



promulgated thereunder, and Section 15(c) of the Exchange Act [15 U.S.C. §78o(c)] and Rule 15c1-2 [17 C.F.R. §240.15c1-2] promulgated thereunder.

4. The Commission brings this action to restrain and enjoin such transactions, acts, practices, and course of business pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§78u(d) and 78u(e)].

#### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], Section 27 of the Exchange Act [15 U.S.C. §78aa] and 28 U.S.C. §1331. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa].

6. Donahue resides in Cincinnati, Ohio, located in the Southern District of Ohio. DSI's principal place of business is also located in Cincinnati, Ohio, and, therefore, within the Southern District of Ohio. The transactions, acts, practices, and courses of business constituting the violations alleged herein have occurred within the jurisdiction of the United States District Court for the Southern District of Ohio and elsewhere.

7. Donahue and DSI, directly and indirectly, have made, and are making use of the means and instrumentalities of interstate commerce and of the mails in connection with the transactions, acts, practices, and courses of business alleged herein in the Southern District of Ohio and elsewhere.

8. There is a reasonable likelihood that Donahue and DSI 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.

### **BACKGROUND**

9. Donahue is 52 years of age and resides in Cincinnati, Ohio. Donahue has been employed in the securities industry since 1982. He has been registered with the Commission as an associated person of DSI since 1989. He has also been the owner of DSI since its incorporation in 1989, and is its former President.

10. DSI is a broker-dealer registered with the Commission since 1989. DSI's headquarters are located in Cincinnati, Ohio. It employs approximately 113 people and has over 280 independent contractors throughout the United States.

11. Donahue is also the majority owner of S.G. Donahue, Inc., an Ohio corporation with its principal place of business in Cincinnati, Ohio. It is involved in the same or similar business as DSI, however, it is not registered with the Commission in any capacity. Donahue used, and passed money through, S.G. Donahue in perpetrating his fraud.

12. Donahue is also a 49% owner of Donahue Mortgage Company ("Donahue Mortgage"). Donahue Mortgage provides mortgage banking services. Donahue, from time to time, used misappropriated funds to pay expenses of Donahue Mortgage and Donahue Mortgage transfers its income to DSI monthly.

### **THE FRAUDULENT SCHEME**

13. As the President and owner of DSI, Donahue also acted as a registered representative with his own customer base. Beginning in about 1989, Donahue began

misappropriating customer funds which were provided to him for the purposes of investment.

14. Initially, Donahue accepted money from customers in the form of checks, cash or wire transfers made payable directly to DSI or SG Donahue. This money was presented to Donahue and DSI for the purposes of investment, and Donahue specifically represented to clients that he would invest the money provided in specific securities he discussed with the clients.

15. Some clients, however, provided Donahue and DSI monies above the amount specifically earmarked for investments with the intention that money be held by DSI until such time as an investment decision was made. Donahue specifically represented to the clients that he would hold the money until an investment decision was made.

16. Instead of holding the money, however, Donahue and DSI misappropriated it, depositing the money in an account controlled personally by Donahue, including at least one account at PNC Bank in Cincinnati. Donahue then commingled the funds with accounts held by DSI and SG Donahue and used the misappropriated money to pay expenses of DSI and SG Donahue, and to pay personal expenses, including to pay personal taxes. If DSI or SG Donahue needed money, Donahue transferred the misappropriated funds from the account he controlled to a DSI or SG Donahue account to pay DSI and SG Donahue expenses.

17. As the fraudulent scheme developed and the Defendants' business grew, Donahue began representing to clients that he would invest a portion of their money through DSI in a DSI money market fund paying interest ranging from 5% to 6%.

Donahue and DSI accepted money from clients for the purpose of investing in this money market fund.

18. The DSI money market fund, however, did not exist, and Donahue and DSI knew that it did not exist. Thus, instead of investing clients' money in a money market fund, as represented, Donahue commingled the funds with accounts held by DSI and SG Donahue and used the misappropriated money to pay expenses of DSI and SG Donahue, and to pay personal expenses, including to pay personal taxes; to buy a condominium in Florida; and to pay for renovations on the Florida condominium.

19. Donahue deposited misappropriated funds in at least one account he personally controlled at Provident Bank in Cincinnati. When he or his businesses needed money, including Donahue Mortgage, he transferred funds to accounts controlled by DSI and SG Donahue to meet the companies needs.

20. DSI, SG Donahue and Donahue Mortgage had grown over the course of the Defendants' fraudulent scheme, at least in part because of the use of misappropriated funds, and they were continuing to grow. Since approximately 1998, to avoid confusion with a legitimate money market fund, Donahue began representing to clients that he would invest a portion of their money through DSI in a DSI tax free bond fund paying interest ranging from 5% to 6%. Donahue and DSI accepted money from clients for the purpose of investing in this tax free bond fund.

