



from over 2,500 investors nationwide through the sale of “Trust Certificates” that investors can purportedly exchange for “common shares” of a publicly-traded company.

2. Initially, investors were told they would receive shares in 4309, Inc., a reporting shell company controlled by Poetter. Later, investors were told they could exchange their trust certificates for shares of AMs-TEC Acquisitions (“AMs-TEC”), a purported Arizona entity that Poetter claimed had a “projected value of \$13.5 billion” and was qualified to trade on a Swiss stock exchange. Investors have never received their promised shares, and Poetter’s claims regarding the projected value and tradability of AMs-TEC stock are bogus.

3. In marketing his scheme to investors, Poetter misrepresented to investors that AMs-TEC and its affiliated entities were in the process of acquiring, or had acquired, several valuable assets or companies. For example, in shareholder meetings and newsletters, Poetter touted AMs-TEC’s acquisition of an African cocoa processing plant with negotiated contracts to process over \$120 million worth of cocoa.

4. Contrary to his representations to investors, Poetter never acquired the cocoa plant. Further, there are no outstanding orders to process cocoa at the plant AMs-TEC was attempting to purchase. In addition to misrepresenting AMs-TEC’s businesses, Poetter has also misappropriated and misapplied investor funds. Poetter transferred millions of dollars to various affiliated entities and used the monies to fund various administrative and employment-related expenses, including at least \$300,000 paid to Poetter. The only assets which appear to have been acquired are a small trucking company and a hay farm. Neither asset is producing income.

5. The Commission, in the interest of protecting investors from any further illegal activity, brings this action against the Defendants and Relief Defendants, seeking as applicable, permanent injunctive relief, disgorgement of all illicit profits and benefits Defendants or Relief Defendants have received, plus accrued prejudgment interest, civil monetary penalties, the appointment of a receiver, and other equitable relief.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 (the “Securities Act”) and Section 27 of the Securities Exchange Act of 1934 (“Exchange Act”). Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce, in connection with the acts, practices, and courses of business described in this Complaint. Venue is proper in this district because offers and sales of securities at issue in this case took place in this District and certain of the acts and transactions alleged in this Complaint occurred in this District.

### **DEFENDANTS**

7. **Paul David Poetter**, age 56, is a resident of Gilbert, Arizona. Until August 28, 2009, Poetter was the president and only shareholder of 4309, Inc., an apparent shell company registered with the Commission. He is also the “Trust Manager” for two purported trusts that have issued the securities described herein.

8. **4309, Inc.** is a Delaware corporation whose shares were registered with the Commission pursuant to Section 12(g) of the Exchange Act. The company has never filed a registration statement under the Securities Act. According to its most recent Form 10-Q, 4309, Inc. has no operations and intended “to locate and negotiate with a business entity for the

combination of that target company” with 4309, Inc. On August 28, 2009, the company filed a Form 15 with the Commission terminating the company’s registration under the Exchange Act.

9. **4309 Acquisition Trust** (“4309 Trust”) purports to be a trust formed by Poetter which has offered and sold “trust certificates” to investors that allowed investors to obtain common shares of 4309, Inc. 4309 Trust has never filed a registration statement with the Commission.

### **RELIEF DEFENDANTS**

10. **AMs-TEC Acquisition Trust** (“AMs-TEC Trust”) purports to be a trust formed by Poetter that offered and sold certificates to investors that allowed investors to obtain shares of AMs-TEC Acquisition, a purported entity whose shares were qualified to trade on the Swiss Exchange. AMs-TEC Trust has never filed a registration statement with the Commission.

11. **AMs-TEC Commodities, Inc.** (“AMs-TEC Commodities”) is an Arizona corporation formed by Poetter that purportedly owns a cocoa and coffee processing plant in San Pedro, Cote d’Ivoire. According to Defendants’ financial records, approximately \$844,000 in investor funds were either transferred to or expended on behalf of AMs-TEC Commodities as of June 30, 2009. AMs-TEC Commodities is named as a relief defendant solely for the purpose of obtaining equitable relief.

