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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff

v.

Jeffrey L. Mowen,
Thomas R. Fry,
Bevan J. Wilde,
Gary W. Hansen,
Michael G. Butcher,
James B. Mooring,
David G. Bartholomew, and
Michael W. Averett,

Defendants,

Erin O'Malley f/k/a Erin O. Mowen,

Relief Defendant.

COMPLAINT

Plaintiff Securities and Exchange Commission ("Plaintiff" or "Commission") alleges as follows:

I. SUMMARY OF THE ACTION

1. This case involves a multi-million dollar offering fraud by the named defendants which was based in Utah and Colorado. Between January 2007 and July 2008 (the "Relevant Period"), defendant Thomas R. Fry ("Fry"), together with promoters Bevan J. Wilde ("Wilde"), Gary W. Hansen ("Hansen"), Michael G. Butcher ("Butcher"), James B. Mooring ("Mooring"), David G. Bartholomew ("Bartholomew"), and Michael W. Averett ("Averett") (collectively, the "Promoters"), raised approximately $41 million from over 150 investors in several states through the offer and sale of purported high-yield promissory notes that the defendants claimed would pay 2% to 3% interest monthly. More than half of the money raised from the sale of these notes has been lost to investors.

2. During the fraudulent scheme, over $18 million of the funds raised by Fry and the Promoters was funneled by Fry into a Ponzi scheme run by defendant Jeffrey L. Mowen ("Mowen"), a convicted felon and securities law recidivist. Mowen misappropriated over $8 million of the funds provided by Fry to support Mowen's lifestyle and to buy a large collection of luxury and antique automobiles and motorbikes. Mowen also transferred approximately $650,000 of the misappropriated funds to his then wife, relief defendant Erin O'Malley ("O'Malley"). Mowen used most of the remaining money provided by Fry to make purported interest payments to investors, thereby creating the illusion of legitimate profits.

3. Fry and the Promoters distributed private placement memoranda ("PPM") to investors that falsely stated that all the investors' funds were being used to make

collateralized domestic real estate loans and domestic small business loans, and which misrepresented the level of each defendant's due diligence as to how the proceeds raised from investors would be used.

4. Fry, who dealt directly with Mowen, either knew or was reckless in not knowing that Mowen had multiple recent felony convictions involving crimes of dishonesty at the time Fry was raising money from investors through his own efforts and those of his Promoters. Indeed, even after Fry learned in approximately late June 2007 that Mowen had been convicted of securities fraud, Fry continued to solicit new investor funds for several months while failing to disclose Mowen's criminal history to any of the Promoters or their investors.

5. Because the Promoters not only conducted virtually no due diligence in connection with Fry's purported investment opportunities, but transferred investor money to Fry without any documentation or limitation on his use of the funds, the Promoters were reckless in failing to discover Fry's association with Mowen and that their funds were being placed into a Ponzi scheme or used for other undisclosed purposes.

6. Through these actions, Mowen, Fry, Wilde, Hansen, Butcher, Mooring Bartholomew, and Averett violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder.

7. In addition to the securities fraud violations, the promissory notes offered and sold through Fry and his Promoters were securities which were not registered with the Commission at the time they were offered and sold to investors as required, in violation of

Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

8. Finally, Fry and the Promoters acted as unregistered brokers-dealers in violation of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] in the course of offering and selling the promissory notes.

II. JURISDICTION AND VENUE

9. The Commission brings this action pursuant to authority conferred on it by 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)] to restrain and enjoin the defendants from engaging in the acts, practices, and courses of business described in this Complaint and acts, practices, and courses of business of similar purport and object. The Commission seeks permanent injunctions, disgorgement of ill-gotten gains derived from the conduct alleged in the Complaint plus prejudgment interest thereon, and third-tier 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)].

10. This Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. The defendants, directly or indirectly, made use of the means and instrumentalities of interstate commerce or of the mails, in connection with the acts, practices, and courses of business alleged in this complaint.

11. Certain of the acts, practices, and courses of business constituting the violations of law alleged herein occurred within the District of Utah. In addition, Mowen, Fry, Wilde, Mooring, Bartholomew, Averett, and O'Malley reside in Utah.

