

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-228-JD
)	
FAIRPAX.COM, FAIRPAX, INC.,)	<u>JURY TRIAL DEMANDED</u>
and JOHN DOES, Nos. 1-20)	
)	
Defendants)	

AMENDED COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges:

SUMMARY

1. This is an emergency enforcement action to stop defendants FairPax, Inc., FairPax.com (collectively, “FairPax”) and John Does Nos. 1-20 (“Does 1-20”), the unknown owners and operators of FairPax, from engaging in an ongoing fraudulent scheme to offer unregistered securities over the Internet. FairPax.com is an Internet website that is currently soliciting money from investors by impersonating a New Hampshire-based registered mutual fund complex called Pax World Funds (“Pax World”).

2. FairPax.com, whose domain name is registered to FairPax, Inc., purports to offer “socially responsible mutual funds” for sale with a guaranteed “fixed 1.8% daily interest rate for 365 days.” - or a 657% annual rate of return. In a “Welcome to FairPax.com” letter from “Laurence A. Shadek, Chairman” and “Thomas W. Grant, President” that appears on the website, FairPax describes its purported mutual funds and “invite[s] you to join us in this quest!”

3. In reality, FairPax is a fraud. The descriptions of its purported mutual funds are

taken, nearly verbatim and without authorization, from Pax World's website. Laurence A. Shadek and Thomas W. Grant are the Chairman and President, respectively, of Pax World and are not, nor have they ever been, affiliated with FairPax in anyway. Moreover, the "socially responsible mutual funds" that FairPax purports to offer for sale are not, and have never been, registered with the Commission.

4. By engaging in the acts and practices alleged in this Complaint, Defendants FairPax and Does 1-20 have engaged in and, unless enjoined, will continue to engage in violations of the federal securities laws. Specifically, FairPax and Does 1-20's conduct constitutes the sale of unregistered securities in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), and fraud in violation of Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

5. Accordingly, the Commission seeks: (i) entry of a permanent injunction prohibiting FairPax and Does 1-20 from further violations of the relevant provisions of the federal securities laws, (ii) disgorgement of FairPax's and Does 1-20's ill-gotten gains and unjust enrichment, plus prejudgment interest, and (iii) the imposition of civil monetary penalties.

6. In addition, because this fraud is ongoing and because of the danger that investor funds will continue to be accumulated by FairPax and will be dissipated, the Commission seeks entry of a temporary restraining order and a preliminary injunction that will: (i) prohibit FairPax and Does 1-20 from continuing to violate the relevant provisions of the federal securities laws, (ii) freeze FairPax's and Does 1-20's funds, including any funds held by any affiliated entities, as well as any other funds obtained from investors and otherwise maintain the status quo pending

final resolution of this action, (iii) require the repatriation of funds obtained from United States investors and transferred overseas, (iv) require FairPax and Does 1-20 to submit an accounting of investor funds and other assets in their possession, (v) prevent FairPax and Does 1-20 from destroying relevant documents, (vi) set a schedule for expedited discovery, and (vii) require that FairPax post a copy of the temporary restraining order and preliminary injunction on its website to alert potential investors.

JURISDICTION

7. The Commission is an agency of the United States of America established by Section 4(a) of the Exchange Act [15 U.S.C. §78d(a)].

8. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa]. Many of the acts and practices alleged in this Complaint occurred in this District.

9. In connection with the conduct described in this Complaint, FairPax and Does 1-20 directly or indirectly made use of the mails or the means or instruments of transportation and communication in interstate commerce.

DEFENDANTS

10. **FairPax.com** is the Internet domain name for the website that contains the fraudulent offering of unregistered securities described in this Complaint.

11. **FairPax, Inc.**, is identified as the owner of the FairPax.com Internet domain name. Its address is listed as 140 E. Happy Valley Road, Scottsdale, AZ 85255.

12. **John Does Nos. 1-20** are unknown individuals and/or groups of individuals

responsible for, and/or controlling, FairPax.com and any other investment program offered by FairPax. Defendants Does 1-5 include the individuals responsible for maintaining, organizing and funding the FairPax.com website, as well as those persons responsible for constructing and advertising the investment programs offered by FairPax.

Related Party

13. **Cory Olsen** is identified on the Internet domain name registration as the “Administrative, Technical Contact” for FairPax.com. His recent addresses are known or suspected to be 11465 East Chama Road, Scottsdale, AZ; 10040 E. Happy Valley Road, Unit 288 Scottsdale, AZ; and 140 E. Happy Valley Road, Scottsdale, AZ.

THE FRAUDULENT AND UNREGISTERED SECURITIES OFFERINGS

14. FairPax.com is an Internet web page that is offering unregistered securities for sale to the public by impersonating a registered investment adviser called Pax World and by promising exorbitant returns. The FairPax.com domain name is registered to FairPax, Inc., of Scottsdale, Arizona, with “Cory Olsen” listed as the “administrative, technical contact.”

