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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

15 JOHN CLEMENT and
EDGEFUND CAPITAL, LLC;

16 Defendants.
17

Case No. **'11CV1034 LAB WVG**

COMPLAINT

18 Plaintiff Securities and Exchange Commission (“Commission”) alleges:

19 **JURISDICTION AND VENUE**

20 1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1)
21 and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77t(b), 77t(d)(1) &
22 77v(a), Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the Securities Exchange Act of 1934
23 (“Exchange Act”), 15 U.S.C. §§ 78(u)(d)(1), 78u(d)(3)(A), 78u(e) & 78aa(a), and Sections
24 209(d), 209(e)(1) and 214(a) of the Investment Advisers Act of 1940 (“Advisers Act”), 15
25 U.S.C. §§ 80b-9(d), 80b-9(e)(1) & 80b-14(a). Defendants have, directly or indirectly, made use
26 of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a
27 national securities exchange in connection with the transactions, acts, practices and courses of
28 business alleged in this Complaint.

1 U.S.C. § 78j(b), and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 206(4) of the
2 Advisers Act, 15 U.S.C. §§ 80b-6(1), 80b-6(2) & 80b-6(4), and Rule 206(4)-8, 17 C.F.R. §
3 275.206(4)-8. By this action, the Commission seeks a temporary restraining order and
4 preliminary and permanent injunctions prohibiting future such violations, an order freezing the
5 Defendants' assets, an order prohibiting destruction of documents, an accounting, disgorgement
6 of the Defendants' ill-gotten gains, and civil penalties.

7 **THE DEFENDANTS**

8 5. **John Clement** resides in Encinitas, California. He is the Chief Executive Officer
9 of Defendant Edgefund Capital LLC. Clement is also an owner of Edgefund Capital. Clement is
10 not registered with the Commission in any capacity.

11 6. **Edgefund Capital LLC** was formed as a Delaware limited liability company on
12 or about November 17, 2009. Clement and Kilmer are owners of Edgefund Capital. Clement is
13 Edgefund Capital's CEO, and Kilmer is its Managing Member. Edgefund Capital is the general
14 partner of The Edgefund, LP. Clement operates Edgefund Capital out of his home in Encinitas,
15 California. Neither Edgefund Capital nor its securities are registered with the Commission in
16 any capacity.

17 **RELATED ENTITIES**

18 7. **The Edge Fund Ltd, LP** is a limited partnership formed in Delaware on or about
19 September 19, 1988. Neither this partnership nor its securities are registered with the
20 Commission in any capacity.

21 8. **The Edgefund, LP** is a limited partnership formed by Clement in Delaware on or
22 about November 17, 2009. Defendant Edgefund Capital is its general partner. Neither this
23 partnership nor its securities are registered with the Commission in any capacity.

24 **THE FRAUDULENT SCHEME**

25 9. Since August 2008, the Defendants have raised at least \$2,161,000 from at least
26 22 investors. During this period, Clement has solicited investments from people he knows; he
27 has also received referrals from people who have already invested.

28 10. Clement works out of his house, and invites prospective investors to see how his

1 trading operation is set up, showing them several television screens displaying information
2 purportedly related to his securities trading.

3 **A. Clement Represents That Investment In His Hedge Funds Is A High Return Low**
4 **Risk Investment**

5 11. In order to induce prospective investors to invest, from August 2008 to the
6 present, Clement has orally represented to such prospective investors that they will receive
7 substantial returns on their investments, that their risk of loss is limited, and that they can obtain
8 a return of their principal from him upon written request. Specifically, Clement represents that:

