held liable for anti-fraud violations committed by vice-president in charge of trading who had apparent authority to act on behalf of firm). As a result, Bjork, Salinas J. David Group, J. David Financial, and Select Asset violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 in connection with the J. David Group bond offering.

4. The Select Asset Private Fund Offering

Fund I and Fund II were the issuers of the fund offerings, and thus primarily liable under *Janus* for any false and misleading statements in the offering prospectuses. The Funds' PPMs represented that the Funds would follow a due-diligence and investment-committee approval process in making loans and that the Funds would focus on short-term investments. The PPMs did not disclose that the Funds would or could make loans to affiliated parties, much less the terms on which the loans would be made. They also did not disclose that the Funds would make affiliate loans and investments following less rigorous due-diligence and approval procedures than would be applied to other, non-affiliated investments. Moreover, the PPMs provided to later investors did not disclose that the Funds had engaged in affiliated transactions that resulted from a less rigorous due-diligence and investment-committee approval process than the PPMs represented.

As a result, the Funds' representations in their respective PPMs regarding the loan process and conflicts of interest were materially misleading, given the fact that Select Asset and Select Capital diverted the Funds' money to affiliate loans, comingling transactions, and related-party transactions almost from inception. Finally, the Funds also failed to disclose to later investors that the earlier investors had not been given financial information, including promised audited financial statements, as described in the agreements attached to the PPMs. As a result, later fund investors were not informed about the affiliate loans, comingling transactions, and related-party transactions.

Further, Fund I and Fund II made the false and misleading statements in its PPMs with *scienter*. Bjork was the face of Select Asset—he provided the PPMs to investors and updated them on their investments. Moreover, Bjork, as CEO of Select Asset, a governor of Select

Capital, and a member of the investment committee for each Fund, knew or was severely reckless in not knowing that Select Asset and Select Capital applied less rigorous due diligence and approval processes to the affiliated loans and investments. Nevertheless, Bjork, Select Asset, and Select Capital used the materially misleading PPMs to raise money for the funds. Thus, Bjork was at least severely reckless, and his *scienter* is imputed to Select Asset and Select Capital. *See, e.g., SEC v. Management Dynamics, Inc., supra; SEC v. Treadway*, 430 F. Supp. 2d 293, 337-38 (S.D.N.Y. 2006) (*scienter* of corporate executives can be imputed to corporate entities for purposes of Section 10(b) and Rule 10b-5); *Southland Securities Corp. v. INSpire Ins. Solutions, Inc.*, 365 F.3d 353, 366 (5th Cir. 2004) (*scienter* of the specific officer or employee who made the misstatement is imputed to the entity).

As a result, Fund I and Fund II violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 in connection with the Select Asset private fund offerings. Bjork, Select Asset, and Select Capital knowingly provided substantial assistance to the Funds and thus aided and abetted the Funds' violations of the anti-fraud provisions of the Securities Act and the Exchange Act.

Further, Bjork, as CEO of Select Asset, a governor of Select Capital, and a member of the Investment Committee for each Fund, controlled the Funds. Select Capital, the fund manager for each Fund, and Select Asset, as the parent of Select Capital and the entity that controlled investor funds, also controlled the Funds. Because Bjork, Select Asset, and Select Capital controlled Fund I and Fund II and participated in the Funds' wrongful conduct, they are jointly and severally liable for Fund I and Fund II's violations of Exchange Act Section 10(b) and Rule 10b-5, pursuant to the control-person liability provisions of Section 20(a) of the Exchange Act.

Bjork, Select Asset, and Select Capital also violated the antifraud provisions of the

Advisers Act, specifically Sections 206(1) and 206(2) of the Advisers Act, with respect to the Fund I and Fund II offerings. Select Asset was an investment adviser registered with the State of Texas and later with the Commission, and it acted as an investment adviser to Fund I and Fund II by and with its subsidiary Select Capital.

Select Capital and Bjork directly violated Sections 206(1) and 206(2) of the Advisers Act because they each meet the definition of investment adviser in the Advisers Act. Section 202(a)(11) of the Advisers Act defines an investment adviser as any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

By using Fund I and Fund II monies to make undisclosed affiliated loans which inured to their or their affiliates' benefit, Select Asset, Select Capital and Bjork, misappropriated or misapplied investor assets in violation of their fiduciary duty to their clients. These breaches of their fiduciary duty constitute a fraud or deceit in violation of Advisers Act Sections 206(1) and 206(2).

