

fraudulent offering of promissory-note securities. Kaleta solicited investors on KCM's behalf, misrepresenting numerous important facts about the investment. For example, Kaleta represented that KCM would use the offering proceeds to provide short-term loans to credit-worthy small businesses. Instead, at Kaleta's direction, KCM loaned approximately \$6.7 million of the offering proceeds to Relief Defendants DFFS and BizRadio, two financially precarious KCM affiliates who had no reasonable prospect of repaying the loans. Kaleta also took approximately \$1.5 million of the offering proceeds to pay his personal expenses. Finally, contrary to Kaleta's representations regarding the use of offering proceeds, KCM, at Kaleta's direction, used offering proceeds to make interest payments to some promissory-note investors.

2. By reason of these activities, Defendants Kaleta and KCM violated Sections 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Defendant Kaleta also violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)].

3. The Commission, in the interest of protecting the public from any further fraudulent activity, brings this action and seeks a judgment from the Court: (a) enjoining Kaleta and KCM from engaging in future violations of the aforementioned antifraud provisions of the federal securities laws; (b) ordering Kaleta and KCM to disgorge, with prejudgment interest, their illicit profits as a result of the actions described herein; (c) ordering Kaleta and KCM to pay civil money penalties; and (d) ordering the appointment of a receiver over KCM to marshal and preserve its assets for the benefit of the investors. Further, the Commission is seeking disgorgement from the Relief Defendants, who are named in this civil action solely for the purposes of equitable relief.

Jurisdiction and Venue

4. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9].

5. The Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. §§ 78aa], Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce or the facilities of a national securities exchange in connection with the acts, practices and courses of business described in this Complaint.

6. Venue is proper in the Southern District of Texas because transactions, acts, practices, and courses of business described herein occurred, and the Defendants may be found, within this judicial district.

Parties

7. Plaintiff Commission is an agency of the United States of America charged with enforcing the federal securities laws.

8. Defendant Kaleta, aged 66, is a resident of Missouri City, Texas.

9. Defendant KCM is a Texas corporation owned by Kaleta, with its principal place of business in Missouri City, Texas.

10. Relief Defendant BizRadio, a Texas limited partnership, is a private-equity fund.

11. Relief Defendant DFFS, a Texas corporation, is a Commission-registered investment adviser with its principal place of business in San Antonio, Texas. It also has offices in Houston and Dallas, Texas.

Statement of Facts

12. During the period of the misconduct described herein, Kaleta owned 100% of KCM and approximately 44% of DFFS. He was likewise a Texas-registered investment-adviser representative and served as DFFS's vice president and chief compliance officer. Kaleta and others controlled BizRadio.

13. In or about December 2007, KCM, by and through Kaleta, began offering investors, many of whom were DFFS clients, three-year promissory notes. Under each note, KCM promised 10% interest annually and a one-third return of principal annually. The notes also provide that, should KCM fail to timely pay, investors could redeem their notes with 30-days notice. Through August 2009, KCM sold such notes to approximately 50 investors, raising approximately \$10 million.

14. No written offering materials accompanied the notes, each of which was signed by Kaleta. Rather, Kaleta orally represented to investors the following: (1) that KCM would use the note proceeds to make short-term loans to small businesses; (2) that KCM would only lend to credit-worthy entities whose investment models Kaleta had fully researched and understood; (3) that Kaleta would perform due diligence to ensure that such entities had the ability to repay KCM; (4) that KCM would charge borrowing entities 12% to 14% annual interest on the short-term loans; and (5) that KCM would profit from the spread between the amount borrowing entities paid on their loans and the 10% interest promised to KCM promissory-note investors. Kaleta also represented to investors that he maintained a reserve account to cover note repayments and that he personally guaranteed the notes, indicating that he had sufficient personal wealth to repay investors in full.

15. In reality, Kaleta did not maintain the promised reserve account and did not

perform due diligence to ensure that borrowers had the ability to repay KCM. Indeed, under Kaleta's direction, KCM loaned funds to non-creditworthy entities that had no reasonable prospect of repaying the loans. KCM loaned more than \$5.5 million to BizRadio, including more than \$3.6 million in the first eight months of 2009. BizRadio's financial statements showed more than \$1.6 million in losses during that eight-month period. Meanwhile, its only significant assets were illiquid radio-station licenses. KCM likewise loaned approximately \$1.2 million to DFFS, which did not have sufficient revenue or assets to service such a loan. This negative financial information regarding BizRadio and DFFS was available to Kaleta while he directed KCM to loan money to BizRadio and DFFS. Not surprisingly, BizRadio and DFFS have not made the payments to KCM as required under the terms of their loans.

