

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

WILFRED T. AZAR, III,
JOSEPH A. GIORDANO, and
EMPIRE CORPORATION,

Defendants.

Civil Action No.

Jury Trial Demanded

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

SUMMARY

1. This matter involves an offering fraud conducted by Defendant Wilfred T. Azar, III, President, Chairman and Chief Executive Officer of Empire Corporation ("Empire"), a Glen Burnie, Maryland-based real estate company, and a former stockbroker, Defendant Joseph A. Giordano.
2. From 2006 through early 2010, Defendants raised more than \$7 million from dozens of investors through the unregistered offering of purported bonds issued by Empire by making materially false and misleading statements and omissions to investors concerning, among other things, Empire's financial condition, its ability to generate the promised returns, and the safety and risk of the investment. Giordano also caused a mutual fund that he advised to purchase the bonds.

3. The Defendants misled investors by touting Empire as a successful and profitable business that had the resources to pay the promised 10 percent rate of return when, in reality, the company was functionally insolvent by the end of 2006.

4. Defendants also made material misrepresentations and omissions about Empire's use of the proceeds, claiming that investor proceeds would be used for various corporate purposes, including financing improvements to an office building owned by Empire, building out tenant space in the same building, and funding other projects for businesses that Azar falsely claimed were controlled by Empire.

5. Contrary to what investors were told, Azar used the great majority of investor proceeds to fund his own lifestyle (including a mortgage on his personal residence, season tickets to the Baltimore Ravens, country club expenses, and lavish vacations), to finance unprofitable and failing businesses unrelated to Empire but controlled by Azar, to meet the day-to-day operating expenses of Empire that the company was otherwise unable to meet, and to make interest and redemption payments to existing Empire bond investors. Azar also paid more than \$340,000 in compensation to Giordano and another stockbroker, Broker A, for their participation in the fraud.

6. In early 2010, the scheme collapsed when the Defendants were unable to recruit new investors to fund Empire's operations and to repay existing investors. As a result, the vast majority of Empire bond investors failed to receive their promised returns and, in fact, lost substantially all of their investments.

7. By knowingly or recklessly engaging in the conduct described in this Complaint, Defendants Empire, Azar and Giordano violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C §§ 77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R §

240.10b-5]. Giordano also violated Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1), 80b-6(2) and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8] and Section 34(b) of the Investment Company Act of 1940 (“Investment Company Act”) [15 U.S.C. § 80a-33(b)].

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-9(e)] and Sections 42(d) and (e) of the Investment Company Act [15 U.S.C. § 80a-41(d) and (e)] to enjoin such acts, transactions, practices and courses of business, and to obtain disgorgement, prejudgment interest, civil penalties and such other and further relief as the Court may deem just and appropriate.

9. The Court has jurisdiction over this action pursuant to Sections 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa], Sections 209(d), 209(e) and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e) and 80b-14] and Section 44 of the Investment Company Act [15 U.S.C. § 80a-43].

10. Venue lies in this judicial district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], Section 214 of the Advisers Act [15 U.S.C. § 80b-14] and Section 36(a) of the Investment Company Act [15 U.S.C. § 80a-35(a)]. Among other things, certain of the acts, practices, and courses of business constituting the violations of the federal securities laws alleged herein occurred within the District of Maryland.

DEFENDANTS

11. **Wilfred T. Azar III**, age 53, is a resident of Hampton Bays, New York. Since 1999, Azar has been the majority owner of Empire Corporation, and its President, Chairman and Chief Executive Officer. In addition, Azar controlled and partially owned a number of other companies, including three other relatively small commercial real estate ventures (Airport North, LLC (“Airport North”), Quarterfield 100, LLC (“Quarterfield”) and the Azar Brothers Partnership (“Azar Brothers”)), an entity that intended to build and re-sell a luxury home in Florida and a yacht brokerage business, the American Global Yacht Group.

12. **Empire Corporation** is a private Maryland corporation founded in 1971 with its principal place of business in Glen Burnie, Maryland. Until initiation of foreclosure proceedings in 2013, Empire owned and operated a 250,000 square foot, ten-story office building located in Glen Burnie, Maryland known as Empire Towers. Empire continues to operate a small commercial real estate building also located in Glen Burnie.

