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14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 **CV11-02976** PDP(VBK-x)

17 SECURITIES AND EXCHANGE  
18 COMMISSION,  
19 Plaintiff,  
20 v.  
21 LUIS GARG,  
22 JASON ZAKOCS,  
23 REALFUND INVESTMENT TRUST,  
24 FIRST ATLANTA LP,  
WEATHERBY LP, AND  
CITIPROP CORPORATION,  
Defendants.

CASE NUMBER \_\_\_\_\_

**COMPLAINT**

1  
2 Plaintiff, United States Securities and Exchange Commission (“SEC” or  
3 “Commission”), states and alleges as follows against defendants:

4  
5 **I. JURISDICTION AND VENUE**

6 1. The Commission brings this action pursuant to authority conferred on  
7 it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Sections 21(d)  
8 and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to restrain and  
9 enjoin the defendants from engaging in the acts, practices, and courses of business  
10 described in this Complaint and acts, practices, and courses of business of similar  
11 purport and object. The Commission seeks permanent injunctions, disgorgement  
12 of ill-gotten gains derived from the conduct alleged in the Complaint plus  
13 prejudgment interest thereon, and penalties pursuant to Section 20(d) of the  
14 Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15  
15 U.S.C. §§ 78u(d)(3)].  
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18 2. This Court has jurisdiction of this action pursuant to Section 20(b) and  
19 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d),  
20 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. The  
21 defendants, directly or indirectly, made use of the means and instrumentalities of  
22 interstate commerce or of the mails, in connection with the acts, practices, and  
23 courses of business alleged in this Complaint.  
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1           5.     Garg, Zakocs, and the entities Garg controlled, RealFund, First  
2 Atlanta, Weatherby, and Citiprop, marketed and sold the promissory notes as a  
3 passive, risk-free investment in a 12-month note that was fully secured and  
4 collateralized by a deed of trust to the properties RealFund, First Atlanta, and  
5 Weatherby would purchase and/or renovate with the proceeds of the notes. The  
6 name Real-CD was used to imply, and defendants (Garg, Zakocs, and RealFund,  
7 and, through them, First Atlanta, Weatherby, and Citiprop) explicitly represented,  
8 that the notes were as or more secure than a bank CD, but earning much higher  
9 interest. The defendants further represented that the product's high rates of return,  
10 ranging from 8% to 24% annually, were guaranteed. Defendants' representations  
11 were materially false and misleading.  
12

13  
14           6.     Notwithstanding each defendant's assurances that the promissory  
15 notes were safe and that RealFund had a long track record of real estate  
16 development successes, and unbeknownst to investors, First Atlanta, one of  
17 RealFund's primary real estate developers and one of the issuers of the Real Estate  
18 Secured Promissory Notes, was the subject of Chapter 11 bankruptcy proceedings  
19 – an event of default under the terms of the notes – throughout most of the offering  
20 period. Moreover, First Atlanta, whose properties did not have sufficient equity to  
21 collateralize investors' promissory notes as represented to investors, defaulted on  
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1 the repayment of principal to at least one investor by September 2009, and on the  
2 payment of monthly interest to a second investor by October 2009.

3  
4 7. Without disclosing these defaults, each defendant continued to  
5 defraud investors by offering and selling the Real-CD as a safe and guaranteed  
6 investment through January 2010. Despite the defendants' assurances, the  
7 defendants discontinued making required interest payments to all investors in or  
8 about March 2010, and failed to even repay the principal investment to most, if not  
9 all, investors.

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11 8. As a result of the foregoing material misrepresentations and omissions  
12 concerning their investment program, Garg, Zakocs, RealFund, First Atlanta,  
13 Weatherby, and Citiprop violated, and unless restrained and enjoined will continue  
14 to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C.  
15 § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange  
16 Act") [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5].