III. DEFENDANTS AND RELIEF DEFENDANT

12. Jeffrey L. Mowen ("Mowen"), age 47 and a resident of Lindon, Utah, was the architect of the Ponzi scheme alleged herein. Mowen has been convicted of securities fraud by state securities regulators in Utah in 2003, 2004, and 2007. In addition, Mowen has theft convictions in Utah from 2003 and 2004.

13. Thomas R. Fry ("Fry"), age 34 and a resident of Cedar Hills, Utah, was in the business of raising capital for various investments. During the Relevant Period, Fry received approximately $36 million in proceeds from securities offerings conducted by him and his Promoters, of which over $18 million was funneled to Mowen by Fry.

14. Bevan J. Wilde ("Wilde"), age 36 and a resident of Highland, Utah, was a business associate of Fry, and Fry's top fundraiser. During the Relevant Period, Wilde raised approximately $15 million from over 80 investors in 11 states through the issuance of promissory notes. Wilde held series 6, 63, and 65 securities licenses in the past, but he has not been associated with an entity registered with the Commission as a broker-dealer since September 2002.

15. Gary W. Hansen ("Hansen"), age 59 and a resident of Berthoud, Colorado, was a fundraiser for Fry. During the Relevant Period, Hansen, together with Defendant Michael G. Butcher, raised approximately $3.7 million from over 20 investors in three states through the issuance of promissory notes. Hansen held series 6, 63, and 65 securities licenses and was associated with a registered broker-dealer, The O.N. Equity Sales Company, until February 2007, which overlaps some of the misconduct alleged

herein. Hansen also travelled to Utah to meet with Fry and Wilde in furtherance of the offering fraud alleged herein.

16. Michael G. Butcher ("Butcher"), age 34, is a resident of Loveland, Colorado. As alleged above, Butcher worked with Hansen to sell promissory notes to raise capital for Fry. Butcher has held series 6, 63, and 65 securities licenses, but he has not been associated with an entity registered with the Commission since September 2002. Butcher also travelled to Utah to meet with Fry and Wilde in furtherance of the offering fraud alleged herein.

17. James B. Mooring ("Mooring"), age 38 and a resident of Highland, Utah, was a fundraiser for Fry. During the Relevant Period, Mooring raised approximately $7.9 million from over 50 investors in seven states through the issuance of promissory notes. Mooring held series 6, 26, 63, and 65 securities licenses in the past, but he has not been associated with any entity registered as a broker-dealer with the Commission since September 2006.

18. David G. Bartholomew ("Bartholomew"), age 35 and a resident of Pleasant Grove, Utah, was a fundraiser for Fry. During the Relevant Period, Bartholomew raised approximately $6.7 million from over 50 investors in five states through the issuance of promissory notes. Bartholomew held series 6, 63, and 65 securities licenses in the past, but he has not been associated with any entity registered with the Commission as a broker-dealer since December 2006.

19. Michael W. Averett ("Averett"), age 38 and a resident of Pleasant Grove, Utah, was a fundraiser for Fry. Averett claims to have years of experience as a controller with public and private companies, which included responsibility for compliance with

Commission regulations. During the Relevant Period, Averett raised approximately $2.8 million from over 20 investors in two states through the issuance of promissory notes.

20. Relief Defendant Erin O'Malley f/k/a Erin O. Mowen, age 46 and a resident of Lindon, Utah, was, during the Relevant Period, Mowen's spouse. Mowen transferred some of his ill-gotten gains to her.

IV. RELATED PARTIES

21. BTN Tracker, LLC ("BTN"), is a Utah limited liability company owned and operated by Fry. BTN is the entity that Fry used to directly and indirectly receive the funds from his and the Promoters' investors. BTN's business purpose was to borrow these funds and to place them with Mowen and in other business ventures.

22. Working Capital, LLC ("WC") is a Utah limited liability company owned and operated by Fry. WC is the entity Fry used to issue $3 million in securities in the form of promissory notes to raise capital for, among other things, Mowen. WC had only one investor, a Missouri limited liability company called ASKM, LLC.

23. Intellectual Capital Investments, LLC ("ICI") is a Utah limited liability company owned and operated by Wilde. ICI is the entity Wilde used to issue securities in the form of promissory notes to raise capital for Fry. Fry, among other things, provided funds raised through ICI to Mowen.