13. **Joseph A. Giordano**, age 51, is a resident of West Graysonville, Maryland. From October 1992 through June 2012, Giordano was the branch manager and a registered representative associated with a registered broker-dealer. Giordano’s office was located in Annapolis, Maryland. During the time of the fraud, Giordano held NASD Series 7, 24, and 63 licenses. In addition, from July 2005 until approximately January 2012, Giordano served as the sole owner, General Manager and President of Giordano Asset Management (“GAM”), then a registered investment adviser. GAM served solely as the adviser to the Giordano Fund, a diversified, no load fund and a series of the Giordano Investment Trust, which was formerly a registered investment company. As a result of the conduct described herein, on September 16, 2013, Giordano was barred from association with a broker-dealer by

FINRA. On May 17, 2013, he was barred from engaging in the securities or investment advisory business in Maryland by the Securities Division of the Office of the Maryland Attorney General.

RELATED ENTITIES

14. **Empire Management Services** was a private Maryland limited liability corporation that served primarily as the operating entity for Empire Corporation. Although technically a separate entity from Empire, the financials of Empire and Empire Management Services were inextricably intertwined. Empire Management Services is not registered with the Commission in any capacity. On November 1, 2011, Empire Management Services filed for bankruptcy pursuant to Chapter 7 of the United States Bankruptcy Code. The final decree was entered on July 20, 2012.

FACTS

A. Background of Azar and Empire's Offering

15. Azar became President, Chairman and Chief Executive Officer of Empire when he acquired the company from his grandfather, the company's founder, in 1999, and he exercised complete control over the operations of Empire. The company owned and operated a 250,000 square foot, ten-story office building located in Glen Burnie, Maryland known as Empire Towers, and rental income from the building was the company's primary source of revenue. At all relevant times, Empire acted by and through Azar.

16. Empire had been selling bonds as a means of securing secondary funding for the company's operations as early as 1972, and Azar continued this practice after he acquired the company.

17. Azar orchestrated the sale of the bonds through oral solicitations and without any prospectus or other offering documents. The sole documentation investors received in connection with their investment consisted of a one page certificate that reflected the terms of the investment (typically promised to be five years in duration with 10 percent interest, compounded daily). Depending on the template that

Azar used, the certificate was titled either “REGISTERED DEBENTURE” or “SENIOR SUBORDINATED DEBENTURE BOND.”

18. Azar or his assistant signed each bond certificate on behalf of Empire. Azar occasionally reduced the duration of the bond in negotiations with investors if necessary to complete the sale of the bond. The majority of bonds promised payment of accrued interest at the end of the term while others promised to pay interest on a monthly or quarterly basis.

19. By at least 2006, Azar was dependent on a significant portion of the bond proceeds to fund Empire’s day-to-day operations and the operations of his other unprofitable and failing commercial real estate ventures (Airport North, Quarterfield and Azar Brothers) and his yacht brokerage business. Azar was also dependent on an increasing amount of the bond proceeds to fund and maintain an affluent lifestyle.

20. Meanwhile, Empire’s financial condition by this time had deteriorated significantly rendering it functionally insolvent. In 2006, Empire had annual revenues of \$2,568,832, negative free cash flow, and outstanding debt of \$22,149,801.

21. After 2006, the company’s financial condition continued to decline. By 2009, the company’s revenues decreased to \$2,132,934 while its free cash flow continued to be negative, with its debt ballooning to \$36,648,250.

22. The combination of Empire’s large debt service, coupled with Azar’s diversion of an increasing amount of funds for himself and other business ventures substantially drained available cash. Around this time, Azar turned to the fraudulent sale of the Empire bonds to raise much-needed cash.

23. From 2006 through 2010, Azar, directly and through Defendant Giordano and Broker A, fraudulently raised more than \$7 million from at least 50 investors by selling purported Empire Registered Debentures and Senior Subordinated Debenture Bonds.

B. False and Misleading Statements and Omissions by Azar and Empire in Connection with the Sale of Empire Bonds.

24. Azar's and Empire's misrepresentations took multiple forms. First, the certificates presented to investors (including those signed by Azar personally) were false and misleading on their face. Many certificates falsely stated that the bonds were "registered" when they were not. The misstatements concerning the bonds' registration status were material.

25. Some certificates signed by Azar claimed the bonds were part of an "issue" that was capped at an "aggregate" of \$2 million. These certificates, too, were also materially false and misleading. The aggregate of the bonds issued far exceeded \$2 million. In addition, at the time Azar issued these bonds, Empire had insufficient earnings or other liquid assets to repay investor principal and the guaranteed rate of 10 percent compounded daily that the Empire bonds purported to promise. These misstatements, too, were materially false and misleading.

