

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

NOV 18 2004

JUDGE MATTHEW F. KENNELLY
UNITED STATES DISTRICT COURT

DOCKETED

NOV 24 2004

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ROBERT A. KASIRER
JEROLD V. GOLDSTEIN
JOEL T. BOEHM
JAMES E. IVERSON, and
VICTOR P. DHOOGHE,

Defendants,

DEBRA SCHOENFELD KASIRER
a/k/a DEBRA SHOENFELD; BISTRA &
MUNKACS HOLDINGS, INC.
f/k/a BHMC CORP.; JDDJ HOLDINGS,
L.P. f/k/a CARECONTINUUM, L.P.
f/k/a BHMC, L.P.; CARECONTINUUM,
L.L.C. f/k/a CF HOLDINGS, L.L.C.;
HEALTH CARE HOLDINGS, L.L.C.
f/k/a HEALTH CARE HOLDINGS, L.P.;
HEALTHCARECONTINUUM, L.L.C.;
MISHKAN HEALTHCARE, INC.; and
KASIRER YELADIM HOLDINGS,
L.L.C.,

Relief Defendants.

NO. 04-CV-04340

Judge Matthew F. Kennelly

Magistrate Judge Geraldine Soat Brown

SECOND AMENDED COMPLAINT

Plaintiff, Securities and Exchange Commission ("Plaintiff" or "SEC") alleges:

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SUMMARY

1. From February 1996 through August 1999, the Defendants, acting in concert, fraudulently offered and sold over \$144 million of municipal revenue bonds to members of the public. The Defendants offered and sold the bonds in question through a series of twelve offerings underwritten by the now-defunct, Minnesota firm of Miller & Schroeder Financial, Inc. (“Miller & Schroeder”). The Defendants sold the bonds to more than 1,800 investors residing in 36 States.

2. The purported purpose of each bond offering was to finance the development of a specified healthcare facility by Heritage Housing Development, Inc. (“Heritage”), a company effectively controlled by Defendant Kasirer. The Heritage facilities consisted of various senior assisted living facilities and a hospital. All together, there were ten Heritage facilities located in the States of Texas, Florida, Illinois and California.

3. The Defendants represented in offering documents that the proceeds from each bond offering would be used to finance one specific healthcare facility. In fact, however, from the very beginning the costs of developing the Heritage facilities, including payments to Defendant Kasirer and some of his family members, outstripped the proceeds from the facilities’ respective bond offerings.

4. The Defendants covered the resulting cash shortfalls by operating a type of Ponzi scheme, commingling bond proceeds and diverting bond proceeds from more recent offerings to pay the expenses of earlier projects. Eventually all ten of the Heritage facilities failed.

5. The diversion of bond proceeds from one project to another went on for four years. The Defendants did not mention their diversion of bond proceeds in any of the offering

documents, and instead falsely represented that the bond proceeds from each offering would be used only for that respective Heritage facility. Miller & Schroeder continued to sell the Heritage bonds to investors until early August 1999. The following month, September 1999, the Defendants' commingling and diversion of bond proceeds was publicly disclosed. Beginning in February 2000, the Heritage facilities ran out of money and defaulted on their obligations to the bondholders. Presently, all the Heritage facilities are in default on their bonds.

6. Defendants Kasirer and Goldstein, the primary architects of the scheme, controlled Heritage. Defendants Kasirer and Goldstein personally directed the commingling and misapplication of bond proceeds. Defendants Iverson and Dhooge, representatives of Miller & Schroeder, managed the underwriting of the various bond offerings, despite their knowledge that bond proceeds were being wrongfully commingled and diverted. Defendant Boehm, an attorney who acted as counsel for Miller & Schroeder in the bond offerings, issued favorable legal opinions despite his knowledge that bond proceeds were being wrongfully commingled and diverted. Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge, acting knowingly or with a reckless disregard for the truth, all took part in writing, reviewing, or disseminating bond prospectuses ("Official Statements") which misled investors with regard to, among other things, Defendant Kasirer's role in the affairs of Heritage, the financial condition of the Heritage facilities, and the true uses to be made of the bond proceeds. All the Defendants personally profited from the scheme.

7. Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge, directly and indirectly, have engaged in and, unless enjoined, will continue to engage in, acts, practices and courses of business which constitute and will constitute violations of Section 17(a) of the

Securities Act of 1933 (“Securities Act”) [15 U.S.C. §77q(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.

8. Plaintiff brings this action to enjoin such acts, practices and courses of business, and for other equitable relief, pursuant to Sections 20(b) and 20(c) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(c)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§78u(d) and 78u(e)].

JURISDICTION

9. The SEC brings this action pursuant to the authority conferred on it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§77t(b) and §77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§78u(d) and 78u(e)].

10. This Court has jurisdiction over this matter pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

11. The acts, practices and courses of business constituting the violations herein have occurred within the jurisdiction of the United States District Court for the Northern District of Illinois and elsewhere.

12. Defendants, directly and indirectly, have made use of the mails and of the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein in the Northern District of Illinois.

13. There is a reasonable likelihood that the Defendants will, unless enjoined, continue to engage in the transactions, acts, practices and courses of business set forth in this Complaint, and transactions, acts, practices and courses of business similar in purport and object.

