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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

DAVID E. RUSKJER,

Defendant.

Case No. **CV09 00237**

**COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS**

SOM

KSC

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa. Defendant David E. Ruskjer ("Ruskjer") has directly

or indirectly made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national exchange in connection with the acts, practices, and courses of business alleged herein.

2. Venue is proper in this Court 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, because Ruskjer resides in this district and certain of the transactions, acts, practices, and courses of conduct constituting the violations alleged herein occurred within this district.

SUMMARY

3. This case involves a fraudulent and unregistered offering of securities by Ruskjer, doing business as Ruskjer & Associates. From about September 2004 to December 2008, Ruskjer raised approximately \$16 million from at least 140 investors nationwide by selling and offering to sell securities in the form of promissory notes (“Notes”) purportedly paying fixed monthly interest rates ranging from 3% to 5%. No registration statement was ever filed or in effect with the Commission for the Notes offering.

4. Ruskjer personally solicited prospective investors at presentations at places like coffee shops, hotel lounges, and private residences. In addition, Ruskjer offered and sold the Notes through several “finders” who received a commission paid by Ruskjer in exchange for referring new investors. Ruskjer used telephones, the mails, and e-mails in connection with sales of the Notes. Ruskjer was never registered as a broker or dealer with the Commission.

5. Ruskjer represented to investors that he had a lucrative investment strategy for selling call options that emphasized “safety first” and “doesn’t rely on speculation.” Ruskjer also told investors that he used their funds to operate his trading strategy, made 5% to 5.5% per month from such trading, and used these profits to pay investors their returns. Contrary to Ruskjer’s representations to

investors, however, from September 2004 through December 2008, Ruskjer used only \$7.9 million (or about half of the \$16 million raised) to trade securities and incurred \$2.6 million in trading losses for a cumulative loss of 95% and an average thirty-day return of negative 5.8%. Ruskjer used about \$5.5 million to pay purported returns to investors and misappropriated the remaining investor funds for personal expenses, including \$523,466 to purchase a condominium.

6. Ruskjer's conduct violated the antifraud and securities and broker-dealer registration provisions of the federal securities laws. The Commission seeks an order permanently enjoining Ruskjer from future violations of the securities laws, requiring Ruskjer to disgorge ill-gotten gains with prejudgment interest, pay a civil monetary penalty, and providing other appropriate relief.

THE DEFENDANT

7. David E. Ruskjer, age 58, is a resident of Koloa, Hawaii. Ruskjer purports to be a self-employed computer consultant doing business as Ruskjer & Associates. Neither Ruskjer nor Ruskjer & Associates were ever registered with the Commission in any capacity, nor have they ever registered an offering of securities under the Securities Act or a class of securities under the Exchange Act.

RUSKJER'S OFFERING OF NOTES

8. From about September 2004 until December 2008, Ruskjer raised approximately \$16 million nationwide from at least 140 investors through the issuance of Notes. The Notes stated that the investor (described as a "lender") was loaning money to Ruskjer (the "borrower") at fixed monthly interest rates ranging from 3% to 5%. Investors chose to either receive monthly payouts of interest or to leave their monthly returns with Ruskjer to compound annually. Each Note was signed by Ruskjer and the investor.

9. On their face, the Notes do not state what Ruskjer would do with the monies "loaned" to him. Based on Ruskjer's oral and written representations,

however, investors understood that Ruskjer would use their money to sell call options. Indeed, investors wrote memoranda such as “investment” and “stock play” on their checks to Ruskjer.

10. Ruskjer personally solicited investors for the Notes through informal presentations held at coffee shops, hotel lounges, and private residences. Ruskjer also communicated with prospective investors by e-mail and telephone. Investors provided their funds to Ruskjer through checks payable to Ruskjer and bank wire transfers to Ruskjer’s bank account. Similarly, Ruskjer paid investors their purported returns through checks and wire and electronic fund transfers.

11. Ruskjer also authorized several investors to act as “finders” to offer and sell the Notes to the general public. These finders received from Ruskjer a 1% commission on new monies invested by their referrals. Ruskjer gave his finders suggestions on how to pitch the Notes and wrote a letter describing the Notes that finders provided to prospective investors.

RUSKJER’S PURPORTED TRADING PROGRAM

12. In Ruskjer’s letter to prospective investors, he claims to have developed a trading program that has “an emphasis on safety first,” “doesn’t rely on speculation,” and “makes money on stocks that go up, that stagnate, or go down.” According to his letter and oral representations to investors, Ruskjer claimed to sell call options for 10% or more relative to the underlying common stock price that provided him with an “instant” profit of 10% or more. Ruskjer also claimed to hedge a call option by purchasing the underlying common stock if it rose above the option’s strike price. In his letter to prospective investors, Ruskjer stated that “the minimum deal we involve ourselves with has to yield at least 10% inasmuch as we pay 3% to those who participate by loaning us the money we use.” Ruskjer’s brokerage records show that he also day-traded stocks and traded put options.