26. In addition to making statements in the certificates themselves, Azar made material false statements and omissions to investors in connection with the sale of bonds both by making various positive statements about Empire's financial condition, including claims that Empire was a successful and profitable business, and by failing to disclose the material and substantial risks associated with the investment.

27. Specific material misstatements Azar knowingly or recklessly made to investors concerning Empire's financial condition and the risks associated with the bonds included:

- (a) Claims that excess cash flow earned on Empire's lease arrangements relative to mortgage obligations and other expenses enabled Empire to pay the high rate of return. This claim was materially false and misleading because, among other reasons, Azar relied primarily on funds from new investors to make interest and redemption payments to existing investors and because the lease arrangements did not produce sufficient excess cash flow;

(b) Statements that Empire, in relation to its debt, was leveraged at only 56 percent and that the company prohibited a debt ratio in excess of 65 percent. These statements were likewise materially false and misleading because Empire had no such policy and the company was, in fact, leveraged well in excess of 65 percent;

(c) Claims that Azar received special reduced “Wall Street” financing that contributed to the company’s ability to pay the 10 percent rate of return because the difference between the “Wall Street” finance rate and the bond rate was less than Empire’s profit margin. These statements were materially false and misleading because Empire had no profit margin. In fact, the company was functionally insolvent by the end of 2006; and

(d) Claims that Empire bonds were part of an exclusive offering and only available to friends and family when, in reality, they were available to anyone who would purchase them.

28. Azar also misled investors about the use of bond sale proceeds. He told some investors that the proceeds would be used for specific renovation projects or other capital improvements at Empire. However, Azar rarely used the proceeds as promised. Instead, he used the proceeds for his own personal benefit to fund his lifestyle, to finance his other unrelated businesses and to make principal and interest payments to earlier investors. Azar’s use of bond proceeds for personal and unrelated business purposes and for principal and interest payments to earlier bond investors would have been material to a reasonable investor.

29. At all times relevant to this Complaint, Azar acted knowingly or recklessly.

30. Empire was the issuer of the bonds. All of the misstatements and omissions of material fact made by Azar, its owner and executive officer, are imputed to Empire.

31. Azar sold a significant amount of bonds through Giordano, a registered representative associated with a registered broker-dealer, and Broker A, a registered representative associated with another broker-dealer. Giordano and Broker A both knew or were reckless in not knowing of Azar’s need for liquidity and his desire to sell Empire bonds to satisfy that need. Giordano and Broker A ignored multiple red flags concerning Empire’s financial condition and, in selling Empire bonds, both acted in contravention

of their firm's respective policies on selling the bonds. Further, when communicating with investors about Empire bonds, Azar, Giordano and Broker A, directly or indirectly, made untrue statements of material facts or omitted material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

C. Giordano's Sale of Empire Bonds

32. Giordano met Azar in the mid-1990s and developed a personal and business relationship with him. After Azar acquired Empire from his grandfather in 1999, he arranged with Giordano to custody bonds issued by Empire with Giordano's firm so that certain existing Empire bond holders could custody their bonds in an IRA brokerage account.

33. Upon learning of this arrangement in 2006, a compliance officer with Giordano's firm advised Giordano that he was only permitted to sell Empire bonds on an unsolicited basis, which means that Giordano was prohibited from recommending that his firm's customer's purchase the bonds.

34. Notwithstanding the firm's directive that Giordano not solicit purchasers for the bonds, Giordano proceeded to actively solicit his own brokerage customers and others in conjunction with the Empire bond program.

35. Between May 2006 and November 2009, Giordano fraudulently raised at least \$1.5 million from approximately 23 investors and also purchased bonds for his own mutual fund that he managed through his own investment advisory business.

36. Giordano's conduct was knowing or reckless because he ignored red flags in connection with his sale of Empire bonds. Giordano touted Empire and recommended the bonds without any prospectus or offering materials, reliable evidence of its current financial condition and its ability to meet obligations as they came due. Moreover, despite repeated requests, Azar withheld Empire

financial documentation necessary for Giordano to effectively evaluate Empire as the issuer of the bond and the risks associated with the investment. Giordano also knowingly or recklessly contravened his firm's directive not to solicit its customers as buyers for these bonds.

37. Giordano solicited investors based primarily on Azar's oral representations that Empire was a successful and profitable company without any prospectus or other offering materials describing Empire, the bond offering or other information about the risks associated with the investment.

