UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
v.	**CASE NO. 2:14CV 396**
DOUGLAS E. COWGILL and PROFESSIONAL INVESTMENT MANAGEMENT, INC.,	**FILED UNDER SEAL** **Jury Trial Demanded**
Defendants.	JUDGE MARBLEY MAGISTRATE JUDGE KING

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges the following against defendants Douglas E. Cowgill ("Cowgill") and Professional Investment Management, Inc. ("PIM"), and hereby demands a jury trial:

SUMMARY OF THE ACTION

1. This case involves material overstatements of client assets and violations of the "custody rule" applicable to registered investment advisers by PIM, an Ohio-based investment adviser formally registered with the Commission, and Cowgill, PIM's sole owner and principal. PIM is now operating illegally without Commission (or state) registration.

2. The custody rule—Rule 206(4)-2 under the Investment Advisers Act of 1940 ("Advisers Act")—is designed to protect advisory clients from the misuse or misappropriation of their funds and securities. Although PIM has custody of client assets held, among other places, in omnibus securities and cash accounts, defendants have failed to arrange for independent

verification of those assets and for clients to receive quarterly account statements from a qualified custodian (*e.g.*, a bank or a broker-dealer), as required by Rule 206(4)-2.

3. Instead, clients receive information about their holdings in these accounts only through periodic statements issued by PIM itself. Those statements, however, have consistently misrepresented the value of the client assets held through PIM.

4. For example, from at least December 31, 2010 through December 31, 2013, defendants overstated the value of client investments in a certain money market fund held through PIM, including by more than $750,000 (in the aggregate) for each of the last three months of 2013.

5. In late January 2014, *after* Commission staff sought information from PIM and Cowgill about PIM's custody of client assets, including in this money market fund, and *after* Cowgill knowingly provided the staff with false reports that purported to show PIM's client records matched the actual holdings for this fund, Cowgill wired hundreds of thousands of dollars into the fund from a bank account used by PIM to hold client cash—thus effectively filling the hole in the money market fund and bringing the client holdings in the fund as reported by PIM in line with reality.

6. This was a pure shell game, however, as defendants had simply created a nearly identical shortfall in the cash account which they hid, and continue to hide, from investors by misreporting clients' cash balances held through PIM. Thus, for example, client cash balances were overstated in aggregate by approximately $755,000 for month-end, January 2014.

7. Through the conduct alleged in this Complaint, defendants have engaged in fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5

thereunder; and fraudulent or deceptive conduct with respect to investment advisory clients, in violation of Section 206(1) and (2) of the Advisers Act. In addition PIM willfully violated, and Cowgill willfully aided and abetted and caused PIM's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, and Section 203(a) of the Advisers Act.

8. Accordingly, the Commission seeks the following relief: (a) entry of a permanent injunction prohibiting the defendants from further violations of the relevant provisions of the federal securities laws; (b) disgorgement of the defendants' ill-gotten gains, plus pre-judgment interest; and (c) the imposition of civil penalties due to the egregious nature of the defendants' violations.

9. In addition, because of the risk that defendants will continue violating the federal securities laws and the danger posed to the safety of client assets, the Commission seeks preliminary equitable relief—a temporary restraining order and upon notice a preliminary injunction—to: (a) prohibit defendants from continuing to violate the relevant provisions of the federal securities laws; (b) appoint a receiver or, in the alternative, freeze PIM's assets and otherwise maintain the status quo; (c) prevent defendants from destroying relevant documents; and (d) authorize the Commission to take expedited discovery.

JURISDICTION AND VENUE

10. The Commission seeks a permanent injunction, disgorgement and other equitable relief pursuant to Section 21(d)(1) and 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(1),(5)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)].

11. The Commission seeks the imposition of a civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

12. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 77aa(a)], and Sections 209(d), 209(e) and 214(a) of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), 80b-14(a)].

13. Venue is proper pursuant to Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)] and Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14(a)].

14. A substantial part of the acts and transactions giving rise to the claims alleged herein occurred in this district and, as set forth below, defendants reside and/or transact business in this district.