VI. RELIEF REQUESTED

A. The Court Should Issue a Temporary Restraining Order *Ex Parte* and a Preliminary Injunction

Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] authorize the Commission to seek and direct the courts to enter "a permanent or temporary injunction or restraining order" upon a "proper showing" that the defendant "is engaged or is about to engage" in violations of the securities laws. In 1981, the Fifth Circuit set forth its standard for a "proper showing" in *SEC v. Zale Corp.*:

> Although the mere fact of a past violation does not *ipso facto* establish the

> SEC's right to injunctive relief, and thus is not alone tantamount to the "proper showing" of present or future violations, the Commission is entitled to prevail when the inferences flowing from the defendant's prior illegal conduct, viewed in light of present circumstances, betoken a "reasonable likelihood" of future transgressions.
>
> Relevant considerations in the "reasonable likelihood" analysis resolve into essentially three areas of inquiry: the nature of the past violation, the defendant's present attitude, and objective constraints on (or opportunities for) future violations of the securities laws.
>
> Such factors include the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of *scienter* involved, the sincerity of the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.
>
> Thus, it is not a single factor, but rather the sum of the circumstances surrounding the defendant and his past conduct that governs whether to grant or deny injunctive relief.

SEC v. Zale Corp., 650 F.2d 718, 720 (5th Cir. 1981)(internal citations omitted).

Here, the factors set out in *Zale* militate strongly in favor of injunctive relief against each Defendant. The Defendants' violations to date have been extremely egregious. They have defrauded more than 100 victims in inter-connected, multi-million-dollar, securities-fraud schemes, which they have sought to conceal by means of fictitious account statements. The Defendants' violations were not isolated. Rather, they were widespread, repeatedly ensnaring

new victims into the scheme for over a decade at least. The Defendants operated with *scienter* in the extreme. And they have not recognized the wrongful nature of their conduct. Indeed, when Commission examiners sought records from Defendants that would expose the bond scheme, Bjork lied to them to conceal and to continue the fraud. Finally, as to occupation, Bjork presently remains associated with Select Asset, Select Capital, Fund I, and Fund II, which purport to provide financial services to investors. Moreover, J. David Group and J. David Financial purport to provide financial services to investors. In these occupations, the Defendants will continue to have opportunities to defraud investors.

When the Commission has established a *prima facie* showing of violations and the likelihood that such violations will continue, issuance of an *ex parte* TRO and order of preliminary injunction are appropriate. *SEC v. First Financial Group of Tex.* 645 F.2d 429, 434-35 (5th Cir. 1981). Unlike private litigants, the Commission is not required to show a risk of irreparable injury or a balance of equities in its favor. *SEC v. Management Dynamics, Inc*., 515 F.2d 801, 808 (2d Cir. 1975); *Unifund*, 910 F.2d 1028, 1036 (2nd Cir. 1990).

> [T]he rationale for this rule is readily apparent. It requires little elaboration to make the point that the SEC appears in these proceedings not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws. Hence, by making the showing required by statute that the defendant "is engaged or about to engage" in illegal acts, the Commission is seeking to protect the public interest, and "the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief."

SEC v. Management Dynamics, Inc., 515 F.2d at 808-809 (quoting *Hecht v. Bowles*, 321

U.S. 321, 331 (1944)).

Ex Parte relief is appropriate when notice to the opposing party could render fruitless further prosecution of the action. *First Technology Safety Systems, Inc. v. Depinet,* 11 F.3d 641, 650-51 (6th Cir. 1993). The Defendants have plainly received millions of dollars from investors through fraudulent schemes. Therefore, it is substantially likely that Defendants now hold investor funds, assets acquired in exchange for investor funds, or both; given notice, these assets could be rapidly dissipated or hidden, potentially rendering fruitless further prosecution to recover assets for victims.