17  
18 9. In addition to the securities fraud violations, the promissory note  
19 offerings in which the defendants participated were securities offerings which were  
20 not registered with the Commission as required or exempt from registration, in  
21 violation of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and  
22 77e(c)].  
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1 of First Atlanta and Weatherby. RealFund has never been registered with the  
2 Commission as a broker or dealer, and has never registered a class of securities or  
3 a securities transaction with the Commission.  
4

5 14. First Atlanta, a Georgia limited partnership with its principal place of  
6 business in Atlanta, Georgia, is a real estate development company and the issuer  
7 for some of the Real-CD a/k/a Real Estate Secured promissory notes. Citiprop,  
8 through Garg, acts as the general partner of First Atlanta. First Atlanta has never  
9 registered a class of securities or a securities transaction with the Commission.  
10

11 15. Weatherby, a Georgia limited partnership with its principal place of  
12 business in Atlanta, Georgia, is a real estate development company and the issuer  
13 for some of the Real-CD a/k/a Real Estate Secured promissory notes. Citiprop,  
14 through Garg, acts as the general partner of Weatherby. Weatherby has never  
15 registered a class of securities or a securities transaction with the Commission.  
16

17 16. Citiprop, a suspended California corporation controlled by Garg, is a  
18 real estate development company located in Los Angeles, California. Citiprop is  
19 the general partner of First Atlanta and Weatherby, both of which issued  
20 promissory notes in the fraudulent offerings alleged herein. Citiprop has never  
21 registered a class of securities or a securities transaction with the Commission.  
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## IV. FACTS

### A. Defendants' Fraudulent and Unregistered Promissory Note Offering

17. From at least April 2008 through January 2010, Garg and Zakocs used RealFund, First Atlanta, Weatherby, and Citiprop to offer and sell approximately \$1 million of their purportedly secure and high yield promissory notes, frequently titled "Real Estate Secured Promissory Notes," to approximately 20 to 30 investors.

18. Garg and Zakocs recruited investors during the Relevant Period through their websites and through at least one webinar conducted by Garg. In addition, Garg and Zakocs each communicated directly with potential investors through e-mails, telephone calls, and live meetings. Further, Garg and Zakocs utilized friends and acquaintances to generate interest in their Real-CD investment program.

19. Each of the defendants failed to register the promissory note offerings with the SEC. Moreover, during the Relevant Period, none of the defendants was registered with the SEC as a broker or dealer, and none of the defendants was an associated person of a registered broker or dealer.

20. In connection with marketing and selling the Real-CD promissory notes offered by RealFund and issued by RealFund, First Atlanta, and Weatherby,

1 Garg and Zakocs, individually and on behalf of First Atlanta, Weatherby, and  
2 Citiprop, each falsely represented verbally to investors that the promissory notes  
3 were risk-free real estate investments having the security of bank CDs and  
4 guaranteed annual returns ranging from 8% to 24%, depending on the amount of  
5 the investment.  
6

7 21. During their telephone calls and meetings with potential investors,  
8 Garg and Zakocs falsely represented that the proceeds from their offerings would  
9 be used by RealFund, First Atlanta, and Weatherby to purchase and/or renovate  
10 properties that would have more than sufficient equity to fully protect and  
11 collateralize the underlying investments.  
12

13 22. Each of the defendants, through Garg and Zakocs, also materially  
14 misrepresented verbally and/or through e-mails to investors that investors would  
15 receive a first mortgage or comparable security interest in the underlying  
16 properties. For example, in an April 10, 2009 e-mail to actual and potential  
17 investors in what he describes as a "great, safe investment," Zakocs wrote: "If you  
18 know of anyone who wants to put some of their money to work hard for them  
19 (18%-20% ROI) in an investment that is secured by real estate (1<sup>st</sup> position on  
20 security deed) please refer them to me." This representation was materially false  
21 and misleading because some, if not all, investments were not secured by security  
22 deeds in first position.  
23  
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1           23.    In a December 2009 webinar presented by Garg, Garg similarly  
2 assured potential investors that they would receive a first warranty deed in  
3 connection with their investment and the same security that a bank receives with a  
4 mortgage. Garg further represented that the RealFund program used a 65% to 70%  
5 loan-to-value ratio for its investment properties, leaving a minimum equity level of  
6 30% to 35%. Again, these representations were materially false and misleading  
7 because some, if not all, investors did not receive first warranty deeds and equity in  
8 investment properties was, in many, if not all cases, well below 30% to 35%,  
9 subjecting the investors to much greater risk than represented.  
10