15. In connection with the conduct alleged in this Complaint, defendants directly or indirectly made use of the means or instrumentalities of transportation or communication in interstate commerce, the facilities of a national securities exchange, or the mails.

16. Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

17. Unless enjoined, defendants are likely to continue to engage in the securities law violations alleged herein, or in similar conduct that would violate the federal securities laws.

DEFENDANT

18. Professional Investment Management, Inc. is an Ohio corporation with its principal place of business in Columbus, Ohio. PIM was registered with the Commission as an investment adviser from 1978 until September 30, 2013, when it filed a form ADV-W to withdraw its registration with the Commission.

19. **Douglas E. Cowgill**, age 58, resides in Columbus, Ohio. He has worked at PIM since 1981, and currently is PIM's President and Chief Compliance Officer ("CCO"). Cowgill

became PIM's sole owner on or about July 22, 2013. Cowgill is not registered with the Commission, but does hold a Series 65 license, which he obtained from the State of Ohio in 2005.

FACTUAL ALLEGATIONS

Background

20. PIM provides third-party administration services and investment advisory services to approximately fifteen retirement plans (with approximately 300 participants collectively who, in turn, own approximately 400 individual retirement accounts that PIM advises), and also provides investment advisory services to approximately 20 to 25 individuals for their own after-tax (non-retirement plan) accounts. Thus, PIM has a total of approximately 325 individual clients, who hold assets in approximately 425 different accounts. These clients reside in various states and PIM uses the U.S. postal service to mail account statements to each of these clients on a periodic basis.

21. PIM currently has approximately $120 million in assets under management. Approximately $30 million of those client assets are invested through the SEI mutual fund and financial complex. On behalf of its clients, PIM maintains an omnibus account (in which money or securities for more than one beneficial owner are commingled) with SEI Transfer Agency, Inc. (the "Securities Account"). The Securities Account includes holdings in a number of different SEI funds, one of which is the "SEI Liquid Trust Prime Obligation" money market fund ("Fund 12").

22. Defendants initially deposit client funds in a checking account held by PIM at Fifth Third Bank on an agency basis for its clients (the "Cash Account"), before sending those

funds onto other firms for investment, such as SEI. PIM client contributions may remain in the Cash Account for several months absent instructions from the client.

23. PIM uses a computer program called "Trust 3000" for portfolio management, recordkeeping and client reporting. The Trust 3000 platform is provided by an SEI affiliate, but PIM has exclusive control over the information entered into Trust 3000. In the ordinary course of business, Cowgill enters securities transactions, account balances and related data into Trust 3000 and uses Trust 3000 to generate PIM client account statements. PIM maintains records in Trust 3000 for Fund 12 and the Cash Account, among other accounts, on a participant level (*i.e.*, keeping track of how the assets in these omnibus accounts are allocated by individual client).

24. The SEI transfer agent maintains its own official records of investor account balances and transactions in the SEI funds.

25. PIM and Cowgill receive a daily consolidated statement from the SEI transfer agent reflecting the daily balance of the Securities Account and each of its component funds, including Fund 12. PIM and Cowgill also receive a monthly consolidated statement reflecting the month-end closing balance of the Securities Account and each of its component funds, including Fund 12.

PIM's Custody Failures

26. The "custody rule"—Rule 206(4)-2 under the Advisers Act [17 C.F.R. § 275.206(4)-2]—requires registered investment advisers with custody of client funds or securities to implement certain controls designed to protect those assets from loss, misappropriation, misuse, or the adviser's insolvency. (An adviser has custody if it holds, directly or indirectly, client funds or securities or has any authority to obtain possession of them.)

27. As amended (effective March 12, 2010), the rule generally requires these advisers to maintain client funds and securities at a qualified custodian; to provide notice to clients detailing how their assets are held; to have a reasonable basis for believing that the qualified custodian is sending quarterly statements to clients; and to be subject to an annual surprise examination by an independent public accountant that verifies the existence of client assets.

28. With respect to the surprise exam requirement, as part of the adviser's written engagement with the independent public accountant, the adviser must require the accountant to file a certificate on Form ADV-E with the Commission describing the nature and extent of the exam conducted.

