

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
AUG 10 11:17
LAURA A. BRIGGS
CLERK

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

KENNETH R. PAYNE, JOHANN M. SMITH,
DANIEL G. DANKER, CONSTANCE
BROOKS-KIEFER, HEARTLAND
FINANCIAL SERVICES, INC., JMS
INVESTMENT GROUP, LLC,

Defendants.

CIVIL ACTION
FILE NO.

1: P00-1265 C - T/G

**MOTION FOR AN EX PARTE TEMPORARY RESTRAINING ORDER
AND OTHER ANCILLARY RELIEF**

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Plaintiff, Securities and Exchange Commission ("Commission"), by its attorneys, respectfully moves this Court to enter a Temporary Restraining Order ("Order") against Kenneth R. Payne ("Payne"), Johann M. Smith ("Smith"), Daniel G. Danker ("Danker"), Constance Brooks-Kiefer ("Brooks-Kiefer"), Heartland Financial Services, Inc. ("Heartland"), and JMS Investment Group, LLC ("JMS") (collectively "Defendants") in order to restrain them from continuing to engage in a Ponzi scheme that has raised at least \$29.1 million from approximately 330 investors in 13 states. Instead of using investor money to purchase legitimate securities, the defendants pay other investors "dividends" and "interest" and pay their personal and business expenses. Specifically, the Commission requests the entry of an Order :

1. Restraining and enjoining Payne, Smith and Danker, their officers, agents, servants, employees, attorneys, 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 transactions, acts, practices or courses of business that violate Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§77e(a), 77e(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 [17 C.F.R. §240.10b-5] promulgated thereunder, or aiding and abetting in transactions, acts, practices and courses of business which constitute violations of Sections 15(a) and 15(c)(1) of the Exchange Act [15 U.S.C. §§78o(a) and 78o(c)(1)], and Rule 15c1-2 promulgated thereunder [17 C.F.R. §240.15c1-2], and from engaging in transactions, acts, practices, or courses of business of similar purport and object;

2. Restraining and enjoining Brooks-Kiefer, her officers, agents, servants, employees, attorneys, and those persons in active concert or participation with her who receive actual notice of the Order by personal service or otherwise, and each of them from directly or indirectly, engaging in transactions, acts, practices or courses of business that violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and 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 from engaging in transactions, acts, practices, or courses of business of similar purport and object;

3. Restraining and enjoining JMS, its officers, agents, servants, employees, attorneys, 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 transactions, acts, practices or courses of business that violate 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§77e(a), 77e(c), 77q(a)], and Sections 10(b), 15(a) and 15(c)(1) of the Exchange Act [15 U.S.C. §§78j(b), 78o(a), and 78o(c)(1)], and Rules 10b-5 and 15c1-2 [17 C.F.R. §§240.10b-5 and 240.15c1-2] promulgated thereunder, and from engaging in transactions, acts, practices, or courses of business of similar purport and object;


4. Restraining and enjoining Heartland, its officers, agents, servants, employees, attorneys, 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 transactions, acts, practices or courses of business that violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and Sections 10(b), 15(a) and 15(c)(1) of the Exchange Act [15 U.S.C. §§ 78j(b), 78o(a), 78o(c)(1)] and Rules 10b-5 and 15c1-2 [17 C.F.R. §§240.10b-5 and 240.15c1-2] promulgated thereunder, and from engaging in transactions, acts, practices, or courses of business of similar purport and object;

5. Temporarily freezing all assets directly or indirectly owned, held, or controlled by Defendants, or in which Defendants, have or had a beneficial interest, pending the outcome of the preliminary injunction hearing;

6. Temporarily freezing all accounts into which investor funds were deposited, pending the outcome of the preliminary injunction hearing;
7. Ordering an accounting of Defendants funds and assets;
8. Enjoining Defendants from destroying, mutilating, concealing, altering or disposing of any documents or recordings relating to the offer, purchase, or sale of securities by Defendants and assets owned, held or controlled by Defendants, or in which Defendants have or had a beneficial interest;
9. Commanding, within four days of the issuance of the Order, the production of certain books and records of Defendants indicating ownership or control of property and assets;
10. Commanding, within four days of the issuance of the Order, the production of certain books and records of Defendants;
11. Prohibiting the solicitation, acceptance or receipt, directly or indirectly, of any funds from individuals or entities for the purpose of investment; and
12. Such further relief as the Court may deem appropriate.

In support of this Motion, Plaintiff adopts and incorporates the facts and arguments contained in the Complaint filed herein and, in support of the instant Motion, submits a Memorandum in Support of Plaintiff's Motion for an ex parte Temporary Restraining Order.

Respectfully submitted,


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Dated: August 9, 2000