UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	
vs.	)	**Case No. 16-cv-5384**
ERIC J. KELLOGG,	)	
Defendant.	)	

COMPLAINT

Plaintiff U.S. Securities and Exchange Commission (the "Plaintiff" or "SEC") alleges as follows:

NATURE OF THE ACTION

1. This case involves violations of the antifraud provisions of the federal securities laws by Defendant Eric J. Kellogg ("Kellogg") in connection with the offer and sale of municipal securities by the City of Harvey, Illinois (the "City of Harvey" or "Harvey"). Kellogg has been the Mayor of Harvey since 2003.

2. Harvey conducted three separate municipal bond offerings in 2008, 2009, and 2010 totaling approximately $14 million (the "2008, 2009, and 2010 Bond Offerings" respectively).

3. The purported purpose of the 2008, 2009, and 2010 Bond Offerings was to provide funding to develop and construct a Holiday Inn Hotel in Harvey ("Hotel Redevelopment Project"). These bonds were not general obligation bonds and were not to be repaid from the general coffers of Harvey, nor were the bond proceeds to be used to fund the operations of the City. Instead, depending on the particular bond offering, the bonds were to be repaid from dedicated tax revenue streams such as Harvey's hotel-motel tax and sales tax revenue or incremental tax from the Tax Increment District ("Harvey TIF District") within which the Hotel Redevelopment Project is located.

4. Thus, it was important to bond investors that money raised from the bond offerings, consistent with the stated purpose, was actually used to fund the Hotel Redevelopment Project, since the funds to repay the bonds derived from tax revenues would be materially affected by the existence of the hotel.

5. Yet, unbeknownst to bond investors and contrary to representations in Official Statements and other documents connected to the 2008, 2009 and 2010 Bond Offerings, from in or about 2009 through in or about 2011, Harvey officials improperly diverted at least $1.7 million of bond proceeds from these offerings into the general operation accounts of Harvey to pay the City's operation costs, including payroll. Harvey's former comptroller (the "Former Comptroller") also received approximately $290,000 in undisclosed payments derived from bond proceeds and other proceeds earmarked for the Hotel Redevelopment Project. Bond investors were thus materially misled about the purpose and risks of the bonds they purchased from Harvey.

6. Through the 2008, 2009, and 2010 Bond Offerings, Harvey engaged in a scheme to divert bond proceeds for improper purposes. As part of the scheme, Harvey

made misrepresentations and omissions to investors about how bond proceeds would be used and the risks associated with investments in Harvey's municipal bonds.

7. Kellogg, as Mayor of Harvey, exercised control over Harvey's operations. He also signed important offering documents that Harvey used to offer and sell bonds through the 2008, 2009, and 2010 Bond Offerings. As Mayor of Harvey, and a signatory on behalf of Harvey of important offering documents, Kellogg possessed the authority to control the 2008, 2009, and 2010 Bond Offerings.

8. Through the activities alleged in this Complaint, as a control person of Harvey, Defendant Kellogg is liable for Harvey's violations of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] ("Exchange Act") and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to the authority conferred by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] seeking a final judgment to restrain and enjoin permanently Defendant Kellogg from engaging in the acts, practices, transactions and courses of business alleged herein.

10. The Commission also seeks a final judgment prohibiting Defendant Kellogg from participating in an offering of municipal securities, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any municipal security; *provided*, however, that the Commission does not seek an injunction that would prevent Defendant Kellogg from purchasing or selling municipal securities for his own personal account.

11. The Commission also seeks a final judgment ordering Defendant Kellogg to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

12. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§78u(d) and 78aa]. The Defendant, directly or indirectly, has made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. These transactions, acts, practices and courses of business occurred in the Northern District of Illinois, where the City of Harvey is located and where Kellogg resides.

13. Defendant has, directly and indirectly, made use of the mails, and of the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

14. There is a reasonable likelihood that Defendant will, unless enjoined, continue to engage in the transactions, acts, practices and courses of business set forth in this Complaint, and transactions, acts, practices and courses of business of similar purport and object.

THE DEFENDANT

15. Eric J. Kellogg, age 60, resides in Harvey, Illinois, where he has been the Mayor since 2003 and was an alderman from 1991 to 2003. Kellogg was elected for his fourth term as Mayor on April 7, 2015. According to the Illinois Municipal Code, the Mayor is the chief executive officer of the city and also serves on the city council.