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12           24.    In addition to being told that their investment was protected by the  
13 value of the properties in which RealFund, First Atlanta, and Weatherby invested,  
14 investors were also told by defendants, through Garg and Zakocs, that their  
15 investment was fully protected by mortgage and/or property insurance, as well as  
16 life insurance taken out on Garg.  
17

18           **B.    Material Misrepresentations on RealFund's Websites and in its**  
19           **Marketing Materials**

20           25.    Further, RealFund's website, which was reviewed, approved and/or  
21 circulated by Garg and Zakocs, who operated RealFund, advertised the promissory  
22 notes as a "passive real estate participation that guarantees your principal with  
23 Deeds of Trust on a property under construction" and falsely characterized  
24

1 RealFund's investment program as having: "No hidden fees. No risk. All  
2 reward."

3  
4 26. Another RealFund website, which was also reviewed, approved,  
5 and/or circulated by Garg and Zakocs, falsely proclaimed to potential investors:  
6 "Your money is never at risk. **RealFund assumes all of the risk.**" (Emphasis in  
7 original). The website further misrepresented to investors:

8  
9 The promissory note is **backed by a real, physical property**, with a  
10 maximum LTV (loan-to-value) of 65% (**minimum equity 35%**). In the  
11 highly unlikely scenario that mortgage insurance would not pay, you can  
12 always foreclose on the property and make a great profit selling it!  
13 (Emphasis in original).

14 27. Similar to the misrepresentations that Garg and Zakocs made verbally  
15 and touted on the RealFund websites, Garg, Zakocs, and RealFund, on behalf of all  
16 defendants, prepared and distributed, in or about June 2009, a "REALFUND  
17 INVESTMENT TRUST" flyer falsely stating that "the RealFund System still has  
18 the highest guaranteed and secured returns available today." In addition, another  
19 "REALFUND INVESTMENT TRUST" flyer entitled "Putting Your 'Lazy and  
20 Sleeping' IRAs & 401ks To Work," falsely advertised "Great Returns for You  
21 Secured & Guaranteed by Low Loan-To-Value Deeds of Trust" and that  
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1 “Profitable, Tested and Proven RealFund Systems have a Successful 45 year Track  
2 Record.”

3  
4 28. Another marketing piece, a February 2010 newsletter entitled  
5 “RealNews,” bearing Garg’s name and distributed from a RealFund e-mail  
6 address, falsely proclaimed: “It’s just like a bank CD, except that it’s more secure  
7 and the interest rates are much higher.”

8  
9 **C. Investors are Sporadically Provided with Documentation of their  
10 Purportedly Safe and Secure Investment**

11 29. After inducing investors to invest in their promissory note program  
12 through the foregoing material misrepresentations, Garg and Zakocs provided  
13 investors with anywhere from one to five documents memorializing their  
14 investment. First, investors were given a one-page subscription agreement  
15 containing wire/check payment instructions and calling for basic investor  
16 information. The subscription agreement did not seek any information to ascertain  
17 whether the investor was an accredited investor in accordance with the federal  
18 securities laws, *e.g.*, an individual investor with a net worth exceeding \$1 million,  
19 excluding the value of their primary residence, or an individual with income  
20 exceeding \$200,000 in each of the two most recent years.

