

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
CASE NO.:**

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
JOHN HENLEY FOWLER,)
JEFFREY ROBERT FOWLER,)
AND JULIANNE CHALMERS)
)
Defendants.)
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COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges as follows:

INTRODUCTION

1. From January through November 2011, Defendants John Henley Fowler and his son Jeffrey Robert Fowler (collectively “the Fowlers”), along with another individual named Terry V. Koontz, operated a Ponzi scheme disguised as a gold futures investment program. They raised approximately \$4.3 million from 70 unsuspecting investors nationwide, many of whom were not accredited or financially sophisticated. The program was purportedly affiliated with Paulson & Co., Inc. (“Paulson NY”) and two other well-known asset management firms. In reality, the program was a sham with absolutely no connection to these firms and no underlying investment in gold futures.

2. John Fowler and Koontz issued promissory notes that guaranteed investors their principal was safely held in a bank account and used as leverage for Paulson NY to purchase gold

futures on credit. John Fowler and Koontz also promised investors three percent monthly interest payments and told them the notes were collateralized by a \$1 billion bond.

3. John Fowler and Koontz masterminded the Ponzi scheme and falsely claimed they were fellow investors. Jeffrey Fowler took steps to make the scheme appear legitimate by forming a Florida corporation with an identical name to the actual Paulson & Co. Inc., and opening several bank accounts in the company's name. He used these accounts to receive investor deposits and administer the Ponzi payments. Koontz enlisted the assistance of Defendant Julianne Chalmers, who has a history of engaging in multi-level marketing programs. Chalmers was hired to solicit investors to the purported gold futures promissory notes program and played a substantial role in the sale of the unregistered securities. Among other things, Chalmers advertised the program in the USA Today newspaper, emailed prospective investors with details of the program, and wired interest payments to investors from funds Jeffrey Fowler provided her.

4. As a result of the conduct described in this Complaint, John Fowler violated Sections 5(a), 5(c), and 17(a)(1), (2), and (3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§77e(a) and (c) and 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)]; and Exchange Act Rules 10b-5(a) and 10b-5(c) [17 C.F.R. §240.10b-5]. Jeffrey Fowler violated Sections 17(a)(1) and (3) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rules 10b-5(a) and 10b-5(c). Chalmers violated Sections 5(a) and 5(c) of the Securities Act and Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

5. The Commission requests the Court enter: (1) permanent injunctions restraining and enjoining the Fowlers and Chalmers from violating the federal securities laws; (2) an order directing Chalmers to disgorge all profits or proceeds she received as a result of the acts and/or courses of conduct complained of, with prejudgment interest; and (3) an order directing Chalmers to pay a

civil money penalty.

DEFENDANTS

6. John Fowler, age 64, is currently imprisoned in West Virginia. He pleaded guilty on September 19, 2012 to criminal charges of conspiracy to commit mail and wire fraud in the Middle District of Florida related to the scheme described in this Complaint. Fowler previously pleaded guilty in 2000 in the Middle District of Florida to four counts of bank fraud and four counts of mail fraud in a check-kiting matter. *U.S. v. Fowler*, 2:00-cr-59-FTM (M.D. Fla. 2000). He was simultaneously convicted of theft of Florida state sales tax funds from the operation of a car dealership. *State of Florida v. Fowler*, 00-002508CF (Feb. 23, 2000). He has never held any securities license and has never been associated with a registered broker-dealer.

7. Jeffrey Fowler, age 35, is currently imprisoned in Florida. He formerly worked as a Florida public school teacher. He pleaded guilty on September 18, 2012 to criminal charges of conspiracy to commit mail and wire fraud related to this scheme. He has never held any securities license and has never been associated with a registered broker-dealer.

8. Chalmers, age 65, is a resident of Desert Hot Springs, California. Chalmers participated substantially in the purported promissory notes program by soliciting investors to purchase notes. She received more than \$90,000 of investor proceeds as transaction-based commission payments for soliciting purchasers. Chalmers has never held any securities license, nor has she been registered as or associated with a registered broker-dealer.

