



2. In a separate instance, Frishberg learned that Kaleta was offering promissory notes issued by Kaleta Capital Management, Inc. (“KCM”)—a company Kaleta owned—to DFFS clients. Frishberg did nothing to investigate the KCM offering or to determine whether the KCM securities were suitable for DFFS clients, yet he allowed Kaleta to continue offering the KCM notes to DFFS clients. In fact, under Frishberg’s leadership, BizRadio borrowed approximately \$5.5 million of the KCM note proceeds. Again, Frishberg failed to ensure that DFFS and Kaleta disclosed to DFFS clients BizRadio’s poor financial condition and the conflicts of interest presented by Frishberg serving as CEO of both DFFS and BizRadio.

3. By reason of these activities, Frishberg directly violated Section 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-6(2)]. In addition, he aided and abetted violations by DFFS and Kaleta of Section 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and 80b-6(2)].

4. In the interest of protecting the public from any further violations of the federal securities laws, the Commission brings this action against Defendant Frishberg, seeking permanent injunctive relief, civil money penalties, and all other equitable and ancillary relief deemed necessary by the Court.

#### **JURISDICTION AND VENUE**

5. The Commission brings this action pursuant to the authority conferred upon it by Section 209 of the Advisers Act [15 U.S.C. § 80b-9].

6. The Court has jurisdiction over this action under Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and 28 U.S.C. § 1331. Defendant, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce or the facilities of a national securities exchange in connection with the acts, practices, and courses of business described in

this Complaint.

7. Venue is proper in the Southern District of Texas because the Defendant resides within this judicial district and many of the transactions, acts, practices, and courses of business described below occurred within this judicial district.

### **DEFENDANT**

8. Daniel Sholom Frishberg, 65, is a resident of Houston, Texas. He was CEO and owned 56% of the DFFS. He was also CEO and president of BizRadio. BizRadio was a limited partnership that invested in radio stations dedicated to business and market talk shows.

### **STATEMENT OF FACTS**

#### **The BizRadio Note Offering**

9. While serving as BizRadio's CEO in 2008, Frishberg approved the issuance of BizRadio promissory notes to raise capital for BizRadio. As DFFS's CEO, Frishberg then approved the BizRadio promissory notes for recommendation to DFFS clients. Frishberg delegated the recommendation task to DFFS representative Kaleta. Kaleta served as an officer of both DFFS and BizRadio, although he was subordinate to Frishberg at both entities. From April 2008 through September 2009, BizRadio raised approximately \$5.5 million through the promissory-note offering.

10. Frishberg chose Kaleta to recommend the BizRadio notes even though Frishberg was aware of complaints about Kaleta's truthfulness in sales presentations regarding other investments. Moreover, Frishberg did not supervise Kaleta's BizRadio note presentations or in any way ensure that Kaleta disclosed material information about the notes. In particular, Frishberg failed to ensure that Kaleta informed clients that Frishberg and Kaleta received salaries from BizRadio. Such receipt of salaries constituted an undisclosed conflict of interest between

the clients on one hand and Frishberg and Kaleta on the other.

11. In addition, Frishberg approved the BizRadio notes for recommendation to DFFS clients even though the notes were not suitable for such clients. DFFS clients included among their investment objectives the expectation of earning interest and receiving a return of principal. BizRadio's financial condition was so poor that it had only nominal prospects for paying interest and returning principal, a fact Frishberg knew or was reckless in not knowing. Moreover, Frishberg failed to ensure that Kaleta disclosed to clients BizRadio's poor financial condition.

### **The KCM Note Offering**

12. In December 2007, Kaleta began offering to investors, many of whom were DFFS clients, three-year promissory notes issued by Kaleta's company, KCM. Through August 2009, KCM sold at least \$10 million of notes. No written offering materials accompanied the notes. Rather, Kaleta verbally represented to investors the following: that KCM would use the note proceeds to make short-term loans to small businesses; that KCM would only lend to credit-worthy individuals or entities whose investment models Kaleta had fully researched and understood; that Kaleta would perform due diligence to ensure that borrowers had the ability to repay their loans; and that KCM would charge 12% to 14% annual interest on the short-term loans, and would profit from the spread between that amount earned upon repayment of the short-term loans and the 10% return promised investors. Kaleta also claimed that he maintained a reserve account to cover note repayments and personally guaranteed the notes, indicating that he had sufficient wealth to pay them.