THE DEFENDANTS

14. At all times relevant to this Complaint, Defendant Kasirer, who is 55 years old, lived in or near Beverly Hills, California. Defendant Kasirer, who is an attorney, describes himself as a consultant who assists people in financings and various projects. Defendant Kasirer effectively controlled Heritage. He exerted control over Heritage management, and he was able to direct the diversion of bond proceeds. Defendant Kasirer managed the Heritage facilities at issue herein, first through a subsidiary of a company named Iatros Health Network, Inc. and then from June 1, 1997 through August 1, 1999, through a company owned by Kasirer—Health Care Holdings, L.P. (“Health Care Holdings”). In the mid-1980s, Kasirer formed CongreCare Retirement Housing Corporation, through which he developed and managed at least three retirement facilities. Two of the facilities were financed by municipal bonds, and one was HUD financed. The HUD-financed facility ultimately went through Chapter 7 liquidation. Both of the other facilities, one in Colorado and one in Illinois, defaulted on their bond payments.

15. At all times relevant to this Complaint, Defendant Goldstein, who is 63 years old, lived in or near Encino, California. Defendant Goldstein’s involvement with Heritage began when he incorporated Heritage in 1993. Defendant Goldstein, who is an attorney, served as outside counsel to Heritage from its inception until July 1998 when he was hired by Heritage as General Counsel, Executive Vice President and Chief Operating Officer. The following month he was made President of Heritage. At all times relevant to this Complaint, Defendant Goldstein

attended Heritage Board meetings. He also reviewed drafts of the Heritage Official Statements and other offering documents prior to the issuance of the bonds at issue in this Complaint.

16. At all times relevant to this Complaint, Defendant Boehm, who is 57 years old, lived in or near Carlsbad, California. Boehm, who is an attorney, served as counsel to the underwriter, Miller & Schroeder, for ten of the bond offerings at issue in this suit, as special counsel to the underwriter for one of the bond offerings, and as bond counsel for one of the bond offerings.

17. At all times relevant to this Complaint, Defendant Iverson, who is 68 years old, lived in or near Agoura, California. Until August 1997, Defendant Iverson owned 49% of the stock of Miller & Schroeder and served as the firm's Executive Vice President and Chairman of the Board of Directors. In or about August 1997, Miller & Schroeder was sold to a group of former and outside shareholders. After August 1997, Defendant Iverson was a Vice President and 1/10 of 1% shareholder of Miller & Schroeder. At all times relevant herein, Defendant Iverson was primarily responsible for supervising the public finance underwriters in Miller & Schroeder's Solana Beach, California office.

18. At all times relevant to this Complaint, Defendant Dhooge, who is 59 years old, lived in or near Solana Beach, California. At all times relevant herein, Dhooge worked in the public finance department of Miller & Schroeder's Solana Beach office and served as a vice president of the firm. Defendant Dhooge was the individual in the underwriting department at Miller & Schroeder responsible for selling the Heritage bonds to the public.

OTHER RELEVANT INDIVIDUALS

19. Emery Rubin, now deceased, founded Heritage in 1993. Offering documents for the first several bond offerings at issue herein identify Rubin as a senior consultant to Heritage; he functioned effectively as Heritage's President. On August 18, 1997, the Heritage Board elected Rubin to the office of President of Heritage. Rubin and Kasirer had a long-term relationship. Rubin babysat Kasirer when Kasirer was a child. Rubin and Kasirer also had prior business dealings before the Heritage projects as Rubin was also involved in the CongreCare projects. The Heritage Board terminated Rubin by resolution on February 18, 1998.

ENTITIES INVOLVED

20. SRC Holding Corporation f/k/a/ Miller & Schroeder Financial, Inc. ("Miller & Schroeder") was incorporated in Minnesota in 1963, and was a registered broker-dealer, specializing in underwriting and dealing in municipal securities. Miller & Schroeder was headquartered in Minneapolis, Minnesota, but during 1996 through 2000, the firm also had underwriting and sales staff in its branch office in Solana Beach, California. From 1996 through August 1999, Miller & Schroeder was responsible for underwriting the municipal bond financings of health care facilities to be developed by Heritage. In December 2000, Miller & Schroeder discontinued its retail financial services, transferring that business to another firm. Nine months later, in September 2001, Miller & Schroeder sold most of its remaining business to a group of investors, giving up its name to the new company and renaming what remained of the old company Securities Resolution Corporation. That company applied to withdraw from registration as a broker-dealer and filed for Chapter 7 bankruptcy liquidation in January 2002.

This bankruptcy is currently pending in the Minnesota. *In re: SRC Holding Corporation, f/k/a Miller & Schroeder, Inc.*, BKY Nos. 02-4-286-02-40286 (Bankr. Dist. MN).

21. Heritage Housing Development, Inc. ("Heritage") was formed in 1993 as a California not-for-profit corporation, based in Los Angeles. At all times relevant to this Complaint, Heritage consisted primarily of a President, Secretary, Controller and a Board of Directors. Heritage had few employees. Instead, Heritage relied on outside people, such as Goldstein. Heritage's stated purpose was to acquire, develop, and operate healthcare facilities serving the elderly, and particularly those suffering from Alzheimer's disease. Heritage bought and renovated existing healthcare facilities in various parts of the country. In most cases, Heritage created a separate non-profit affiliate company to own and operate each facility ("Heritage Affiliate"). Heritage shared the same board of directors with and was the sole member of each non-profit affiliate.