- 9 a. He has many years of experience in the investment advisory business over
10 which he has developed successful investment and securities trading
11 strategies which he uses to make significant profits for his investor clients;
- 12 b. Defendant Edgefund Capital is offering interests in The Edge Fund LP,
13 The Edge Fund Ltd, LP, or The Edgefund LP, a hedge fund he had created
14 that offers investors the opportunity to make substantial returns, and that
15 Clement has millions of dollars in assets under management; for example,
16 in or about August 2008, Clement told investor Nicholas Johnson
17 (“Johnson”), that he had \$4 million in assets under management; in or
18 about late 2009 or early 2010, Clement similarly told investor Richard J.
19 Hoard (“Hoard”) that he had \$7.5 million in assets under management,
20 and that this amount was sufficient for him to work with Goldman Sachs;
- 21 c. He uses investors’ funds to engage in profitable “day trading” of securities
22 whereby he does not hold securities for longer than a day and investors’
23 assets are liquid at the end of each trading day because he closes out his
24 securities positions every night;
- 25 d. Because of his trading strategy, the maximum risk to each individual
26 investor is 5% of the principal amount invested;
- 27 e. Investors will receive a monthly return of 1%-2% of the principal amount
28 invested;

- 1 f. Investor returns will be paid from the profits realized from his day trading
2 of securities;
- 3 g. Investors may elect to either receive their promised returns on a monthly
4 basis or they may choose to roll the returns over into “long-term growth”
5 accounts;
- 6 h. Upon thirty days written notice, for any reason, an investor may request
7 the return of the full amount of the original principal invested, along with
8 any accrued profits, minus any disbursements;
- 9 i. A minimum investment is required; Clement represents different
10 minimums to different investors, including representing to Hoard in or
11 about late 2009 or early 2010 that \$250,000 is the minimum, and in or
12 about August 2008 and October 2010 representing to Johnson and investor
13 Rosi O’Hara respectively, each of whom wished to invest fewer monies,
14 that the minimum investment is usually \$100,000, but that he would make
15 an exception and permit each of them to invest a smaller sum.

16 12. From August 2008 to the present, Clement has made the same or similar
17 representations in an investment agreement which he mails to investors. In particular, beginning
18 in or about August 2008, the agreement represented that:

- 19 a. “Regardless of risks the individual investor is protected by a 5% stop loss
20 rule used by the advisor that automatically stops all trading if a 5% loss is
21 realized in the fund and the fund is liquidated. Due to this protection the
22 maximum risk is 5% of initial investment and the risk is reduced by 2%
23 each month a dividend is paid.”
- 24 b. “An investor in the Interests must rely upon the abilities of the Advisor to
25 make portfolio investments. Investors will not have the opportunity to
26 evaluate personally the relevant economic, financial and other information
27 that will be utilized by the Adviser.”
- 28 c. “The minimum initial capital contribution of a new Limited Partner shall
be \$100,000, except that the General Partner may, in its sole discretion,
permit any Limited Partner to make an initial capital contribution of less
than \$100,000. . . .”
- d. “Any Limited Partner may withdraw as of the last day of any calendar
quarter (or at any other time permitted by the General Partner in its sole
discretion), all or any part of his Capital Account balance, by giving not
less than three (30) [sic] days prior written notice to the General Partner. .

1 . . . After such withdrawal, the Partnership shall distribute cash to the
2 Limited Partner within ten (10) days following the end of the month in
3 which the withdrawal occurs.”

4 e. “Distributions are to be 2% of the individual limited partners initial capital
5 investment paid monthly into an account of the investors choice or rolled
6 over into a long term growth account managed for the fund by the general
7 partner”

8 f. “The Adviser, as General Partner, shall annually prepare or cause to be
9 prepared the Fund’s financial statements, for those persons share of the
10 fund that opted for the rollover option, which shall include a balance sheet
11 and related statements of income and retained earnings and changes in
12 financial position, and which financial statements shall be audited by an
13 independent certified accountant chosen by the Advisor. . . . Financial
14 statements shall be prepared in accordance with generally accepted
15 accounting principles.”

16 g. “The Advisor shall use its best efforts to transmit, within fifteen (15) days
17 after the end of a month , a report to each person whowho [sic] opted for
18 the rollover option and was a Limited Partner during such month
19 indicating the performance of that persons share of the fund.”