RELATED INDIVIDUALS AND ENTITIES

9. Koontz, age 56, is currently imprisoned in Mississippi. Koontz pleaded guilty on December 10, 2012 to one count of conspiracy to commit mail and wire fraud related to this scheme. In 2002 the Commission obtained a permanent injunction against Koontz for securities law

violations related to a \$40 million prime bank offering fraud. *SEC v. Koontz et al.*, Civil Action No. 98cv11904NG (D. Mass., September 17, 1998). In a related criminal action, Koontz was charged with conspiracy to commit securities fraud and wire fraud and was sentenced on May 20, 2001 to ten years in prison and three years of supervised release. *U.S. v. Koontz*, 8:00-cr-00341-SCB (M.D. Fla. 2001). On July 3, 2013 the Commission issued an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions against Koontz. Koontz consented to the Order, which bars him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Koontz has never held any securities license and has never been associated with a registered broker-dealer.

10. Paulson & Co. Inc. (“Paulson FL”) was a Florida corporation with its principal place of business in Fort Myers, Florida. Jeffrey Fowler was Paulson FL’s sole director. John Fowler was a trustee of Paulson FL. Paulson FL is administratively dissolved, has no known disciplinary history, is not registered with the Commission in any capacity, and has not registered any offering of securities under the Securities Act or any class of securities under the Exchange Act.

11. CK&K is a fictitious business name registered with the State of Florida in January 2011. CK&K has never been registered with the Commission in any capacity and has never registered any offering of securities under the Securities Act or any class of securities under the Exchange Act.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act[15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)]; and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

13. This Court has personal jurisdiction over the Defendants and venue is proper in the Middle District of Florida because many of the Defendants' acts and transactions constituting violations of the Securities Act and the Exchange Act occurred in the Middle District of Florida. For example, John Fowler masterminded the scheme and Jeffrey Fowler collected investor funds and made Ponzi payments from their location in the Middle District. In addition, the Fowlers resided in the Middle District of Florida, and the Paulson FL office was located in the Middle District of Florida until it closed in late 2011. Chalmers participated substantially in the sale of unregistered securities for companies she knew were located in the Middle District of Florida. Chalmers knew that Paulson FL was located in Ft. Myers, Florida, and that CK&K was located in Tampa, Florida. She sent e-mails and communicated via telephone with Koontz and the Fowlers on dozens of occasions regarding the transactions with knowledge they were located in the Middle District of Florida. Chalmers also directed investors to wire their funds to bank accounts located in Ft. Myers and Tampa, Florida.

14. In connection with the conduct alleged in this Complaint, the Defendants, directly and indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation and communication in interstate commerce, and the mails.

FACTUAL ALLEGATIONS

A. The Promissory Notes Offering

15. John Fowler and Koontz met in a Florida prison around 2001 while both were serving time for prior convictions. In December 2010, Fowler and Koontz developed a scheme to defraud investors by using the name and reputation of Paulson NY and its well-known principal, John Paulson, to lure investors into a Ponzi scheme disguised as a gold futures promissory notes

program.

16. The premise of the fictitious program was that Paulson NY and a London-based asset management group would use their extensive lines of credit to purchase undervalued gold futures, then resell them at a profit of 12 to 20 percent per month. Investor funds would be safely maintained in a holding account Paulson NY owned and purportedly used to increase the credit line Paulson NY used to purchase gold futures.

17. Investors received promissory notes purporting to be from the asset management group and a New York-based bond liquidation firm. The notes purportedly guaranteed monthly payments to investors of three percent (36 percent annualized) in addition to a return of principal. The promissory notes and monthly interest were also allegedly backed by collateral from Paulson NY in the form of a \$1 billion bond.

18. Koontz prepared an audio recording of how the promissory notes program supposedly functioned, and made it available by telephone to prospective investors. Koontz explained he worked for an entity called CK&K, which he falsely described as the “marketing arm” of, and a “feeder company” to, Paulson NY. By investing in the promissory notes program, Koontz claimed investors, or “funding partners,” had “the opportunity to reap the benefits of this successful venture.” Koontz compared the program to traditionally safe bank certificates of deposit and told investors they could sell their notes through recognized financial institutions after 90 days. Koontz also prepared written materials, including: a draft promissory note purportedly issued jointly by CK&K, Dock Street Capital Management, and Thames River Capital; testimonial letters from supposed investors; and a copy of the \$1 billion International Paper Company bond. These documents were all shams.

