

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MARKET STREET ADVISORS,
SHAWN R. MERRIMAN,
LLC-1,
LLC-2,
MARQUE LLC-3, and
LLC-4,

Defendants,

and

IMPRESSIONS EVERLASTING,

Relief Defendant.

COMPLAINT

Plaintiff, United States Securities and Exchange Commission (“SEC”), states and alleges as follows against Defendants:

I. SUMMARY OF THE CASE

1. From 1994 to 2009, Shawn R. Merriman, through his entity Market Street Advisors, conducted a multi-million dollar Ponzi scheme, raising at least \$17-20 million through the sale of interests in at least four limited liability companies to at least 38 investors in multiple states.

2. Merriman fraudulently represented to investors that he would invest their money in stocks and options and, to maintain that appearance, generated false monthly statements showing annual rates of return of 7% to 20%.
3. Contrary to those representations, Merriman used investor proceeds to pay for withdrawals by other investors and to pay for personal expenses and support his lavish lifestyle.
4. The SEC seeks to halt Merriman's fraudulent scheme and to freeze his assets and those of Market Street Advisors, the four LLC's, and another entity owned by Merriman that received proceeds from the Ponzi scheme to: (1) preserve funds of investors pending the final disposition of this litigation; and (2) stop the use of investor funds to perpetrate any additional fraudulent offerings. Therefore, the SEC requests that the Court enter the emergency and other relief detailed below in the prayer for relief.

II. JURISDICTION AND VENUE

5. The SEC brings this civil enforcement action seeking a temporary restraining order, preliminary and permanent injunctions, disgorgement plus prejudgment interest, and civil penalties for violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)]; Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]; Sections 206(1), (2), and (4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-6(1), (2), and (4)]; and Advisers Act Rule 206(4)-8 [17 C.F.R. §_275.206(4)-8].
6. The Court has jurisdiction pursuant to Securities Act Sections 20(b) and 22(a) [15 U.S.C. §§ 77t(b) and 77v(a)]; Exchange Act Section 21(d) and (e), and 27 [15 U.S.C. §§ 78u(d) and (e) and 78aa]; and Advisers Act Section 209(c) and (d) [15 U.S.C. §_80b-9(c) and (d)].

7. In connection with the acts described in this Complaint, the Defendants have used the mails, other instruments of communication in interstate commerce, and means or instrumentalities of interstate commerce.

8. Venue lies in this Court pursuant to Securities Act Section 22(a) [15 U.S.C. § 77v(a)]; Exchange Act Section 27 [15 U.S.C. § 78aa]; Advisers Act Section 209(c); and 28 U.S.C. § 1391(b)(1) & (2). During the period of conduct alleged herein, Market Street Advisors, LLC-1, LLC-2, Marque LLC-3, LLC-4, and Impressions Everlasting were organized under the laws of, and maintained offices in, Colorado. Further, Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3, and LLC-4 engaged in the offer and sale of securities in Colorado, and many of the acts and practices described in this Complaint occurred in Colorado. Moreover, Merriman is a resident of Aurora, Colorado.

III. DEFENDANTS

9. **Market Street Advisors**, a Colorado limited liability with its principal place of business in Aurora, Colorado, is a purported investment adviser entity owned by Merriman and through which Merriman conducted his Ponzi scheme.

10. **Shawn R. Merriman**, 46, resides in Aurora, Colorado and is the owner of Market Street Advisors.

11. **LLC-1**, a Colorado limited liability company, is an investment fund established by Merriman. Merriman sold ownership interests in LLC-1 to investors based on false claims that he would invest the proceeds from those sales in stocks and options.

12. **LLC-2**, a Colorado limited liability company, is an investment fund established by Merriman. Merriman sold ownership interests in LLC-2 to investors based on false claims that he would invest the proceeds from those sales in stocks and options.

13. **Marque LLC-3**, a Colorado limited liability company, is an investment fund established by Merriman. Merriman sold ownership interests in Marque LLC-3 to investors based on false claims that he would invest the proceeds from those sales in stocks and options.

14. **LLC-4**, a Colorado limited liability company, is an investment fund established by Merriman. Merriman sold ownership interests in LLC-4 to investors based on false claims that he would invest the proceeds from those sales in stocks and options.

IV. RELIEF DEFENDANT

15. **Impressions Everlasting**, a Colorado limited liability company, was established by Merriman to purchase fine art using proceeds from Merriman's Ponzi scheme.