20 Beginning in or before October 15, 2010, Clement amended the Agreement to delete items (f)
21 and (g); and to state that the risk of loss was reduced by 1% per month rather than 2% each
22 month a dividend is paid; that the minimum capital contribution was \$50,000 rather than
23 \$100,000; and that distributions would be 1% rather than 2% of the individual limited partner’s
24 initial capital investment paid monthly.

25 **B. Clement Sends Investors Account “Statements” Purporting To Show Positive**
26 **Returns, As Well As Payments Purportedly Constituting Returns**

27 13. From August 2008 to at least October 2010, once investors invested, Clement
28 lulled them into believing their money was safe and they should invest more by sending them
two types of statements. First, Clement sent to each investor who made subsequent investments
after the initial investment, a document entitled “EXHIBIT A,” which purports to reflect the
amount of additional funds invested, the total amount of principal invested, and the current value
of the account. Second, Clement sent to each investor a written “Statement of Account”
purportedly reflecting principal investments, distributions, and an account balance which
included purported returns.

14. In or about May 2010, Clement also caused account statements to be mailed to at
least one investor, Hoard, labeled “The Edgefund LP Performance Summary” which purported to

1 be from Alaris Trading Partners, LLC, a broker-dealer registered with the Commission whose
2 clients received clearing, custody and execution services provided by Goldman Sachs Clearing
3 And Execution, L.P., another Commission-registered broker dealer, which statements purported
4 to reflect activity in “Goldman Sachs Account #7ECF-1209.” In fact, these statements were
5 complete fabrications. Moreover, although Clement did open an account in the name of The
6 Edgefund LP with Goldman Sachs, that account was never funded, and was closed by Goldman
7 Sachs in June 2010 upon the request of Alaris after Alaris learned of the fabricated account
8 statements.

9 15. Beginning in or about August 2008, Clement also sent investors “distributions” by
10 wire transfer or check which purportedly constituted returns on their investments.

11 16. On or before July 1 and July 10, Clement caused three checks labeled either
12 “Redemption” or “Dividend” in the amounts of \$250,000, \$236,000 and \$31,294.33, totaling
13 \$517,294.33 to be mailed to investor Hoard, who had requested a refund of his \$486,000
14 investment after learning from Alaris that the purported Goldman Sachs account statements he
15 had received were fabricated. Hoard attempted two times to cash the checks at Bank of
16 America; both times he was told there were insufficient funds in the account. It was only after
17 Hoard hired an attorney and demanded that funds be wired to his bank account that he received
18 his principal, but no purported “dividend,” from Edgefund Capital.

19 **C. Clement Has Misappropriated Investor Monies Rather Than Investing Them**

20 17. Clement’s representations are false. In fact, after causing the investor monies to
21 be deposited in a Bank of America account in the name of Edgefund Capital, Clement only
22 deposited \$320,000 of the \$2,161,000 in investor funds raised into a securities account held in
23 the name of Edgefund Capital at Fidelity Investments/national Financial Services LLC. Rather
24 than making the promised 1-2% monthly return in trading, Clement in fact disbursed only \$3,543
25 from this account to investors. In order to conceal losses and induce additional investments,
26 Clement paid \$801,692 (including the above \$3,543) in investor “distributions” constituting
27 purported “returns” on investment from investor monies held in the Edgefund Capital Bank of
28 America and Fidelity accounts in Ponzi-like fashion.

1 18. Additionally, Clement misappropriated the vast majority of the \$2.1 million he
2 has raised from investors. Rather than investing in the hedge fund account, Clement has instead
3 misappropriated investor monies deposited into the Edgefund Capital bank and brokerage
4 accounts, using those accounts as his personal accounts, misappropriating at least \$295,300 to his
5 personal use, consisting of cash (\$102,974); jewelry, travel, dining and entertainment expenses
6 (\$41,171); payments for cars, credit cards in Kilmer's name, utilities, clothing and personal
7 expenses (\$139,155), and a payment to TERI, Inc., a charity founded by and employing Kilmer
8 (\$12,000). Additionally, at least another \$293,417 in funds from the Edgefund Capital accounts
9 was withdrawn as cashiers' checks.

