

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

SECURITIES AND EXCHANGE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 JAY COSTA KELTER,)
)
 Defendant.)

Case No. _____

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Jay Costa Kelter (“Kelter” or “Defendant”), alleges as follows:

SUMMARY OF ALLEGATIONS

1. During the period from 2013 through 2016, Kelter, a former registered investment adviser and registered representative, repeatedly violated the federal securities laws through material misrepresentations and omissions to three retired clients whose securities accounts he controlled. Through those material misrepresentations and omissions, and deceptive acts and

practices, Kelter misappropriated the clients' funds for his personal use and other unauthorized purposes.

2. Kelter defrauded one client and misappropriated \$1.467 million of her funds by selling securities in her account, taking funds from her by forgery and fraud, and transferring the money to Kelter's company without the client's knowledge. Kelter schemed to defraud a second client and misappropriated \$200,000 of her funds by selling securities in her account and falsely and misleadingly claiming that he would invest her funds in a corporate certificate of deposit, without disclosing to the client that the funds were being transferred to Kelter's own company and that he intended to use the funds for personal expenses, for trading, and to repay another client. Kelter used these two clients' money to purchase luxury items - including a Bentley automobile - and to pay for a family vacation, rent on his home, his day-to-day living expenses, unauthorized business expenses, and to satisfy prior debts to his clients. Kelter lost most of the remaining funds through risky futures and options trading.

3. In addition, in May 2016, Kelter guaranteed a third client that he would reimburse the client's losses from Kelter's trading of securities in the client's accounts. Kelter made material misrepresentations and omissions to the client regarding his guarantee, his financial liquidity, and his financial health in order to induce the client to allow him to continue to buy and sell securities through high risk trades in the client's accounts.

4. By engaging in the conduct described in this Complaint, Kelter violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77(q)(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder, and Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § § 80b-6(1), 80b-6(2), and 80b-4].

5. Unless enjoined and restrained, Kelter will continue to engage in the violations alleged in this Complaint. Accordingly, among other things, the Commission seeks entry of a judgment that permanently enjoins Kelter from future violations of the federal securities laws, requires him to disgorge his ill-gotten gains together with prejudgment interest, and imposes civil monetary penalties on account of his fraud.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v], Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)], and Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14], to enjoin the Defendant from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

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

8. Venue in this District is proper because certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act, the Exchange Act, and the Advisers Act occurred in the Middle District of Tennessee.

9. Defendant, directly or indirectly, made use of the means or instruments of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails and wires, or of any facility of a national securities exchange, as described in this Complaint.

DEFENDANT

10. **Jay Costa Kelter**, age 48, resides in Marietta, Georgia and is an owner of BEK Consulting Partners, LLC (“BEK”), an inactive and dissolved Florida corporation. Kelter previously held Series 6, 7, and 63 securities licenses. Kelter was registered as an investment adviser representative in Florida from 1997 until November 2010. Kelter continued to seek registration as an investment adviser representative in Georgia until 2013, but was not an active registrant. Kelter was registered as a representative of a broker-dealer until September 2013.

11. Kelter was a registered representative at his former brokerage firm from 2007 to September 2013. Since September 2013, Kelter has acted as an unregistered investment adviser.

RELEVANT ENTITY

12. Throughout the relevant period, BEK was a Florida insurance and investment company. BEK was previously known as Kelter & Company, LLC. Kelter and his father were the sole members of BEK before it dissolved. Kelter directed payments that he received from his clients to BEK. Kelter had access to, and control over, BEK’s bank account.

13. BEK filed for voluntary dissolution in February of 2017 and is no longer an active company under the regulations of the Florida Division of Corporations.

FACTS

14. From 2007 to September 2013, Kelter worked as a registered representative at his former firm, where he provided investment advisory and broker services to the firm’s clients. Kelter was compensated through commissions that were based on a preset schedule determined by the type of product and transaction involved.

15. Kelter left his former firm in approximately September 2013. In connection with his departure, Kelter offered to continue to provide certain clients with investment advice,

working through TD Ameritrade. Several of the clients to whom Kelter made this offer had the mistaken impression (based on Kelter's statements) that Kelter would be an employee or contractor at TD Ameritrade, when in fact Kelter had no relationship with the broker-dealer. Kelter did not inform all of the clients that he was not associated with TD Ameritrade, nor did he inform all of the clients that going forward he would not be associated with any broker-dealer or investment adviser registered with the Commission. At least six of Kelter's clients at his former firm agreed to open accounts at TD Ameritrade and continue to engage Kelter for investment advisory services.