38. Giordano possessed limited documentation concerning the investment, which consisted principally of copies of the Empire bond certificates. These certificates, on their face, revealed that the bonds were nothing more than uncollateralized loans.

39. Over time, Giordano gained more insight into the extent of deterioration of Empire's financial condition.

40. By 2006, the scant financial documentation that Azar did provide to Giordano relating to Empire's financial condition should have raised serious questions about Empire's ability to generate adequate income to repay principal plus the promised 10 percent annual rate of return.

41. For example, in June 2006, Azar sent Giordano an Empire unaudited balance sheet for year-end 2005. Azar later gave Giordano unaudited balance sheets in March 2007 for year-end 2006 and again in February 2008 for year-end 2007.

42. These unaudited balance sheets, which were not compiled in accordance with Generally Accepted Accounting Principles, were noticeably inaccurate in that Total Assets did not equal the Total Liabilities plus Owners Equity, with Empire claiming to have over \$3 million more in assets than it had in Liabilities and Equity. In other words, the balance sheets did not "balance."

43. Moreover, in these unaudited balance sheets, Empire claimed to have over \$9 million in negative retained earnings for each year – suggesting that the company had either been historically unprofitable or that the company’s shareholders (in this case, Azar himself) had extracted a massive amount of value from the company in the form of dividends or other payments.

44. Giordano later explicitly questioned Azar regarding the deficiencies in the balance sheet and he suggested in a March 2008 email to Azar that he add a surplus account or shareholder’s equity section to bring it into balance. Giordano lacked a basis for suggesting that Azar bolster the equity section of the balance sheet by adding a surplus account. Notwithstanding the inadequacies contained in Empire’s balance sheet, Giordano continued to solicit investors to purchase Empire bonds.

45. Only after Giordano was pressured by the board of directors of his mutual fund during the economic downturn in 2008 did Giordano seek information from Azar about Empire’s operations and financial condition, including tax returns, occupancy rates, and company business plans. However, Azar refused to provide this information.

46. Despite possessing inadequate documentation about the nature of the bond investment and financial information that raised questions about Empire’s ability to repay investors’ principal and interest, Giordano, from 2006 to early 2010, continued to portray Empire as a successful company and maintained that its bonds were a “very safe” investment. Giordano had no reliable basis to make these claims.

47. In addition, Giordano affirmatively represented to at least one investor to whom he sold a bond in 2009 that the bonds were registered in Maryland – which they were not – without any basis for the statement.

48. Giordano also concealed from potential and actual investors that he was offering the bonds in contravention of his broker-dealer's directive to offer the securities only on an unsolicited basis.

49. By the end of 2008, Giordano had raised more than \$600,000 from at least 20 different bond sales. At this time, Empire's finances continued to further deteriorate.

50. By early 2009, Giordano began receiving checks from Azar to compensate him for selling bonds. Azar also authorized Giordano to start offering 60 and 90 day bonds to make the investment more attractive to potential investors.

51. From February 2009 to November 2009, Azar paid Giordano over \$69,000 for selling bonds to investors. During this same time, Giordano began learning of his own customers' difficulty in redeeming their Empire bonds.

52. For example, on or about April 17, 2009, two Giordano customers sought to redeem their respective bonds totaling more than \$150,000. At the time, Giordano emailed Azar about the need to redeem the bonds stating "I hate to put pressure on you like this but I am in an uncomfortable situation unable to issue the check." Azar subsequently issued the checks to the investors from Empire, but the checks were returned for insufficient funds.

53. On or about April 29, 2009, Giordano wrote Azar stating, "[o]ur customer statements close tomorrow. I have not told [the investors] that their checks from Empire bounced." Three weeks later, the investors still had not been paid.

54. On or about May 18, 2009, Giordano wrote "I hate to be a pain about this but the heat is really being placed on me and I cannot go hide. Please give me an ETA on when we can expect the

funds.” The next day, a month after the funds were initially requested, the investors were finally paid, while Giordano hid from them that Empire had been unable to make the payments.

55. Despite his knowledge that Empire was in a precarious financial condition in that, at a minimum, it was not able to meet its obligations, Giordano continued to solicit and sell the bonds promising high fixed rate returns. Giordano never disclosed the bounced checks to investors and continued to solicit new purchasers in the bonds, ultimately selling an additional \$703,000 after the bounced check incident occurred. Giordano misled investors by claiming that Empire was not a risky investment while he withheld facts related to Empire’s ability to timely make redemption payments to its investors on its bonds.