29. No form ADV-E was filed for PIM for the years 2010, 2011, 2012 and 2013.

30. On September 30, 2013, the Commission's staff called Cowgill and inquired about PIM's failure to file form ADV-E for the last several years, despite disclosing custody of client assets in other regulatory filings. During this phone call, Cowgill dismissed this failure as an administrative oversight and further stated that PIM intended to switch from Commission to State of Ohio registration.

31. Later that same day, Cowgill filed a Form ADV-W to withdraw PIM's registration with the Commission. PIM never registered with Ohio, however, and has continued to operate without federal or state registration.

32. The Form ADV-W filed by PIM claimed that PIM did not have custody of client assets.

33. A subsequent exam by the Commission's staff in November 2013 confirmed that PIM in fact still had custody of client assets, including at SEI, Fifth Third Bank and other financial institutions.

34. The staff also learned that PIM was further violating the custody rule because PIM failed to arrange for clients that had assets in Fund 12, the Cash Account and other omnibus accounts to receive quarterly account statements from a qualified custodian. Instead, as set forth above, PIM prepared and sent periodic statements to its clients. PIM's client statements merely included a line item for "cash," without disclosing that client money was held at Fifth Third Bank.

35. As CCO, Cowgill knew that PIM was required to comply with the Advisers Act custody rule, but failed to ensure that PIM did so.

36. At all relevant times, Cowgill had responsibility for engaging an independent public accountant to conduct the requisite verification of client assets in PIM's custody. Cowgill purportedly engaged an accounting firm to conduct surprise exams for 2010 and 2011, however, neither PIM nor the accounting firm have a copy of any written engagement and the accounting firm never completed exam procedures for 2010 or 2011, never prepared the required surprise exam reports, and never filed a Form ADV-E with the Commission for either year.

Defendants' Misreporting of Client Assets in Fund 12

37. Because PIM's failures to comply with the custody rule created the potential for clients to receive misinformation about the assets they held through PIM, Commission staff sought to verify the existence of those assets by, among other things, comparing PIM's Trust 3000 month-end records with SEI's official records. This comparison of month-end records revealed that PIM consistently overstated the balance of client holdings in Fund 12. For example:

Fund 12 End-of-Month Balances			
Monthly Statement Date	**Fund 12 Balance per Client Statements**	**Fund 12 Balance per SEI Transfer Agent**	**Overstatement in Client Statements**
1/31/2013	$9,413,356	$8,334,248	$1,079,108

2/28/2013	$9,463,246	$8,384,138	$1,079,108
3/31/2013	$9,463,152	$8,392,877	$1,070,274
4/30/2013	$8,676,002	$7,934,431	$741,572
5/31/2013	$8,609,922	$7,868,351	$741,572
6/30/2013	$8,062,040	$7,327,803	$734,237
7/31/2013	$8,124,190	$7,389,953	$734,237
8/31/2013	$8,140,730	$7,406,493	$734,237
9/30/2013	$7,982,953	$7,236,402	$746,551
10/31/2013	$8,922,494	$8,168,959	$753,535
11/30/2013	$7,710,675	$6,957,141	$753,535
12/31/2013	$7,369,020	$6,615,485	$753,535

38. From at least December 31, 2010 to December 31, 2013, PIM and Cowgill issued client account statements with values of client holdings in Fund 12 that, in the aggregate, substantially exceeded the actual Fund 12 holdings in the Securities Account.

Defendants' Attempts to Conceal the Fund 12 Shortfall from the Commission

39. During the Commission staff's November 2013 exam of PIM, and continuing thereafter, Cowgill actively sought to conceal the fact that PIM held less assets in Fund 12 than reported in PIM's records and client statements.

40. On November 21, 2013, while Commission exam staff were on-site at PIM's offices, Cowgill accessed Trust 3000 and entered a fake sale for $753,535 in Fund 12, allocating the trade to a client holding the single largest position in the fund, which caused PIM's Trust 3000 records for Fund 12 to match SEI's official records (such that both sets of records showed a balance of $6,957,141). Cowgill then printed a report based on this manipulated data and handed it to the Commission staff in response to their ongoing requests for information about client assets held by PIM. Later that night, Cowgill reversed this trade in Trust 3000 and PIM's records reverted to showing a Fund 12 balance that exceeded SEI's official records by $753,535 ($7,710,675 versus $6,957,141). Cowgill utilized a function in Trust 3000 that "suppressed"

these transactions so that they would not appear on the client's account statement, which typically would reflect the client's transaction history.