19. To conceal his and John Fowler’s names and criminal backgrounds, Koontz asked

his former girlfriend to open a bank account he and John Fowler could use to deposit investor funds. The former girlfriend registered the fictitious name CK&K with the State of Florida and opened a bank account in the same name.

20. John Fowler initially deposited \$10,000 into a bank account in the name of CK&K from personal funds, which Koontz used for start-up expenses until investors began depositing funds into the program around March 2011.

21. In January 2011, Koontz located Chalmers, and subsequently convinced Chalmers to solicit investors for the promissory notes program. He emailed her details of the program. Koontz promised to pay Chalmers half of the monthly interest payments CK&K made to investors she solicited. Chalmers received more than \$90,000 in transaction-based commissions during the life of the scheme.

22. Chalmers actively solicited investors whom she knew and advertised the program in the USA Today newspaper. Chalmers emailed prospective investors with details of the promissory notes program and with information she received from Koontz. She then requested that investors provide their contact and banking information on electronic information forms. Chalmers also solicited church pastors by email. The email promised the congregation “a guaranteed safe opportunity to increase tithes and offerings for the church as well as a way to contribute to the numerous projects the church supports.” She also directed prospective investors via email or telephone to the recorded audio presentation Koontz prepared, which described the program in detail.

23. Chalmers also utilized a password protected website called www.Gold4Gain.com for the purpose of soliciting investors, informing them the program was backed by gold, and inviting them to “cash in on the gold fever spreading around the world” and join her “Inner Circle.” She

described the investment program on the website and posted copies of the written materials Koontz provided her, including draft promissory notes, investor testimonial letters, and the bond that supposedly backed the notes. She then collected investors' completed subscription forms and bank account information for wiring interest payments. She also provided investors with the executed promissory notes.

24. Chalmers directed prospective investors to Koontz for answers to their questions. She set up telephone calls between herself, Koontz, and prospective investors where Koontz essentially repeated the information from the recorded presentation and answered questions. The majority of investors did not speak to Koontz without Chalmers being present.

25. From approximately March to early May 2011, Chalmers directed investors to wire their investment funds to a purported Paulson & Co. bank account located in Florida. In reality the account was in the name of CK&K.

26. In May 2011, Jeffrey Fowler, at John Fowler's request, incorporated Paulson FL, listing himself as director, and gave it a formal presence by leasing office space in the Paulson FL name. Jeffrey Fowler then opened three bank accounts in that name. From that point forward, Koontz instructed Chalmers to direct investor funds into the Paulson FL bank accounts with the exception of \$250,000 from one investor, which was directed to the CK&K account.

27. Chalmers maintained records of investor deposits and monthly returns. Twice a month, Chalmers reviewed her investor records to confirm the interest payments owed to investors.

28. Koontz's former girlfriend initially made the monthly investor interest payments from the CK&K account at Koontz's instruction. In May 2011, Jeffrey Fowler began making the payments to investors from the Paulson FL account that he opened. From July to October 2011, Chalmers wired interest payments to a subset of smaller investors from funds Jeffrey Fowler wired

to her personal account. The amounts distributed to all investors came solely from new investor money as the alleged investments in promissory notes and gold futures never happened.

29. Chalmers ignored various red flags about Koontz's past and the authenticity of the gold futures promissory notes program. For example, in March 2011, a prospective investor conducted internet research and uncovered Koontz's criminal past. The prospective investor brought the information to Koontz and Chalmers's attention. In the summer of 2011, Chalmers learned a prospective investor had contacted the FBI agent who had handled Koontz's prior criminal case and the FBI agent had told the prospective investor the gold futures program was under investigation. In late 2011, one of the program's salespersons informed Koontz and Chalmers the Secret Service had contacted him about the promissory notes program. The salesperson told them the Secret Service had confirmation from Paulson NY that the promissory notes program was a fraud. Chalmers discussed each instance with Koontz, who denied any wrong doing. Despite these red flags Chalmers continued to participate in the program.