21. The DSI tax free bond fund, however, did not exist, and Donahue and DSI knew that it did not exist. Thus, instead of investing clients' money in a tax free bond fund, as represented, Donahue commingled the funds with accounts held by DSI and SG Donahue and used the misappropriated money to pay expenses of DSI, SG Donahue and

Donahue Mortgage. He also used these investor funds to pay personal expenses, including, but not limited to, purchasing a vacant lot upon which he intended to build a personal home, and purchasing materials with which to build a personal home. Donahue also purchased mutual funds and opened a brokerage account in his own name using these investor funds.

22. In total, Donahue and DSI misappropriated more than \$6 million dollars from clients estimated to be at least 200 to 250 in number. Over the years and throughout the course of the scheme, Donahue and DSI paid some clients principal and interest on money they had invested by using other misappropriated money. Donahue and DSI, in furtherance of their scheme, and in order to avoid detection, used funds misappropriated from other investors to redeem shares in the non-existent money market fund and the non-existent tax free bond fund.

23. Donahue and DSI currently hold and control monies misappropriated from at least 123 clients, and owe those clients over \$6 million dollars. This is money DSI and Donahue misappropriated over the course of their fraudulent scheme. Donahue used at least \$580,000 of the misappropriated money to pay personal expenses. He used at least an additional \$50,000 to put a down payment on a condominium in Naples, Florida, and an unspecified amount on renovations of that condominium. Donahue also used approximately \$275,000 to purchase vacant land upon which he intended to build a home, and used \$160,000 to purchase building materials. The rest of the misappropriated money, and the actual dollar amount, is as yet unaccounted for.

## COVER UP

24. In an attempt to hide the misappropriation from clients, Donahue and DSI created false account statements on DSI letterhead, i.e. "consolidated statements", indicating a clients' interest in the DSI money market fund and the DSI tax free bond fund. DSI mailed these statements to clients falsely representing that they held shares in the nonexistent funds.

25. During the week of February 12 to 16, 2001, examiners from the Commission's Office of Broker-Dealer Inspections and Examinations commenced an exam of DSI. During the course of the examination the examiners requested certain documents from Donahue and DSI, including DSI's correspondence file. Donahue, however, removed all the correspondence related to the tax free bond fund from the file and destroyed it before providing the file to the examiners in an attempt to cover up the fraudulent scheme.

26. In a further effort to cover up the fraudulent scheme, Donahue instructed DSI employees to move files and to hide files from the examiners. Donahue also created false statements, including false "consolidated statements", which he provided the examiners and which hid the purported existence of a tax free bond fund. Additionally, Donahue instructed a DSI employee to delete records of investments in the nonexistent tax free bond fund from DSI computers. On February 19, 2001 Donahue requested that the examiners speak with legal counsel on February 20, 2001.

27. On February 20, 2001, Donahue, through counsel, admitted the existence of his fraudulent scheme to the examiners. Finally, on February 21, 2001, Donahue

personally disclosed the details of the scheme to attorneys from the Commission, the FBI and the United States Attorney Office for the Southern District of Ohio.

**COUNT I**  
**Violations of Section 17(a)(1) of the Securities Act**

28. Paragraphs 1 through 27 are realleged and incorporated by reference as if set forth fully herein.

29. From at least 1989 to the present, Donahue and DSI, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, have employed and are employing devices, schemes and artifices to defraud.

30. Donahue and DSI knew or were reckless in not knowing of the activities described in paragraphs 28 and 29 above.

31. By reason of the activities described in paragraphs 28 through 30 above, Donahue and DSI have violated and are violating Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

**COUNT II**  
**Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act**

32. Paragraphs 1 through 27 are realleged and incorporated by reference as if set forth fully herein.

33. From at least 1989 to the present, Donahue and DSI, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, have obtained and are obtaining money and property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements



made, in light of the circumstances under which they were made, not misleading, and have engaged and are engaging in transactions, practices or courses of business which have operated and will operate as a fraud and deceit upon purchasers of securities.

34. By reason of the activities described in paragraphs 32 through 33 above, Donahue and DSI have violated and are violating Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(2) and §77q(a)(3)].

**COUNT III**  
**Violations of Section 10(b) of the**  
**Exchange Act and Rule 10b-5 Promulgated Thereunder**

35. Paragraphs 1 through 27 are realleged and incorporated by reference as if set forth fully herein.

36. From at least 1989 to the present, Donahue and DSI, in connection with the purchase and sale of securities, directly and indirectly, by the use of the means and instrumentalities of interstate commerce and of the mails, have employed and are employing devices, schemes and artifices to defraud; have made and are making untrue statements of material fact and have and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged and are engaging in acts, practices and courses of business which operated as a fraud and deceit upon the customers discussed in paragraphs 13 to 27 above.