56. For example, in July 2009, Giordano solicited a couple who already held Empire bonds and convinced them to invest an additional \$50,000. Giordano told them via email that their investment was “very safe” and that Empire was “still looking good.” At the time he made these statements, he already knew that his customer was not successfully able to redeem his bond for a number of months and he was knowing or reckless in making these statements concerning the safety of the bonds.

57. During the fall of 2009, Azar again approached Giordano and directly asked for assistance in raising funds through the sale of Empire bonds to satisfy a demand by a bank to make a substantial cash payment in relation to a separate Azar investment, unrelated to Empire.

58. Responding to Azar’s request, Giordano began to solicit new investors in Empire bonds. On November 11, 2009, Giordano wrote Azar “I think I have called or e-mailed all of our clients with over \$30,000 in the money market.” Giordano misled one investor, who invested \$40,000 in Empire on November 2, 2009, claiming that his money would be used for renovations to the Empire Towers.

Giordano knew or was reckless in not knowing that Azar did not intend to use these proceeds to renovate Empire Towers.

59. Giordano also misled two other investors, who each invested \$30,000 in short term 90-day bonds on November 6 and November 16, 2009 claiming their money would be used by Empire to cover construction costs on a building that experienced cost overruns. Giordano told them that the building would be completed within days and that they would be reimbursed after a construction loan was converted to a traditional mortgage. In fact, Giordano knew or was reckless in not knowing that the proceeds would be used for an entity other than Empire.

60. On or about November 20, 2009, the new chief compliance officer at Giordano's firm completed his audit of Giordano's home office and discovered that Giordano was selling the Empire bonds. Giordano lied during the audit, claiming that he was not offering the bonds on a solicited basis and that he was not receiving any compensation in connection with the offering. The compliance officer ordered Giordano to immediately cease offering the Empire bonds.

D. Giordano Purchases Empire Bonds for the Giordano Fund

61. Giordano was also General Manager and President of Giordano Asset Management, the sole investment adviser to the Giordano Fund. Giordano caused the Fund to purchase Empire bonds. The first purchase occurred on December 9, 2005 in the amount of \$75,000, with a second purchase of \$100,000 occurring on April 12, 2006.

62. One year later, on April 30, 2007, Giordano caused the Fund to redeem the two existing Empire bonds for a new Empire bond, purportedly secured by assets held in the name of Empire, in the amount of \$275,000 (in other words, the Fund invested an additional \$100,000 in the bonds). As of this

date, as detailed above, Giordano had observed numerous red flags concerning Empire's financial condition and knew or should have known of its distressed financial condition.

63. In connection with the Fund's investment in the bond in 2007, Giordano, through GAM, failed to conduct adequate due diligence in the face of red flags concerning the risks associated with the Empire bonds. As detailed above, Giordano's firm prohibited him from recommending the bonds to its customers. Empire also had no prospectus or other written offering materials detailing the investment and its risk factors. Empire, through Azar, refused to provide adequate financial information to Giordano. Consequently, Giordano had no ability to properly evaluate Empire as an issuer of the bonds.

64. During a September 30, 2008, meeting of the Giordano Fund Fair Value Committee, during the heart of the financial crisis, counsel to the Fund raised concerns about the Fund's investment in Empire and its holding the investment at face value.

65. Despite having no access to complete financial statements, including statements of cash flows, income statements and other supplementary information, Giordano told the Fund's board that he was monitoring Empire and the company's financial health along with its income and occupancy rates.

66. The Board then agreed to retain the current bond valuation at face value and elected to continue to hold the bond. The Board relied upon, among other things, Giordano's materially false statements and omissions about Empire's financial condition and his statements concerning the safety of the investment.

67. By September 30, 2008, the Fund, which was primarily comprised of individual investors, many of whom had a pre-existing personal or professional relationship with Giordano, had approximately \$1.81 million in assets under management.

68. The Empire bonds represented approximately 15.2 percent of the Fund's holdings as of September 30, 2008. Despite being the largest holding in the Fund, Giordano still had not collected from Empire anything more than unaudited balance sheets. These balance sheets, among other things, contained unfavorable indicators about Empire's financial condition and did not balance. During this time, Giordano requested additional information about Empire's financial condition from Azar but he refused to produce it.

