

SUMMARY

1. The Commission brings this emergency action to obtain relief including asset freezes and an accounting of at least \$1.75 million that Kothare (through Sterling) misappropriated from about 18 Sterling investment advisory clients and invested in Players Choice, a web-based sports club that Kothare controls. Kothare is the chairman and sole owner of Sterling, a registered investment advisory firm. Kothare is also one of the founders of Players Choice and the chairman of its board of managers. In breach of his fiduciary duty to his advisory clients, Kothare transferred Sterling clients' funds to Players Choice without obtaining the clients' written consent and without disclosing significant conflicts of interest. At some point, Kothare disclosed the "investments" in the Club on the clients' Sterling account statements but failed to disclose that he controls Players Choice, and that, with no reasonable basis, he set the purported market value for the Players Choice units that appeared on clients' statements. Also, in another scheme, Kothare fraudulently transferred assets from a deceased client's custodial brokerage account to entities he controls, including his own law practice.

2. Kothare and Players Choice have failed to disclose, and are continuing to fail to disclose, that the Club has lost its most significant asset -- a two-year license from the Major League Baseball Players Association ("MLBPA") that allowed Players Choice to use the likenesses and names of players to, among other things, market and sell certain products. This license is critical to the Club's business. Among other things, Club membership entitled individuals to attend "meet and greet" events with major league baseball players. Having lost its license, Players Choice has no saleable assets and is likely worthless. Despite this, Kothare and Sterling have continued to misrepresent the

market value of Players Choice units on investors' account statements and have otherwise failed to disclose the loss of the license in conversations with investors.

3. Defendants have defrauded, and are continuing to defraud, Sterling clients by failing to provide all of the material facts concerning the Players Choice investment to investors before or after transferring their money to the Club.

4. Kothare and Sterling, fiduciaries to the Sterling clients invested in Players Choice, have also violated, and are continuing to violate, the custody provisions of the Investment Advisers Act of 1940 ("Advisers Act"). Had Kothare and Sterling complied with the custody provisions, Sterling clients would have known the true value of their investments, including that the investments are now worthless.

5. Specifically, as investment advisors with control over client assets, Kothare and Sterling are required, among other things, to have the Sterling accounts invested in Players Choice verified annually by surprise examination by an independent accountant. As a result of Kothare's and Sterling's failure to comply with this requirement, no independent accountant has been able to verify the Sterling clients' investments in the Club since its inception, in or about January 2005. In addition, the Defendants have refused to provide an accounting regarding the Club's use of investor funds to the Commission.

6. By Kothare's own admission, the Club's assets have dwindled from approximately \$3 million in cash to as little as \$200,000 in fewer than six months.

7. Through this abuse of trust by the Defendants, about \$1.75 million in client funds are now unaccounted for.

8. Kothare breached his fiduciary duty to at least one other investment advisory client. Kothare fraudulently transferred assets from a deceased client's custodial brokerage account to Kothare's law firm and another entity he controls. After his client's death, Kothare used a power of attorney certification to wrongfully write at least eight checks totaling approximately \$97,000 against the deceased client's custodial brokerage account.

9. After an attorney representing the client's son filed objections in a probate proceeding, Kothare failed to appear in Surrogate's Court in Suffolk County for an examination to address allegations that he had been marshalling estate assets and utilizing estate funds without preliminary letters of testamentary. Kothare was subsequently disqualified from acting as executor for the estate.

10. By this action, the Commission seeks to freeze the Defendants' assets to prevent the possible dissipation of remaining assets and compel the Defendants to submit accountings on an emergency basis.

11. The Commission also seeks, as immediate relief, a temporary restraining order and preliminary injunction order against the Defendants, the appointment of receivers over Players Choice and Sterling, and an order prohibiting the Defendants from destroying or altering documents.

VIOLATIONS

12. By virtue of the conduct alleged in this Complaint:

- a. Defendants Kothare and Sterling, directly or indirectly, singly or in concert, have engaged and are engaging in violations of Sections 204, 206(1), 206(2), 206(4) and 207 of the Advisers Act [15 U.S.C. §§ 80b-

4, 80b-6(1), (2) and (4) and 80b-7] and Rules 204-2 and 206(4)-2 thereunder [17 CFR §§ 275.204-2, 275.206(4)-2]; and

- b. Defendants, directly or indirectly, singly or in concert, have engaged and are engaging in acts, practices and course of business that constitute violations of Section 17(a) of the Securities Acts 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 [17 C.F.R. § 240.10b-5].

13. Unless Defendants are temporarily restrained and preliminarily and permanently enjoined, they will continue to engage in the acts, practices, and course of business alleged herein, and in acts, practices, and courses of business of a similar type and object.

JURISDICTION AND VENUE

14. The Commission brings this action pursuant to the authority conferred by Section 209 of the Advisers Act [15 U.S.C. § 80b-9], Section 20(b) of the Securities Act [15 U.S.C. § 77t(a)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking a temporary restraining order and preliminary and permanent injunctions, asset freezes, the appointment of receivers for Players Choice and Sterling, verified accountings, expedited discovery, and an order prohibiting the Defendants from destroying or altering documents.

15. The Commission also seeks final judgments requiring the Defendants to disgorge any ill-gotten gains and to pay prejudgment interest thereon and ordering the Defendants to pay civil money penalties pursuant to Section 209(e) of the Advisers Act

[15 U.S.C. § 80b-9], Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

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

17. The Defendants, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged herein.

18. Venue lies in this District pursuant to Section 214 of the Advisers Act [15 U.S.C. § 80b-14], 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]. A substantial number of the events and omissions giving rise to the Commission's claims occurred in the Southern District of New York as Sterling's offices are located in the Southern District of New York and at least one victim of the fraud resides in New York, New York.

THE DEFENDANTS

19. **Kothare**, is 45 years old, a resident of Voorhees, New Jersey, and is the president and sole owner of Sterling, a registered investment advisory firm located in New York. He is also an attorney registered in New Jersey and owns and operates a law practice. Upon information and belief, Kothare is also a certified public accountant registered in New Jersey and Pennsylvania with an accounting practice, and president and