22. Iatros Health Network, Inc. ("Iatros"), began business in 1992 as Gracecare Health Systems, Inc., but changed its executive team and its name in 1994. Iatros and its subsidiaries owned, leased, and managed long term health care facilities in a number of eastern, mid-south, and western states. In 1995, Iatros acquired Kasirer's respiratory rehabilitation company, King Care Respiratory Services, Inc., whereupon Kasirer became a member of Iatros' board of directors. Iatros' subsidiary IHN/Health Services Group, Inc. ("IHN"), managed the early Heritage facilities until Heritage terminated the contract on June 1, 1997. Thereafter, Health Care Holdings managed the Heritage facilities.

23. Health Care Holdings, L.P., was a manager of specialty healthcare facilities formed by Kasirer as a Nevada limited partnership in 1994, and converted to a limited liability

corporation in 1998 (together, "Health Care Holdings"). Kasirer was the owner and chief executive officer of Health Care Holdings, which managed the Heritage facilities at issue herein from June 1, 1997 through August 1, 1999.

THE DEFENDANTS' FRAUD

The Heritage Bond Offerings

24. From February 1996 through August 1999, various affiliates of Heritage raised over \$144 million through twelve public offerings of municipal revenue bonds (the "Heritage bonds"). The Heritage bonds were issued for the stated purpose of providing financing to Heritage and its affiliates for the acquisition, renovation, and operation of healthcare facilities. The twelve Heritage bond offerings financed ten different facilities, located in Texas, Florida, Illinois and California. The facilities were to provide care to geriatric patients and persons suffering from Alzheimer's disease. Miller & Schroeder sales representatives sold the Heritage bonds. These twelve offerings are summarized below:

<u>Facility</u>	<u>Location</u>	<u>Series A</u>	<u>Series B</u>	<u>Series C</u>	<u>Total</u>
Heritage Hospital	Rancho Cucamonga	12,030,000	1,020,000		13,050,000
Danforth Gardens	Texas City	6,440,000	855,000		7,295,000
Sam Houston Gardens	Houston	9,265,000	1,105,000		10,370,000
St. Joseph Gardens	Fort Worth	11,745,000	1,675,000		13,420,000
House of Sarasota	Sarasota	10,740,000	1,565,000		12,305,000
Duval Gardens	Austin	9,190,000	1,900,000		11,090,000
Heritage House of Chicago	Chicago	15,750,000	1,525,000		17,275,000
Heritage Hospital	Rancho Cucamonga	13,900,000	8,430,000		22,330,000
St. Joseph Gardens	Fort Worth	2,010,000	2,130,000	2,715,000	6,855,000
Eastwood Gardens	Houston	8,775,000	2,545,000		11,320,000

House of Seminole	Seminole	5,820,000	1,410,000		7,230,000
Valley Gardens	Brownsville	<u>9,785,000</u>	<u>1,950,000</u>	<u> </u>	<u>11,735,000</u>
	Total:	127,480,000	27,130,000	2,715,000	144,275,000

25. The Heritage bonds were revenue bonds. That is, the Heritage bonds were not backed in any way by the credit or taxing power of the issuing municipal authorities, or of the relevant states or any of their political subdivisions or agencies. Rather, because the Heritage issues were revenue bonds, the primary source of funds available to fund interest and principal payments to the bond holders was to be the revenue generated from the operation of the respective Heritage healthcare facilities.

26. The Heritage bonds were generally structured such that each municipality or municipal corporation that issued bonds (the issuer) agreed to loan the bond proceeds to the Heritage Affiliate responsible for the facility being funded. At the same time, the issuer assigned the loan to the indenture trustee (the "Trustee"). The bond proceeds were turned over to the Trustee, which thereafter released the proceeds to the Heritage Affiliate as needed, in response to requisitions, or draw requests, submitted by the Heritage Affiliate. As required by the loan agreement, the Heritage Affiliate was to make monthly payments to the Trustee sufficient to pay, when due, the principal and interest on the bonds. At each bond closing, Miller & Schroeder entered into a "firm commitment" underwriting agreement with the issuer, by which Miller & Schroeder agreed to purchase the entire bond issue at one time, for later re-sale to investors.

27. Miller & Schroeder's sales representatives in its Minneapolis, Minnesota and Solana Beach, California offices sold the Heritage bonds to members of the public.

28. The Heritage bonds were purchased by approximately 1,800 individual investors located in thirty-six different states. In addition, certain of the Heritage bonds were purchased by a Milwaukee-based investment adviser and fund manager.

29. Six of the facilities underlying the Heritage bonds were located in Texas (Danforth Gardens, Sam Houston, St. Joseph Gardens, Duval Gardens, Eastwood Gardens and Valley Gardens). Two of the facilities underlying the Heritage bonds were located in Florida (Seminole and Sarasota). One facility was located in Illinois (Heritage House of Chicago), and one facility was located in California (Heritage Hospital).

30. Each of the Heritage projects experienced cost overruns and construction delays.

The Heritage Bond Offering Official Statements

31. An Official Statement was prepared and distributed to investors throughout the country for each of the Heritage bond offerings. An Official Statement is the municipal bond version of a prospectus. Among other things, an Official Statement for a new issue discloses to investors information about the bonds and the issuer of the bonds. The Heritage bond Official Statements were sent to brokers and to persons who purchased the Heritage bonds.

32. The Heritage bond Official Statements contained, among other things, sections describing the Bonds, the Annual Debt Service Requirements, the Plan of Financing, the Estimated Sources and Uses of Funds, the Forecasted Debt Service Coverage, the Sources of Payment and Security for the Bonds, the Financial Covenants, The Facility, The Issuer, The Company, the Management of the Facility and Bondholder's Risks.

