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UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

Civil Action No. \_\_\_\_\_

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN G. ELROD AND NOVA DEAN PACK,

Defendants.

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**COMPLAINT**

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Plaintiff, United States Securities and Exchange Commission (“S.E.C.” or “Commission”), states and alleges as follows against defendants:

**I. SUMMARY OF THE CASE**

1. This case involves a two million dollar unregistered offering fraud by Brian G. Elrod (“Elrod”). From at least March through November 2009, Elrod, with the assistance of his friend, Nova Dean Pack (“Pack”), who referred most of the investors to Elrod for undisclosed commissions, raised more than two million dollars from the unregistered offer and sale of high-

yield promissory notes issued by a company controlled by Elrod, CFS Holding Company LLC (“CFS”).

2. Touting the promissory notes as “secured” and “guaranteed” and downplaying the risks associated with the notes by assuring investors that they would be repaid in full upon the maturity of their note, or sooner if the money was needed, Elrod represented to investors that the proceeds of the note offering would be invested in, and used to expand, CFS and Elrod’s other financial services companies, all of which were purportedly performing well.

3. Notwithstanding Elrod’s assurances as to the safety and “guaranteed” nature of the promissory notes, assurances that he knew, or was reckless in not knowing, were false at the time made, CFS stopped making monthly interest payments to investors by May 2010, just five months after several of the investors had invested in CFS, and thereafter failed to repay any of the investors’ principal.

4. Moreover, contrary to Elrod’s representations concerning the use of investor funds, representations that he had no intention of carrying out, Elrod and CFS used the vast majority of investor funds to make interest payments back to investors, to make payments to Elrod, his wife, children, and relatives, to pay undisclosed commissions to Pack for referring investors and otherwise assisting with the offering, to pay for travel and entertainment expenses that did not appear to have a legitimate business purpose, and to pay for Elrod’s miscellaneous personal expenses, including clothing, food, flowers, and jewelry.

5. In addition, Elrod and CFS used investor funds to pay for the legal fees associated with defending against pending, but undisclosed, investigations and an enforcement action by the

National Futures Association (“NFA”) against Elrod, his son, and their commodity trading advisor, CFS Capital Management LLC (“CFS Capital”), alleging fraudulent marketing practices and misuse of customer funds.

6. As a result of the foregoing material misrepresentations and omissions concerning, among other things, the safety of investing in the CFS promissory notes and the manner in which the proceeds from the notes would be used, Elrod 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 by Elrod, the promissory note offerings in which Elrod and Pack participated were securities offerings which were not registered with the Commission as required. As a result, Elrod and Pack violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

8. Finally, Pack acted as an unregistered broker and/or dealer 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]. Elrod and Pack, 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 Colorado.

### **III. DEFENDANTS**

12. Brian G. Elrod, age 54 and a resident of Buffalo Creek, Colorado, was the owner and manager of CFS, which, in turn, wholly owned CFS Investment Group LLC (“CIG”), a Colorado limited liability company that owned a group of financial services company subsidiaries (CFS, CIG, and the CIG subsidiaries are collectively referred to herein as the “Elrod Companies”). Elrod was the president and chief executive officer of CIG as well as CIG’s financial service company subsidiaries. Between March 2009 and May 2010 (the “Relevant Period”), Elrod held Series 6, 7, 24, 26, 63, and 66 licenses and was a registered representative of a Commission-registered broker-dealer.

13. Nova Dean Pack, age 64 and a resident of Highland, California, is a lawyer licensed to practice law in the state of California. Although Pack, Elrod's close friend, referred nine of the twelve investors in the CFS note offering to Elrod for a commission and otherwise participated in the offering, Pack has never been registered with the Commission as a broker or dealer, and has never been an associated person of a registered broker or dealer.

#### **IV. FACTS**

14. From March through November 2009, CFS, through Elrod and Pack, offered and sold \$2.015 million of high yield promissory notes purportedly having a 12% to 24% annual return to twelve investors, nine of whom were introduced to Elrod by Pack.

15. Nearly all of the CFS investors, most of whom were unaccredited and unsophisticated in investment matters, met Elrod and Pack through church affiliations. In addition, several of the investors had retained Pack as a lawyer in unrelated matters prior to investing with Elrod.

16. Exploring alternatives to investing their retirement funds or the proceeds from recent property or business sales in the stock market, most of the investors turned to Pack for investment guidance. Pack, in turn, recommended his good friend, Elrod, as a highly knowledgeable financial services professional with a track record of repaying investors on a timely basis. Pack also vouched for Elrod's character, as well as the successful history of the family-owned Elrod Companies.