According to the Harvey Municipal Code, the Mayor appoints, and supervises the conduct of, officers of the city.

<u>RELATED PARTY</u>

16. <u>City of Harvey, Illinois</u> is located in southern Cook County, Illinois, about 20 miles south of downtown Chicago. Harvey was organized on June 18, 1891 and is a "body politic and corporate" operating under the Illinois Municipal Code. It is governed by a City Council, comprised of a mayor, and six alderman elected from separate wards for four year terms.

<u>FACTS</u>

A. The City of Harvey's Issuance of 2008 Bonds

17. In August 2008, Harvey conducted a municipal bond offering (the "2008 Bond Offering") to sell $6,025,000 of Hotel-Motel Tax Revenue Bonds, Series 2008A (the "2008 Bonds").

18. As part of the 2008 Bond Offering, Harvey provided to potential investors an Official Statement ("2008 Official Statement") with information regarding the offering.

19. The 2008 Official Statement was signed by Kellogg and the City Clerk on behalf of Harvey.

20. The 2008 Official Statement stated that the 2008 Bonds were being issued to finance: (i) a portion of the acquisition by the developer of the project, Harvey Hotel Properties (the "Developer"), of a parcel of property at 17040 South Halsted Street, Harvey, Illinois ("Hotel Property"); (ii) the rehabilitation of the facilities located on the Hotel Property "to provide for a full-service hotel and conference center" which was

expected to operate as a Holiday Inn; and (iii) to pay for administrative, financing, legal and other costs associated with the 2008 Bond Offering. On the first page of the 2008 Official Statement, the 2008 Official Statement stated in pertinent part:

> The Bonds are being issued for the purposes of: (i) financing costs of the Project described in this Official Statement, and paying incidental expenses associated with the issuance of the Bonds, and (ii) paying capitalized interests on the Series C Bonds.

21. The Project for which the City of Harvey was issuing the 2008 Bonds was the acquisition and rehabilitation of facilities on a parcel of property (the "Property") within the City of Harvey. According to the 2008 Official Statement, the Property would be improved with a full-service Holiday Inn hotel and conference center which would include, among other things, 239 rooms, a restaurant and lounge, an indoor pool, and 10,500 square feet of meeting space.

22. The 2008 Official Statement estimated that of the $6.025 million expected to be raised through the issuance of the 2008 Bonds, approximately $5.4 million would be used for a deposit into a fund for the Hotel Redevelopment Project and approximately $624,000 would be used for issuance costs, including the underwriter's compensation.

23. The 2008 Bonds were not general obligation bonds. In other words, the 2008 Bonds were not to be repaid to investors from the general coffers of Harvey.

24. Instead, according to the 2008 Official Statement, the bonds were payable solely from the incremental hotel-motel tax and sales tax revenue. On the front page of the 2008 Official Statement, in bold, capitalized type, the 2008 Official Statement represented in pertinent part: "The Bonds are not general obligations of the City, notwithstanding any provision or reference contained in this Official Statement, the Series 2008 A Ordinance, or any other bond document or transaction document; the

Bonds shall be special limited obligations of the City. The Bonds are payable solely from Hotel-Motel Tax and Sales Revenues." Thus, the Hotel Redevelopment Project, and the funding and progress of the project, would affect the tax revenue that would serve as the sole source of funds for repayments to investors of the 2008 Bonds.

25. After receiving Harvey's representations in the 2008 Official Statement about how proceeds from the 2008 Bond Offering would be used, and how tax revenues would be generated to repay bondholders, investors purchased a total of $6.025 million of 2008 Bonds.

B. The City of Harvey's Issuance of 2009 Bonds

26. In or about August 2009, the City of Harvey conducted a municipal bond offering (the "2009 Bond Offering") to sell $3,000,000 of Series 2009A Bonds (the "2009 Bonds").

27. As part of the 2009 Bond Offering, the City of Harvey provided to potential investors a Tax Exemption Certificate ("2009 Tax Exemption Certificate") with information regarding the offering.