33. Defendant Kasirer played a leading role in the drafting of the Heritage bond Official Statements. Defendant Kasirer was one of the primary drafters of the Official

Statements for the first two offerings. For the subsequent Official Statements, Defendant Kasirer instructed a Health Care Holdings employee regarding changes to be made from the previous Official Statement. Defendant Kasirer then reviewed and approved each Official Statement before it was distributed to investors.

34. Defendant Boehm acted as the Underwriter's Counsel for ten of the Heritage Bond offerings—those for the Heritage Hospital, Danforth Gardens, Sam Houston, St. Joseph Gardens, House of Sarasota, Duval Gardens, Eastwood Gardens, House of Seminole and Valley Gardens projects. Defendant Boehm also served as Bond Counsel for the second Heritage Hospital offering. As Underwriter's Counsel, Defendant Boehm was responsible for preparing the Heritage bond Official Statements. Defendant Boehm also was responsible for performing due diligence regarding the Heritage bonds. As Bond Counsel, Boehm was responsible to ensure that the second Heritage Hospital offering was validly issued under state bond law. Defendant Boehm provided information for and reviewed each of these Heritage bond Official Statements before it was distributed to investors.

35. Drafts of the Heritage bond Official Statements were distributed to Defendants Iverson and Dhooge for their review. Defendant Boehm asked Defendants Dhooge and Iverson to review and make changes to the Official Statements. As representatives of the underwriter, Defendants Dhooge and Iverson had the ability to request changes in the language of the Heritage Official Statements.

36. Drafts of the Heritage bond Official Statements were distributed to Defendant Goldstein for his review. For the first nine Heritage Official Statements (Heritage Hospital,

Danforth Gardens, Sam Houston Gardens, St. Joseph Gardens, House of Sarasota, Duval Gardens, Heritage House of Chicago, Heritage Hospital, St. Joseph Gardens II), Defendant Goldstein served as Heritage's outside counsel. Defendant Goldstein signed the last three Heritage Official Statements (Eastwood Gardens, Heritage House of Seminole, and Valley Gardens) on behalf of Heritage. As to the last three Official Statements, Defendant Goldstein represented on behalf of Heritage that "the Company has reviewed the information contained herein and has authorized all such information for use within this Official Statement." Defendant Goldstein understood that his signature meant that the representations contained in the Official Statements relating to Heritage were correct.

Defendant Kasirer Profited from the Heritage Bond Offerings

37. Defendant Kasirer's financial interest in the Heritage projects began with his ownership interest in the properties that the Heritage Affiliates purchased for eight of those projects. In the mid-1990s, Kasirer resolved a prior dispute with Columbia/HCA Health Network, Inc. ("Columbia"), through an agreement under which Columbia agreed to transfer several closed healthcare facilities to a company Defendant Kasirer owned. Defendant Kasirer then turned to Heritage and negotiated a series of complex agreements with Defendant Goldstein, Rubin and the Heritage Board on behalf of Heritage. Taken together, these agreements created a mechanism through which the Heritage Affiliates purchased healthcare facilities from Kasirer's company for eight of the projects financed by the bonds at issue in this Complaint. The Heritage Affiliates used bond proceeds from the offerings at issue in this Complaint to make those purchases. As a result of the agreements with Heritage and its affiliates, Defendant Kasirer profited from each of those purchases.

38. Defendant Kasirer also profited from the Heritage bond offerings in that Heritage selected Kasirer's company, Health Care Holdings, to manage the facilities financed with the proceeds of the Heritage bond offerings.

39. Defendant Kasirer's family also benefited from the Heritage bond offerings. Defendant Kasirer's wife, Debra Kasirer, was paid, under her maiden name, as an interior design consultant by one of the Heritage Affiliates, although she performed no work for that Affiliate. Moreover, Golden State Health Centers, Inc., of which Kasirer's father was the Vice President and Chief Operating Officer, was hired by a Heritage Affiliate to be the supervisory manager of the Sarasota project. Defendant Kasirer's father was unaware of this arrangement.

40. Defendant Kasirer also received money from the underwriter's counsel, Defendant Boehm. On or around September 1998, Boehm wrote a check to Defendant Kasirer in the amount of \$18,000 pursuant to an undisclosed agreement under which Defendant Boehm shared a portion of the underwriter's counsel fees with Defendant Kasirer. Defendant Boehm's payments to Defendant Kasirer purportedly were to compensate Defendant Kasirer for time spent by Defendant Kasirer and employees of Health Care Holdings in assisting in the preparation of the Official Statements. In effect, Defendant Kasirer was receiving a portion of the fees of the lawyer who was supposed to be conducting due diligence with respect to Defendant Kasirer. In addition, Defendant Boehm's law firm, Atkinson, Andelson, Loya, Ruud and Romo, wire-transferred monies to Debra Kasirer on October 29, 1998 in the sum of \$24,000, on January 22, 1999 in the sum of \$48,000, and on April 12, 1999 in the sum of \$24,000.

Defendant Kasirer Controlled Heritage

41. Defendant Kasirer did not hold any position with Heritage or its affiliates.

Nevertheless, Defendant Kasirer effectively controlled Heritage and the Heritage Affiliates at all times relevant herein.