B. The Court Should Order Ancillary Relief

1. Orders Freezing Assets, Requiring Document Preservation, and Expediting Discovery

Federal courts have broad equitable powers enabling them to fashion appropriate ancillary remedies necessary to grant full relief. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103-4 (2d Cir. 1972); *SEC v. Blatt*, 583 F.2d 1325, 1335-1336 (5th Cir. 1978). The Court should freeze the Defendants' assets based on the misconduct described above. Such an order is appropriate to prevent dissipation pending an assessment of the assets' value and liquidity and their return to investors. *See, e.g., SEC v. Manor Nursing Centers, Inc.*, 458 F.2d at 1106. The Defendants' wrongdoing amply demonstrates that they should not be entrusted with investor funds.

An asset freeze is also appropriate to assure satisfaction of whatever equitable relief the Court ultimately may order. *Id.*; *Commodity Futures Trading Com. v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). Additionally, an asset freeze "facilitate(s) enforcement of any disgorgement remedy that might be ordered" and may be granted "even in circumstances where the elements required to support a traditional SEC injunction have not been established." *SEC v.*

Unifund SAL, 910 F.2d 1028, 1041 (2d Cir. 1990). Courts recognize that an asset freeze is sometimes necessary to ensure that a future disgorgement order will have effect. *See, e.g., United States v. Cannistraro*, 694 F. Supp. 62, 71 (D.N.J. 1988), *aff'd in part, vacated in part on other grounds*, 871 F.2d 1210 (3d Cir. 1989); *SEC v. Vaskevitch*, 657 F. Supp. 312, 315 (S.D.N.Y. 1987); *SEC v. R. J. Allen & Associates, Inc.*, 386 F. Supp. 866, 881 (S.D. Fla. 1974).

To obtain an asset freeze, the Commission need not show a reasonable likelihood of future violations. *Commodity Futures Trading Com. v. Muller*, 570 F.2d at 1300. Its burden is lower than that of a preliminary injunction because an asset freeze only preserves the *status quo*. *Unifund SAL*, 910 F.2d at 1039.

In addition, the Court should enter an order prohibiting the movement, alteration, and destruction of books, records, and accounts to prevent destruction of documents before the Commission's claims can be adjudicated. And to more fully ascertain the extent of the Defendants' misconduct, the Court should order expedited discovery in anticipation of a hearing on the Commission's request for a preliminary injunction. These orders will assure that whatever equitable relief might ultimately be granted is available and meaningful. *See R. J. Allen & Assocs., Inc.*, 386 F. Supp. at 881.

2. Appointment of a Receiver

As set forth above, pursuant to their general equity powers, courts may order ancillary relief to effectuate the purposes of the federal securities laws, to preserve defendants' assets, and to ensure that wrongdoers do not profit from their unlawful conduct. In this regard, the power of the district court to appoint a receiver to marshal and preserve assets and perfect property rights is well-established. *SEC v. Materia,* 745 F.2d 197 (2d. Cir. 1984); *SEC v. First Financial* Group, 645 F.2d 429, 438 (5th Cir. 1981). *See also* 12 C. Wright, A. Miller & R. Marcus, "Federal

Practice & Procedure" §2983 at 23-24 (2d ed. 1997). An evidentiary hearing is not required on Plaintiff's request to appoint a receiver where the record discloses sufficient facts to warrant such an appointment. *Bookout v. Atlas Fin. Corp.,* 395 F. Supp. 1338, 1342 (N.D. Ga. 1974), *aff'd*, 514 F.2d 757 (5th Cir. 1975); *United States v. Mansion House Center N. Redevelopment Co.,* 419 F. Supp. 85, 87 (E.D. Mo. 1976).

The evidence presented here establishes that Defendants have misappropriated or misapplied millions of dollars received from investors and are in possession of assets acquired with investor funds that are at risk of disappearing any moment. Moreover, the Defendants may have transferred investor money or assets derived therefrom to other parties, who may not have a legitimate claim to retain possession of that money or those assets. Under these circumstances, appointment of a receiver to marshal, conserve, and hold Defendants' property and other property traceable to the fraud is essential to providing meaningful restitution to investors.

VII. CONCLUSION

Based on the foregoing facts and for the reasons set forth above, the Commission respectfully requests that the Count enter orders providing the relief requested.

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