28. The 2009 Tax Exemption Certificate was signed by Kellogg and Harvey's City Treasurer on behalf of Harvey.

29. The 2009 Tax Exemption Certificate stated that the 2009 Bonds were being issued to (i) pay a portion of the cost of the Hotel Redevelopment Project and (ii) to pay the Costs of Issuance of the 2009 Bonds.

30. The 2009 Tax Exemption Certificate estimated that of the $3 million expected to be raised through the issuance of the 2009 Bonds, approximately $1.749 million would be used for the acquisition of land for the Hotel Redevelopment Project,

approximately $835,000 would be used for rehabilitation costs associated with the Hotel Redevelopment Project, $150,000 would be used for an underwriter's discount, and approximately $276,000 would be used for costs of issuance of the 2009 Bonds.

31. Like the 2008 Bonds, the 2009 Bonds were not general obligation bonds and were not to be repaid to investors from the general coffers of Harvey. Instead, according to the 2009 Tax Exemption Certificate, the bonds were payable solely from the incremental tax revenue generated by a redevelopment project area within the City of Harvey Center Street Tax Increment Finance District ("Harvey TIF District"), which was where the Property for the Hotel Redevelopment Project was located.

32. Illinois law authorizes the use of tax increment financing, known as "TIF," to redevelop "blighted," "conservation," or "industrial park conservation areas" by financing redevelopment project costs with incremental property tax revenues. Incremental property tax revenue is derived from the increase in the equalized assessed valuation of real property within a redevelopment project area over and above the equalized assessed valuation in effect at the time the redevelopment project area is established.

33. Because the 2009 Bonds were payable solely from the incremental tax revenue generated by the redevelopment project area in the Harvey TIF District within which the Hotel Development Project was located, the funding and progress of the project would affect the repayment of principal and interest on the bonds.

34. After receiving Harvey's representations in the 2009 Tax Exemption Certificate about how proceeds from the 2009 Bond Offering would be used, and how tax revenues would be generated to repay bondholders, a single investor purchased a total of

$3 million of 2009 Bonds in approximately August 2009. A portion of that investor's interest in the 2009 Bonds was subsequently acquired by other investors.

C. The City of Harvey's Issuance of 2010 Bonds

35. In or about September 2010, the City of Harvey conducted a municipal bond offering (the "2010 Bond Offering") to sell $5,000,000 of Series 2010 Bonds (the "2010 Bonds").

36. As part of the 2010 Bond Offering, the City of Harvey provided to potential investors an Official Statement ("2010 Official Statement") with information regarding the offering.

37. The 2010 Official Statement was signed by Kellogg and Harvey's City Clerk on behalf of Harvey.

38. The 2010 Official Statement stated that the 2010 Bonds were being issued to finance: (i) the reimbursement of the developer of the project, Harvey Hotel Properties (the "Developer"), for eligible costs for the Hotel Redevelopment Project; (ii) reimbursing the City for advances made to the Developer; (iii) paying bond issuance expenses; and (iv) providing funds for future costs for the Hotel Redevelopment Project.

39. The 2010 Official Statement estimated that of the $5 million expected to be raised through the issuance of the 2010 Bonds, approximately $4.078 million would be used for a deposit to a project fund for the Hotel Redevelopment Project, $500,000 would be used for a deposit to a debt service reserve fund, and approximately $421,000 would be used for costs of issuance of the 2010 Bonds, including paying agent fees, underwriter's discount, legal fees, printing, and other miscellaneous costs of issuance.

40. Like the 2008 Bonds and the 2009 Bonds, the 2010 Bonds were not general obligation bonds and were not to be repaid to investors from the general coffers of Harvey. Instead, according to the 2010 Official Statement, the bonds were payable solely from the incremental tax revenue generated by a redevelopment project area within the Harvey TIF District where the Hotel Redevelopment Project was located. The 2010 Official Statement represented in pertinent part: "The Bonds are limited obligations of the City, payable solely from and secured by the Incremental Taxes and certain other moneys held under the Bond Ordinance." Thus, as with the 2008 Bonds and the 2009 Bonds, the Hotel Redevelopment Project, and the funding and progress of the project, would affect the incremental tax revenue that would serve as the sole source of funds for repayments to investors in the 2010 Bonds.