24. Northern Colorado Capital, LLC ("NCC") is a Colorado limited liability company owned and operated by Hansen and Butcher. NCC is the entity Hansen and Butcher used to issue securities in the form of promissory notes to raise capital for Fry. Fry, among other things, provided funds raised through NCC to Mowen.

25. Strategic Capital, LLC ("Strategic") is a Utah limited liability company

owned and operated by Mooring. Strategic is the entity Mooring used to issue securities in the form of promissory notes to raise capital for Fry. Fry, among other things, provided funds raised through Strategic to Mowen.

26. LOA Capital, LLC ("LOA") is a Utah limited liability company owned and operated by Bartholomew. LOA is the entity Bartholomew used to issue securities in the form of promissory notes to raise capital for Fry. Fry, among other things, provided funds raised through LOA to Mowen.

27. HS Capital, LLC ("HS") is a Utah limited liability company owned and operated by Averett. HS is the entity Averett used to issue securities to raise capital for Fry. Fry, among other things, provided funds raised through HS to Mowen.

28. First National Bancorp Limited ("FNB") is a New Zealand corporation formed in October 2007. Mowen acquired control of FNB in approximately November 2007. Mowen told Fry that FNB was a chartered institution permitted under New Zealand law to offer certain banking features, but, in fact, it has no such status. FNB is not a registered bank with the Reserve Bank of New Zealand and Mowen never sent any of the funds provided by BTN to FNB.

V. FACTS

A. Mowen Implements His Investment Scheme with Fry

28. In October 2006, Mowen was introduced to Fry. Mowen told Fry that he was a successful foreign currency ("forex") trader and was developing a forex training seminar and trading platform.

29. Over the course of several introductory meetings, Mowen also told Fry that he had twenty years of experience as an international banker and that he had

developed contacts at private overseas financial institutions that allowed him to leverage funds by a factor of up to 100 to invest in the forex market. Mowen said that, as a result, he was able to generate returns of between 50% and 100% per month through forex trading. Mowen further explained that he only traded approximately 10% to 15% of his available funds to generate the returns and he kept the remainder in reserves.

30. Mowen promised Fry that he could generate a minimum monthly return of 33% on any funds Fry provided to him.

31. Fry supplied Mowen with an initial $100,000 personal investment on October 12, 2006, with the understanding that Mowen would use this money for forex trading.

32. Mowen and Fry documented their enterprise, which they called TJ Financial, in a short Letter of Understanding ("LOU"). This LOU did not limit how Mowen could use the funds Fry provided. To the contrary, the LOU vested Mowen with the sole responsibility for "manag[ing] the operating capital of TJ Financial for growth." Fry's task was to provide TJ Financial with the operating capital.

33. In November 2006, Mowen began meeting with Fry on a monthly basis to review what Mowen represented to be trading account activity for TJ Financial.

34. Mowen told Fry that TJ Financial's funds were held at an offshore bank called the Bank of Nevis ("BofN"). Mowen purported to access the BofN accounts via his "secured" laptop computer and projected what he claimed was the account activity on a screen for Fry to see rather than providing Fry with written statements.

35. The BofN accounts shown to Fry were in the name of TJ Financial and had user names beginning with the prefix "tjfx," indicating that they were established for TJ

Financial's forex trading and reserves.

36. Fry observed that the accounts reflected the 33% monthly return that Mowen had promised, as well as excess funds held in reserves.

37. Also around November 2006, Fry began exploring the idea of providing Mowen with additional operating capital he would obtain from others. One such person was Wilde.

38. Fry promised Wilde a return of 5% per month on any funds Wilde provided to Fry's company, BTN. Fry told Wilde that he was making money through a leveraged escrow account program. In particular, Fry explained that he would "rent" funds in an escrow account as "virtual earnest money" to lock up parcels of real estate while developers negotiated the purchase transaction and obtained permanent financing, typically through "hard money" lenders. Importantly, Fry stated that he, not the developers, had control over the escrow account and that the funds would not be allowed to leave the account, suggesting that the principal was not at risk of loss.

39. At the time of his proposal to Wilde, Fry did not tell Wilde anything about Mowen, including the fact that Mowen was purportedly generating returns through forex trading, or that funds provided to Mowen would be held in an offshore account.