42. Although he had no position with Heritage or the Heritage Affiliates, for most of the relevant period Defendant Kasirer was a signatory on the operating and payroll accounts of the Heritage Affiliates.

43. Defendant Kasirer's control over Heritage was so strong that he was able to direct that Heritage pay his personal obligations. Specifically, on April 9, 1997, Defendant Kasirer faxed a handwritten memorandum to Rubin. In that memorandum, Defendant Kasirer stated:

I was informed last night [a creditor of Kasirer] had rejected my proposal to postpone any further monthly payments of \$58,500 until the end of May at which time I would pay them off in full.

Accordingly, I must make a payment to them by April 15, 1997. Please draw the \$58,500 from Sam Houston and call it a loan and I will repay it upon the closing of St. Joseph.

As instructed by Defendant Kasirer, on or about April 11, 1997, Rubin caused Heritage to disburse \$58,500 in payment of Defendant Kasirer's personal obligation.

44. Defendant Kasirer also exercised control over the manner in which Heritage and its affiliates commingled and diverted the proceeds of the Heritage bond offerings. On January 12, 1998, an employee of Defendant Kasirer sent Defendant Kasirer a memorandum advising that funds for the Danforth and Sam Houston project funds had been depleted. In response, Defendant Goldstein, who was copied on the memorandum, wrote a note to Defendant Kasirer

asking where the money had come from to cover the cost overruns. Defendant Kasirer replied in writing to Defendant Goldstein:

I am now working on the two (2) year schedule which addresses inter-company loans to keep everything going until we catch up.

45. During the time period relevant herein, Defendant Kasirer regularly attended meetings of the Heritage Board.

46. Defendant Kasirer also exerted control over the selection and retention of Heritage Board members. Many of the Heritage Board members were friends and acquaintances of Defendant Kasirer whom Defendant Kasirer had succeeded in placing on the Heritage Board.

47. Defendant Kasirer also influenced hiring and firing decisions at Heritage. Among the individuals that Defendant Kasirer "recommended" to Heritage were its Secretary/Treasurer and its Controller. Defendant Kasirer also recommended that Heritage hire Miller & Schroeder to underwrite the bond offerings at issue herein.

48. Defendant Kasirer's influence over Heritage was so strong that in or about August 1998, after being advised that Heritage could not afford it, he arranged a Hawaiian retreat for the officials of Heritage and Health Care Holdings, for the purported purpose of achieving better working relations between Heritage and Health Care Holdings. Defendant Kasirer was able to charge the cost of the Hawaiian retreat, approximately \$40,000, to several of the Heritage Affiliates.

The Defendants' Commingling and Diversion of Bond Proceeds

49. As alleged above, each Heritage bond Official Statement stated that the proceeds from each offering would be disbursed to fund debt service and to pay certain specified expenses in connection with the facility for which each offering was being conducted.

50. Nevertheless, although each Heritage Official Statement specified that the bond proceeds would only be used on the project identified in that Official Statement, Defendant Kasirer, through Rubin and other Heritage personnel, began commingling and diverting the bond proceeds among Heritage and the Heritage Affiliates shortly after the very first offering had been completed in 1996. The commingling and diversion of the proceeds from the Heritage bond offerings continued until at least September 1999.

51. Defendants Goldstein, Boehm, Iverson, and Dhooge each learned of the commingling and diversion of bond proceeds at various times during 1997 and 1998. Nevertheless, after learning of the misuse of bond proceeds, Defendants Goldstein, Boehm, Iverson, and Dhooge continued to participate in the drafting and distribution of Official Statements and in the offer and sale of Heritage bonds, without disclosing the commingling and diversion of the bond proceeds. Indeed, after he became an officer of Heritage, Defendant Goldstein personally directed numerous wrongful disbursements of bond proceeds among Heritage and the Heritage Affiliates.

52. For example, the first of the Heritage bond offerings was a \$13 million issue conducted in February 1996 for the Heritage Hospital in Rancho Cucamonga, California, known

as the “Rancho” project. During 1996, Rubin and other Heritage personnel caused approximately \$740,000 of the bond proceeds from the Rancho offering to be diverted to Heritage.

53. As another example, in December 1996, \$7.3 million in municipal bonds were issued to finance a Heritage facility in Texas City, Texas, the “Danforth” project. Within four months, Rubin and other Heritage personnel, diverted approximately \$890,000 of the Danforth bond proceeds to pay costs of the Rancho project in California. Then, during the course of 1997, Rubin and other Heritage personnel, diverted \$1 million in bond proceeds from the next two Heritage projects—Sam Houston and St. Joseph, bonds for which were issued in March and May 1997—to the Rancho project. Before the end of 1997, Rubin and other Heritage personnel diverted approximately \$1.1 million of the bond proceeds from the Sam Houston and St. Joseph projects to the Danforth project.

54. As another example, in December 1997, the Defendants raised approximately \$11.7 million through an offering of bonds for a Heritage facility in Sarasota, Florida, the “Sarasota” project. Within six months, Rubin and other Heritage personnel had diverted over a third of those bond proceeds, over \$4.4 million, to other Heritage projects.

55. In a June 16, 1998, memorandum Defendant Kasirer informed Defendant Goldstein that Kasirer had “advised [a Health Care Holdings employee] that she is to speak to [a Heritage consultant/director recommended by Kasirer] twice a day to apprise him of cash needs henceforth. After we get over the hump, she will speak to [the consultant] once a day to advise

him of the cash needs. Based on our meeting on Monday, I think [the consultant] has an excellent plan of how to proceed forward; we just need to get it done.”