30. John Fowler remained behind the scenes in the scheme until late October 2011 when Koontz was imprisoned for violating the terms of his supervised release based on his involvement in the purported promissory notes offering. John Fowler then stepped in to solicit investors.

31. John Fowler told at least one prospective investor during a telephone call that John Paulson was the general partner of the promissory notes program and Paulson had asked him to handle the gold futures fund. He claimed investor returns were guaranteed and explained his main function was to wire to investors their monthly returns, which he received directly from Paulson NY. John Fowler informed the prospective investor he would receive an e-mail confirmation of his and Paulson NY's connection to the program.

32. Shortly after the call, the prospective investor received an email which stated that

John Fowler had “full corporate and legal authority to run our program.... He is a full time Paulson & Co., Inc. employee and trustee.” Further, the email stated Paulson FL was a branch office of Paulson NY and John Paulson oversaw every trade in the promissory notes program. These representations were false and baseless.

33. John Fowler also began preparing fake promissory notes (which promised a return of principal and 36 percent annualized interest) and assignments of security from Paulson & Co., and signed them as trustee and officer of Paulson & Co. The documents represented that Paulson & Co. owned the \$1 billion bond that backed the promissory notes. John Fowler then provided such a document to at least one investor.

MISREPRESENTATIONS AND OMISSIONS

34. John Fowler misrepresented to investors and prospective investors the crux of the promissory notes program: the affiliation with Paulson NY and John Paulson. Paulson NY was never affiliated with CK&K and the promissory notes program was not a product of Paulson NY.

35. John Fowler also orally misrepresented to at least one prospective investor that: (i) they would never lose their principal investments; (ii) the promissory notes were collateralized by a \$1 billion bond owned by Paulson NY, with an added layer of protection in the form of a standby letter of credit for those who invested more than \$1 million; (iii) returns of three percent per month were guaranteed; (iv) the promissory notes program had been in existence since 2009, when in reality it commenced in December 2010; and (v) the promissory notes program was extremely liquid and investors could obtain redemptions with proper notice. John Fowler also failed to disclose to at least the one prospective investor he solicited that he was a convicted felon who had been incarcerated in the early 2000s. Instead, he represented his background as a full-time employee of Paulson NY. John Fowler knew the oral and written statements he made to investors

were false because he was running a Ponzi scheme.

MISAPPROPRIATION OF INVESTOR FUNDS

36. The Fowlers misappropriated portions of the funds they raised from investors. They raised approximately \$4.3 million from investors and used \$1.2 million of this to make Ponzi payments investors and pay out redemptions. They used a large portion of the remainder for their personal benefit during the short scheme. For example, the Fowlers paid themselves over \$314,000 in cash. They also purchased vehicles, clothing, jewelry, furniture, and real property.

COUNT I

**Sale of Unregistered Securities in Violation of
Sections 5(a) and 5(c) of the Securities Act
(Against John Fowler and Chalmers)**

37. The Commission realleges and incorporates Paragraphs 1 - 33 of this Complaint.

38. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities and transactions described in this Complaint and no exemption from registration existed with respect to these securities and transactions.

39. From January through November 2011, John Fowler and Chalmers directly and indirectly:

(a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein, through the use or medium of a prospectus or otherwise;

(b) carried securities or caused such securities, as described herein, to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or

(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, as described herein, without a registration statement having been filed or being in effect with the Commission as to such securities.

40. By reason of the foregoing, John Fowler and Chalmers violated and, unless enjoined, are reasonably likely to continue to violate, Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)].