16. Each of Kelter's clients who opened TD Ameritrade accounts provided Kelter with his or her TD Ameritrade account user name and password, thereby giving Kelter unfettered electronic access to each client's brokerage accounts. Kelter also created an e-mail address for at least one client, which TD Ameritrade used as a contact e-mail for the client's brokerage account. Kelter had the password and full access to this e-mail account.

Kelter Defrauded Client JF Out Of At Least \$1.467 Million

17. Kelter began providing investment advisory services to Client JF in 2011 while he was associated with his former firm. Client JF is a 75-year old widowed retiree dependent almost entirely on her investments in securities for income. At the beginning of the client-advisor relationship, Client JF told Kelter that she wanted to make only conservative investments. Kelter served as Client JF's adviser throughout the time she maintained accounts at Kelter's former firm. Initially, Client JF invested over \$3 million with Kelter.

18. Client JF was one of Kelter's clients at his former firm who opened accounts at TD Ameritrade at Kelter's suggestion. In 2013, Kelter set up TD Ameritrade accounts on Client JF's behalf and in Client JF's name. Kelter represented to Client JF that he would continue to

manage her investments at TD Ameritrade as he had at his former firm. At Kelter's direction, Client JF transferred \$3,123,006 – a substantial portion of her life savings at the time –to TD Ameritrade.

19. Kelter had full access to Client JF's accounts and the log-in and password information. Kelter also started an email address for Client JF, which he controlled and used to communicate with TD Ameritrade. Client JF did not access her TD Ameritrade accounts.

20. Kelter conducted all of the trading in the accounts on Client JF's behalf. Kelter did not have to obtain Client JF's permission before engaging in securities purchases, sales, or determinations to hold investments. Client JF continued to tell Kelter that she wanted to pursue conservative strategies.

21. Kelter began trading in Client JF's TD Ameritrade accounts in October 2013. From October 2013 to August 2016, Kelter executed approximately 124 transactions in Client JF's accounts that primarily involved the purchase or sale of options and bonds.

22. From February 2014 to August 2016, Kelter wrongfully withdrew at least \$1.467 million from Client JF's TD Ameritrade accounts by selling securities in Client JF's accounts and causing checks to be written or funds to be wired from Client JF's brokerage accounts to a BEK bank account that Kelter controlled.

23. Kelter fraudulently withdrew funds from Client JF's brokerage accounts by either forging Client JF's name on withdrawal requests submitted to TD Ameritrade or causing her to execute transfer requests, without disclosing to Client JF that the transfer requests would result in money being sent to his company, BEK. Kelter used the funds misappropriated from Client JF's accounts to repay two other clients, one of whom was Kelter's step-mother, to make risky futures

and options trades in an account he controlled and that did not benefit Client JF, and to pay for his personal expenses.

24. During the relevant period, Kelter met with and spoke to Client JF regularly, during which time Kelter assured Client JF that everything was fine and going well with her investments. Kelter told Client JF not to bother looking at her TD Ameritrade statements for her accounts.

25. Kelter never disclosed to Client JF that he had transferred \$1.467 million of Client JF's funds to Kelter's business. Kelter did not disclose to Client JF that he had any association with BEK or how her funds were being used.

26. In August 2016, TD Ameritrade contacted Client JF in connection with a pending account transaction initiated by Kelter. From this inquiry, Client JF first learned of Kelter's unauthorized withdrawals from her accounts.

27. When Client JF asked Kelter about the unauthorized transactions in her accounts at TD Ameritrade, after initially denying any wrongdoing and making various misrepresentations to Client JF regarding the funds and BEK, Kelter ultimately admitted to Client JF that he had taken the money from Client JF's accounts.

28. On or about September 2, 2015, Kelter signed an agreement in which he promised to return all monies that he took from Client JF "totaling an estimated 1.4 million US dollars in its entirety."

Kelter Defrauded Client JM

29. Kelter began providing Client JM investment advisory services in 2009 while Kelter was at his former firm. Client JM is a retiree who, during the relevant period, was receiving disbursements from a trust that she invested through Kelter. Client JM was another of

Kelter's clients at his former firm who, at Kelter's suggestion, transferred her accounts to TD Ameritrade when Kelter left the brokerage firm in 2013. At the time Client JM agreed to transfer her accounts, Client JM believed that Kelter would be affiliated with TD Ameritrade, just as he had been affiliated with his former firm.