V. FACTUAL ALLEGATIONS

16. After working as a stock broker for approximately five years, Merriman started his own investment business in 1994 under the name Market Street Advisors. Merriman formed an entity by that name in 1996.

17. In or around 1995, Merriman established his original investment fund. That fund had an aggressive investment strategy and lost approximately \$400,000 shortly after inception.

18. Rather than reporting those losses to investors, Merriman started another fund to receive new investment monies that would cover any withdrawals by investors from the first fund.

19. Merriman subsequently started a third and a fourth fund, and used new investment monies to pay investors who were requesting withdrawals and, eventually, to support his lavish lifestyle.

20. While Merriman traded some securities initially, he stopped doing so after about one year and, subsequently, all investor proceeds were used to pay other investors and for his personal expenses.

21. Between 1994 and 2009, Merriman raised at least \$17-20 million from at least 38 investors. The investors, many of whom appear to have been family friends of Merriman and some of whom were seniors, resided in multiple states, including Colorado, Minnesota, and Utah.

22. On several occasions, in an effort to perpetuate his Ponzi scheme, Merriman set up programs to try to entice existing investors to invest additional sums of money. For example, on at least one occasion, Merriman attempted to entice investors to invest additional funds by offering an 11% “bonus” or “rebate” on additional funds invested, up to a certain amount.

23. On other occasions, Merriman represented to investors that a liquidating investor had requested an expedited withdrawal of funds, for which the liquidating investor would incur a 20% penalty. To entice those investors to invest new funds, ostensibly to replenish the funds withdrawn by the liquidating investor, Merriman offered to credit those investors’ accounts with an additional 20% of the new funds invested, up to the amount of the liquidating investor’s withdrawal. In short, Merriman was promising to give the liquidating investor’s 20% penalty to existing investors in exchange for investments of new funds.

24. While the investors purchased membership interests in limited liability companies, those investors did not exercise any control over the operations of those entities. Rather, Merriman represented to investors that he would make all investment decisions, and he in fact did so.

25. Throughout the course of his scheme, Merriman represented to investors, verbally and in writing, that all investor funds had been, were, or would be pooled and used to purchase securities.

26. Throughout the course of his scheme, Merriman also represented to investors, verbally and in writing, that Merriman had retained, was retaining, or would retain a commission of 25% of the funds' profits from investing in securities.

27. To maintain the appearance that he was investing investor funds in securities, Merriman generated periodic statements throughout the course of his scheme, which he mailed or emailed to investors, showing the purported total value of each LLC and the investor's percentage ownership of the LLC. Those periodic statements reflected annual rates of return of 7% to 20%.

28. The foregoing representations to investors were false. Contrary to his representations to investors, Merriman did not use investor funds to purchase securities; the funds he purported to manage were not profitable; the LLCs in which the investors owned interests did not have the values represented to investors; and investors were not earning the stated returns on their investments.

29. Rather, contrary to his representations, Merriman used investor funds to pay out withdrawals by other investors, to pay for his personal expenses, and to support his lavish lifestyle. Among other things, Merriman used investor money to purchase classic cars,

motorcycles, motor homes, a cabin in Idaho, and fine art collections, including works by Rembrandt that are worth millions of dollars.

30. Also contrary to his representations to investors, Merriman used investor funds to purchase art work for Impressions Everlasting.

31. Merriman knew that his representations that all investor funds had been, were, or would be pooled and used to purchase securities were false. Merriman also knew that his representations regarding his commissions were false, as there were no profits from investing in securities. And, Merriman knew that the information in the periodic statements, including information about the value of the LLCs, the value of each investor's interest in the LLCs, and the LLCs' annual rates of return, was false.

FIRST CLAIM FOR RELIEF
Fraud - Violations of Securities Act Section 17(a)(1)
[15 U.S.C. § 77q(a)(1)]

32. The SEC incorporates the allegations of paragraphs 1 through 31 as if fully set forth herein.

33. Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3 and LLC-4, directly and indirectly, with scienter, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme or artifice to defraud.

34. Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3 and LLC-4 have violated, and unless restrained and enjoined will in the future violate Securities Act Section 17(a)(1) [15 U.S.C. § 77q(a)(1)].

