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U.S. DISTRICT COURT
FEDERAL DISTRICT OF GEORGIA

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOHN BENJAMIN STEWART, JR.,
STEWART FINANCE COMPANY,
STEWART NATIONAL FINANCE COMPANY,
DONALD N. ELLIS and
D&E ACQUISITIONS, INC.

Defendants.

Civil Action No.

3:03-CV-42 (CAR)

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission
("Commission" or "SEC") alleges:

SUMMARY

1. This action involves the unregistered offer and sale of securities, without an exemption from registration, by defendants John Benjamin Stewart, Jr. ("Stewart"), Stewart Finance Company ("Stewart Finance"), Stewart National Finance Company ("Stewart National"), Donald N. Ellis ("Ellis") and D&E Acquisitions, Inc. ("D&E"). Stewart owns and controls Stewart Finance and Stewart National, both of which are engaged in the consumer finance business of making small, short-term loans to borrowers. Stewart caused D&E to be

formed through Ellis, a strawman. While D&E is ostensibly formed and owned by Ellis, it was formed at Stewart's instigation and expense.

2. By engaging in this conduct, the defendants violated Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77e(a) and(c)]. The Commission seeks permanent injunctions, disgorgement, prejudgment interest and civil monetary penalties against each of the defendants. The Commission also seeks sworn accountings from Stewart and Ellis.

JURISDICTION AND VENUE

3. The Commission brings this action pursuant to authority conferred on it by Section 20(d)(1) of the Securities Act [15 U.S.C. §77t(d)(1)].

4. This Court has jurisdiction over this action pursuant to Sections 20 and 22(a) of the Securities Act [15 U.S.C. §§77t and 77v(a)]. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] because Stewart and Ellis reside and transact business within the Middle District of Georgia, the main offices of Stewart Finance, Stewart National and D&E are located within the Middle District of Georgia. Further, many of the acts and circumstances giving rise to this complaint occurred within the Middle District of Georgia.

5. The defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the acts, practices, and courses of business alleged herein.

DEFENDANTS

6. Defendant Stewart, age 54, is a resident of Union Point, Georgia. He is the co-founder, president, director and treasurer of Stewart Finance and the sole owner of Stewart Finance's parent company. Stewart is also the sole owner, founder, president, director and treasurer of Stewart National.

7. Defendant Stewart Finance is a Georgia corporation that maintains its headquarters and principal place of business in Union Point, Georgia. At the time of the filing of Complaint, Stewart Finance had offices located in Georgia, Louisiana, Missouri, Illinois and Tennessee. Stewart Finance has been engaged in the consumer finance business since its inception in 1984. Stewart Finance filed for bankruptcy protection pursuant to Chapter 11 of the Bankruptcy Code on February 10, 2003.

8. Defendant Stewart National is a Georgia corporation that maintains its headquarters and principal place of business in Union Point, Georgia. Stewart National was formed in August 2001 to acquire, among other things, the assets of

Stewart Finance. Stewart National's primary business is the making of small consumer finance loans. Stewart National filed for bankruptcy protection pursuant to Chapter 11 of the Bankruptcy Code on February 10, 2003.

9. Defendant Ellis, age 59, is a resident of Union Point, Georgia, and has been employed by Stewart since 2001. He is the sole owner of D&E, which he formed at Stewart's direction and for Stewart's benefit.

10. Defendant D&E is a Georgia corporation headquartered in Union Point, Georgia, and was formed in July 2002. D&E's primary business was ostensibly the making of small consumer finance loans, although it never held appropriate licenses in its name, and relied upon licenses in the name of Stewart Finance. D&E had no employees, and all persons working on its behalf were, in fact, employees of Stewart Finance.

Securities Offered and Sold by Stewart Finance and Stewart

11. In 1989, Stewart Finance commenced a continuous series of offerings to Georgia investors of its subordinated debentures and senior demand notes. The debentures had a range of maturity dates and interest rates. The demand notes had no fixed term and a variable interest rate.

12. In 1998, Stewart Finance also sold preferred stock to Georgia investors.

13. Stewart Finance referred to its subordinated debentures and senior demand notes as "investments" in newspaper advertisements and informational brochures about the company.

14. The initial offers and sales of securities by Stewart Finance were purportedly exempt from registration pursuant to the intrastate offering exemption set forth in Section 3(a)(11) of the Securities Act. The intrastate offering exemption applies to any security that is part of an issue offered and sold only to persons resident within a single state, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated and doing business within such state.

15. Stewart Finance opened its first office outside the state of Georgia in 1992. Thereafter a larger and larger percentage of offering proceeds were used to fund out-of-state operations, eventually causing Stewart Finance not to be in compliance with Section 3(a)(11)'s requirement that the issuer be doing business in the state where the exempted securities are sold.

16. Stewart Finance allowed the holders of its debentures, including those who moved outside the state of Georgia, to roll over the debentures at maturity.