41. After receiving Harvey's representations in the 2010 Official Statement about how proceeds from the 2010 Bond Offering would be used, and how tax revenues would be generated to repay bondholders, a single investor purchased a total of $5 million of 2010 Bonds.

D. The Scheme to Misuse Bond-Related Proceeds and Harvey's Misrepresentations to Investors

42. Through the 2008, 2009, and 2010 Bond Offerings, Harvey and the Former Comptroller engaged in a scheme to divert bond proceeds for improper purposes, including undisclosed payments to the Former Comptroller beyond what was disclosed in the bond offering documents, for payroll for the City of Harvey, and for other purposes unrelated to the Hotel Redevelopment Project. As part of the scheme, Harvey made misrepresentations and omissions to investors about how bond proceeds would be used and the risks associated with investments in Harvey's municipal bonds.

43. In August 2008, a title company for the Hotel Redevelopment Project disbursed $400,000 to a firm controlled by the Former Comptroller (the "Former Comptroller's Firm" or the "Firm"), which the offering documents for the 2008 Bonds disclosed as the Firm's fee for acting as a financial adviser to Harvey for the offering.

44. Also in August 2008, a title company for the Hotel Redevelopment Project disbursed approximately $162,000 of 2008 Bond proceeds to a bank account for a drywall company, purportedly for unpaid construction work performed by the drywall company. The bank account was jointly controlled by the Developer and by the owner of the drywall company. When the $162,000 disbursed to the drywall company hit the drywall company's account, the drywall company immediately transferred $140,000 to the Developer's majority owner and wrote him a check for an additional $25,000.

45. Although some proceeds from the 2008 Bonds appear to be related to the Hotel Redevelopment Project, all of these proceeds went to pay for past due amounts on the project, such as past due real estate taxes and loans and unpaid construction bills. Thus, while the 2008 Official Statement represented that a portion of the 2008 Bond proceeds would go towards "rehabilitation of the facilities located on the Hotel Property" to provide for a full-service Holiday Inn hotel and conference center, in fact none of the $6.025 million in proceeds from the 2008 Bond Offering was used for additional work on the project, as opposed to payment of past due amounts.

46. As part of the scheme to divert bond-related proceeds, in July 2009, the City of Harvey sent $1.5 million from Harvey to an escrow account for the Former Comptroller's Firm. The Firm then paid the Developer $1 million. After receiving this

payment, the Developer made a $70,000 undisclosed payment to the Former Comptroller and paid an additional $100,000 to the Developer's majority owner's girlfriend.

47. In 2010, Harvey used subsequent bond proceeds to repay a portion of the $1.5 million loan made in July 2009.

48. In August 2009, a title company for the Hotel Redevelopment Project disbursed $72,000 to the Former Comptroller's Firm, which the offering documents for the 2009 Bonds disclosed as the Firm's fee for acting as a financial adviser to Harvey for the offering.

49. In August 2009, as noted above, the City of Harvey issued the 2009 Bonds and distributed the 2009 Tax Exemption Certificate to investors in the bonds. As noted above, the 2009 Tax Exemption Certificate stated that the purpose of the bonds was to provide funding for the Hotel Redevelopment Project and represented that repayment of the 2009 Bonds would be affected by the funding and progress of the Hotel Redevelopment Project. The 2009 Tax Exemption Certificate omitted to state that Harvey had misused a portion of the proceeds from a previous bond offering – the 2008 Bond Offering – as well as other proceeds from the City of Harvey, for undisclosed payments to the Former Comptroller, the Developer's girlfriend, and the Developer himself, as set forth in the preceding paragraphs herein.

50. The City of Harvey materially misled investors by, among other things, stating in the 2009 Tax Exemption Certificate that Harvey was issuing the bonds for the Hotel Redevelopment Project while omitting to state that bond-related and other proceeds earmarked for the Hotel Redevelopment Project already had been misused.

51. In August 2009, as part of the scheme to divert bond proceeds, the City of Harvey used $600,000 in 2009 Bond proceeds for the City of Harvey's general expenses, not for the Hotel Redevelopment Project. On August 9, 2009, $600,000 of 2009 Bond proceeds was transferred to the City of Harvey's general bank account. On that same day, the City of Harvey withdrew $420,000 from its general bank account to meet Harvey's payroll obligations.