COUNT II

Fraud in the Offer or Sale of Securities in Violation of Section 17(a)(1) of the Securities Act (Against John Fowler and Jeffrey Fowler)

41. The Commission realleges and incorporates Paragraphs 1 - 20, 26, 28, and 30 - 36 of this Complaint.

42. From January through November 2011, John Fowler and Jeffrey Fowler, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

43. By reason of the foregoing, the Defendants, directly and indirectly, violated and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT III

**Fraud in the Offer or Sale of Securities in Violation of
Section 17(a)(2) of the Securities Act
(Against John Fowler)**

44. The Commission realleges and incorporates Paragraphs 1 - 20, 30 - 36 of this Complaint.

45. From January through November 2011, John Fowler, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

46. By reason of the foregoing, John Fowler, directly and indirectly, violated and, unless enjoined, is reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act [15 U.S.C. § 77(q)(a)(2)].

COUNT IV

**Fraud in the Offer or Sale of Securities in Violation of
Section 17(a)(3) of the Securities Act
(Against John Fowler and Jeffrey Fowler)**

47. The Commission realleges and incorporates Paragraphs 1 - 20, 26, 28, and 30 - 36 of this Complaint.

48. From January through November 2011, John Fowler and Jeffrey Fowler, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, engaged in transactions, practices and courses of business which operated as a fraud or deceit upon purchasers of such securities.

49. By reason of the foregoing, John Fowler and Jeffrey Fowler, directly and indirectly, violated and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act [15 U.S.C. § 77(q)(a)(3)].

COUNT V

**Fraud in Connection with the Purchase or Sale of Securities in
Violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) and 10b-5(c)
(Against John Fowler and Jeffrey Fowler)**

50. The Commission realleges and incorporates Paragraphs 1 - 20, 26, 28, and 30 - 36 of this Complaint.

51. From January through November 2011, John Fowler and Jeffrey Fowler, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly:

(a) employed devices, schemes or artifices to defraud; or

(b) engaged in acts, practices and courses of business which have operated as a fraud upon the purchasers of such securities.

52. By reason of the foregoing, John Fowler and Jeffrey Fowler, directly or indirectly, violated and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rules 10b-5(a) and 10b-5(c) [17 C.F.R. § 240.10b-5(a) and 17 C.F.R. § 240.10b-5(c)].

COUNT VI

**Unregistered Broker or Dealer Activity in
Violation of Section 15(a) of the Exchange Act
(Against Chalmers)**

53. The Commission realleges and incorporates Paragraphs 1 - 18 and 21 - 29 of this Complaint.

54. From January through November 2011, Chalmers, directly or indirectly, by the use of the mails or the means or instrumentalities of interstate commerce, while acting as or associated with a broker or dealer effected transactions in, or to induce or attempt to induce the purchase or sale of securities, while she was not registered with the Commission as a broker or dealer or when she was not associated with an entity registered with the Commission as a broker-dealer.

55. By reason of the foregoing, Chalmers, directly or indirectly, violated and, unless enjoined, is reasonably likely to continue to violate, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine and find that the Defendants committed the violations of the federal securities laws alleged in this Complaint.

II.

Permanent Injunctive Relief

Issue a Permanent Injunction restraining and enjoining John Fowler, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with him, and each of them, from violating Sections 5(a), 5(c), 17(a)(1), (2) and (3) of the Securities Act, and Section 10(b) of the Exchange Act and Exchange Act Rules 10b-5(a) and 10b-5(c).

Issue a Permanent Injunction restraining and enjoining Jeffrey Fowler, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with him, and each of them, from violating Sections 17(a)(1) and (3) of the Securities Act, and Section 10(b) of the

Exchange Act and Exchange Act Rules 10b-5(a) and 10b-5(c).

Issue a Permanent Injunction restraining and enjoining Defendant Julianne Chalmers, her officers, agents, servants, employees, attorneys, and all persons in active concert or participation with her, and each of them, from violating Sections 5(a) and 5(c) of the Securities Act and Section 15(a) of the Exchange Act.

III.

Disgorgement

Issue an Order directing Defendant Chalmers to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

IV.

Penalties

Issue an Order directing Defendant Chalmers to pay a civil money penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

V.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

VI.


Retention of Jurisdiction

Further, the Commission respectfully requests the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

July 3, 2013

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