40. Fry informed Mowen that he planned to raise capital from others and that he would have interest obligations associated with those funds. Accordingly, Mowen agreed to pay out returns of approximately 12% per month to Fry, purportedly from the monthly profits Fry was making with TJ Financial.

41. Under the terms of his arrangement with Fry, Mowen was supposed to reinvest any excess earnings in TJ Financial's BofN trading account. He did not. In fact,

Mowen did not transfer any funds to BofN. Instead, soon after he began to obtain money from Fry, Mowen began misappropriating funds to pay for his personal living expenses.

B. Mowen's Scheme Is Furthered by Offerings of Promissory Notes by Fry and Fry's Promoters

42. Around late November 2006, Fry and Wilde concluded that if they were going to raise capital from others, they needed to do so by means of a private offering of promissory notes utilizing a PPM.

43. Fry located an individual in Idaho named Phil Manning, who provided offering documents (including a PPM) for an entity Fry created, WC.

44. The PPM obtained from Manning, who Fry knew was not an attorney, stated that the capital raised from the sale of promissory notes issued by WC would be employed "in the business of making short-term real estate loans and small business loans, throughout the United States." Indeed, the PPM specifically represented that "[t]he vast majority of capital raised by the offering will be available for the stated purpose of the offering; to make real estate loans." This language was followed by several pages detailing WC's purported real estate lending standards and policies, which provided that such loans would be "secured, directly or indirectly, by deeds of trust on real estate property located in the United States."

45. The PPM also contained statements regarding the due diligence which would be performed by the manager of WC, i.e., Fry, in making the loans; namely, the PPM represented that for real estate loans, the borrower must have "demonstrated track records of 1) successful real estate investing and 2) timely payment of their loan obligations" and, for small business loans, the manager's review of potential loans "will be based on key financial ratios, credit and business history, and the loan request terms."

46. Fry provided a copy of the PPM to Wilde and assisted him in adapting it to use in connection with an offering of notes by Wilde's newly-formed entity, ICI. As adapted, the PPM used by Wilde mirrored the PPM used by Fry in all pertinent respects.

47. Over the next several months, Wilde introduced Fry to several of his business acquaintances, Hansen, Butcher, Mooring, and Bartholomew, who, like Wilde, were insurance salesmen. Bartholomew, in turn, introduced Fry to his brother-in-law, Averett.

48. Fry's interactions with each of the Promoters followed a similar pattern. Fry would meet with them to pitch his leveraged escrow account program opportunity and offer to pay between 4% and 5% per month on funds provided to BTN through the sale of notes issued and sold by them.

49. For a fee, Fry provided these Promoters with offering materials (identical in all pertinent respect to the PPM disseminated by WC and ICI) and state securities filings in connection with the notes to be issued by their entities, NCC (Hansen/Butcher), Strategic (Mooring), LOA (Bartholomew), and HS (Averett). Fry provided advice on conducting a private offering to the Promoters and offered to meet with potential investors and did, in fact, meet with several investors of ICI, NCC, LOA, and HS.

50. Because they were acting as broker-dealers, Fry and each of the Promoters had a duty to investigate the investment opportunity he was promoting and could not blindly accept facts as true in connection with the offer or sale of his respective entity's promissory notes.

51. The Promoters conducted virtually no due diligence regarding Fry or his leveraged escrow account program, certainly not the level of due diligence they represented

they would undertake in their entities' PPMs. Specifically, the Promoters failed to obtain any financial information from Fry relative to his credit or business history or details about where the leveraged escrow account funds would be held or the contacts that made the opportunity available to Fry.

52. To the contrary, Fry, when asked for such information by Wilde, Hansen, and Butcher, made it clear that he would not provide it, stating that he was bound by non-disclosure agreements or was a very private individual, and in essence, presenting a "take it or leave it" approach.

53. In addition, none of the Promoters sought the advice of securities counsel before commencing his offering.

54. The Promoters generally failed to obtain any written agreements from Fry, and the few loan documents that were obtained by Strategic, NCC, and HS all state: "Lender acknowledges and consents that the funds provided to Borrower [BTN] under this [note/loan] shall be used for purposes which shall be determined at the sole discretion of Borrower." Accordingly, the Promoters did not take any steps to ensure that the proceeds from the offerings were used for the purposes that were communicated to investors.

