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U.S. DISTRICT COURT
NORTHERN DIST. OF TX
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**)
)
)
PLAINTIFF,)
)
)
v.)
)
PATRICK O. HOWARD;)
HOWARD CAPITAL HOLDINGS, LLC;)
AND OPTIMAL ECONOMICS CAPITAL)
PARTNERS, LLC,)
)
DEFENDANTS.)

Civil Action No.:

8-17CV-420-L

FILED UNDER SEAL

**PLAINTIFF'S EMERGENCY *EX PARTE* MOTION TO SEAL
DOCKET AND PROCEEDINGS TEMPORARILY,
AND BRIEF IN SUPPORT**

In accordance with Local Rule 79.3(b), Plaintiff Securities and Exchange Commission ("Commission") moves this Court for an order temporarily sealing the proceedings, pleadings, and orders issued in this matter and all other filings herein until notification from the Commission that the Commission's requested asset freeze is put into effect by the relevant financial institution.

MOTION TO SEAL

1. In keeping with its responsibility to enforce the securities laws of the United States, the Commission initiated this civil action against the above-named Defendants, who have defrauded at least 100 investors of approximately \$13.1 million in an ongoing fraudulent securities offering as set forth in detail in the accompanying Fact Brief, which contains references to evidence contained in the accompanying Appendix. The Commission incorporates the Fact Brief as if set forth fully herein.

2. In summary, the Defendants have pursued an aggressive solicitation effort to sell

the securities issued by three private investment funds. The defendants employed an extensive radio-advertising campaign to attract investors. These advertisements, along with numerous written offering materials, contained representations that investors would earn an “insured” 12% annual return at a minimum. The investments purportedly generated this return over a three-year investment period by investing in third-party portfolio companies.

3. In reality, the Defendants have perpetrated an egregious fraud on the Funds’ investors. They have misappropriated and misapplied offering proceeds. They have issued investors phony account statements showing returns, which in fact did not exist. And they have disseminated written offering materials containing numerous untrue and misleading statements as to material facts, including the following:

- That investors would receive an insured minimum return of 12%, paid quarterly. In reality, the quarterly cash payments to investors were mostly Ponzi payments—taken from other investors’ contributions.
- That the Funds achieved average growth of 20%. In reality, the Funds have earned just \$33,334 since inception, a growth rate of only 0.25%.
- That, for CFG II, “the Company is backing the minimum preferred yield and principal with insurance based assets.” In reality, CFG II never purchased any such insurance-based assets.
- That OE Fund would pay no sales commissions. In reality, OE Fund paid at least \$175,000 in sales commissions.
- That Defendant Patrick O. Howard was a Registered Investment Adviser (“RIA”). In reality Howard was never an RIA.

4. By engaging in the conduct described in the Complaint, the Defendants violated, and unless enjoined will continue to violate, Securities Act Sections 5(a), 5(c), and 17(a) [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Exchange Act Sections 10(b) and 15(a) [15 U.S.C. § 78j(b) and § 78o(a)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

5. Through this action, the Commission seeks to protect the interests of current and future investors. In order to preserve assets that were procured by this fraud and because those assets are at risk of dissipation, the Commission seeks emergency *ex parte* relief in this action to freeze assets and obtain other equitable relief.

6. Based on the ongoing nature of this egregious fraud and the misapplication and misappropriation of investor funds, emergency relief is needed to prevent the Defendants from defrauding additional investors, to limit the potential for further financial harm to existing investors, and to recover assets for the Defendants' victims. The Commission seeks a preliminary injunction as to each Defendant against future violations pending final judgment and the following *ex parte* relief: (1) a temporary restraining order as to each Defendant; (2) an immediate asset freeze as to each Defendant to preserve the *status quo* pending final judgment; (3) the appointment of a receiver as to each Defendant to marshal, conserve, and hold funds and assets obtained by the Defendants; (4) an order prohibiting Defendants from destroying or altering books, records, accounts, and documents; and (5) an order expediting discovery.

7. A temporary seal on the proceedings is necessary and in the public interest to effectuate service on the adverse parties wherever they may be found, and to allow for a Receiver this Court may appoint to take possession of assets pending the resolution of this matter and until investor funds can be traced and returned. This limited time period will enable the Receiver and process servers to physically arrive at the various Defendants' locations before Defendants are able to flee the jurisdiction or otherwise evade service, dissipate or secret assets (including moving assets offshore), or destroy records.

8. Finally, the safety of persons attempting to serve process, and of the Receiver attempting to take possession of Defendants' assets might be placed in jeopardy if the

Defendants learn of the Commission's action through public court records or news reports before they can be served. The Commission intends to serve the Defendants on the same day the sealing order is granted. Therefore, it is expected that the seal would have a brief duration of no more than 48 hours.

MEMORANDUM OF LAW

A court possesses inherent power to seal part or all of its records. *See, e.g., United States v. McVeigh*, 119 F.3d 806, 811 (10th Cir. 1997) (stating that court records "may be sealed if the right to access is outweighed by interests favoring non-disclosure"). In ruling on a motion for leave to file under seal, courts employ a balancing test, to determine whether the interests furthered by denying public access (*e.g.*, preventing unfair pretrial publicity, law enforcement purposes, or protecting privacy interests) outweigh the public's interest in inspecting judicial records. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978).

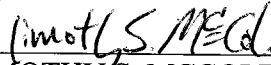
The serious law-enforcement interests implicated here tip the scale heavily in favor of sealing this matter for the limited period requested. The seal would be subject to being removed as soon as the defendants are made aware of the Commission's case. The Commission intends to serve the Defendants on the same day the seal is granted. It is expected, therefore, that the seal would not last for more than 48 hours.

REQUEST FOR RELIEF

The Commission respectfully requests that, as provided in the proposed order filed herewith, the Court seal these proceedings, the pleadings, all orders, and all other motions and papers filed herein until a return of service is filed or the Commission files a Notice of Status with the Clerk of the Court, stating that the requested asset freeze has been put into effect by the relevant financial institution, whichever is earlier.

DATED: February 14, 2017

Respectfully submitted,



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