21  
22 30. Following an investment, Garg and/or Zakocs also typically provided  
23 the investor with a two-page promissory note, originally called a “Real Estate  
24

1 Secured Promissory Note” that set forth the terms of the note and was ordinarily  
2 signed by Garg on behalf of RealFund, which issued some of the notes, or on  
3 behalf of Citiprop, the general partner of the two other issuers of notes, First  
4 Atlanta and Weatherby. Contrary to representations Garg and Zakocs made to  
5 investors that the promissory notes would be protected by high equity levels and  
6 secured by first warranty deeds, small print on the back-side of the promissory  
7 notes provided that the deed of trust securing the note would be subordinate to  
8 amounts owed to primary lenders (*i.e.*, purchase and construction loans) and senior  
9 liens.  
10

11  
12 31. The back-side of the promissory notes issued to investors also set  
13 forth additional rights and obligations of the parties, and identified several events  
14 of default by the issuer. Events of default included: (1) the issuer’s failure to make  
15 payments due under the note for at least 30 days; (2) its inability to pay debts when  
16 due; (3) its insolvency or institution of proceedings alleging insolvency; and (4) its  
17 sale or transfer of the underlying investment property without notifying investors.  
18

19 32. In addition to the foregoing documents, some investors in the  
20 RealFund program were provided with a four or five-page Tenants in Common  
21 Security Deed or Deed of Trust that purportedly granted the investors a  
22 proportionate equity interest in the investment property to secure their promissory  
23 notes. The final line of the final page of the deed preceding the signature page  
24

1 stated that the deed was a subordinated deed behind purchase and/or construction  
2 loans. Not only was this post-investment disclosure inconsistent with oral and  
3 other written representations made to investors, the defendants frequently never  
4 provided investors with a copy of the deed of trust; instead advising investors that  
5 they would retain the original deed for safekeeping.  
6

7 33. Garg and Zakocs also provided some investors with a five-page Real  
8 Estate Participation Agreement setting forth the terms of the RealFund investment,  
9 including the investment amount, interest rate to be paid, term of the note, and real  
10 estate project for which the proceeds of the note would be used and which would  
11 serve as collateral for the investor's "Guarantee[d] Security Deeds of Trust."  
12

13 34. Finally, following their investment some investors received a Receipt  
14 Acknowledging Funds Received that was signed by Garg. In the receipt, Garg  
15 advised investors that within two weeks they would receive the "legal documents  
16 securing and guaranteeing [the investor's] participation[.]" As noted above (*see*  
17 ¶ 32), most investors in the RealFund program never received documentation  
18 securing their investment.  
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1           **D.     Contrary to Defendants’ Assurances of Safety, Note Issuer First**  
2           **Atlanta was in Bankruptcy throughout much of the Relevant**  
3           **Period and had Already Defaulted on its Notes**

4           35.    Notwithstanding Garg’s and Zakocs’s verbal and written  
5           representations to investors, First Atlanta, an integral part of the RealFund  
6           investment program, had filed for Chapter 11 bankruptcy on August 4, 2008 and,  
7           apart from a three-week period from March 18, 2009 through April 5, 2009,  
8           remained in bankruptcy proceedings through May 10, 2010, at which time the  
9           bankruptcy case was dismissed. Each defendant failed to disclose that, for nearly  
10          the entire offering period, First Atlanta was involved in bankruptcy proceedings, an  
11          event of default under the terms of the promissory notes (*see* ¶31).

13          36.    Moreover, the bankruptcy schedules filed in federal district court by  
14          First Atlanta, and signed by Garg and Citiprop, its general partner, reflect that one  
15          of the primary properties being developed in connection with RealFund’s  
16          investment program had a first mortgage of \$160,000 and a mechanic’s lien of  
17          approximately \$6,000, representing 83% of the stated \$200,000 value of the  
18          property. Accordingly, the remaining equity in the property was only 17%, well  
19          short of the 35% minimum equity level guaranteed in RealFund’s website (*see*  
20          ¶ 26) and the 30% to 35% minimum equity level reaffirmed during Garg’s webinar  
21          presentation (*see* ¶ 23).