17. By 1999, Stewart Finance was selling securities in unregistered offerings, without an exemption, because it was using an impermissible amount of offering proceeds to fund the company's operations outside the state of Georgia. Consequently, Stewart Finance was not in compliance with the Section 3(a)(11) requirement that the issuer be doing business in the state where the exempted securities are sold. Stewart Finance nonetheless continued to offer and sell securities after 1999, without an exemption from registration, by allowing existing investors to roll over their securities at maturity.

18. In approximately August 1999, after learning that Stewart Finance could no longer issue securities, Stewart began personally issuing promissory notes to investors and transferring the proceeds of those notes to Stewart Finance. The notes issued by Stewart were for a one-year term and had a fixed rate of interest. The offers and sales of these notes were not registered with the Commission and were not exempt from registration. Stewart issued at least \$21 million in promissory notes over a period of approximately two years.

Securities Offered and Sold by Stewart National and Stewart

19. Stewart formed Stewart National in August 2001.

20. In January 2002, Stewart National began offering \$25 million in variable rate subordinated debentures in a

purported private placement pursuant to Regulation D of the Securities Act.

21. The proceeds of Stewart National's offering were to be used to acquire certain Georgia offices of Stewart Finance.

22. Stewart planned eventually to merge Stewart Finance with and into Stewart National and file a registration statement to exchange registered debentures of Stewart National for all outstanding debentures of Stewart Finance.

23. Stewart National's private placement memorandum included financial statements for Stewart Finance.

24. The Stewart National offering was not exempt from the registration requirements of the Securities Act because the facts and circumstances of the offering required it to be integrated with the prior and contemporaneous non-exempt offerings by Stewart Finance and Stewart.

Securities Offered and Sold by D&E, Ellis and Stewart

25. D&E was formed in July 2002 by Ellis, who purportedly owns 100% of D&E's stock. Ellis caused D&E to be formed, at Stewart's insistence, for the sole purpose of allowing debentures previously issued through Stewart Finance and Stewart National to be rolled over and issued through D&E.

26. Ellis invested no personal funds to capitalize D&E at or since its formation. Stewart, not Ellis, paid all legal fees and filing costs associated with D&E's formation.

27. Stewart conceived of and planned the D&E scheme to sell unregistered securities.

28. Stewart directed Ellis, whom he had previously employed in other Stewart controlled companies, to implement the D&E plans under Stewart's control.

29. At the time of or shortly after its formation, D&E entered into a contractual agreement with Stewart Finance to acquire eleven Georgia branches of Stewart Finance for the cost of \$9,676,711.

30. In the transaction, D&E acquired only the "businesses" of the Georgia branches. The leases for the buildings remained in the name of Stewart Finance, and while there was a general agreement that D&E would reimburse Stewart Finance for rental costs and other business expenses, D&E paid nothing to Stewart Finance on business expenses for the eleven branches between D&E's July 2002 formation and February 2003 bankruptcy.

31. A confidential private placement memorandum ("PPM") dated July 22, 2002 for "D&E Acquisitions, Inc. d/b/a Stewart Finance Company" offered the sale of \$15 million in variable rate subordinated debentures in \$100 denominations and \$10 million in fixed rate subordinated demand notes in \$100 denominations. Stewart paid all legal and other costs associated with the preparation of D&E's PPM.

32. Thereafter, as debentures issued by Stewart Finance and Stewart National matured, the investors were given D&E's PPM, and those who wished to continue being a debenture holder were issued debentures through "D&E Acquisitions, Inc. d/b/a Stewart Finance Company." All monies rolled over to D&E for debentures were transferred into a D&E bank account and were immediately wire-transferred to the bank accounts of Stewart Finance, ostensibly for partial payment on the purchase of the eleven branches pursuant to the sales contract between D&E and Stewart Finance.

33. D&E had no employees, but relied instead upon the same employees of Stewart Finance that had previously sold debentures for both Stewart Finance and Stewart National.

34. As D&E issued rollover debentures in the name of "D&E Acquisitions, Inc. d/b/a Stewart Finance," the debt D&E owed Stewart Finance was reduced dollar for dollar. By January 2003, D&E had issued rollover debentures totaling approximately \$6 million, leaving a debt to Stewart Finance at that time of approximately \$3.6 million.

Integration of the Offerings

35. The offerings of Stewart, Stewart Finance, Stewart National and D&E were a single offering because: (1) the offerings were part of a single plan of financing and were made for the same general purpose of funding the consumer

finance businesses owned and operated by Stewart; (2) Stewart Finance, Stewart National and D&E each offered the same type of securities--subordinated debentures; (3) Stewart Finance's, Stewart's, Stewart National's and D&E's offerings overlapped during the same time period; and (4) the offerings all involved the same type of consideration--cash.

36. Stewart Finance and Stewart National are integrated issuers. Even though Stewart Finance and Stewart National are separate legal entities, they are under common ownership and control and are engaged in the same business. At the time that it commenced its offering in January 2002, Stewart National planned to merge with Stewart Finance. The success of both Stewart National and Stewart Finance is dependent upon the same individual--Stewart. Stewart Finance and Stewart National are so closely related that the private placement memorandum for Stewart National's offering included the financial statements for Stewart Finance.