30. Kelter had complete access to Client JM's accounts at TD Ameritrade and conducted trading in the accounts from November 2013 to January 2014. Kelter had full trading authority in Client JM's account. Kelter did not have to obtain Client JF's permission before engaging in securities purchases, sales, or determinations to hold investments. Client JM did not perform any trading in her account during this time or instruct Kelter regarding any securities trading that he should do in her account.

31. In late 2013, Kelter falsely represented to Client JM that he was selling securities in her account and investing her funds in a company. Specifically, in December of 2013, Kelter told Client JM that he was going to make a \$200,000 investment on her behalf that would yield an 8.5 percent return. Kelter told Client JM that this was an investment that would be held by a firm other than TD Ameritrade. Client JM asked Kelter if the form of investment would be a certificate of deposit and Kelter falsely stated that it would be.

32. Kelter failed to disclose to Client JM that: (1) the investment would be in BEK; (2) BEK was a company in which he held an ownership interest; (3) he received remuneration from BEK; and (4) Client JM's funds transferred to BEK would be further transferred to his step-mother's TD Ameritrade account, which he controlled, and to his personal bank accounts for his personal expenses.

33. Relying on Kelter's misrepresentations, on or about December 24, 2013, Client JM issued a check to BEK in the amount of \$200,000.

34. Kelter provided Client JM with a document purporting to be a “Corporate [sic] Certificate Confirmation of Deposit and Receipt of Funds” from BEK. The certificate confirmed the receipt of \$200,000 from Client JM and purported to reflect Client JM’s investment as a callable bond paying 8.5 percent annual interest for a term of 36 months. Significantly, the document did not disclose Kelter’s interest in or ownership of BEK.

35. After receiving the document and conducting her own research regarding BEK, Client JM became uncomfortable with the investment. Client JM spoke with Kelter and, after questioning, Kelter falsely told her that BEK was his uncle’s company. Upon learning of Kelter’s previously undisclosed relationship with BEK, Client JM demanded that Kelter return her money. Having already misappropriated Client JM’s money to pay for his personal expenses and replace funds in his step-mother’s account, Kelter misappropriated money from Client JF’s TD Ameritrade account in order to return Client JM’s investment.

Kelter Made Misrepresentations to Client HK

36. Kelter’s business relationship with Client HK began in 2002. Initially, Kelter provided Client HK with investment advisory services through Kelter & Company. Client HK continued his relationship with Kelter and remained a client when Kelter began working as an independent investment advisor in 2013.

37. Client HK is a retiree who relies on his securities investments to provide income throughout his retirement. As such, from the beginning of their relationship, Client HK repeatedly informed Kelter that he wanted to invest conservatively and would be content with returns averaging about 6 percent annually.

38. In August 2013, at Kelter’s suggestion, Client HK moved his securities accounts, then valued at over \$1 million from Kelter’s former firm to TD Ameritrade. Client HK opened

two accounts at TD Ameritrade and provided Kelter with the access information and passwords with the understanding that Kelter would access the accounts and make trades on Client HK's behalf. Kelter and Client HK agreed orally that Kelter would receive 20 percent of any profits earned through trades that Kelter made in Client HK's accounts.

39. Kelter made at least 139 trades in Client HK's TD Ameritrade accounts from 2013 to 2016 and 430 futures trades in an OptionsXpress account in 2016.

40. During a phone call in late 2015, Kelter told Client HK that Kelter could make a lot of money by trading futures on Client HK's behalf. Kelter assured Client HK that Kelter was very experienced in such trading. Initially, Kelter's futures trading yielded positive results, but thereafter, Client HK became concerned as the trading losses from Kelter's futures trading in his accounts mounted. By May 10, 2016, Kelter had lost \$56,423 in Client HK's accounts from futures trading.

41. After experiencing significant losses, Client HK told Kelter that he no longer wanted Kelter to make trades that would lead to volatility in his account, and that in general he wanted Kelter to scale back trading on his behalf. To address Client HK's concerns, during a telephone conversation on or about May 11, 2016, Kelter told Client HK that Kelter would guarantee, from Kelter's own funds, any of Client HK's losses resulting from Kelter's futures trading in Client HK's accounts. During subsequent discussions with Client HK, Kelter limited his guarantee to replace any of Client HK's losses up to a maximum of \$200,000. Kelter further assured Client HK that if Kelter was not able to make up any losses that he had incurred in Client HK's accounts through trading, Kelter would reimburse Client HK, from Kelter's own funds at the end of October 2016.