17. In fact, at the time Pack referred investors to Elrod, Pack had not conducted any true due diligence with respect to Elrod or the Elrod Companies, and had never reviewed the companies' financial statements.

18. Largely based on Pack's recommendation, the investors each met with Elrod prior to investing with him. Elrod typically traveled from his home in Colorado to California to meet with investors, most of whom resided in California. During these meetings with investors, which took place at restaurants, Pack's office, and investors' homes, Elrod, who was a registered representative of a Commission-registered broker-dealer, typically assured investors that an investment in the CFS promissory notes was safe, secured, and guaranteed, assurances that were repeated on the face of approximately half of the notes issued by CFS.

19. At the time Elrod represented to investors that the CFS notes were safe, secured, and guaranteed, he knew, or was reckless in not knowing, that the notes were not safe, secured, or guaranteed. In fact, contrary to his representations to investors, Elrod knew that the Elrod Companies were struggling financially and did not own sufficient assets to cover the CFS note obligations.

20. Elrod also assured investors that he had a highly successful track record in the financial services and investing business and advised investors that the proceeds from their promissory notes would be used to expand his successful financial services companies. Elrod also told some of the investors that their money would additionally be used to expand and nationalize his local "Big Money" radio show.

21. Although investors generally were not provided with offering or marketing materials for the CFS note offering, Elrod provided one family of investors with marketing materials that stated as follows:

Use of security note proceeds will include expanding the Investment Professional representative organization, opening new CFS Investment Professional Brokerage offices, developing new financial institution relationships, and increasing our investment products and marketing methods for the representatives. This will include using a nationwide financial radio program for recruiting and conducting investment seminars.

22. At no time did Elrod advise the CFS investors that their money would be used to make interest payments back to them and investors from other Elrod offerings. Had the CFS investors been provided with this important information, many or all of them would not have invested in the CFS promissory notes.

23. While touting his own and the Elrod Companies' successful track record and assuring investors of his own integrity, Elrod also failed to advise investors that at the time of their investment he, his son, and one of the Elrod Companies, CFS Capital, had recently been sued by the NFA for fraud and misuse of customer funds, a lawsuit that settled in February 2010 after CFS Capital and Elrod's son agreed to be barred from NFA membership, and Elrod agreed to a five-year bar from NFA membership and associate membership with the right to reapply and pay a \$30,000 fine thereafter. This would have been important information to CFS investors, many or all of whom would not have invested with Elrod had they known of Elrod's recent disciplinary history with the NFA.

24. Elrod and Pack also failed to tell several investors that Pack, who was not registered with the Commission as a broker or dealer, and was not an associated person of a registered broker or dealer at the time, was receiving a significant commission from CFS

(typically 10% or more of the amount invested) for referring them to Elrod and participating in the note offering in other ways, including drafting some of the promissory notes, providing wire instructions and arranging for at least one investor's funds to be wired from California to CFS's Colorado bank account, executing at least one promissory note in the capacity of a witness, and otherwise being present during Elrod's presentation of, and investors' decisions to invest in, the CFS note offering.

25. Pack's undisclosed commissions and conflict of interest in referring legal clients to Elrod was important information that investors needed to know prior to their investments with CFS. Had investors been provided with this information, many or all of them likely would not have invested with Elrod and CFS.

26. Notwithstanding Elrod's representations as to the safety and guaranteed nature of the CFS notes, CFS stopped making interest payments to investors in or about May 2010, although it appears that one of Elrod's business associates may have made a few additional interest payments thereafter.

27. In addition, although some of the investors requested the return of their principal prior to the maturity date specified in their promissory note, an option Elrod represented they could exercise, CFS and Elrod failed to return the requested principal and similarly failed to repay the remaining investors' principal when due.

28. In addition to defaulting on the CFS notes, Elrod failed to use the proceeds from the notes in the manner represented to investors. In fact, little, if any, of the proceeds from the notes was used for legitimate business purposes or to expand the Elrod Companies and Elrod's



radio show. Instead, during the nine month period from March to November 2009, a period in which the Elrod Companies were engaged in little, if any, legitimate business activities, CFS and Elrod spent the vast majority of investor proceeds (approximately \$1.5 million) on: 1) payments to Elrod and his family, including his wife, children, mother, and son-in-law, totaling approximately \$580,000; 2) Elrod's personal expenses, including flights, hotels, restaurants, entertainment, clothing, flowers, and jewelry, totaling approximately \$228,000; 3) interest payments back to the CFS promissory note investors and investors in earlier Elrod offerings totaling approximately \$422,000; 4) commission payments to Pack of \$171,500; 5) unexplained cash withdrawals of approximately \$24,000; and 6) legal fees of approximately \$44,000 associated with undisclosed regulatory investigations and the NFA's enforcement action.