37. Stewart's, Ellis's and D&E's recent offering are integrated into those earlier offerings of Stewart, Stewart Finance and Stewart National. D&E should be considered an integrated issuer with Stewart Finance and Stewart National because once any applicable exemption ceased to exist with regard to the earlier offerings, it could not apply to D&E's unregistered later offering. Furthermore, the D&E offering

was a continuation of the earlier offerings. Like Stewart National and Stewart Finance, the success of D&E is dependent upon the same individual--Stewart. D&E is so closely related to Stewart Finance and Stewart National that the private placement memorandum for D&E's offering included the financial statements for Stewart Finance.

Registration Violations

38. Based on the facts described above, the defendants violated Sections 5(a) and 5(c) of the Securities Act by offering and selling securities, through the means or instruments of transportation or communication in interstate commerce, or of the mails, when no registration statement was in effect or on file with the Commission and no exemption from registration was available.

CLAIM FOR RELIEF

COUNT I--UNREGISTERED OFFERING OF SECURITIES
Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§ 77e(a) and 77e(c)]

39. Paragraphs 1 through 38 are hereby realleged and are incorporated herein by reference.

40. No registration statement has been filed or is in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the scheme and transactions in such scheme described herein.

41. At various times from at least 1989 through at least

2003, the Defendants, directly and indirectly, have:

a. made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell the securities described herein, through the use or medium of any prospectus or otherwise, when a registration statement was not in effect as to such securities;

b. carried securities or caused such securities, as described herein, to be carried through the mails or in interstate commerce, by means or instruments of transportation, for the purpose of sale or for delivery after sale, when a registration statement was not in effect as to such securities; and

c. made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, the securities described herein, without a registration statement having been filed as to such securities.

42. These acts include, but are not limited to, the activities described in paragraphs 1 through 38 of this Complaint.

43. By reason of the foregoing, Defendants Stewart, Stewart Finance, Stewart National, Ellis and D&E directly and

indirectly, have violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently enjoin the defendants from violating Sections 5(a) and 5(c) of the Securities Act;

II.

Order defendant Stewart to file with this Court and serve upon the Commission a sworn accounting of:

- a. all funds received from investors holding promissory notes issued by Stewart;
- b. the name, address and telephone number of each such investor; and
- c. the amount invested by each such investor and a statement of the location and disposition of any funds received from such investors;

III.

Order defendant Ellis to file with this Court and serve upon the Commission a sworn accounting of:

- a. all funds received from investors holding debentures and/or notes issued by D&E;

b. the name, address and telephone number of each such investor; and

c. the amount invested by each such investor and a statement of the location and disposition of any funds received from such investors;

IV.

Order defendants Stewart and Ellis to disgorge the proceeds obtained as a result of the illegal conduct described above, together with prejudgment interest thereon;

V.

Order that defendants Stewart Finance, Stewart National and D&E disgorge ill-gotten proceeds obtained as a result of the illegal conduct described above, along with prejudgment interest thereon, provided that, for so long as bankruptcy proceedings involving such parties are pending, any such payment by these defendants shall be paid through their respective bankruptcy proceedings;

VI.

Order defendant Stewart to be jointly and severally liable for any sums that Stewart Finance, Stewart National and D&E are required to disgorge;

VII.

Order defendants Stewart and Ellis to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)];

VIII.

Order civil money penalties against defendants Stewart Finance, Stewart National and D&E pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] provided that, for so long as bankruptcy proceedings involving such parties are pending, any such payment by these defendants shall be paid through their respective bankruptcy proceedings;

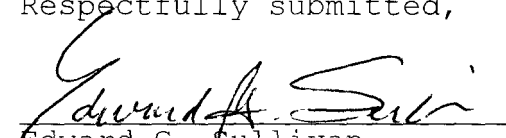
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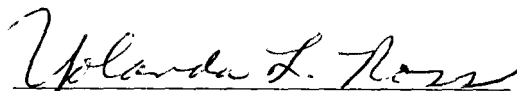
Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction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

X.

Grant such other relief as this Court may deem just and proper.

Respectfully submitted,


Edward G. Sullivan
Georgia Bar No. 691140
Senior Trial Counsel

A handwritten signature in black ink, reading "Yolanda L. Ross". The signature is written in a cursive style with a horizontal line underneath the name.

Yolanda L. Ross
Staff Attorney

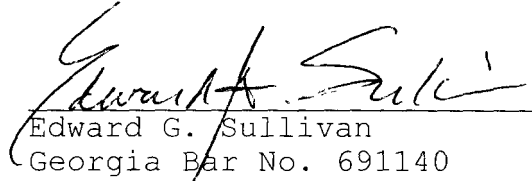
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served by United States first-class mail this 30th day of January, 2004, upon the following:

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