1           37. This loan-to-value ratio was also nowhere near the 50% loan-to-value  
2 ratio represented by Garg in at least one investor's Real Estate Participation  
3 Agreement. That March 4, 2009 Agreement, initialed or signed on every page by  
4 Garg, falsely represented that the promissory notes for First Atlanta's \$250,000  
5 offering would be "Secured with a TIC [tenants in common] Deed of Trust for that  
6 same amount on the property," and that the property had an estimated value of  
7 \$500,000, representing a 50% loan-to-value ratio.

8  
9           38. Therefore, contrary to Garg's and Zakocs's express representations to  
10 investors, the equity in what was a primary First Atlanta investment property was  
11 clearly insufficient to secure the promissory notes that were purportedly  
12 collateralized by the property.

13  
14           39. In addition to failing to disclose First Atlanta's bankruptcy and  
15 misrepresenting the extent to which investors' promissory notes would be secured  
16 by real estate, each defendant failed to disclose that as of April 2009, First Atlanta  
17 had been in default on its mortgage payments for one of the RealFund investment  
18 properties for approximately two years – *i.e.*, prior to and throughout the offering  
19 period. As noted above (*see* ¶ 31), First Atlanta's inability to pay its debts when  
20 due constituted another event of default under the terms of its promissory notes.  
21

22  
23           40. Moreover, although this property was sold in a foreclosure sale on  
24 April 7, 2009, First Atlanta, through Garg and Zakocs, failed to notify investors – a

1 further event of default under the promissory notes (*see* ¶ 31) – and issued at least  
2 two promissory notes that purportedly represented investments in the property  
3 *after* the foreclosure sale.  
4

5 41. Notwithstanding the defendants’ representations through Garg and  
6 Zakocs that the RealFund investment program was risk-free and that both principal  
7 and interest were guaranteed, by mid-September 2009, First Atlanta defaulted on  
8 repaying principal to at least one investor whose promissory note had matured.  
9

10 42. By October 2009, First Atlanta also defaulted with respect to a second  
11 investor when it failed to make a required interest payment within 30 days. Both  
12 the failure to repay principal and the failure to make a required interest payment  
13 were also defaults on the promissory notes (*see* ¶ 31).  
14

15 43. Incredibly, even following these defaults, of which Garg, the  
16 defendant entities controlled by him, and Zakocs were each aware, each defendant  
17 continued offering and selling what they collectively marketed as risk-free,  
18 guaranteed return promissory notes in the RealFund investment program. In  
19 addition to continuing to make these patently false representations on RealFund’s  
20 website, Garg and Zakocs continued to verbally assure new investors that the  
21 RealFund investment was as safe as a bank CD and would generate guaranteed  
22 returns.  
23  
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1           **E.     Garg Continues his False Representations on a December 2009**  
2           **Webinar and a February 2010 Newsletter**

3           44.     Further, Garg hosted a webinar in December 2009 – after the defaults  
4     – in which he continued to tout the Real-CD promissory notes as an investment  
5     offering “secured high returns” and having more security than a bank CD. When  
6     asked by a webinar participant what would happen in the event of a builder default,  
7     Garg responded that an individual’s investment would be protected by both  
8     mortgage insurance, which would pay the investor off, and the value of the  
9     underlying property.  
10

11           45.     Garg continued to misrepresent the risk-level of his promissory note  
12     program in RealFund’s February 2010 e-mail newsletter to investors, again falsely  
13     characterizing a Real-CD as being “just like a bank CD, except that it’s more  
14     secure and the interest rates are much higher!”  
15

16           46.     In addition to making the foregoing misrepresentations to new  
17     investors, each defendant failed to disclose the prior defaults on principal and  
18     interest payments, which made the foregoing representations doubly false and  
19     misleading.  
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1           **F. Defendants Acted with Scienter in Making Material**  
2           **Misrepresentations and Failing to Disclose Material Information**