41. In responding to a subsequent document subpoena issued by the Commission's enforcement division in early January 2014, Cowgill once again knowingly provided one or more false reports generated from PIM's Trust 3000 records purporting to show a recorded balance for Fund 12 that matched SEI's official records. For instance, Cowgill gave Commission staff a report showing that the PIM client holdings in Fund 12 as of December 31, 2013 totaled $6,615,485, which figured matched SEI's official records. This report further showed individual client holdings in Fund 12 and, notably, listed a balance of $466,638 for the client account in which Cowgill had earlier booked the fake sale transaction. This client's actual account statement for December 31, 2013, however, showed a Fund 12 balance in excess of $1.2 million carried forward from the month prior without any account activity (other than the accrual of interest).

42. During his investigative testimony on January 23, 2014, Cowgill was unable to explain why the Fund 12 balances had been overstated by PIM. Cowgill admitted that he had entered a fake trade in Trust 3000 in order to be able to show the Commission staff account balances for Fund 12 that could be reconciled with the balances in SEI's official records.

Defendants' Misreporting of Client Assets in the Cash Account

43. About a week after his testimony with the Commission staff, Cowgill tried a new approach to address the shortfall in Fund 12. Where previously he had sought to sidestep Commission scrutiny by reducing the PIM reported balance (with a few key strokes in Trust 3000) to match SEI's balance, Cowgill now proceeded to make SEI's balance match what PIM

had been reporting to clients by wiring monies from the Cash Account into the Securities Account to purchase additional Fund 12 shares.

44. Subsequently, PIM no longer misstated the balance of Fund 12 but, instead, misstated the balance of the Cash Account:

Cash Account End-of-Month Balances			
Monthly Statement Date	**Cash per Client Statements**	**Cash per Fifth Third Statement**	**Overstatement**
1/31/2014	$790,711	$35,704	$755,007
2/28/2014	$1,378,219	$694,692	$683,527
3/31/2014	$1,139,992	$393,905	$746,087

45. The above misreported client holdings in the Cash Account for the first quarter of 2014 correspond closely to the size of the misstated Fund 12 balances that PIM had reported to clients during the last quarter of 2013.

Ongoing Harm to Investors

46. The conduct described above presents substantial risk of harm to investors. PIM is operating without registration with any regulatory authority and has submitted false documents to the Commission—with whom PIM is required to be registered. Moreover, PIM continues to issue false account statements to clients, make redemptions requested by clients misinformed about their holdings, and charge fees to clients based on a percentage of assets under management (which assets are overstated).

FIRST CLAIM FOR RELIEF
Violation of Section 10(b) of the Exchange Act and Rule 10b-5 (Against PIM and Cowgill)

47. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 46.

48. By engaging in the conduct described above, defendants, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, by the use

of means and instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have made or are making untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) have engaged or are engaging in acts, practices or courses of business which operated as a fraud or deceit upon certain persons.

49. As a result, defendants have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF
Violation of Section 206(1) and (2) of the Advisers Act
(Against PIM and Cowgill)

50. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 49.

51. At all relevant times, PIM was an "investment adviser" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)]. Cowgill was an "investment adviser" due to his ownership and control of PIM.

52. By engaging in the conduct described above, defendants, while acting as investment advisers, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (a) with scienter, employed devices, schemes, or artifices to defraud clients or prospective clients; and (b) engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon clients or prospective clients.

53. As a result, defendants have violated and, unless enjoined, will continue to violate Section 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6(1), (2)].

THIRD CLAIM FOR RELIEF
Violation of Section 206(4) of the Advisers Act and Rule 206(4)-2
(Against PIM)

54. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 53.

55. As set forth above, PIM had custody of client assets and was therefore required, but failed, to comply with the Advisers Act "custody rule."

56. During the relevant period, PIM did not have a reasonable basis, after due inquiry, for believing that a qualified custodian was sending quarterly statements to PIM clients.