10 19. As of April 29, 2011, the Edgefund Capital account at Bank of America had a
11 balance of -\$631.57. As of April 30, 2011, the balance in the Edgefund Capital Fidelity
12 brokerage account was \$ 4.83.

13 **D. Clement Is Falsely Representing That The Commission's Investigation Is Preventing**
14 **Him From Returning Investor Monies Or Making Payments To Investors**

15 20. Beginning in or about March 2011, Clement stopped paying investors any returns
16 or distributions. In or about March 2011, Clement sent emails to investors stating that:

17 This is to notify you that both Edgefund LLC and myself are currently
18 under investigation by the Securities and Exchange Commission.
19 Unfortunately, this investigation impacts my ability to communicate with
20 investors. On the advice of counsel and as a result of this investigation, I
21 cannot have direct communications with investors and [sic] until this
investigation is complete. I also cannot give you any information, oral or
22 otherwise, regarding any deposits, withdrawals, dividends or any
23 accounting of the same. . . . If you insist on directing any inquiries to me,
24 you must do so though [sic] my attorney as follows. . . .

25 21. In or about March 2011, Clement orally represented to several investors that because
26 of the Commission's investigation, both his accounts at Bank of America and his brokerage
27 accounts were frozen, and he was unable to conduct business or do any securities trading.

28 22. On or about April 18, 2011, Clement orally represented to investor Johnson, who
had gone to Clement's house, that he was still unable to conduct business and engage in
securities trading or make payments to investors because Goldman Sachs has frozen his
brokerage accounts. As explained above, no such Goldman Sachs account exists.

1 23. Although it was true that the Commission was conducting an investigation
2 regarding Edgefund Capital, the Commission had not, in fact, “frozen” investor funds. Moreover,
3 in representing that the Commission was investigating him, Clement failed to disclose the material
4 fact that he was not cooperating in the Commission’s investigation. In particular, notwithstanding
5 repeated attempts from August 3, 2010, through at least February 10, 2011, to persuade Clement to
6 comply with its July 20, 2010, subpoenas, Clement never appeared for testimony.

7
8 **FIRST CLAIM FOR RELIEF**
9 **FRAUD IN THE OFFER OR SALE OF SECURITIES**
10 **Violations of Section 17(a) of the Securities Act**
11 **(Against All Defendants)**

12 24. The Commission realleges and incorporates by reference paragraphs 1 through 23
13 above.

14 25. Defendants Clement and Edgefund Capital, and each of them, by engaging in the
15 conduct described above, directly or indirectly, in the offer or sale of securities by the use of
16 means or instruments of transportation or communication in interstate commerce or by use of the
17 mails:

- 18 a. with scienter, employed devices, schemes, or artifices to defraud;
- 19 b. obtained money or property by means of untrue statements of a material fact or by
20 omitting to state a material fact necessary in order to make the statements made,
21 in light of the circumstances under which they were made, not misleading; or
- 22 c. engaged in transactions, practices, or courses of business which operated or would
23 operate as a fraud or deceit upon the purchaser.

24 26. By engaging in the conduct described above, Defendants Clement and Edgefund
25 Capital violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the
26 Securities Act, 15 U.S.C. § 77q(a).

27 **SECOND CLAIM FOR RELIEF**
28 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES**
 Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
 (Against All Defendants)

 27. The Commission realleges and incorporates by reference paragraphs 1 through 23

1 above.