29. Although Elrod also spent approximately \$191,000 on what might otherwise be considered legitimate office related expenses during this time, including rent, computers, internet, and telephone service, Elrod's offices do not appear to have been used during this time to conduct any significant business beyond the fraudulent and unregistered CFS note offering.

30. As a result of the foregoing, Elrod materially misrepresented to investors the manner in which he would use the proceeds from the CFS promissory notes.

31. In addition to failing to use investor proceeds in the manner represented to investors, from March through November 2009 the Elrod Companies generated very little, if any, legitimate business revenues and instead relied almost exclusively on the proceeds from investor promissory notes. More specifically, approximately \$2,015,000 of the \$2,150,000 in total bank deposits into the Elrod Companies' primary bank accounts during this period (approximately 94%) consisted of promissory note proceeds.

32. From the end of the note offering through the time CFS made its final interest payments to investors (approximately December 2009 through May 2010), the Elrod Companies continued to generate little, if any, legitimate business revenues. In fact, the primary deposits into the Elrod Companies' accounts during this period are third party loans totaling \$850,000.

33. During the six month period from December 2009 through May 2010, Elrod and his companies spent this additional money in much the same manner as they had spent investor funds over the preceding nine months: 1) approximately \$258,000 in payments to Elrod, his family, and relatives; 2) approximately \$63,400 for Elrod's personal expenses, including flights, hotels, restaurants, entertainment, clothing, flowers, and guns; 3) approximately \$210,000 in interest payments back to the CFS promissory note investors and investors in earlier Elrod offerings; 4) approximately \$217,000 to repay the loans CFS had just received; 5) approximately \$9,000 in unexplained cash withdrawals; and 6) approximately \$20,000 in legal fees associated with undisclosed regulatory investigations and enforcement actions.

34. In sum, over the course of 15 months Elrod raised approximately \$2.886 million through the CFS note offering and, after having spent the proceeds, additional loans. Far from using investor proceeds to expand his businesses, as represented to investors, Elrod used the foregoing funds, among other things, to pay himself and his family at least \$1.16 million, to make undisclosed commission payments totaling \$171,000 to his friend Pack, to pay legal fees of approximately \$65,000 for preexisting regulatory investigations and/or complaints that weren't disclosed to investors, and to make unexplained cash withdrawals in excess of \$33,000.

35. Elrod also used approximately \$276,000 of the funds raised to pay for the Elrod Companies' rent and other office related expenses even though these companies appear to have been engaged in little, if any, legitimate business activity.

36. Finally, since the Elrod Companies generated very little, if any, legitimate operating revenues, Elrod used the foregoing funds, including investor proceeds, to make interest payments back to investors totaling approximately \$632,000 (roughly half of what Elrod chose to pay himself and his family). Elrod failed to advise investors at the time of their investment or at any time thereafter that he would be using their investment money to make interest payments back to them and other investors, information that was important to the CFS investors and would have caused many or all of them not to invest with Elrod and CFS.

37. After exhausting the foregoing funds by the end of May 2010, Elrod and the Elrod Companies discontinued their unsustainable "business" and efforts to raise additional funds.

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

38. Paragraphs 1 through 37 are hereby realleged and incorporated by reference.

39. Elrod, directly and indirectly, with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, has employed devices, schemes or artifices to defraud; has 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 has 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.

40. By reason of the foregoing, Elrod has violated and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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

41. Paragraphs 1 through 37 are hereby realleged and incorporated by reference.

42. Elrod, 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) has employed, is employing, or is about to employ devices, schemes or artifices to defraud; (b) has obtained, is obtaining or is 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) has engaged, is engaged, or is about to engage in transactions, acts, practices and courses of business that operated or would operate as a fraud upon purchasers of securities.

43. By reason of the foregoing, Elrod has violated and, unless restrained and enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**THIRD CLAIM FOR RELIEF**  
**SALE OF UNREGISTERED SECURITIES: Violations by Elrod and Pack of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)]**

44. Paragraphs 1 through 37 are hereby realleged and incorporated by reference.

45. Elrod and Pack, 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.

46. By reason of the foregoing, Elrod and Pack, 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: Violation by Pack of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]**

47. Paragraphs 1 through 37 are hereby realleged and incorporated by reference.

48. Pack, 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 without being registered with the Commission as a broker or dealer or an associated person of a registered broker-dealer.

49. By reason of the foregoing, Pack has violated and, unless restrained and enjoined, will continue to violate Section 15(a) of the Exchange Act.

**V. 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 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 the 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 5, 2013

Respectfully submitted,

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