3           47. Both the information misrepresented to investors, including the risk  
4 level associated with an investment in the RealFund program, as well as the  
5 information concealed from investors, including the prior defaults and First  
6 Atlanta's bankruptcy, was important to investors in the RealFund program. Had  
7 the foregoing information been accurately and fully provided to individuals  
8 considering an investment in the RealFund program, many, if not all, individuals  
9 would not have invested in the program.  
10

11           48. Both Garg and Zakocs were aware of, or, in their capacity as  
12 unregistered brokers who were selling the promissory note securities issued by  
13 First Atlanta, RealFund, and Weatherby, had a duty to investigate in order to  
14 ascertain the material information that was misrepresented to or concealed from  
15 investors.  
16

17           49. More specifically, Garg and Zakocs, as unregistered brokers selling the  
18 Real-CD promissory notes on behalf of all defendants, had a duty to investigate the  
19 issuers and investment opportunities they were promoting and could not blindly  
20 accept facts as true in connection with the offer or sale of the notes. Accordingly,  
21 Garg and Zakocs knew, or, had they performed the due diligence required of them,  
22 would have learned, among other things, that: 1) First Atlanta was involved in  
23  
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1 bankruptcy proceedings throughout most of the Relevant Period; 2) First Atlanta's  
2 properties did not have sufficient equity to fully collateralize investors' promissory  
3 notes, as represented to investors; 3) First Atlanta had defaulted on the mortgage  
4 payment for at least one of its investment properties for approximately two years and  
5 the property was sold in foreclosure in April 2009; and 4) First Atlanta had defaulted  
6 with respect to at least two investors, when in September and October of 2009 it  
7 failed to make required principal or interest payments to them.  
8

9           50. Given the material information which each defendants knew, or had a  
10 duty to know, but did not disclose to investors, each defendant knew, or was  
11 reckless in not knowing, that their investment program, encompassing investments  
12 in promissory notes issued by First Atlanta, RealFund, and Weatherby, was not  
13 risk-free and did not generate guaranteed returns as represented.  
14

15           **G. Defendants' Further Defaults, Subsequent Lulling Behavior, and**  
16           **Attempts to Obstruct the SEC Investigation**

17           51. In fact, by April 2010, RealFund, First Atlanta, and Weatherby had  
18 defaulted with respect to all of their promissory note obligations and discontinued  
19 making interest and principal payments to investors. Attributing the termination of  
20 payments to the SEC staff's investigation of the offering fraud alleged herein, Garg  
21 and Zakocs continue to assure investors that their principal investment is safe and  
22 still accruing interest at the agreed upon rate. Garg and Zakocs also continue to  
23  
24

1 represent to investors that they will be repaid their principal investment plus all  
2 accrued interest upon resolution of the SEC staff's investigation.

3  
4 52. In addition to engaging in this continuing lulling behavior, the  
5 defendants, through Garg and Zakocs, have also encouraged investors not to  
6 cooperate with, or speak to, the SEC staff. For example, in RealFund's March  
7 2010 e-mail newsletter to investors, a newsletter that ends with Garg's printed  
8 signature, RealFund advised investors who were contacted by the SEC to "wait  
9 until when and if you receive something in writing from them, and allow our  
10 attorneys to respond for you" in order to "keep any liability or inconvenience on  
11 our dime and keep you legally shielded."  
12

13 53. Similarly, as recently as December 2010, RealFund, through Garg and  
14 Zakocs, distributed e-mails to investors recommending that they not contact the  
15 SEC staff since such contact "may prolong their 'investigation' and delay the  
16 conclusion."  
17

18 54. Although the defendants, through Garg and Zakocs, also continue to  
19 assure investors that they have fully cooperated with the SEC staff's investigation  
20 of the offering fraud alleged herein and "have diligently done all [they] can and  
21 have done everything [they] have been asked to do" since they "have nothing to  
22 hide," in fact, Garg, Zakocs, RealFund, First Atlanta, and Citiprop each has  
23 ignored the document subpoenas served on him/it in this matter.  
24