12. **AMs-TEC Energy Corp.** (“AMs-TEC Energy”) is an Arizona corporation located in Gilbert, Arizona, and controlled by Poetter. An AMs-TEC Energy bank account currently holds approximately \$179,500 of investor funds. AMs-TEC Energy is named as a relief defendant solely for the purpose of obtaining equitable relief.

13. **Greener Cleaner Farms, Inc.** (“Greener Farms”) is a Texas corporation that purports to own a hay farm in Texas. In 2008, Poetter acquired Greener Farms, and as of June 30, 2009, approximately \$105,000 in investor funds had been transferred to, or expended on behalf of, this entity. Greener Farms is named as a relief defendant solely for the purpose of obtaining equitable relief.

14. **RoboCargo Corporation** (“RoboCargo”) is an Arizona corporation that Poetter acquired through the issuance of an AMs-TEC Trust certificate. RoboCargo’s only known asset is an 18-wheel truck and trailer. Approximately \$385,000 in investor funds had been transferred to, or expended on behalf of, RoboCargo as of June 30, 2009. RoboCargo is named as a relief defendant solely for the purpose of obtaining equitable relief.

### **FACTS**

15. In approximately June 2007, Poetter began his scheme by convincing a few members of a small Baptist Church in East Texas to invest in the 4309 Trust. The trust certificates represented that they could “be surrendered . . . for Common Shares of 4309, Inc. or its successors.” Poetter sold the certificates at \$.05 per share, and repeatedly referred to the offering as “nickel shares.” Thus, a \$1,000 investment in 4309 Trust entitled the investor to receive 20,000 shares of 4309, Inc. Poetter’s initial investors, in turn, told other members of their church, family members, and friends about the investment and encouraged them to pray about the investment before making a decision.

16. As of June 2008, Poetter had raised approximately \$2 million from the sale of certificates representing approximately 40 million shares of 4309, Inc. to about 950 persons residing in at least 26 states. Poetter never disclosed these sales in 4309, Inc.’s Commission

filings, including reports on Forms 10-QSB and 10-KSB filed with the Commission. In fact, each Form 10-QSB and 10-KSB specifically asked whether the issuer had any recent or unregistered sales of equity securities. In response to each inquiry, Poetter replied “none.” Moreover, the financial statements in the periodic filings disclosed that 4309, Inc., was borrowing funds from 4309 Trust, but there was no disclosure that the source of such funding was from the fraudulent offering of securities.

17. At a June 2008 “shareholder meeting,” held at the Texas Baptist church in which at least 500 individuals attended, Poetter announced that 4309 Trust investors would soon be given the opportunity to exchange their 4309 Trust certificates for AMs-TEC Trust certificates, which according to the terms of the certificate, could “be surrendered . . . for Common Shares of AMs-TEC Acquisitions.” As discussed below, Poetter claimed that AMs-TEC Acquisitions was an entity that was qualified to trade on a European exchange.

18. Following the shareholder meeting, Poetter continued to offer the AMs-TEC certificates at \$.05 per share and, beginning in November 2008, solicited investors by mailing “shareholder newsletters” in which he touted the company’s purported acquisitions and business developments. Several of the newsletters encouraged investors to solicit investments from family members and friends. By the time Poetter held a second shareholder meeting in February 2009, the number of shareholders had grown to approximately 1,400. Both shareholder meetings were recorded on a DVD and distributed to shareholders.

19. In AMs-TEC promotional materials and during the shareholder meetings, Poetter touted, among other things, the company’s “proprietary technology” for a high-speed, electrically-powered, nationwide cargo transportation system, a nuclear waste disposal process,

and the acquisitions of a working farm, an African cocoa processing plant, and a Swiss financial services firm. According to Poetter, these business ventures would enable investors to profitably trade their shares.