55. Between January 1 and June 26, 2007, Fry and his Promoters offered and sold high-yield (2% to 3% per month) promissory notes with a maturity period of ten years to investors in several states, some of whom were neither sophisticated nor accredited as defined by Section 2(a)(15) of the Securities Act [15 U.S.C. §§ 77b(a)(15)] and Rule 501 of Regulation D thereunder.

56. The notes offered and sold by Fry and his Promoters were essentially identical in form and purpose.

C. The Offerings of Promissory Notes by Fry and Fry's Promoters Were Fraudulent and the Defendants Profited from Them

57. In connection with the offer and sale of these notes, Fry and each of the Promoters distributed a PPM to their investors, often during personal meetings with them, but occasionally by mail. Each of the PPMs distributed by Fry and the Promoters contained the false and misleading representations discussed above relating to the use of proceeds and manager due diligence.

58. Prior to distributing the PPM for WC and assisting the Promoters in preparing their PPMs, Fry knew that he intended to give funds raised to Mowen to use as capital for their joint TJ Financial enterprise. As discussed above, that meant that the funds would be held at an offshore financial institution, BofN, and, at least in part, would be used in forex trading, not to make collateralized domestic real estate loans and domestic small business loans as stated in the PPMs. At the time the PPMs were distributed, Fry also knew that he was giving the money to Mowen with no strings attached – that is, no limitation on how Mowen could use the funds.

59. At no time during the Relevant Period did Fry tell the Promoters or any investors of Mowen's involvement in the use of their funds, or that any of the funds invested would be used for forex trading, or that any of the funds invested would be held at an offshore financial institution.

60. Prior to distributing their respective entity's PPMs, each of the Promoters knew from meetings with Fry that Fry intended to use any fund he raised from investors for, at least in part, Fry's leveraged escrow account program, not to make collateralized domestic real estate loans or domestic small business loans as stated in the PPMs. Additionally, while their offerings continued, each of the Promoters knew that he had given

money to BTN with no limitations on the use of the money.

61. Each of the Promoters also knew that he had failed to conduct the level of due diligence he represented to investors in the PPMs that he would conduct.

62. Moreover, due to their failure to investigate the use of investors' money, each of the Promoters failed to learn of and were reckless in failing to disclose to investors Mowen's involvement, that funds would be used for forex trading, or, prior to the formation of FNB, that funds would be held at an offshore financial institution.

63. Further, none of the Promoters provided financial statements, much less audited ones, to investors regarding the operations of their respective entities.

64. Fry pooled the proceeds from the note sales by the Promoters into BTN's bank account and then forwarded approximately $18 million of the commingled funds to Mowen.

65. From February to June 2007, Mowen made regular payments to Fry, which Fry used to make timely interest payments to his own investors and the Promoters' entities, which, in turn, paid the Promoters' investors.

66. Fry and the Promoters profited from, among other things, the interest rate spreads built into the scheme's structure. In addition, Hansen and Butcher charged investors 5% up-front commissions to participate in NCC's offering.

67. Contrary to his representations to Fry, Mowen did not invest the funds provided to him by BTN, but instead used them to make the interest payments back to BTN and to fund his lifestyle, all in the nature of a Ponzi scheme.

68. In addition, flush with BTN's cash, Mowen began purchasing numerous luxury and antique vehicles, a collection on which Mowen eventually spent over $6

million. Mowen also misappropriated funds to pay for real estate, vacations, entertainment, and living expenses. In total, Mowen misappropriated over $8 million, approximately $650,000 of which he transferred to his then spouse, O'Malley. O'Malley was not entitled to, and did not provide consideration for, these investor proceeds.

D. Fry Discovers Mowen Was Convicted of Securities Fraud and Attempts to Limit His Exposure to Mowen

69. In approximately late June 2007, Fry discovered that Mowen, who showed up to a meeting wearing an ankle monitor, had recently been convicted of a felony. At that meeting, Mowen admitted that he had pled guilty to securities fraud and was sentenced to supervised release.