57. During the relevant period, PIM was not subject to an annual surprise examination by an independent public accountant to verify the existence of client funds and securities.

58. Further, PIM did not provide notice to clients that PIM held client money in an agency account at Fifth Third Bank.

59. As a result, PIM has violated and, unless enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-2 thereunder [17 C.F.R. § 275.206(4)-2].

FOURTH CLAIM FOR RELIEF
Aiding and Abetting Violation of Section 206(4) of the Advisers Act and Rule 206(4)-2
(Against Cowgill)

60. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 59.

61. As set forth above, in violation of the Advisers Act "custody rule," PIM failed to have a reasonable basis for believing a qualified custodian was sending quarterly statements to clients, was not subject to annual surprise examination by an independent public accountant to

verify the existence of client assets, and did not provide adequate notice to clients detailing how their assets were held.

62. As set forth above, Cowgill knew, or was reckless in not knowing, that PIM's conduct was improper, and he knowingly and substantially assisted PIM's custody rule violations by, among other things, failing to ensure a surprise examination was completed by the accountants purportedly engaged for this purpose in 2010 and 2011, failing to engage any accountants to perform a surprise examination in 2012 or 2013, failing to take any steps to ensure a qualified custodian was sending quarterly statements to clients, and issuing client statements that provided false and inadequate information about their holdings.

63. As a result, Cowgill willfully aided and abetted PIM's violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-2 thereunder [17 C.F.R. § 275.206(4)-2] and, unless enjoined, will continue to aid and abet such violations.

FIFTH CLAIM FOR RELIEF
Violation of Section 203(a) of the Advisers Act
(Against PIM)

64. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 63.

65. PIM acted as an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)] and, directly or indirectly, made use of the mails or means or instrumentality of interstate commerce in connection with its business as an investment adviser without being registered and without the applicability of Section203(b) of the Advisers Act[15 U.S.C. § 80b-3(b)] or Section 203A of the Advisers Act [15 U.S.C. § 80b-3a].

66. As a result, PIM has violated and, unless enjoined, will continue to Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)].

SIXTH CLAIM FOR RELIEF
Aiding and Abetting Violation of Section 203(a) of the Advisers Act
(Against Cowgill)

67. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 66.

68. As set forth above, since the withdrawal of its registration with the Commission, PIM has operated as an unregistered investment adviser in violation of Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)].

69. As set forth above, Cowgill knew, or was reckless in not knowing, that PIM's conduct was improper, and he knowingly and substantially assisted PIM's violation of the Advisers Act registration requirement by, among other things, filing (or causing PIM to file) a Form ADV-W on September 30, 2013 without justification, and continuing to make use of the mails and means or instrumentalities of interstate commerce in connection with PIM's business as an investment adviser.

70. As a result, Cowgill willfully aided and abetted PIM's violations of Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)] and, unless enjoined, will continue to aid and abet such violations.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

A. Enter a preliminary injunction and order for other equitable relief in the form submitted with the Commission's motion for such relief;

B. Enter a permanent injunction restraining defendants and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile

transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. 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];

2. Section 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80(b)-6(1), (2)];

3. Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-2 thereunder [17 C.F.R. § 275.206(4)-2]; and

4. Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)]

C. Require defendants to disgorge any ill-gotten gains and losses avoided, plus prejudgment interest;

D. Order defendants to pay an appropriate civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)];

E. Appoint a receiver pursuant to Federal Rule of Civil Procedure 66;

F. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief, within the jurisdiction of this Court; and

G. Award such other and further relief as the Court deems just and proper.

Dated: April 29, 2014

Respectfully submitted,

/s/ John E. Birkenheier
John Birkenheier (IL Bar No. 6270993)
Michael D. Foster (IL Bar No. 6257063)
David Benson (IL Bar No. 6281015)
175 West Jackson Blvd., Suite 900
Chicago, IL 60604
Phone: (312) 886-3947 (Birkenheier direct)
Fax: (312) 353-7398
E-mail: birkenheierj@sec.gov

Attorneys for Plaintiff
U.S. Securities and Exchange Commission