69. A few months later, on December 30, 2008, Giordano again promised the Fund's Board that he would "continuously monitor" the company's financial condition to determine its ability to redeem the bond and assured them that "[t]here are not any financial issues that may hinder Empire Corporation's ability to pay us."

70. However, at the time he made the statements, Giordano had no ability to "continuously monitor" Empire's financial condition and he lacked any basis to opine on the company's ability to pay investors because Giordano never obtained reliable financial information about the company, including, but not limited to, statements of cash flow and income statements. In fact, at a minimum, the limited financial information that Giordano did possess suggested that there were substantial risks associated with the Empire bonds.

71. Beginning in February 2009, as alleged above, Giordano began receiving payments from Empire and Azar. Giordano failed to disclose to the Fund's Board the conflict of interest associated with receiving compensation from an issuer in which the Fund was invested.

72. By the summer of 2009, counsel for the Fund was expressing concerns about the financial stability of Empire. On or about August 25, 2009, Giordano wrote to Azar: "I just got off the phone with our lawyer and he is very worried about Empire Corp, Empire Bonds, and the way I handle

this part of my business. With an internal and SEC audit probably happening within the next few months I want to make sure everything is perfect. He suggested that we sell the bonds back to you if we cannot get this up to his satisfaction, I don't want to sell the bonds and plan on easing his nerves ASAP. Please provide any financial information you can . . ." Azar failed to produce information in response to this request.

73. Giordano continued, through November 2009, to tout Empire and recommend the bonds to investors in the face of numerous indicators of the company's financial instability.

74. On November 17, 2009, Giordano wrote a letter accompanying the 2009 Annual Report for the Fund, which was filed with Commission, for the period ending September 30, 2009. The letter was addressed to "Fellow Shareholders, Clients, Friends, and Prospects" and it stated that Empire's occupancy rate was over 90 percent, that it maintains a "strong credit position," and that the investment "has been beneficial to the fund."

75. As the President and sole owner of Giordano Asset Management, the Fund's adviser, Giordano signed and certified the filings with the Commission and signed the letter to the shareholders. In doing so, Giordano was knowing or reckless in making those statements.

76. At the time Giordano made these statements, he knew that Empire's credit position was not "strong." In addition, he had no basis to opine on what its occupancy rate was because Giordano did not possess the financial data or other information necessary to support that assertion.

77. Giordano continued to watch Empire's condition deteriorate. After his firm forbid Giordano's sale of the bonds in December 2009, Azar failed to make multiple interest and redemption payments to Giordano's customers through early 2010.

78. During this period, Giordano told Azar repeatedly that his Fund's investment in the Empire bonds was causing him "major problems" and was getting "really ugly." Nonetheless, Giordano neither attempted to redeem the Fund's Empire bond nor informed the Fund's Board of the risk of nonpayment on the bond. In doing so, Giordano breached his duty to the Fund and its investors.

79. In August 2010, Giordano presented the Fund's bond to Empire for redemption. At that time, the total value of the investment (including interest compounded daily) was approximately \$382,000. Over the ensuing three months, the Fund attempted to redeem its Empire bond with no success. After redemption checks were returned for insufficient funds by Empire, the Fund ultimately decided to write off its Empire bond as a total loss.

80. At all times relevant to this Complaint, Giordano acted as an investment adviser to his advisory clients, including the Giordano Fund, and its investors.

81. As an investment adviser, Giordano owed his investment advisory clients, including the Giordano Fund and its investors, a fiduciary duty, including the duty to provide full and fair disclosure of all material facts regarding the investments in the Empire bonds.

82. Giordano, knowingly or recklessly, made untrue statements of material facts or omitted material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading to the Board of the Giordano Fund and prospective investors in connection with the Empire bonds.

83. Giordano breached his fiduciary duty to his advisory clients by making material misstatements and omissions regarding the investment in Empire bonds, by failing to conduct the requisite due diligence, and failing to disclose conflicts of interest that existed due to his receipt of compensation from Empire related to the sale of Empire bonds to Giordano's brokerage customers.

E. Sale of Bonds by Broker A

84. Broker A was a stockbroker associated with a registered broker-dealer. During the period of the fraud, Azar, together with Broker A, raised approximately \$3.6 million through Empire bond sales.

85. In or around 2005, Azar enlisted Broker A to sell the Empire bonds to his brokerage customers and others for compensation. Broker A solicited investors based primarily on Azar's oral representations that Empire was a successful and profitable company. Empire did not provide a prospectus or other offering materials describing Empire, the bond offering or the risks associated with the investment. Broker A was provided the same unaudited balance sheets provided to Giordano.