SECOND CLAIM FOR RELIEF
Fraud – Violations of Securities Act Sections 17(a)(2) and 17(a)(3)
[15 U.S.C. §§ 77q(a)(2) and (3)]

35. The SEC incorporates the allegations of paragraphs 1 through 31 as if fully set forth herein.

36. Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3 and LLC-4, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of untrue statements of material facts or omissions of material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

37. Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3 and LLC-4 engaged in transactions, practices or courses of business which operated as a fraud or deceit upon the purchaser of securities.

38. Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3 and LLC-4 have violated, and unless restrained and enjoined will in the future violate Securities Act Sections 17(a)(2) and 17(a)(3) [15 U.S.C. §§ 77q(a)(2) and (3)].

THIRD CLAIM FOR RELIEF
Fraud – Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder
[15 U.S.C. §§ 78j(b) and 17 C.F.R. § 240.10b-5]

39. The SEC incorporates the allegations of paragraphs 1 through 31 as if fully set forth herein.

40. Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3 and LLC-4, acting with scienter, by use of means or instrumentalities of interstate commerce or of the mails, or of any facility of a national securities exchange, used or employed, in connection with the purchase

or sale of a security, a manipulative or deceptive device or contrivance in contravention of the rules and regulations of the SEC; employed devices, schemes or artifices to defraud; made untrue statements of material fact or 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; or engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person, in violation Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

41. Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3 and LLC-4 have violated, and unless restrained and enjoined will in the future violate Exchange Act Sections 10(b) and Rule 10b-5 [15 U.S.C. §§ 78j(b) and 17 C.F.R. § 240.10b-5].

FOURTH CLAIM FOR RELIEF

Fraud – Violations of Advisers Act Section 206(1), (2), and (4) and Rule 206(4)-8 Thereunder [15 U.S.C. § 80b-6(1), (2), and (4) and 17 C.F.R. § 275.206(4)-8].

42. The SEC incorporates the allegations of paragraphs 1 through 31 as if fully set forth herein.

43. Market Street Advisors and Merriman, while acting as investment advisers, directly or indirectly, employed devices, schemes, or artifices to defraud clients or prospective clients; engaged in transactions, practices, or courses of business which operated or operate as a fraud or deceit upon any client or prospective client; and engaged in acts, practices, or courses of business which are fraudulent, deceptive, or manipulative.

44. Among other things, Market Street Advisors and Merriman made untrue statements of material facts and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or

prospective investor in pooled investment vehicles; and Market Street Advisors and Merriman otherwise engaged in acts, practices, or courses of business that are fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

45. Market Street Advisors and Merriman, have violated, and unless restrained and enjoined will in the future violate Advisers Act Section 206(1), (2), and (4) and Rule 206(4)-8.

FIFTH CLAIM FOR RELIEF
Equitable Disgorgement Against Relief Defendant

46. The SEC incorporates the allegations of paragraphs 1 through 31 as if fully set forth herein.

47. Relief Defendant Impressions Everlasting obtained money, property and assets as a result of the violations of the securities laws by Defendants Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3, and LLC-4.

48. Impressions Everlasting should be required to disgorge all illegal gains which inured to its benefit under the equitable doctrines of disgorgement, unjust enrichment and constructive trust.

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

1. Enter an Order finding that each of the Defendants Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3, and LLC-4 committed the violations alleged in the First Through Fourth Claims for Relief in this Complaint, and unless restrained will continue to do so;

2. Enter Injunctions, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, temporarily and permanently restraining and enjoining Defendants Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3, and LLC-4, and their officers, agents, servants, employees, attorneys, fictitious trade name entities, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from violating or any of the violations alleged;

3. Enter an Order freezing the assets of Defendants Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3, and LLC-4 and Relief Defendant Impressions Everlasting;

4. Order that Defendants Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3, and LLC-4 and Relief Defendant Impressions Everlasting disgorge all illegal gains, together with prejudgment and post judgment interest;

5. Order that Defendants Market Street Advisors, Merriman, LLC-1, LLC-2, Marque LLC-3, and LLC-4 pay civil money penalties pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)], Exchange Act Section 21(d) [15 U.S.C. § 78u(d)], and Advisers Act Section 209(e);

6. Order that Defendants Market Street Advisors, Merriman, LLC-1, LLC-2,

Marque LLC-3, and LLC-4 4 and Relief Defendant Impressions, and any entities that they control, each prepare a sworn accounting of their receipt, disbursement and/or use of any funds received directly or indirectly from any investor; and

7. Order such other relief as this Court may deem just or appropriate.

Dated: April 7, 2009

Respectfully submitted,

s/Julie K. Lutz

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