56. Approximately \$8 million of bond proceeds were commingled and diverted among the various Heritage projects from February 1996 through June 1998.

57. Defendant Goldstein became President of Heritage in August 1998. From that time through at least August 1999, Defendant Goldstein, with the knowledge and approval of Defendant Kasirer, directed still more commingling and diversion of proceeds from the Heritage bond offerings. From July 1998 through at least September 1999, approximately \$13 million of the bond proceeds were commingled and diverted among Heritage and the various Heritage projects.

False Written Requests for Funds

58. As part of the scheme to divert bond proceeds from one Heritage project to another, Heritage personnel sent false written requests for funds to the Trustee.

59. From early 1997, bond proceeds that Heritage wrongfully transferred from one affiliate to another were obtained from the Trustee through written requests that misrepresented the purposes for which the funds were being requested. In general, Heritage offered one of three “purposes” on its written requests for proceeds destined to be transferred to different projects: “construction advance,” “working capital advance,” or “renovation.”

60. For example, on May 14, 1999, Heritage personnel submitted two written requests to the Trustee for the release of funds for the Valley Gardens project, one for approximately \$455,000 and another for \$550,000. The first request represented that the \$450,000 being sought would be used for the purpose of “Renovation.” The second request represented that the

\$550,000 was a “Working Capital advance.” These written requests were signed by Defendant Goldstein on behalf of Heritage and by an employee of Defendant Kasirer, on behalf of Health Care Holdings. Neither request mentions transferring the proceeds to other Heritage projects. On or about May 17, 1999, the Trustee wired the requested \$1.05 million to a bank account for the Valley Gardens project. On or about May 19, 1999, \$1 million was wired from the Valley Gardens bank account to a Heritage bank account. That same day Heritage disbursed \$1 million among five other Heritage projects: Danforth (\$175,000), Sam Houston (\$150,000), St. Joseph (\$150,000), Duval (\$200,000), and Rancho (\$325,000).

61. In other cases, Heritage personnel created invoices and submitted them to the Trustee in support of requisitions. For instance, on July 29, 1998, Heritage sent a requisition to the Trustee on behalf of the Chicago project. The requisition sought the release of \$900,000 of bond proceeds, purportedly for “construction advances.” This request was signed by a Heritage employee and by Defendant Kasirer. The request was supported by a purported invoice for construction advances that had been created by a Heritage employee with the knowledge and approval of Defendant Kasirer. The next day, July 30, 1999, the Trustee disbursed the requested \$900,000 to a bank account of the Chicago project. That same day, the entire \$900,000, which had purportedly been requested for the Chicago project, was transferred from the Chicago project’s bank account to Heritage. On the same day that Heritage received the \$900,000 from the Chicago project, Heritage transferred \$625,000 to a bank account for the Sarasota project and \$300,000 to a bank account for the Rancho project.

62. Personnel of Heritage, the Heritage Affiliates, and Health Care Holdings, including Defendants Kasirer and Goldstein, submitted numerous additional falsified written

requests for the release of bond proceeds in order to misappropriate funds from one Heritage project and wrongfully transfer these funds to another Heritage project.

Defendants' Knowledge of the Wrongful Transfers of Bond Proceeds

63. Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge knew, or were reckless in not knowing, that bond proceeds were being improperly commingled and diverted. For example:

64. On March 6, 1997, Bond Counsel for the Sam Houston project wrote to Defendant Boehm advising Defendant Boehm that he had learned of an agreement, under which a Heritage entity had incurred a liability in connection with the St. Joseph's acquisition and that the Heritage entity intended to repay the liability when the Sam Houston bonds were issued. In Bond Counsel's letter, which was addressed to Defendant Boehm and copied to Defendants Goldstein, Kasirer, and Dhooge, Bond Counsel stated:

[I was advised] that in connection with the St. Joseph's acquisition, a Columbia entity loaned Heritage V \$32,878.30 for which Heritage V gave a promissory note ("the Heritage V. Note"). . . . Heritage V agreed to repay the Heritage V Note when the Sam Houston bonds are issued. . . . As we are sure you are aware, the Sam Houston bond proceeds may not be used to repay the Heritage V Note.

65. In performing an audit of the 1996 financial statements of the Rancho project, Heritage's independent auditors discovered that during 1996 Heritage had disbursed bond proceeds for the Rancho project in ways that were inconsistent with the Official Statement for the Rancho offering. On May 30, 1997, the Heritage auditors sent a letter to the Board of Directors of the Heritage Affiliate for the Rancho project. In this letter, the auditors stated:

The funds received from the bond proceeds were not used according to the covenants and agreements i.e. the receivable from Heritage Housing. If this is not corrected, the tax exempt status of bonds could be in jeopardy.

The Board of Directors of the Heritage Affiliate for the Rancho project consisted of the Directors of Heritage.

66. In March 1998, Heritage auditors spoke with Defendants Boehm and Dhooge and expressed concern about the transfers of bond proceeds among various Heritage projects. Defendant Boehm told the auditors that such “inter-company transfers” were not prohibited under the Heritage bond offering documents and that while such transfers were not preferred, they were common among non-profit entities and did not break any laws.