1           55. In response to the SEC staff's subpoenas seeking documents,  
2 including offering documents provided to investors, documents reflecting the use  
3 and current location of all amounts invested with the defendants (including  
4 documents identifying the properties purchased and/or renovated by the  
5 defendants), and documents reflecting any collateralizations or security interests  
6 for the promissory notes, as represented to investors, Garg, Zakocs, RealFund,  
7 First Atlanta, and Citiprop have failed to produce such documents.  
8

9           56. Accordingly, Garg, Zakocs, RealFund, First Atlanta, and Citiprop  
10 have not only failed to cooperate with the SEC staff's investigation of the offering  
11 fraud alleged herein, but have altogether failed to comply with the subpoenas  
12 lawfully issued by the SEC staff.  
13

#### 14           **H. Unregistered Offer and Sale of Securities**

15           57. Section 5 of the Securities Act prohibits any offers, directly or  
16 indirectly, to sell a security unless a registration statement for that offering has  
17 been filed with the SEC. Section 5 also prohibits any sale of a security unless a  
18 registration statement is effective. A registration statement is transaction specific.  
19 Each sale of a security must either be made pursuant to an effective registration  
20 statement or fall under a registration exemption.  
21  
22

23           58. The promissory notes issued by RealFund, First Atlanta, and  
24 Weatherby and sold by defendants were securities under federal law.

1           59. At the time of the offers and sales of the promissory notes issued by  
2 RealFund, First Atlanta, and Weatherby no registration statements were filed or in  
3 effect with respect to the offers and sales and no registration exemption applied.  
4

5           **I. Acting as an Unregistered Broker-Dealer**

6           60. Section 15(a)(1) of the Exchange Act prohibits a broker or dealer  
7 from using the mails or any means or instrumentality of interstate commerce to  
8 effect any transactions in, or to induce or attempt to induce the purchase or sale of,  
9 any security unless the broker or dealer is registered with the SEC. Section 3(a)(4)  
10 of the Exchange Act defines a “broker” as any person who is engaged in the  
11 business of effecting transactions in securities for the account of others. Section  
12 3(a)(5) of the Exchange Act defines a “dealer” as any person engaged in the  
13 business of buying and selling securities for the person’s own account through a  
14 broker or otherwise.  
15

16           61. RealFund, Garg, and Zakocs participated in securities transactions as  
17 a broker-dealer with respect to the sale of the promissory notes. For more than a  
18 year RealFund, Garg, and Zakocs actively solicited investors to purchase securities  
19 via e-mail, websites, telephone, and the United States mail. Garg and Zakocs had  
20 conversations with prospective investors on the telephone and met in person with  
21 prospective investors. Garg conducted a webinar to solicit purchases and sales of  
22 the promissory notes, which were securities, for the accounts of the investors.  
23  
24

1 RealFund, Garg, and Zakocs were not registered as broker-dealers nor affiliated  
2 with a broker-dealer registered with the SEC during the time in which they offered  
3 and sold the RealFund, First Atlanta, and Weatherby promissory notes to investors.

4  
5 62. Garg, Zakocs, and RealFund were regularly involved in  
6 communications with and recruitment of investors for the purchase of the  
7 promissory note securities. They regularly handled customer funds and securities,  
8 negotiated the terms of the notes, gave advice as to the merits of the notes, and  
9 actively solicited investors. In addition, Zakocs received at least \$57,000 in  
10 transaction-based compensation in the form of a commission (typically 4%) on  
11 promissory notes he sold.  
12

13 **FIRST CLAIM FOR RELIEF**  
14 **SECURITIES FRAUD: Violations by All Defendants of Section 10(b) of the**  
15 **Exchange Act and Rule 10b-5 [15 U.S.C. §§ 78j(b)]**

16 63. The Commission realleges and incorporates by reference paragraphs 1  
17 through 62.