15. The Internet address www.fairpax.com contains a “Welcome to FairPax.com” letter that purports to be from “Laurence A. Shadek, Chairman” and “Thomas W. Grant, President.”

16. In reality, Laurence A. Shadek and Thomas W. Grant are the Chairman and President of Pax World, not FairPax. They are not, nor have they ever been, affiliated in any capacity with FairPax. They have never given anyone affiliated or associated with FairPax authorization to make representations on their behalf.

17. The “Welcome to FairPax.com” letter further provides the following description of FairPax’s purported investment products:

FairPax enables investors to align their financial goals with their personal values through a selection of professionally managed socially responsible mutual funds. By screening companies not only by their investment potential but also by standards of social responsibility, **FairPax** challenges companies to reach for a higher “bottom line” and offers investors the opportunity to do good while doing well.

At **FairPax**, we invest in companies that provide goods and services that improve the quality of life. We focus on areas such as health care, housing, high technology, pollution control, utilities, and education. While no company is perfect, we favor companies that rate positively on all our social screens. We do not invest in companies that make defense or weapons-related products or that derive revenue from the manufacture of tobacco, alcohol, or gambling products.

18. FairPax’s description is taken verbatim and without authorization from the description of mutual funds offered for sale by Pax World. On its website, Pax World describes its investment products as follows:

Pax World enables investors to align their financial goals with their personal values through a selection of professionally managed socially responsible mutual funds. By screening companies not only by their investment potential but also by standards of social responsibility, Pax World challenges companies to reach for a higher “bottom line” and offers investors the opportunity to do good while doing well.

At Pax World, we invest in companies that provide goods and services that improve the quality of life. We focus on areas such as health care, housing, high technology, pollution control, utilities, and education. While no company is perfect, we favor companies that rate positively on all our social screens. We do not invest in companies that make defense or weapons-related products or that derive revenue from the manufacture of tobacco, alcohol, or gambling products.

19. The “Welcome to FairPax.com” letter further describes FairPax’s purported “High Yield Fund” as follows:

FairPax High Yield Fund’s primary investment objective is to seek high current income. To the extent that it is consistent with the Fund’s primary objective, the Fund will also seek capital appreciation as a secondary objective.

FairPax High Yield Fund is the first socially screened high-yield fund to be offered to the public. The portfolio manager evaluates companies from both financial and social perspectives and seeks out companies that provide products and services that improve the quality of life and that are not, to any degree, involved in the manufacture of tobacco, liquor, gambling, and defense or weapons-related products.

20. This description, too, is taken verbatim and without authorization from Pax World, which offers a High Yield Fund that has filed a registration statement with the Commission:

Investment Objective: Pax World High Yield Fund’s primary investment objective is to seek high current income. To the extent that it is consistent with the Fund’s primary objective, the Fund will also seek capital appreciation as a secondary objective.

Social Commitment: Pax World High Yield Fund is the first socially screened high-yield fund to be offered to the public. The portfolio manager evaluates companies from both financial and social perspectives and seeks out companies that provide products and services that improve the quality of life and that are not, to any degree, involved in the manufacture of tobacco, liquor, gambling, and defense or weapons-related products.

21. In addition, FairPax promises exorbitant returns to investors. FairPax.com states that it offers “a fixed **1.8%** daily interest rate for **365 days.**” This translates into a 657% annual return. The web site further states that withdrawals of an investor’s principal are subject to a fee of “only 20%.”

22. FairPax invites all interested investors to send funds to FairPax through an Internet service called E-Gold, which facilitates electronic payments over the Internet. According to the “Frequently Asked Questions” section of the web site, opening a FairPax account is “quite easy and convenient. Simply click on the Signup button on this web site and follow the easy instructions.” The “Signup” page asks only for name and contact information, an E-Gold account number, and a username and password.

23. Neither FairPax’s purported “High Yield Fund” nor any other FairPax mutual fund has filed a registration statement with the Commission. In addition, FairPax is not registered as an investment adviser with the Commission.

24. FairPax.com is currently accessible on the Internet, and FairPax and Does 1-20 continue to use the FairPax.com web site to offer investments to the public. Potential investors continue to be able to place money in those plans and programs.

REMEDIES

25. The violations set forth in this Complaint involve fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement and such violations directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

FIRST CLAIM FOR RELIEF AGAINST FAIRPAX.COM, FAIRPAX, INC. AND DOES 1-20

Offer and Sale of Unregistered Securities [Violation of Sections 5(a) and 5(c) of the Securities Act]

26. The Commission repeats and incorporates by reference the allegations in paragraphs 1-25 of the Complaint as if set forth fully herein.