20. None of the profitable developments or acquisitions announced by Poetter has ever come to fruition. For example, on the AMs-TEC website, in shareholder newsletters and during the two shareholders' meetings, Poetter repeatedly touted the purported acquisition of a 30,000 metric ton cocoa processing facility in San Pedro, Cote d'Ivoire, Africa. Among other things, Poetter claimed that AMs-TEC had "just purchased" the facility, and had negotiated contracts totaling "approximately 120,000 metric tons" at "\$1,000 per metric ton," or \$120 million. In fact, the purchase of the cocoa processing plant was never completed. Unbeknownst to investors, a contract was purportedly executed to purchase the plant for \$2 million. However, Poetter never acquired the plant and does not have sufficient funds to complete the acquisition. Further, the statements regarding the purported cocoa processing contracts are also false.

21. At the June 2008 shareholder meeting, Poetter also told investors that they "owned" 4309, Inc., along with an unnamed "Swiss financial services company with 22 years experience." At the same meeting, Poetter claimed that "we have overseas companies waiting for [our] stock to hit the market" and that the "projected value of the company is \$13.5 billion." He further stated "we have worked tirelessly to find the asset base we needed to qualify for the safest trading platform, we now qualify." (emphasis added)

22. In the November 2008 shareholder newsletter, Poetter also claimed that: 1) AMs-TEC had retained legal representation in Switzerland "to shepherd us through the paperwork and procedures required to elevate us onto the Swiss trading platform . . . with our goal of trading in

the first quarter of 2009; 2) AMs-TEC found “the safest trading platform for you, the shareholder, of any in the free world;” and 3) he and AMs-TEC “consider Switzerland a safe haven in these stressful times because it enforces its rules and regulations which safeguard the shareholder from the sharks and manipulators in a real way, unlike the US government’s SEC.” Poetter also told investors that their nickel shares would increase in value such that they could pay a \$5.00 dividend per \$.05 share.

23. In truth, none of Poetter’s affiliated entities is capable of carrying out an initial public offering, or trading on any exchange. Except for 4309, Inc., which currently reports total assets of \$4,859, none of Poetter’s affiliated companies has audited financial statements, a necessary requirement for any initial public offering. Further, none of Poetter’s other companies has any substantial assets, and none has generated any revenue. Indeed, according to a June 30, 2009, balance sheet for AMs-TEC Trust, virtually all investor funds have been transferred to Poetter affiliated entities pursuant to purported “notes receivable.” These notes, even if they exist, are uncollectible. Finally, Poetter’s statement that AMs-TEC had acquired enough assets to “qualify” to trade on the Swiss exchange is absolutely false. The Swiss Exchange requires that an issuer’s reported equity capital be at least 25 million Swiss francs, which is equivalent to about \$24 million U.S. Combined, all the AMs-TEC entities have only \$179,000 in cash, a one-trailer trucking company and hay farm of limited value.

24. Poetter has expended the majority of funds for purposes other than toward the acquisition of valuable companies or assets. At most, only approximately \$1.3 million of the \$5.2 million raised from investors have been used toward the acquisition of any assets.

25. The AMs-TEC Trust balance sheet reflects that as of June 30, 2009, most of the remaining funds have been transferred to various Poetter affiliated entities pursuant to purported “notes receivable.” The various entities, including the four relief defendants, expended at least \$1 million on wages and employment related expenses, including at least \$300,000 paid to Poetter. At least \$1.1 million was expended on various “administrative expenses,” including over \$276,000 for “travel,” and \$360,000 in “professional fees.”

## **CLAIMS**

### **FIRST CLAIM** **Violations of Section 17(a) of the Securities Act**

26. Plaintiff Commission repeats and incorporates paragraphs 1 through 25 of this Complaint by reference as if set forth *verbatim*.

27. Defendants, directly or indirectly, singly, in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or 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 (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

28. As part of and in furtherance of this scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, 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 in paragraph 1 through 25, above.

29. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness with regard for the truth. Defendants were also negligent in their actions regarding the representations and omissions alleged herein.

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

**SECOND CLAIM**  
**Violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder**

31. Plaintiff Commission repeats and incorporates paragraphs 1 through 25 of this Complaint by reference as if set forth *verbatim*.