42. Kelter falsely represented to Client HK that he had offshore accounts and shell corporations with about \$1 million in assets that would enable Kelter to make good on his guarantee.

43. Kelter further misrepresented to Client HK that Kelter's funds were liquid, and that it would take him a day or two to access those funds if necessary to fulfill his guarantee of any of Client HK's trading losses.

44. At the time of Kelter's guarantee and thereafter, however, Kelter knew that he did not have the financial resources to fulfill his guarantee to cover Client HK's trading losses.

45. Based on Kelter's assurances that he would cover any of Client HK's losses up to \$200,000, Client HK orally agreed to allow Kelter to continue to trade in his accounts.

46. Kelter's futures trading in Client HK's accounts following Kelter's guarantee resulted in precipitous losses. In or around August 2016, Client HK became extremely concerned about the losses and requested that Kelter stop trading on his behalf. Kelter assured him that the market had ups and downs and reiterated his promise to personally guarantee up to \$200,000 in losses.

47. By October 2016, Kelter had lost a total of \$187,417 in Client HK's TD Ameritrade due to futures trades executed by Kelter.

48. In or around October 2016, Kelter convinced Client HK to invest an additional \$30,000 in a Charles Schwab OptionsXpress account, in which Kelter would make trades on Client HK's behalf. Client HK invested \$30,000 into the account under the impression that Kelter would make smaller and more conservative investments. In a matter of days, Kelter's trading resulted in losses of approximately \$12,000. Client HK directed Kelter stop trading in the OptionsXpress account after the losses in the account increased to nearly \$22,000.

49. In total, relying on Kelter's misrepresentations that Kelter would personally guarantee Client HK's losses, Client HK lost at least \$189,022 from Kelter's futures trading from February to December 2016.

CLAIMS FOR RELIEF

FIRST CLAIM

Section 17(a)(1) of the Securities Act

50. The Commission repeats and re-alleges Paragraphs 1 through 49 as if fully set forth herein.

51. As set forth above, Defendant, in the offer and sale of securities, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails and wires, directly and indirectly, employed devices, schemes and artifices to defraud, all as more particularly described above.

52. While engaging in the course of conduct described above, Kelter acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

53. By engaging in this conduct, Defendant, directly and indirectly, violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

SECOND CLAIM

Section 17(a)(2) and (3) of the Securities Act

54. The Commission repeats and re-alleges Paragraphs 1 through 49 as if fully set forth herein.

55. As set forth above, Defendant in the offer and sale of securities, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails and wires, directly and indirectly:

- a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of securities, all as more particularly described above.

56. By engaging in this conduct, Defendant, directly and indirectly, violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

THIRD CLAIM
Exchange Act 10(b) and Rule 10b-5 thereunder

57. The Commission repeats and re-alleges Paragraphs 1 through 49 as if fully set forth herein.

58. As set forth above, Defendant, in connection with the purchase or sale of securities, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails and wires, directly and indirectly:

- a. employed devices, schemes, and artifices to defraud;
- b. made untrue statements of material facts and 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; and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon other persons, all as more particularly described above.

59. In engaging in such conduct, Defendant acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

60. By reason of the foregoing, Defendant, directly and indirectly, 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 [17 C.F.R. § 240.10b-5].

FOURTH CLAIM

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

61. The Commission repeats and re-alleges Paragraphs 1 through 49 as if fully set forth herein.

62. As set forth above, Defendant, acting as an investment adviser, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails and wires, directly and indirectly, employed devices, schemes and artifices to defraud one or more advisory clients.

63. By engaging in this conduct, Defendant, directly and indirectly, violated, and, unless enjoined, will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

FIFTH CLAIM

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

64. The Commission repeats and re-alleges Paragraphs 1 through 49 as if fully set forth herein.

65. As discussed above, Defendant, acting as an investment adviser, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails and wires, directly and indirectly, engaged in transactions, practices, and courses of business which would and did operate as a fraud and deceit on one or more advisory clients.

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

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

(a) Finding that Defendant committed the violations alleged herein;

(b) Permanently restraining Defendant, his agents, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.P.R. § 240.10b-5] promulgated thereunder, and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)];

(c) Requiring an accounting of the use of proceeds of the fraudulent conduct described in this Complaint and the disgorgement by the Defendant of all ill-gotten gains or unjust enrichment with prejudgment interest;

(d) Imposing civil penalties against the Defendant;

(e) Granting such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors; and

(f) Granting the Commission a trial by jury on all issues so triable.

Respectfully submitted,

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