86. On multiple occasions, Azar and Broker A met jointly with prospective bond investors and made material misrepresentations and omissions about, among other things, Empire's financial condition, its ability to repay investor principal and the promised rate of return, and the intended use of investor proceeds.

87. In addition, Broker A met with prospective bond investors individually and, directly or indirectly, made untrue statements of material facts or omitted material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading when soliciting Empire bonds.

F. Misuse of Empire Bond Proceeds by Azar

88. From 2006 through 2010, Azar misappropriated substantially all of the approximately \$7.2 million in investor proceeds from the sale of at least 100 Empire bonds. Azar did not use the proceeds in the manner he represented to investors. To the contrary, Azar used virtually all of the proceeds to fund his lifestyle, finance his unprofitable and failing businesses unrelated to Empire, meet the day-to-day expenses of Empire, make interest and redemption payments to existing bondholders and compensate Defendant Giordano and Broker A. In one case, Azar sold a bond valued at \$100,000 in exchange for an Aston Martin luxury automobile, which he kept for his personal use.

89. Azar misappropriated approximately \$4.14 million from Empire for personal use. Azar described many of these payments to himself as loans on the company's books, yet these "loans" contained no collateral, did not require any interest, had no defined terms and did not require payment by any particular date. Instead, the money went directly to third parties on behalf of Azar or to Azar himself in the form of cash or transfers to a personal bank account.

90. Azar also used Empire funds to make direct payments on his behalf, including \$3,000 monthly mortgage payments for his primary residence, \$51,000 to an Azar living trust, \$17,298 for Baltimore Ravens season tickets and \$25,389 in greens fees and country club expenses.

91. Azar also made regular personal use of an American Express card paid directly by Empire Management Services. During the relevant period, Azar charged over \$420,000 to that card to pay for everything from daily living expenses to dining and travel costs and other various personal expenses. For example, Azar used the American Express card to spend more than \$34,000 on vacations and meals for his family and \$14,369 in college tuition for his child.

92. Azar also used investor proceeds for other unrelated businesses. Many of the entities that received investor proceeds were struggling and unprofitable start-up ventures that were owned in whole or in part by Azar. Azar routinely moved money freely between Empire and these entities under the guise of “loans.”

93. Between 2006 and 2010, Azar, on a net basis, “loaned” these entities more than \$1.07 million in Empire funds, which were never repaid. Azar knew that these businesses lacked the ability to repay the funds but he nonetheless looted Empire to finance these entities.

94. Azar’s transfer of investor money to his other businesses is particularly significant because the bonds made clear that they were an obligation of Empire Corporation only and that “no recourse shall be had” for payment of principal or interest against any member, officer, or director of the company. Therefore, when the money left Empire, so did the investors’ recourse to their funds.

95. Empire also made approximately \$3.31 million in interest and redemption payments to bond holders during the period of the fraud -- payments that could not have been made without the benefit of new investor money.

96. Azar also paid over \$272,000 to Broker A and \$69,000 to Giordano as compensation for selling Empire bonds.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
Violations of Section 5(a) and 5(c) of the Securities Act
(Against All Defendants)

97. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 96 inclusive, as if they were fully set forth herein.

98. As a result of the conduct alleged herein, Defendants Empire, Azar and Giordano, directly or indirectly, made use of the means and instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale.

99. No valid registration statement has been filed with the Commission or has been in effect with respect to any offering or sale alleged herein.

100. By engaging in the foregoing conduct, Defendants Empire, Azar and Giordano violated, and unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

SECOND CLAIM FOR RELIEF
Violations of Section 17(a) of the Securities Act
(Against All Defendants)

101. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 100, inclusive, as if they were fully set forth herein.

102. From at least 2006 through early 2010, as a result of the conduct alleged herein, Defendants Empire, Azar and Giordano, knowingly or recklessly, in the offer and sale of securities,

directly or indirectly, by the use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails:

- a. employed devices, schemes or artifices to defraud;
- b. obtained money or property by means of untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices or courses of business which operated as a fraud or deceit upon offerees, purchasers and prospective purchasers of securities.

103. By engaging in the foregoing conduct, Defendants Empire, Azar and Giordano violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
(Against All Defendants)

104. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 103, above, as if the same were fully set forth herein.