16. In addition, at gross variance to representations made to investors regarding the use of proceeds, Kaleta used funds raised in the KCM note offering to pay personal expenses. He used offering proceeds to pay more than \$10,000 per month cover credit card bills for him and his family. He also paid thousands of dollars to Mercedes-Benz for one or more automobiles. In total, Kaleta took approximately \$1.5 million from the offering proceeds to pay personal expenses.

17. Also, at Kaleta's direction, KCM used offering proceeds from certain investors to make interest payments to other investors. In some instances, KCM received note-offering proceeds and transferred them to Biz Radio. Then, within a day or two, Biz Radio returned those same funds to KCM as "interest payments" or "reimbursements." KCM then used these funds to pay interest to other investors. These round-trip transactions masked the reality that the so-called interest payments to KCM investors were simply fund transfers from one KCM investor to another.

FIRST CLAIM
(Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5)

18. The Commission realleges and reincorporates paragraphs 1 through 17 as if fully set forth herein.

19. Defendants, directly or indirectly, singly or in concert with others, on connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails (a) have employed devices, schemes, and artifices to defraud, (b) have made untrue statements of material facts and have 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) have engaged in acts, practices, and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers, and other persons.

20. As part of and in furtherance of their scheme to defraud, Defendants, directly or indirectly, prepared, disseminated, used, issued, or made oral presentations, false and misleading account statements, promotional materials, investor and other correspondence, which contained untrue statements of material facts and misrepresentation of material facts, and which 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, including, but not limited to, those set forth above.

21. Defendants made these misrepresentations and omissions knowingly or with severe recklessness.

22. By reason of the actions alleged herein, Defendants have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

SECOND CLAIM
(Violations of Section 17(a) of the Securities Act)

23. The Commission realleges and reincorporates paragraphs 1 through 17 as if fully set forth herein.

24. Defendants, directly or indirectly, singly or in concert with others, 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 have (a) knowingly or with severe recklessness employed devices, schemes, or artifices to defraud; (b) negligently obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; and (c) negligently engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

25. As part of and in furtherance of this scheme, Defendants, directly or indirectly, prepared, disseminated, used, issued, and made oral presentations, false and misleading account statements, promotional materials, investor and other correspondence, which contained untrue statements of material fact and which 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, including, but not limited to, those statements and omissions set forth above.

26. By reason of the foregoing, the Defendants have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM
(Violations of Section 206 of the Advisers Act)

27. The Commission repeats and incorporates paragraphs 1 through 17 above by reference as if set forth verbatim.

28. Defendant Kaleta, an investment adviser, directly or indirectly, singly or in concert with others, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails (a) has employed devices, schemes, or artifices to defraud clients and prospective clients and (b) has engaged in transactions, practices, or courses of business which operate as fraud or deceit upon these investors.

29. Defendant Kaleta knew or was reckless in not knowing that the representations and omissions set forth herein were false and misleading.

30. By reason of the activities described above, Defendant Kaleta violated and, unless enjoined, will continue to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

FOURTH CLAIM
(Unjust Enrichment (Against Relief Defendants))

31. The Commission hereby incorporates Paragraphs 1 through 17 by reference as if set forth verbatim.

32. Relief Defendants received funds and property from KCM, which are proceeds, or are traceable to the proceeds, of the unlawful activities of Defendants, as alleged above.

33. Relief Defendants obtained the funds and property alleged above as part of and in furtherance of the securities violations alleged in Paragraphs 1 through 17 above and under circumstances in which it is not just, equitable, or conscionable for them to retain the funds and property. As a consequence, Relief Defendants do not have a rightful claim to these funds and were therefore were unjustly enriched.

REQUEST FOR RELIEF

34. Therefore, the Commission respectfully requests that the Court:

35. Permanently enjoin Defendants Kaleta and KCM from violating Section 17(a) of

the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

36. Permanently enjoin Defendant Kaleta from violating Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

37. Order the Defendants to disgorge an amount equal to the funds and benefits they obtained illegally, or to which they are otherwise not entitled, as a result of the violations alleged, plus prejudgment interest on that amount.

38. Order the Relief Defendants to disgorge an amount equal to the funds and benefits they obtained illegally, or to which they are not entitled, as a result of the violations alleged.

39. Order Defendants Kaleta and KCM to pay monetary penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and, as to Kaleta, Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].;

40. Grant such ancillary and other relief as this Court may deem just, equitable, and necessary.

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Respectfully submitted,
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