70. However, as early as December 2006, just prior to the Relevant Period, Fry had discovered via the Internet that Mowen was under investigation by the Utah State Department of Commerce, Division of Securities ("UDS") and that law enforcement authorities had broken down the door of Mowen's home to arrest him in connection with an investor lawsuit for $200,000. At that time, Mowen told Fry that he was innocent of the allegations and was merely a victim of a personal vendetta by the UDS's director of enforcement, Michael Hines, based on Mowen's failure to recommend Hines to the governor of Utah for a political position some years earlier.

71. In fact, prior to December 2006, the UDS had posted two press releases on its website, one dated June 30, 2006, and another dated September 6, 2006, which stated that the UDS had brought criminal charges against Mowen (not just commenced an investigation) for an investment scheme involving forex trading, that Mowen had two prior securities fraud convictions in 2003 and 2004 and a prior conviction for theft in 2003, and that Mowen owed $78,000 in unpaid civil judgments.

72. In addition, early in the Relevant Period on February 7, 2007, Wilde e-mailed Fry an alert issued by the UDS regarding the top ten investment scams in 2006 with the request that Fry "just keep [him] informed." Among other things, the UDS alert contained warnings for: 1) real estate scams involving high-yield notes (2% to 4% per month) to facilitate "hard money" lending; 2) promoters claiming expertise in forex trading; and 3) schemes involving offshore financial institutions where "[i]nvestors are told there is no risk because their money will never leave their control in bank accounts." The UDS alert urged investors "to check out the promoter's background and investment offers with our Division before handing over your money."

73. Despite these warnings, Fry failed to take any steps to contact the UDS regarding Mowen in either 2006 or 2007.

74. After learning of Mowen's 2007 conviction, Fry ceased giving any additional money to Mowen. However, during the Relevant Period, Fry did not disclose to any of his Promoters Mowen's criminal history or Mowen's possession of their entities' funds, nor did Fry cease BTN's business activities or contact law enforcement regarding Mowen.

75. To the contrary, Fry continued to accept money from the Promoters into BTN's account (approximately $16 million over the remainder of the Relevant Period).

76. Over the next several months, July to November 2007, Fry used the new funds obtained from the Promoters to diversify BTN's investments in projects not involving Mowen. However, the largest of those projects were outside the scope of the activities described in the PPMs distributed to investors and have yet to generate any income for BTN.

77. For example, on July 31, 2007, Fry and Bartholomew, through BTN, wired $4.2 million to Bursar-Cambist, Inc., a Texas-based lender run by an individual named Vincent Curry. Curry was supposed to use his banking relationships to leverage the $4.2 million into a $16.8 million line of credit accessible to Fry and Bartholomew. However, Curry did not obtain the promised line of credit and did not return the money.

78. Fry also made substantial equity investments in TigerLight, Inc., a Utah-based company that purportedly manufactures and distributes non-lethal personal defense devices, and Bio-Path, Inc., a Utah-based company purportedly developing injectable cancer treatments. Neither of these investments, which totaled almost $3.2 million, resulted in any return of capital.

E. Mowen Stops Making Interest Payments and Creates a Phony Foreign Bank to Conceal His Misappropriation of Funds While Fry and Wilde Engage in Lulling Activities

79. In mid-September 2007, Mowen missed his first interest payment to BTN. Mowen told Fry that he had been injured in a motorcycle accident and was therefore unable to make the wire request to BofN within the required monthly withdrawal window. In truth, Mowen was running out of money to make the Ponzi scheme interest payments to Fry because BTN was no longer sending any funds to Mowen.

80. On or about September 24, 2007, Fry also learned that NCC had received a request for information from the Commission and that the Commission wanted to know how NCC had used the proceeds of its securities offering.

81. Around this time, Fry informed Mowen that he wanted to withdraw his share of TJ Financial's funds.

82. In response, Mowen told Fry that he could not access the bulk of the money

because it was held in gold certificates and it would take 90 to 180 days to liquidate without incurring a substantial penalty. As an alternative, Mowen proposed to Fry the idea of forming an offshore bank to, among other things, provide Fry with direct access and control to his share of TJ Financial's funds on an expedited basis.

83. Fry agreed to the international bank plan and Mowen made his last payment of approximately $1.4 million to Fry on October 15, 2007, and then acquired control of FNB.

84. FNB was not a real bank and Mowen never sent any money to FNB. Instead, FNB was merely a sham devised by Mowen as a delay tactic until he could find another way to perpetuate his Ponzi scheme.