RUSKJER'S UNSUCCESSFUL SECURITIES TRADING

13. In his oral representations to investors, Ruskjer stated that since he began operating his trading program in September 2004, it initially returned a 10% monthly profit, but then made a 5 to 5.5% monthly profit for almost two years, including commissions and losses. In his letter to investors, Ruskjer stated that he “currently average[d] between 5 and 5.5% profit including commissions and losses.”

14. In January 2001, Ruskjer opened a brokerage account that he did not fund until September 2004. Ruskjer's brokerage records indicate that between September 2004 and December 2008, a total of \$7.9 million was deposited into, and \$1.7 million was withdrawn from, his account. Ruskjer had sole discretionary authority over his brokerage account until July 2008. An analysis of Ruskjer's brokerage records reveals that rather than making an average profit of 5% to 5.5% as stated in his letter to investors, from September 2004 to December 2008, Ruskjer sustained an average monthly loss of 5.8% and a net loss of \$2.6 million.

RUSKJER'S MISAPPROPRIATION OF INVESTOR FUNDS

15. In addition to sustaining substantial trading losses, Ruskjer also misappropriated investor funds. While Ruskjer deposited approximately \$16 million from investors into his personal bank account since September 2004, only \$7.9 million gross (or \$6.2 million net) was transferred from his bank account to his brokerage account to trade call and put options and engage in day trading. Ruskjer's bank records also show that he used investor funds for a variety of personal expenses. From September 2004 to December 2008, Ruskjer used \$523,466 from his bank account to purchase a condominium and \$10,000 on two motorcycles. During that same period, Ruskjer also withdrew about \$112,000 in cash from automatic teller machines and made about \$743,000 in debit card

purchases. In addition, Ruskjer wired \$88,600 from his brokerage account to overseas bank accounts.

16. While Ruskjer claimed that he would use investor funds to trade call options and had a history of generating 5% to 5.5% monthly returns, he in fact operated a Ponzi scheme. Although Ruskjer's brokerage account engaged in extensive securities trading, his average 30-day return was negative 5.8%. But Ruskjer nevertheless paid out about \$5.5 million in interest to investors. Indeed, the only way that Ruskjer was able to pay interest to existing investors was by using funds from new investors. The undisclosed use of new investor funds to pay existing investors constituted a Ponzi scheme.

FIRST CLAIM FOR RELIEF

Unregistered Offer and Sale of Securities

Violations of Sections 5(a) and 5(c) of the Securities Act

17. The Commission realleges and incorporates by reference paragraphs 1 through 16 above.

18. Ruskjer, by engaging in the conduct described above, directly or indirectly, made use of means or instrumentalities of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interstate commerce for the purpose of sale or delivery after sale.

19. No registration statement has been filed with the Commission or has been in effect with respect to the offering alleged herein.

20. By engaging in the conduct described above, Ruskjer violated, and unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

SECOND CLAIM FOR RELIEF

Unregistered Broker-Dealer

Violations of Section 15(a) of the Exchange Act

21. The Commission realleges and incorporates by reference paragraphs 1 through 16 above.

22. Ruskjer, by engaging in the conduct described above, directly or indirectly, made use of the mails and other means or instrumentalities of interstate commerce to effect transactions in securities, without being registered as a broker or dealer pursuant to Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b), in violation of Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

23. By engaging in the conduct described above, Ruskjer violated, and unless restrained and enjoined will continue to violate, Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

THIRD CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities

Violations of Section 17(a) of the Securities Act

24. The Commission realleges and incorporates by reference paragraphs 1 through 16 above.

25. Ruskjer, by engaging in the conduct described above, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails directly or indirectly:

- a. with scienter, employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

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

FOURTH CLAIM FOR RELIEF

Fraud in Connection with the Purchase or Sale of Securities

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

27. The Commission realleges and incorporates by reference paragraphs 1 through 16 above.

28. Ruskjer, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

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

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

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Ruskjer committed the alleged violations.

II.

Issue judgments, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining Ruskjer, and his officers, agents, servants, employees, attorneys, and those in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c) & 77q(a), and Sections 10(b) and 15(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) & 78o(a), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

Order Ruskjer to disgorge all ill-gotten gains from the illegal conduct alleged herein, together with prejudgment interest thereon.

IV.

Order Ruskjer to pay civil penalties under 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).

V.

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

VI.

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

DATED: May 27, 2009

Respectfully submitted,



Nicholas S. Chung
Attorney for Plaintiff
Securities and Exchange Commission