13. In 2008, Frishberg learned that Kaleta was offering KCM promissory notes to DFFS clients. But Frishberg did not investigate the KCM note program to determine whether it was a suitable investment to offer DFFS clients. Indeed, given KCM's poor financial condition,

the notes were not suitable. Moreover, Frishberg failed to ensure that Kaleta disclosed conflicts of interest. Frishberg served as CEO of both DFFS and BizRadio, one of the allegedly “credit-worthy entities” to which KCM was lending money. Indeed, BizRadio borrowed more than \$5.5 million of the KCM note proceeds. Frishberg stood to benefit from BizRadio’s borrowing from KCM because it helped fund Frishberg’s BizRadio salary. Finally, Frishberg did not ensure that Kaleta disclosed BizRadio’s poor financial condition and consequent lack of credit-worthiness to DFFS clients to whom he recommended KCM notes. Nonetheless, Frishberg allowed Kaleta to continue recommending the KCM notes to DFFS clients.

14. In November 2009, the Commission filed a lawsuit in this Court against Kaleta and KCM (No.: 4:09-cv-03674), alleging that they violated the federal securities laws by engaging in fraudulent securities offering. The Commission likewise named DFFS and BizRadio as relief defendants in an effort to recover proceeds from the Kaleta-KCM fraudulent offering. The Court entered a judgment against Kaleta and KCM, enjoining them from violations of the federal securities laws and ordering them to pay disgorgement plus prejudgment interest and penalties, the amounts of which the Court will set upon future motion by the Commission. The Court also appointed a receiver to take possession of KCM and all of its assets. Ultimately, the Court also placed DFFS and BizRadio into the receivership, authorizing the receiver to take possession of these entities and all of their assets. Presently, these entities are in the receiver’s possession and control.

### **FIRST CLAIM**

#### **Direct Violations of Section 206(2) of the Advisers Act**

15. The Commission repeats and incorporates paragraphs 1 through 14 above by reference as if set forth verbatim.

16. Defendant Frishberg, an investment adviser within the meaning of Section 202(11) of the Advisers Act [15 U.S.C § 80b-2(11)], by use of the mails or means or instrumentalities of interstate commerce, directly or indirectly, engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients.

17. By reason of the foregoing, Defendant Frishberg violated and, unless enjoined, will continue to violate of Section 206(2) of the Investment Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

### **SECOND CLAIM**

#### **Aiding and Abetting Violations of Section 206(1) and 206(2) of the Advisers Act**

18. Plaintiff Commission repeats and incorporates paragraphs 1 through 14 of this Complaint by reference as if set forth verbatim.

19. Defendant Frishberg aided and abetted Kaleta and DFFS, who, as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C § 80b-2(11)], by use of the mails or means or instrumentalities of interstate commerce, directly or indirectly: (1) employed devices, schemes, or artifices to defraud clients or prospective clients; and (2) engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients.

20. By reason of the foregoing, Defendant Frishberg aided and abetted Kaleta and DFFS's violations and, unless enjoined, will continue to aid and abet violations of Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

### **REQUEST FOR RELIEF**

Wherefore, the Commission respectfully requests that the Court:

21. Permanently enjoin Defendant Frishberg from violating Section 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(2)].

22. Permanently enjoin Defendant Frishberg from aiding and abetting violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

23. Order Defendant Frishberg to pay a monetary penalty of \$65,000 pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]; and

24. Grant such ancillary and other relief as this Court may deem just, equitable, and necessary.

Dated: March 25, 2011.

Respectfully submitted,

s/Timothy S. McCole  
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