85. Meanwhile, Fry was formulating an exit strategy with regards to the Promoters' securities offerings and the Commission's investigation. On November 1, 2007, Fry informed his attorney, Justin Elswick, via e-mail to prepare rescission and release documents for four of his "lenders" who "are getting the boot for good and fast." Fry explained that he had "learned several things even since our last meeting that makes me want to move now."

86. The "lenders" who Fry planned to "boot" were his largest: ICI (Wilde); Strategic (Mooring); LOA (Bartholomew); and NCC (Butcher/Hansen). However, Fry did not have access to sufficient funds outside of FNB to pay off all of these Promoters.

87. On December 5, 2007, Fry's lawyer, Elswick, warned Fry via e-mail that if the Commission proceeded with a planned meeting with NCC's principals (Hansen and Butcher) in two days "the SEC is going to likely find out about BTN as well and that there was no real disclosure or registration or exemption."

88. Accordingly, on December 7, 2007, the date NCC's principals were scheduled to be interviewed by the Commission's staff, Fry paid off NCC with funds he possessed outside of FNB. As a result of the payoff, NCC's principals did not appear at the scheduled interview with the Commission's staff and they sent their attorney instead.

89. Fry's payoff of NCC depleted a large amount of his available funds. Therefore, Fry used FNB as the mechanism to sever himself from his largest remaining Promoters. The day before the NCC payoff, Fry set up a meeting with Wilde, Mooring, and Bartholomew (hereinafter the "FNB Depositors") and persuaded them to open their own accounts at FNB.

90. In the weeks leading up to that meeting, Fry told the FNB Depositors that he wanted to pay them off, but proposed that if they wanted to continue to earn the high yields they had been receiving from BTN, he could introduce them directly to the international bankers with whom he had been working.

91. Fry explained that in order to open the accounts at FNB, the FNB Depositors would have to execute documents releasing BTN from its repayment obligations so he could transfer ownership of the funds to them. However, Fry did not disclose to the FNB Depositors that Mowen had any association with FNB or that Mowen was a convicted felon.

92. In the days that followed, Fry worked with Mowen to set up the accounts for the FNB Depositors.

93. By December 21, 2007, the FNB Depositors had signed releases for BTN acknowledging payment in full and, on January 3, 2008, Fry "funded" the FNB Depositors' accounts by transferring the following amounts from his own FNB account: $12,932,000 to

ICI; $6,875,000 to Strategic; and $1,610,000 to LOA. Because Mowen never funded FNB, these transfers between Fry and the FNB Depositors were illusory.

94. The transition to FNB was a short-lived solution for Fry, because almost immediately FNB (that is, Mowen) began to provide excuses for why the FNB Depositors could not access the funds purportedly deposited into their accounts.

95. In accordance with Fry's wishes, Mowen subsequently gave Fry a role in administering the phony bank. In early February 2008, Fry began composing e-mails on behalf of FNB that he would forward to Mowen for distribution to the FNB Depositors. After Fry requested it, Mowen gave Fry an administrative password in April 2008 that allowed Fry to send out e-mails posing as individual FNB "private bankers," making it appear that the FNB Depositors had a staff person at FNB directly addressing their concerns. However, the "private bankers" never existed, and Fry was, at a minimum, reckless in not realizing this.

96. The FNB Depositors were never able to withdraw any funds from their FNB accounts because the accounts were a sham.

97. Between April and August 2008, Fry, Wilde, Mooring, Bartholomew and Averett stopped making their interest payments to investors.

98. At the time Fry and the Promoters stopping paying their investors, only around $15 million had been returned to investors, resulting in investors losses of over approximately $25 million.

99. After he stopped paying interest, Wilde knowingly provided false assurances to ICI's investors that their funds were safe despite the missed payments. In fact, Wilde even attempted to convince ICI's investors to open their own accounts at FNB

even after having received an e-mail from a New Zealand lawyer stating that Wilde was "being scammed."

100. On August 1, 2008, Fry finally informed Wilde, Mooring, Bartholomew, and Averett of Mowen's involvement. Within hours, they discovered Mowen's criminal history.