27. The units, or shares, of the plans and programs offered by FairPax and Does 1-20, and any investment contracts related to them, including, but not limited to the FairPax High Yield Fund and FairPax mutual funds, are securities within the meaning of Section 2(a)(1) of the Securities Act [15 U.S.C. §77b(a)(1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. §78c(a)(10)]. No registration statement has been filed with respect to these securities, and no exemption from registration has been available.

28. FairPax and Does 1-20, directly or indirectly: (a) have made, are making, and are about to make use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise, as to which no registration statement was in effect and for which no exemption from registration was available, and/or for the purpose of sale or for delivery after sale, have carried or caused to be carried, are carrying or causing to be carried, and are about to carry or cause to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities for which no registration statement was in effect and for which no exemption from registration was available; and/or (b) have made, are making, and are about to make use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement had been filed and for which no exemption from registration was available.

29. As a result, FairPax and Does 1-20 have violated, are violating 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)].

**SECOND CLAIM FOR RELIEF
AGAINST FAIRPAX.COM, FAIRPAX, INC. AND DOES 1-20**

**Fraud in the Offer and Sale of Securities
[Violation of Section 17(a) of the Securities Act]**

30. The Commission repeats and incorporates by reference the allegations in paragraphs 1-29 of the Complaint as if set forth fully herein.

31. FairPax and Does 1-20, directly or indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of securities by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) have employed, are employing, and are about to employ devices, schemes or artifices to defraud; (b) have obtained, are obtaining, and are about to obtain money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) have engaged, are engaging, and are about to engage in transactions, practices or courses of business which operate as a fraud or deceit upon the purchasers of the securities.

32. As a result, FairPax and Does 1-20 have violated, are violating and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

**THIRD CLAIM FOR RELIEF
AGAINST FAIRPAX.COM, FAIRPAX, INC. AND DOES 1-20**

**Fraud in Connection with the Purchase and Sale of Securities
[Violation of Section 10(b) of the Exchange Act and Rule 10b-5]**

33. The Commission repeats and incorporates by reference the allegations in paragraphs 1-32 of the Complaint as if set forth fully herein.

34. FairPax and Does 1-20, directly or indirectly, acting intentionally, knowingly or

recklessly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) have employed, are employing, and are about to employ devices, schemes or artifices to defraud; (b) have made, are making, and are about to make untrue statements of material fact or have omitted, are omitting, and are about to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) have engaged, are engaging, and are about to engage in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

35. As a result, FairPax and Does 1-20 have violated, are violating and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §240.10b-5].

NEED FOR EMERGENCY RELIEF

36. This is an ongoing fraud, as FairPax and Does 1-20 continue to solicit investors through the FairPax website. Without this Court's action, it is unlikely that FairPax and Does 1-20 will discontinue their fraudulent solicitations.

37. FairPax and Does 1-20 may likely dissipate assets belonging to investors by transferring them offshore or to bank accounts maintained by affiliated companies.

38. The emergency relief requested below is necessary in order to prevent further violations of the federal securities laws and further harm to investors, including further dissipation of investor assets.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Enter a temporary restraining order which:

1. Restrains FairPax and Does 1-20 and each of their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from directly or indirectly violating:

- a. Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. 77e(a)];
- b. Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], and
- c. 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];

2. Requires FairPax and Does 1-20, and each of their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, including facsimile transmission, electronic mail or overnight delivery service, to hold and retain all funds and other assets held for the direct or indirect benefit, or under the direct or indirect control, of FairPax or Does 1-20, in whatever form such funds and other assets may presently exist, to prevent any withdrawal, sale, payment, transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value or other disposal of any such funds and other assets, including incurring charges or cash advances on any credit card, and to freeze such funds and other assets pending further order of this Court, and further require all bank, brokerage and other financial institutions and other persons and entities which receive actual notice of the order by personal service or otherwise, including by facsimile transmission, electronic mail or overnight delivery service, and which hold any funds or other assets for the direct or indirect benefit, or under the direct or

indirect control, of FairPax or Does 1-20 in whatever form such assets may presently exist, to hold and retain within their control and prohibit the withdrawal, sale, payment, transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value or other disposal of any such funds and other assets;

3. Requires that all persons who hold or possess funds or other assets obtained directly or indirectly in connection with solicitations on the website “fairpax.com” or under the name(s) “FairPax, Inc,” or any of their affiliates, in whatever form such funds or other assets may presently exist and wherever located, hold and retain such funds and other assets, prevent any withdrawal, sale, payment, transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value or other disposal of any or all such funds or other assets, and freeze such funds and other assets pending further order of this Court.

4. Requires FairPax and Does 1-20, and each of their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmissions, electronic mail or overnight delivery service, and each of them, shall, within five (5) days of receiving actual notice of this Order, take such steps as are necessary to repatriate and deposit into the registry of the Court in an interest bearing account, any and all funds or assets that presently may be located outside of the United States that were obtained directly or indirectly from investors.