52. In February 2010, in another act in furtherance of the scheme to divert bond proceeds, the City of Harvey used an additional $300,000 in 2009 Bond proceeds for the City of Harvey's general expenses, not for the Hotel Redevelopment Project. On February 12, 2010, $300,000 of 2009 Bond proceeds was transferred to the City of Harvey's general bank account. It appears that Harvey used this money for Harvey's general operations.

53. In September 2010, as noted above, the City of Harvey issued the 2010 Bonds and distributed the 2010 Official Statement to investors in the bonds. The City of Harvey used a portion of the 2010 Bond proceeds to repay the City of Harvey for a portion of the $1.5 million loan it had made to the Developer in July 2009. As noted above, part of the proceeds of this loan was diverted to the former Comptroller and to the Developer's majority owner's girlfriend.

54. As noted above, the 2010 Official Statement stated that the purpose of the bonds was to provide funding for the Hotel Redevelopment Project and represented that repayment of the 2010 Bonds would be affected by the funding and progress of the Hotel Redevelopment Project. The 2010 Official Statement also set forth a variety of Risk Factors related to the risk that the Harvey TIF District would not generate a sufficient

amount of pledged taxes such that there would be sufficient money to pay principal and interest on the bonds when due. But the 2010 Official Statement omitted to state that the City of Harvey had misused a portion of the proceeds from Harvey's two previous bond offerings, the 2008 and 2009 Bond Offerings.

55. The City of Harvey materially misled investors by, among other things, stating in the 2010 Official Statement that Harvey was issuing the bonds for the Hotel Redevelopment Project while omitting to state that bond-related proceeds from the 2008 and 2009 Bond Offerings and other proceeds earmarked for the Hotel Redevelopment Project already had been misused.

56. The City of Harvey also materially misled investors by, among other things, describing in the 2010 Official Statement the various risks that the Harvey TIF District would be unable to generate sufficient revenues to repay investors while omitting to state that the risk that Harvey would misuse bond proceeds had already occurred with respect to the 2008 and 2009 Offerings as well as with other proceeds earmarked for the Hotel Redevelopment Project within the Harvey TIF District.

57. In September 2010, as part of the scheme to divert bond proceeds, the City of Harvey transferred $1.87 million of the $5 million 2010 Bond proceeds to the Developer. The Developer then used $1,075,000 to pay off an existing loan for the project, used $100,000 for an undisclosed payment to the Former Comptroller's Firm, and used an additional $100,000 for a payment to a construction company controlled by the Developer.

58. In October 2010, the Developer made an additional undisclosed $49,375 payment to the Former Comptroller's Firm and made an additional $75,000 payment to the construction company controlled by the Developer.

59. In June 2011, as part of the scheme to divert bond proceeds, the City of Harvey authorized a $250,000 loan to the Developer. The $250,000 loan was transferred from an account holding proceeds from the $5 million 2010 Bond Offering. The Developer then made a $15,000 undisclosed payment to the Former Comptroller's Firm, made a $30,000 payment to a construction company controlled by the Developer, and made a $57,000 payment to the Developer's majority owner.

60. In October 2011, as part of Harvey's participation in the scheme to divert bond proceeds, the City of Harvey used $959,000 in 2010 Bond proceeds for the City of Harvey's general expenses, not for the Hotel Redevelopment Project. The $959,000 of 2010 Bond proceeds was transferred to the City of Harvey's general bank account. It appears that Harvey used this money for Harvey's general operations.

E. The Failure of the Hotel Redevelopment Project

61. As the result of the scheme to divert bond related proceeds, the Hotel Redevelopment Project has turned into a fiasco for bond investors and Harvey residents. According to news reports, the proposed Holiday Inn hotel and conference center stands as an unfinished decrepit shell.

F. Misrepresentations to Underwriters About the Absence of Conflicts Of Interest

62. In connection with each of the 2009 and 2010 Bond Offerings, the City of Harvey executed a General Closing Certificate. Kellogg signed the 2009 and 2010 General Closing Certificates, along with the City Clerk.

63. The City of Harvey provided the General Closing Certificate to the underwriters for the 2009 and 2010 Bond Offerings. The role of the underwriters was to purchase and pay for all bonds if they were purchased.