37. Donahue and DSI knew or were reckless in not knowing of the activities described in paragraphs 35 and 36 above.

38. By reason of the activities described in paragraphs 35 through 37 above, Donahue and DSI have violated and are violating Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

**COUNT IV**  
**Violation of Section 15(c) of the**  
**Exchange Act and Rule 15c1-2 Promulgated Thereunder**

39. Paragraphs 1 through 27 are realleged and incorporated by reference as if set forth fully herein.

40. From at least 1989 to the present, DSI, aided and abetted by Donahue, effected transactions in, or induced or attempted to induce the purchase or sale of securities, made untrue statements of material fact, or omitted 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, and has engaged in and is engaging in acts, practices and courses of business which operated as a fraud and deceit upon the customers discussed in paragraphs 13 to 27 above.

41. DSI knew or was reckless in not knowing of the activities described in paragraphs 39 and 40 above.

42. Donahue knowingly provided substantial assistance to DSI in the activities described in paragraphs 39 and 40 above.

43. By reason of the activities described in paragraphs 39 through 42 above, Donahue and DSI have violated, aided and abetted violations of, and are violating, and aiding and abetting violations of, Section 15(c) of the Exchange Act [15 U.S.C. §§78o(c)] and Rule 15c1-2 [17 C.F.R. §240.15c1-2] promulgated thereunder.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that the Court:

**I.**

Find that Defendants Donahue and DSI committed the violations charged and alleged herein.

**II.**

Issue a Temporary Restraining Order and Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Donahue, his officers, agents, servants, employees, attorneys-in-fact and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(1), 77q(a)(2), and 77q(a)(3)], Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §§240.10b-5] promulgated thereunder, and aiding and abetting violations of Section 15(c) of the Exchange Act [15 U.S.C. §§78o(c)] and Rule 15c1-2 [17 C.F.R. §240.15c1-2] promulgated thereunder.

Issue a Temporary Restraining Order and Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant DSI, its officers, agents, servants, employees, attorneys-in-fact and those persons in active concert or participation with it who receive actual notice of the Order, by personal service or otherwise, and each of them

from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(1), 77q(a)(2), and 77q(a)(3)], Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §§240.10b-5] promulgated thereunder, and Section 15(c) of the Exchange Act [15 U.S.C. §§78o(c)] and Rule 15c1-2 [17 C.F.R. §240.15c1-2] promulgated thereunder.

### III.

Grant a Temporary Restraining Order and Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendants, their officers, agents, servants, employees, attorneys-in-fact and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly:

A. transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts or other property belonging to, or directly or indirectly, in the possession, custody or control of the Defendants, or in which the Defendants have a beneficial interest, wherever located, included but not limited to the assets of SG Donahue and Donahue Mortgage;

B. transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts or other property into which investor funds were deposited; and

C. destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books, records, documents, correspondence, brochures, manuals, obligations, belonging to, or directly or indirectly in the possession, custody or control of Defendants, in whatever form, including electronic, and wherever located.

#### IV.

Grant an Order requiring Defendants to:

A. provide the Commission, within 3 days of the issuance of the Temporary Restraining Order, with: (1) an accounting of all of the funds received, directly or indirectly, from individuals who gave Defendants money for investment, the uses to which such funds were put, and the amounts of any remaining funds and their location; and (2) an accounting of the assets and liabilities of Defendants and their location;

B. produce to the Commission, within 3 days of the issuance of the Temporary Restraining Order, all books, records and other documents supporting or underlying the accounting provided to the Commission pursuant to paragraph IV.A. above; and

C. produce to the Plaintiff, within 3 days of the issuance of the Temporary Restraining Order, all current accountant's reports, bank statements, documents indicating title to real or personal property, and any other indicia of ownership or interest in property of the Defendants, which indicia of ownership or interest are now in the Defendants' actual or constructive possession; provided, however, that nothing in the

order shall be construed to require Defendant Donahue to abandon any constitutional or other legal privilege which he may have available to him.

**V.**

Issue an Order requiring Defendants to disgorge the ill-gotten gains that they received as a result of their wrongful conduct, including prejudgment interest.

**VI.**

Grant an Order appointing a receiver to marshal and preserve and manage the assets of Defendants, including, without limitation, the assets of SG Donahue and Donahue Mortgage.

**VII.**

With regard to the Defendant's violative acts, practices and courses of business set forth herein issue an Order imposing upon them appropriate civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §§78u(d)(3)].

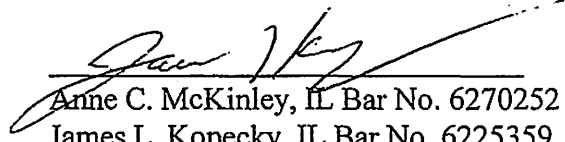
**VIII.**

Retain jurisdiction of this action in accordance with the principals 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 this Court.

IX.

Grant Orders for such further relief as the Court may deem appropriate.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Anne C. McKinley", is written over a horizontal line.

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