101. Fry, Wilde, Mooring, Bartholomew, and Averett confronted Mowen at his home on August 27, 2008. During that meeting, Mowen admitted that he had set up accounts at FNB, that he was the administrator of FNB, and that he controlled the funds at FNB. Mowen also outlined his forex trading program and laid out a plan to use new depositor money sent to a "correspondent" account in New Zealand to pay off the current FNB Depositors.

102. Mowen's plan was essentially to use FNB to continue his Ponzi scheme. Indeed, at the August 27th meeting, Mowen even boasted that banks "are the biggest Ponzi organizations around, they just have a charter that covers that."

103. Shortly after the August meeting, Mowen fled the United States without repaying any of the funds supposedly deposited in FNB.

FIRST CLAIM FOR RELIEF
SECURITIES FRAUD: Violations by All Defendants of Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. §§ 78j(b)]

104. Paragraphs 1 through 103 are hereby realleged and incorporated by reference.

105. The defendants, and each of them, directly and indirectly, with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, have employed devices, schemes or artifices to defraud; have made untrue statements of

material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or have engaged in acts, practices or courses of business which have been and are operating as a fraud or deceit upon the purchasers or sellers of securities.

106. By reason of the foregoing, the defendants, and each of them, have violated and, unless restrained and enjoined, will continue to violate and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

SECOND CLAIM FOR RELIEF
SECURITIES FRAUD: Violations by All Defendants of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]

107. Paragraphs 1 through 103 are hereby realleged and incorporated by reference.

108. The defendants, and each of them, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) have employed, are employing, or are about to employ devices, schemes or artifices to defraud; (b) have obtained, are obtaining or are about to obtain money or property by means of untrue statements of material fact and 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 (c) have engaged, are engaged, or are about to engage in transactions, acts, practices and courses of business that operated or would operate as a fraud upon purchasers of securities.

109. By reason of the foregoing, the defendants, and each of them, have violated and are violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM FOR RELIEF
SALE OF UNREGISTERED SECURITES: Violations by Fry, Wilde, Hansen, Butcher, Mooring, Bartholomew, and Averett of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)]

Paragraphs 1 through 103 are hereby realleged and incorporated by reference.

110. Defendants Fry, Wilde, Hansen, Butcher, Mooring, Bartholomew, and Averett, and each of them, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and sell securities in the form of promissory notes through the use or medium of a prospectus or otherwise, and carried or caused to be carried through the mails, or in interstate commerce, by means or instruments of transportation, such securities for the purpose of sale or for delivery after sale, when no registration statement had been filed or was in effect as to such securities.

111. By reason of the foregoing, defendants Fry, Wilde, Hansen, Butcher, Mooring, Bartholomew, and Averett, and each of them, have violated and, unless restrained and enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

FOURTH CLAIM FOR RELIEF
FAILURE TO REGISTER AS BROKER-DEALER: Violations by Fry, Wilde, Hansen, Butcher, Mooring, Bartholomew, and Averett of Sections 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]

112. Paragraphs 1 through 103 are hereby realleged and incorporated by reference.

113. Defendants Fry, Wilde, Hansen, Butcher, Mooring, Bartholomew, and Averett, and each of them, while acting as a broker or dealer, made use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to

induce or attempt to induce the purchase or sale of, any securities in the form of promissory notes with being registered with the Commission as a broker or dealer or an associated person of a registered broker-dealer;

114. By reason of the foregoing, defendants Fry, Wilde, Hansen, Butcher, Mooring, Bartholomew, and Averett, and each of them, has violated and, unless restrained and enjoined, will continue to violate Section 15(a) of the Exchange Act.

VI. PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

A.

Find that the defendants committed the violations alleged.

B.

Enter an Order of Permanent Injunction as to the defendants, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, enjoining them from further violations of the provisions of law and rules alleged against them in this complaint.

C.

Enter an Order directing all defendants and relief defendant Erin O. O'Malley to disgorge and pay over, as the Court may direct, all ill-gotten gains received or benefits in any form derived from the illegal conduct alleged in this Complaint, together with pre-judgment interest thereon.

D.

Enter an Order requiring all defendants to pay third-tier civil penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

E.

Grant such further equitable relief as this Court deems appropriate and necessary.

DATED: September 1, 2009

Respectfully submitted,

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