64. The General Closing Certificates for the 2009 and 2010 Bond Offerings, stated, in pertinent part, that "[n]o member of the City Council, no officer of the City, and no managerial or supervisory employee of the City" is "interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation" in the borrowing evidenced by the Bonds, or the contract or contracts for the acquisition, construction and equipping of the Hotel Redevelopment Project.

65. When the City of Harvey issued these General Closing Certificates in 2009 and 2010, the Former Comptroller, as a Harvey city official, was an "officer" of Harvey. He also was a managerial or supervisory employee of Harvey, supervising the accounting and financial employees of Harvey. Based on the undisclosed payments to the Former Comptroller and/or his businesses described herein, the Former Comptroller was "interested, either directly or indirectly" in the borrowing evidenced by the Bonds, or the contract or contracts for the acquisition, construction and equipping of the Hotel Redevelopment Project.

66. In light of the Former Comptroller's undisclosed interests in the borrowing evidenced by the 2009 and 2010 Bonds, and in the contracts for the Hotel Redevelopment Project, Harvey's representations to the underwriters in the 2009 and 2010 General Closing Certificates about the absence of conflicts of interest were materially misleading.

G. Kellogg's Control Of Harvey And His Ability To Control Its Bond Offerings

67. As Mayor, Kellogg controlled Harvey's general operations and possessed the power to control the 2008, 2009, and 2010 Bond Offerings. Among other things Kellogg appointed the Former Comptroller and was responsible for supervising him. The Former Comptroller's job duties included the issuance of the bonds in the 2008, 2009, and 2010 Bond Offerings. Kellogg's ability to control the City of Harvey's bond offerings is further evidenced by the fact that he signed the official statements for the 2008, 2009, and 2010 Bonds and the 2009 and 2010 General Closing Certificates.

H. Kellogg's Assertion Of The Fifth Amendment Privilege Against Self-Incrimination

68. Prior to filing this action against Kellogg, the Commission subpoenaed Kellogg to appear before Commission staff in an investigative testimonial proceeding to answer questions, under oath, about the events at issue in this case. After swearing under oath to truthfully testify during the proceeding, Kellogg asserted his Fifth Amendment privilege against self-incrimination during the proceeding in response to all substantive questions asked by Commission staff regarding the events at issue in this case.

I. The Commission's Prior Lawsuit Against Harvey And The Former Comptroller

69. In June 2014, in *SEC v. City of Harvey, et al.* Case No. 14-cv-4744 (N.D. Ill.), the Commission filed a lawsuit against Harvey and the Former Comptroller relating to the misconduct described herein. In the lawsuit, the Commission alleged, among other things, that Harvey and the Former Comptroller violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

70. In December 2014, the Court entered a Final Judgment by consent against Harvey. That Final Judgment against Harvey, among other things, permanently enjoined

Harvey from committing future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Further, in January 2015, the Court entered a Final Judgment by default against the Former Comptroller. That Final Judgment against the Former Comptroller, among other things, permanently enjoined him from committing future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

CLAIM FOR RELIEF

Control Person Liability
Section 20(a) of the Exchange Act [15 U.S.C. Section 78t(a)]

71. The Commission realleges and reincorporates by reference each and every allegation set forth above.

72. Defendant Kellogg is liable as a control person for Harvey's violations 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].

73. Pursuant to Section 20(a) of the Exchange Act [15 U.S.C. §78t(a)], Defendant Kellogg is liable jointly and severally with and to the same extent as Harvey.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court enter a judgment:

I.

(Injunctive Relief Against Future Securities Law Violations)

Permanently enjoining Defendant Kellogg from violating, and from inducing violations of, Section 10(b) of the Exchange Act [15 U.S.C. § 78j] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

II.

(Other Injunctive Relief)

Prohibiting Defendant Kellogg from participating in an offering of municipal securities, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any municipal security; *provided*, however, that such injunction shall not prevent Defendant Kellogg from purchasing or selling municipal securities for his own personal account.

III.

(Civil Penalties)

Imposing appropriate civil penalties upon Defendant Kellogg pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

(Retention of Equitable Jurisdiction)

Retaining jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure.

V.

(Other Relief)

Granting such orders for further relief the Court deems appropriate.

Respectfully submitted,

/s/Eric Phillips__________

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Dated: May 19, 2016