2 28. Defendants Clement and Edgefund Capital, and each of them, by engaging in the
3 conduct described above, directly or indirectly, in connection with the purchase or sale of a
4 security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the
5 facilities of a national securities exchange, with scienter:

- 6 a. employed devices, schemes, or artifices to defraud;
- 7 b. made untrue statements of a material fact or omitted to state a material fact
8 necessary in order to make the statements made, in the light of the
9 circumstances under which they were made, not misleading; or
- 10 c. engaged in acts, practices, or courses of business which operated or would
11 operate as a fraud or deceit upon other persons.

12 29. By engaging in the conduct described above, Defendants Clement and Edgefund
13 Capital violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the
14 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

15 **THIRD CLAIM FOR RELIEF**
16 **FRAUD WHILE ACTING AS AN INVESTMENT ADVISER**
17 **Violations of Section 206(1), 206(2) and 206(4) of the Advisers Act**
and Rule 206(4)-8 Thereunder
(Against All Defendants)

18 30. The Commission realleges and incorporates by reference paragraphs 1 through 23
19 above.

20 31. Defendants Clement and Edgefund Capital, and each of them, by engaging in the
21 conduct described above, directly or indirectly, while acting as investment advisers, by use of the
22 mails or means or instrumentalities of interstate commerce:

- 23 a. with scienter, employed devices, schemes, or artifices to defraud clients or
24 prospective clients;
- 25 b. engaged in transactions, practices, or courses of business which operated
26 or would operate as a fraud or deceit upon clients or prospective clients; or
- 27 c. while acting as investment advisers to a pooled investment vehicle:
28 (1) engaged in acts, practices or courses of business that were

1 fraudulent, deceptive, or manipulative by making untrue
2 statements of a material fact or omitting to state a material fact
3 necessary to make the statements made, in the light of the
4 circumstances under which they were made, not misleading, to
5 investors or prospective investors in the pooled investment vehicle
6 or

7 (2) otherwise engaged in acts, practices, or courses of business that
8 were fraudulent, deceptive, or manipulative with respect to
9 investors or prospective investors in the pooled investment vehicle.

10 32. By engaging in the conduct described above, Defendants Clement and Edgefund
11 Capital violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the
12 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, the Commission respectfully requests that the Court:

15 **I.**

16 Issue findings of fact and conclusions of law that the Defendants committed the alleged
17 violations.

18 **II.**

19 Issue orders, in a form consistent with Fed. R. Civ. P. 65(d), temporarily, preliminarily
20 and permanently enjoining Defendants Clement and Edgefund Capital and their officers, agents,
21 servants, employees, and attorneys, and those persons in active concert or participation with any
22 of them, who receive actual notice of the order by personal service or otherwise, and each of
23 them, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the
24 Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and
25 Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), 80b-6(2) & 80b-
26 6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

27 **III.**

28 Issue in a form consistent with Fed. R. Civ. P. 65, a temporary restraining order and a

1 preliminary injunction freezing the assets of Defendants Clement and Edgefund Capital;
2 prohibiting each of the Defendants from destroying documents; and ordering accountings by
3 each of the Defendants.

4 **IV.**

5 Order Defendants Clement and Edgefund Capital to disgorge all ill-gotten gains from
6 their illegal conduct, together with prejudgment interest thereon.

7 **V.**

8 Order Defendants Clement and Edgefund Capital to pay civil penalties under Section
9 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C.
10 § 78u(d)(3), and Section 209 of the Advisers Act, 15 U.S.C. § 80b-9.

11 **VI.**

12 Retain jurisdiction of this action in accordance with the principles of equity and the
13 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and
14 decrees that may be entered, or to entertain any suitable application or motion for additional
15 relief within the jurisdiction of this Court.

16 **VII.**

17 Grant such other and further relief as this Court may determine to be just and necessary.

18
19 DATED: May 11, 2011

/s/ Karen Matteson _____
Karen Matteson
Solomon R. Mangolini
Attorneys for Plaintiff
Securities and Exchange Commission