18 64. The defendants, and each of them, directly and indirectly, with  
19 scienter, by use of the means or instrumentalities of interstate commerce, or of the  
20 mails, have employed devices, schemes or artifices to defraud; have made untrue  
21 statements of material fact or omitted to state material facts necessary in order to  
22 make the statements made, in light of the circumstances under which they were  
23 made, not misleading; or have engaged in acts, practices or courses of business  
24

1 which have been and are operating as a fraud or deceit upon the purchasers of  
2 securities.

3  
4 65. By reason of the foregoing, the defendants, and each of them, have  
5 violated and, unless restrained and enjoined, will continue to violate Section 10(b)  
6 of the Exchange Act and Rule 10b-5 thereunder.

7  
8 **SECOND CLAIM FOR RELIEF**  
9 **SECURITIES FRAUD: Violations by All Defendants of Section 17(a) of**  
10 **the Securities Act [15 U.S.C. § 77q(a)]**

11 66. The Commission realleges and incorporates by reference paragraphs 1  
12 through 62.

13 67. The defendants, and each of them, directly or indirectly, in the offer or  
14 sale of securities, by the use of the means or instruments of transportation or  
15 communication in interstate commerce or by the use of the mails: (a) with scienter,  
16 employed a device, scheme, or artifice to defraud; (b) obtained money or property  
17 by means of an untrue statement of material fact or omission to state a material fact  
18 necessary in order to make the statements made, in light of the circumstances  
19 under which they were made, not misleading; or (c) engaged in a transaction,  
20 practice, or course of business that operated or would operate as a fraud upon  
21 purchasers of securities.  
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1 interstate commerce or of the mails to offer to sell through the use or medium of  
2 any prospectus or otherwise, a security.

3  
4 73. By reason of the foregoing, the defendants, and each of them, have  
5 violated and, unless restrained and enjoined, will continue to violate Sections 5(a)  
6 and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

7  
8 **FOURTH CLAIM FOR RELIEF**  
9 **FAILURE TO REGISTER AS BROKER-DEALER: Violation by**  
10 **Garg, Zakocs, and RealFund of Section 15(a) of the Exchange Act**  
11 **[15 U.S.C. § 78o(a)]**

12 74. Paragraphs 1 through 62 are hereby realleged and incorporated by  
13 reference.

14 75. Defendants Garg, Zakocs, and RealFund, while acting as a broker or  
15 dealer, made use of the mails or any means or instrumentality of interstate  
16 commerce to effect a transactions in, or to induce or attempt to induce the purchase  
17 or sale of, a security in the form of a promissory note without being registered with  
18 the Commission as a broker or dealer or being an associated person of a registered  
19 broker-dealer.

20 76. By reason of the foregoing, defendants Garg, Zakocs, and RealFund  
21 have violated and, unless restrained and enjoined, will continue to violate Section  
22 15(a) of the Exchange Act.  
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**V. PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court:

**A.**

Find that each defendant committed the violations alleged.

**B.**

Enter an Order of Permanent Injunction as to each defendant, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, enjoining each of them from further violations of the provisions of law and rules alleged against them in this Complaint.

**C.**

Enter an Order directing each defendant to disgorge and pay over, as the Court may direct, all ill-gotten gains received or benefits in any form derived from the illegal conduct alleged in this Complaint, together with pre-judgment interest thereon.

**D.**

Enter an Order requiring each defendant to pay civil penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

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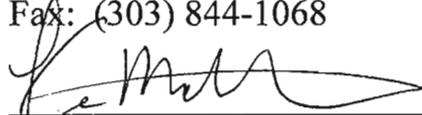
E.

Grant such further equitable relief as this Court deems appropriate and necessary.

DATED: April 7, 2011

Respectfully submitted,

  
\_\_\_\_\_  
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