67. On June 1, 1998, a meeting took place in Miller & Schroeder’s Solana Beach office. Defendants Kasirer, Goldstein, Boehm, Iverson, and Dhooge all attended the meeting. Defendants Goldstein and Kasirer informed those present of at least one instance of a misappropriation of investor funds and a wrongful transfer of these funds. At the meeting Defendant Dhooge instructed Defendants Kasirer and Goldstein that only surplus revenues, not bond proceeds, could be loaned from one project to another project.

68. Defendants Iverson, Dhooge, and Boehm did not attempt to obtain more specific information from Defendants Goldstein and Kasirer at the meeting. Defendants Iverson, Dhooge, and Boehm also did nothing to notify the Trustee or the investors of the misappropriation that had taken place. Nor did Defendants Iverson, Dhooge, and Boehm take any action to prevent the misappropriation of bond proceeds in the future. In fact, at or after the meeting, Defendant Iverson instructed Defendant Dhooge not to tell the Minneapolis office of Miller & Schroeder or the Trustee about the misappropriation of investor funds.

69. On June 9, 1998, the Heritage auditors sent a letter to the Board of Directors and Management of St. Joseph Gardens. In their letter, the auditors stated:

During the year, there were a substantial volume of advances to and from affiliates, resulting in unreconciled accounts and cash flow constrictions. The bond documents required the proceeds of the bond to be used solely on the Organization's project.

70. On the same date, June 9, 1998, the Heritage auditors sent a letter to the Board of Directors and Management of Sam Houston Gardens. In that letter, the auditors stated:

During the year, there were a substantial volume of advances to and from affiliates, resulting in unreconciled accounts and cash flow constrictions. The bond documents required the proceeds of the bond to be used solely on the Organization's project.

71. The Directors of Heritage constituted the Boards of Directors of the Heritage Affiliates for the St. Joseph and Sam Houston projects.

72. In the Summer of 1998, a Health Care Holdings employee learned of the diversion of bond proceeds. The employee spoke to Defendant Kasirer and advised Kasirer that he was surprised by the high dollar amounts involved in the transfers. Defendant Kasirer told the employee that with the proceeds from the next bond financing all would be corrected.

73. On July 17, 1998 Defendant Goldstein sent a letter to a contractor working on one of the Heritage projects. In his letter, Defendant Goldstein stated:

This is to confirm that I am general counsel for the Heritage Companies; that I am familiar with the fundings presently scheduled to close this month for Heritage; and that I am familiar with the sums due you by Heritage for services rendered.

Please be advised that from the fundings you will receive the following:

1. \$500,000 on or before July 31, 1998
2. \$500,000 on or before August 7, 1998

The balance of the funds now due you should be paid on or before September 30, 1998.

Misrepresentations and Misleading Omissions in the Official Statements
Regarding Uses of the Bond Proceeds

74. Each Heritage bond Official Statement contained a section regarding “Estimated Sources and Uses of Funds.” In each Official Statement, the listed uses—purchase price of existing facility, renovation, architecture and engineering, costs of issuance—all related to costs of the facility for which the bonds were issued.

75. Each Heritage bond Official Statement also contained a summary statement such as the following, from the Valley Gardens offering Official Statement: “The proceeds derived from the sale of the [Valley Garden] Bonds will be used to repay certain debt obligations incurred in connection with the acquisition of the Existing Facility, perform the Renovation Project, fund a Debt Service Reserve Fund, initially fund the Valley Gardens Indigency Fund, fund start-up costs and capitalized interest and pay certain costs of issuance with respect to the [Valley Garden] Bonds.” In each offering, the stated uses for the bond proceeds related only to the particular facility involved with that offering.

76. None of the Heritage bond Official Statements disclosed that a possible use of the bond proceeds might be a transfer of those proceeds to other, failing, Heritage projects.

77. None of the Heritage bond Official Statements disclosed the extensive commingling of bond proceeds among the various Heritage projects, the financial interdependence of the Heritage projects, the contemplated use of bond proceeds to pay existing facilities expenses, or the construction delays, cost overruns and financial difficulties

experienced at the other Heritage projects. The Heritage bond Official Statements did not disclose these material facts, even though Defendants Kasirer and Goldstein knew, and Defendants Boehm, Iverson and Dhooge knew, or recklessly disregarded, the undisclosed facts.

78. Four of the Heritage facilities, (Duval Gardens, Eastwood Gardens, House of Seminole, and Valley Gardens) were part of a master indenture financing structure. This master indenture financing structure was instituted at the request of Miller & Schroeder and allowed surplus revenues of the projects—not bond proceeds, but, rather operating revenues remaining after debts and other obligations had been met—to be utilized to obligors under the master indenture. The master indenture financing structure did not permit the transfer of bond proceeds from one project to another.

Other Misrepresentations and Omissions in the Heritage Offering Documents

79. Each of the Official Statements represented that Heritage and the Heritage Affiliate involved in that offering were governed by an Independent Board of Directors which was responsible for overseeing and managing the affairs of Heritage and the Heritage Affiliate. These representations were false and misleading. In fact Heritage and the Heritage Affiliates involved in the offerings were effectively controlled by Defendant Kasirer.

80. Each of the Heritage bond Official Statements touted the experience and abilities of Defendant Kasirer. The Official Statements highlighted Kasirer's experience in developing retirement communities, assisted living facilities and healthcare facilities for not-for-profit owners. However, the Official Statements failed to disclose Defendant Kasirer's control of Heritage, his several prior business failures, and several judgments that had been entered against

him. Defendants Goldstein and Boehm knew these undisclosed facts, and Defendants Iverson and Dhooge knew, or recklessly disregarded, these undisclosed facts.