105. From at least 2006 through early 2010, as a result of the conduct alleged herein, Defendants Empire, Azar and Giordano, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use of the means or instrumentality of interstate commerce or of the mails, or of a facility of a national securities exchange:

- a. employed devices, schemes or artifices to defraud;

- b. made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

106. By engaging in the foregoing conduct, Defendants Empire, Azar and Giordano violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

FOURTH CLAIM FOR RELIEF
Violations of Sections 206(1) and 206(2) of the Advisers Act
(Against Giordano)

107. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 106, above, as if the same were fully set forth herein.

108. As a result of the conduct alleged herein, Defendant Giordano, directly or indirectly, by use of the mails or the means or instrumentalities of interstate commerce, while acting as an investment adviser:

- a. with scienter, employed devices, schemes or artifices to defraud advisory clients or prospective advisory clients; and
- b. engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients.

109. By engaging in the foregoing conduct, Defendant Giordano violated, and unless restrained and enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

FIFTH CLAIM FOR RELIEF
Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder
(Against Giordano)

110. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 109, above, as if the same were fully set forth herein.

111. As a result of the conduct alleged herein, Defendant Giordano, directly or indirectly, by use of the mails or the means or instrumentalities of interstate commerce, while acting as an investment adviser to a pooled investment vehicle, engaged in acts, practices, or courses of business which were fraudulent, deceptive, or manipulative with respect to investors or prospective investors in a pooled investment vehicle. As part of these activities, Defendant Giordano, directly or indirectly, made untrue statements of material facts or omitted material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to investors or prospective investors in the pooled investment vehicle.

112. By engaging in the foregoing conduct, Defendant Giordano violated, and unless restrained and enjoined will continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 [17 C.F.R. § 275.206(4)-8] thereunder.

SIXTH CLAIM FOR RELIEF
Violations of Section 34(b) of the Investment Company Act
(Against Giordano)

113. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 112, above, as if the same were fully set forth herein.

114. As a result of the conduct alleged herein, Defendant Giordano caused the Giordano Fund to make untrue statements of material fact, or omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in

registrations statements, applications, reports, accounts, records, or other documents filed or transmitted pursuant to the Investment Company Act or the keeping of which is required by that Act.

115. By engaging in the foregoing conduct, Defendant Giordano violated, and unless restrained and enjoined will continue to violate, Section 34(b) of the Investment Company Act, [15 U.S.C. § 80a-33(b)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently restrain and enjoin Defendants Empire and Azar from violating Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C §§ 77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R §240.10b-5];

II.

Permanently restrain and enjoin Defendant Giordano from violating Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C §§ 77e(a), 77e(c), and 77q(a)]; Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R §240.10b-5]; Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2) and 80b-6(4)] and Rule 206(4)-8 [17 C.F.R. § 275.206(4)-8] thereunder; and Section 34(b) of the Investment Company Act [15 U.S.C. § 80a-33(b)].

III.

Order each Defendant to disgorge all ill-gotten gains derived from his or its illegal conduct, together with prejudgment interest thereon.

IV.

Order Defendants to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]; and, as to Giordano, under Section 42(e)(1) of the Investment Company Act [25 U.S.C. § 80a-41(e)(1)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9].

V.

Pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78(d)(2)], prohibit Defendant Azar from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)].

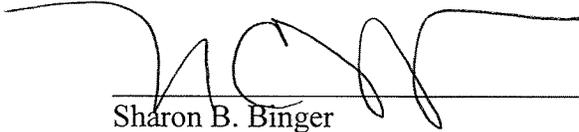
VI.

Retain jurisdiction of this action for purposes of enforcing any final judgment and orders; and

VII.

Grant such other and further relief as this Court may deem just and appropriate.

Respectfully submitted,



Sharon B. Binger
Brendan P. McGlynn (PA Bar No. 77271)
Nuriye C. Uygur (PA ID No. 88930)
Michael F. McGraw (PA Bar No. 201567)

Attorneys for Plaintiff:

SECURITIES AND EXCHANGE COMMISSION
Philadelphia Regional Office
1617 JFK Blvd, Suite 520
Philadelphia, PA 19106
Telephone: (215) 597-3100

Local Counsel:

Rod J. Rosenstein
United States Attorney

/ s /

By:

Rebecca Koch
Assistant United States Attorney
Federal Bar No. 03118
36 S. Charles Street
4th Floor
Baltimore, MD 21201
(410) 209-4800

Dated: November 14, 2014