5. Restrains FairPax and Does 1-20 and each of their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, including facsimile

transmission, electronic mail or overnight delivery service, from accepting, or depositing into any account in which any of them has a direct or indirect beneficial interest or over which they exercise direct or indirect control, all funds or other assets obtained in connection with solicitations on the website “www.FairPax.com” or under the name “ FairPax, Inc.,” or any affiliated entities;

6. Requires FairPax and Does 1-20 to submit in writing and serve upon the Commission, within three (3) business days following service of the order, a written accounting identifying:

- a. The name, address, amount and date of payment and present location of proceeds for each and every individual who made payments in connection with solicitations on the website “www.FairPax.com” or under the name “ FairPax, Inc.,” or any affiliated entities;
- b. Assets of every type and description with a value of at least one thousand dollars (\$1,000) held for the direct or indirect benefit, or subject to the direct or indirect control, of FairPax or Does 1-20, whether in the U.S. or elsewhere;
- c. All transfers of funds or other assets of one thousand dollars (\$1,000) or more in funds obtained in connection with solicitations on the website “www.FairPax.com” or under the name “ FairPax, Inc.,” or any affiliated entities, including the names and locations of all persons, entities and accounts to and from which the transfers were made, the dates, amounts and purposes of the transfers and the identity and location of any assets derived from such funds;
- d. All accounts maintained at any bank, broker-dealer or other financial institution in the U.S. or elsewhere for the direct or indirect benefit, or subject to the direct or indirect control of FairPax or Does 1-20 at any time since January 1, 2004.

7. Requires FairPax and Does 1-20 to submit in writing to the Commission, within three (3) business days following service of the order, a list of all street and mailing

addresses (including but not limited to postal box numbers), telephone or facsimile transmission numbers (including numbers of pagers and mobile telephones), electronic mail addresses, safety deposit boxes and storage facilities used by either or under either's direct or indirect control, at any time since January 1, 2004;

8. Restrains FairPax and Does 1-20 and each of their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, including by facsimile transmission, electronic mail or overnight delivery service, from destroying, mutilating, concealing, altering, or disposing of any items, including but not limited to any books, records, documents, correspondence, contracts, agreements, assignments, obligations, tape recordings, computer media or other property relating to FairPax and/or Does 1-20 or any of their securities, financial or other business dealings, including but not limited to the website "FairPax.com;"

9. Provides that the parties may commence discovery forthwith, without any time constraints imposed by the Federal Rules of Civil Procedure or the Local Rules of this District, that all parties shall respond to any discovery request, including any notice of deposition or document request, within three (3) business days following service thereof, and that all depositions may be taken upon three (3) business days notice and all depositions of parties may be taken in Boston, Massachusetts;

10. Provides that, pursuant to Rule 5 of the Federal Rules of Civil Procedure, service of all pleadings and other papers to be served in this action, except the Summons and Complaint, may be made personally, by facsimile transmission, by overnight delivery service, or by electronic mail as this Court may direct by further order and that service of the Summons and

Complaint shall be made pursuant to Rule 4 of the Federal Rules of Civil Procedure or as this Court may further order; and

11. Requires FairPax and Does 1-20 to serve the statements and accountings required by the order and all other filings in this action on counsel for the Commission by messenger, overnight delivery service, or by facsimile to Lauren Albrecht, Esq., U.S. Securities and Exchange Commission, 73 Tremont Street, 6th Floor, Boston, Massachusetts 02108, facsimile number (617) 424-5940.

12. Requires, within two (2) days of service of the order on any of the Defendants, a hyperlink to a legible and verbatim copy of the order to be posted on the home page of the Internet web site operated by FairPax and Does 1-20 (www.fairpax.com) for the duration of the period that the order is in effect that is described using the title of the order and setting for the caption and civil action number of this action.

B. Enter a preliminary injunction extending the terms of the temporary restraining order described above;

C. Enter a permanent injunction restraining FairPax and Does 1-20 and each of their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order or injunction by personal service or otherwise, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. 77e(a)],
2. Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], and
3. 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];

D. Require FairPax and Does 1-20 to disgorge their ill-gotten gains and unjust enrichment, including prejudgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

E. Order FairPax and Does 1-20 to pay appropriate civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)];

F. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

G. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Ian D. Roffman

Ian D. Roffman (Mass. Bar No. 637564)
Martin F. Healey (Mass. Bar No. 227550)
ATTORNEYS FOR PLAINTIFF
SECURITIES AND EXCHANGE COMMISSION
73 Tremont Street, 6th Floor
Boston, Massachusetts 02108
(617) 424-5900 ext. 119 (Roffman)

Dated: September 7, 2004