82. 81. The Heritage Official Statements failed to disclose the conflict of interest created by the fact that the underwriter's counsel had entered into an agreement with Kasirer, wherein the underwriter's counsel was giving a portion of his fees to Kasirer.

COUNT I

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder

82. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 81, above.

83. By reason of the activities described above in paragraphs 1 through 81, Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge, in connection with the purchase and sale of securities, and by the use of the means and instrumentalities of interstate commerce and by the use of the mails, directly and indirectly employed devices, schemes and artifices to defraud; made untrue statements of material fact 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 engaged in acts, practices and courses of business which operated and would operate as a fraud and deceit.

84. Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge acted with scienter when they engaged in the conduct described in paragraphs 1 through 81, above.

85. By reason of the activities described in paragraphs 1 through 81, above, Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge violated Section 10(b) of the

Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

COUNT II

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

86. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 81, above.

87. By reason of the activities described above in paragraphs 1 through 81, Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge, in the offer and sale of securities, by the use of the means and instrumentalities of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud.

88. Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge acted with scienter when they engaged in the conduct described in paragraphs 1 through 81, above.

89. By reason of the activities described in paragraphs 1 through 81, above, Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge violated Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

COUNT III

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act

90. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 81, above.

91. By reason of the activities described above in paragraphs 1 through 81, Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, obtained money and property by means of untrue statements of material facts 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 engaged in transactions, practices and courses of business which operated or would operate as a fraud and deceit upon investors and prospective investors.

92. By reason of the activities described in paragraphs 1 through 81 above, Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(2) and (3)].

COUNT IV

Relief Defendants

93. Debra Schoenfeld Kasirer (“Debra Kasirer”) a/k/a Debra Schoenfeld, age 50, is Robert Kasirer’s wife. She resides with Kasirer in Beverly Hills, California.

94. Bistra & Munkacs Holdings, Inc. (“Bistra & Munkacs Holdings”) f/k/a BHMC Corp. is a Delaware corporation, of which Kasirer is the president.

95. JDDJ Holdings, L.P. (“JDDJ Holdings”) f/k/a CareContinuum, L.P. f/k/a BHMC, L.P. is a California limited partnership. BHMC Corp., the predecessor to Bistra & Munkacs Holdings, Inc., is the general partner of JDDJ Holdings, L.P.

96. CareContinuum, L.L.C. (“CareContinuum”) f/k/a CF Holdings, L.L.C. is a California limited liability company of which Kasirer is a general partner.

97. Health Care Holdings, L.L.C. (“Health Care Holdings”) f/k/a Health Care Holdings, L.P. is a California limited liability company of which Kasirer is the general partner.

98. Healthcarecontinuum, L.L.C. (“Healthcarecontinuum”) is a California limited liability company of which Kasirer is a general partner.

99. Mishkan Healthcare, Inc. (“Mishkan Healthcare”) is a California corporation of which Debra Kasirer is the president.

100. Kasirer Yeladim Holdings, L.L.C. (“Kasirer Yeladim Holdings”) is a California limited liability company of which Kasirer is the general partner.

101. Altogether, Robert Kasirer and the Relief Defendants received more than \$20 million of ill gotten funds in connection with the twelve Heritage offerings.

102. Robert Kasirer received at least \$1.1 million.

103. Debra Kasirer received at least \$1 million.

104. JDDJ Holdings received at least \$10.8 million. JDDJ Holdings transferred some of the money it received to Kasirer and to Bistra & Munkacs Holdings, which is the general partner of JDDJ Holdings.

105. CareContinuum and Health Care Holdings together received at least \$7.1 million.

106. Healthcarecontinuum received at least \$219,480.

107. Mishkan Healthcare received at least \$122,000.

108. Kasirer Yeladim Holdings received at least \$193,000. This money was paid to a Utah title company for the benefit of Kasirer Yeladim Holdings, which owns a house in Park City, Utah.

109. The money received by the Relief Defendants constituted ill gotten funds.

110. The Relief Defendants have no legitimate claim to the ill gotten funds they were paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States Securities and Exchange Commission, respectfully requests that this Court:

A. Find that Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge committed the violations alleged in this Complaint;

B. Permanently enjoin Kasirer, Goldstein, Boehm, Iverson and Dhooge those persons in active concert or participation with it who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. §77(q)(a)], Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder;

C. Order Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge to disgorge all ill-gotten gains received by them as a result of the wrongful conduct set forth in this Complaint, including prejudgment interest;

D. Order Defendants Kasirer, Goldstein, Boehm, Iverson and Dhooge to pay appropriate civil penalties for the wrongful conduct set forth in this Complaint, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)];

E. Grant an Order requiring Debra Kasirer, JDDJ Holdings, CareContinuum, Health Care Holdings, Healthcarecontinuum, Mishkan Healthcare, and Kasirer Yeladim Holdings to

disgorge all the monies, including prejudgment interest, that were wrongfully obtained in connection with the Defendants' fraud and that were then paid to the Relief Defendants.

F. Grant such additional relief as this Court deems appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Birkenheier". The signature is written in a cursive style with a large initial "J" and "B".

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Dated: November 15, 2004

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A handwritten signature in black ink, appearing to read "John E. Birkenheier", written over a horizontal line.

John E. Birkenheier
Securities & Exchange Commission