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

33. As a part of and in furtherance of their scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations 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 in Paragraphs 1 through 25 above.

34. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

35. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate the provisions of 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].

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

36. Plaintiff Commission repeats and incorporates paragraphs 1 through 25 of this Complaint by reference as if set forth *verbatim*.

37. Defendants, directly or indirectly, singly or in concert with others, made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer and to sell securities through the use or medium of a prospectus or otherwise when no registration statement had been filed or was in effect as to such securities and no exemption from registration was available.

38. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate the provisions of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77(e)(c)].

**FOURTH CLAIM**  
**Violations of Section 13(a) of the Exchange Act and**  
**Exchange Act Rules 12b-20, 13a-1, and 13a-13 thereunder**

39. Plaintiff Commission repeats and incorporates paragraphs 1 through 25 of this Complaint by reference as if set forth *verbatim*.

40. At the times alleged in this Complaint, Defendant 4309, Inc., whose securities were registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I], failed to file annual and quarterly reports with the Commission that were true and correct, and failed to include material information in its required statements and reports as was necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

41. By reason of the conduct described above, Defendant 4309, Inc. violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] thereunder by filing materially false and misleading annual and quarterly reports on Forms 10-K and 10-Q with the Commission.

**FIFTH CLAIM**  
**Aiding and Abetting 4309, Inc.'s Violations of Section 13(a) of the Exchange Act and**  
**Exchange Act Rules 12b-20, 13a-1, and 13a-13 thereunder**  
**(Against Poetter)**

42. Plaintiff Commission repeats and incorporates paragraphs 1 through 25 of this Complaint by reference as if set forth *verbatim*.

43. At the times alleged in this Complaint, Defendant Poetter knowingly and substantially participated in 4309, Inc.'s failure to include material information in its required statements and reports as was necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

44. By reason of the conduct described above, Poetter knowingly and substantially aided and abetted 4309, Inc.'s violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] thereunder.

**SIXTH CLAIM**  
**Claims Against Relief Defendants as Custodian of Investor Funds**

45. Plaintiff Commission repeats and incorporates paragraphs 1 through 25 of this Complaint by reference as if set forth *verbatim*.

46. Relief Defendants received funds and property from one or more of the Defendants, which are the proceeds, or are traceable to the proceeds, of the unlawful activities of Defendants, as alleged in paragraphs 1 through 25 above.

47. Relief Defendants obtained the funds and property alleged above as part of and in furtherance of the securities violations alleged in paragraphs 1 through 25 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 were unjustly enriched.

**RELIEF REQUESTED**

The Commission seeks the following relief:

48. An order of the Court permanently enjoining Defendants Poetter and 4309, Inc., as appropriate, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, [15 U.S.C. §§ 77e(a), 77(e)(c), and 77q(a)], Sections 10(b) the Exchange Act, [15 U.S.C. § 78j(b)], and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and Defendant 4309, Inc. from violations of, and Defendant Poetter from aiding and abetting violations of, Section 13(a) of the Exchange Act, [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] thereunder.

49. An order of the Court prohibiting Poetter from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

50. An order of the Court permanently enjoining Defendants 4309 Trust and AMs-TEC Trust, as appropriate, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, [15 U.S.C. §§ 77e(a), 77(e)(c), and 77q(a)], Sections 10(b) the Exchange Act, [15 U.S.C. § 78j(b)], and of Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

51. An order of the Court directing Defendants and Relief Defendants to disgorge an amount equal to the funds and benefits obtained illegally as a result of the violations alleged, plus prejudgment interest on that amount.

52. An order of the Court directing Defendants, to pay civil monetary pursuant to 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)] for their violations of the federal securities laws as alleged herein.

53. An order of the Court appointing a receiver to recover and conserve assets for the benefit of investors.

55. All further relief as the Court may deem just and proper.

Dated: September 8, 2009

Respectfully Submitted,

/s/ Michael D. King

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