

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

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.

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: CIVIL ACTION  
: FILE NO.

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EX PARTE TEMPORARY RESTRAINING ORDER

This cause coming to be heard on the Motion of the Plaintiff, Securities and Exchange Commission ("Commission"), for Temporary Restraining and Other Ancillary Relief, the Court having considered the Commission's Complaint, Motion for Temporary Restraining Order and Other Ancillary Relief, Memorandum in Support of such motion and the Affidavit of Scott J. Hlavacek and having been fully advised in the premises, finds:

1. That this Court has jurisdiction over the subject matter of this case and there is good cause to believe it will have jurisdiction over all parties hereto.

2. That there is good cause to believe that Defendants Kenneth R. Payne ("Payne"), Johann M. Smith ("Smith"), Daniel G. Danker ("Danker"), directly and indirectly, have engaged and, unless enjoined, will continue to engage in acts, practices and courses of business which constitute violations of 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, and have aided and abetted, and unless enjoined, will continue to aid and abet 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].

3. That there is good cause to believe that Defendant Constance Brooks-Kiefer ("Brooks-Kiefer"), directly and indirectly, has engaged and, unless enjoined, will continue to engage in acts, practices and courses of business which constitute violations of 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.

4. That there is good cause to believe that Defendant JMS Investment Group, LLC ("JMS"), directly and indirectly, has engaged and, unless enjoined, will continue to engage in acts, practices and courses of business which constitute violations of Sections 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.

5. That there is good cause to believe that Defendant Heartland Financial Services, Inc. ("Heartland"), directly and indirectly, has engaged and, unless enjoined, will continue to engage in acts, practices and courses of business which constitute violations of 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.

6. That there is good cause to believe that Defendants Payne, Smith, Danker, Brooks-Keifer, Heartland, and JMS will continue to engage in such acts, transactions, practices and courses of business and in such violations to the irreparable loss and damage to the Plaintiff and the public unless immediately restrained and enjoined by order of this Court and that investor funds may be dissipated and documents may be destroyed, and that therefore, this Temporary Restraining Order ("Order") should be and is granted.

I.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Defendants Payne, Smith, Danker, Brooks-Keifer, Heartland, and JMS their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are temporarily restrained and enjoined from, directly or indirectly, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- (1) employing any device, scheme or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of material fact or omission 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; or
- (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

in violation of Sections 17(a)(1), (2) and (3) of the Securities Act of 1933 [15 U.S.C. §§77q(a)(1), (2) and (3)].

**II.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants Payne, Smith, Danker, Brooks-Keifer, Heartland, and JMS their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are temporarily restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (1) employing any device, scheme or artifice to defraud;
- (2) making any untrue statement of material fact or omitting 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; or
- (3) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

**III.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants Payne, Smith, Danker, and JMS their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by

personal service or otherwise, and each of them, be and hereby are temporarily restrained and enjoined from, directly or indirectly:

- (1) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails, to sell securities through the use or medium of any prospectus or otherwise unless and until a registration statement is in effect with the Commission as to such securities;
- (2) Carrying or causing to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities;
- (3) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or offer to buy through the use or medium of any prospectus or otherwise securities unless and until a registration statement has been filed with the Commission as to such securities, or while the registration statement is the subject of a refusal or stop order or under any public proceeding or examination under Section 8 of the Securities Act of 1933 [15 U.S.C. §77h];

in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 [15 U.S.C. §77e (a) and §77e (c)]. Provided, however, that nothing in this portion of the Order (Section III) shall apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act of 1933 [15 U.S.C. §77e].

#### IV.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendants Payne, Smith, Danker, Heartland and JMS and their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and are hereby temporarily restrained and enjoined from, directly or indirectly, as principals or as aiders and abettors, by use of the

mails or any means or instrumentality of interstate commerce, effecting any transaction in, or inducing or attempting to induce the purchase or sale of any security (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) unless registered with the Commission as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)], in violation of Section 15(a) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o(a)].

V.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendants Payne, Smith, Danker, Heartland and JMS and their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and are hereby temporarily restrained and enjoined from, directly or indirectly, as principals or as aiders and abettors, while acting as a broker or dealer, making use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any securities (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities exchange of which he is a member, by means of any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or by means of any untrue statement of a material fact or omission 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, where such statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading, in violation of Section 15(c)(1) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o(c)(1)] and Rule 15c1-2 thereunder [17 C.F.R. § 240.15c1-2].

## VI.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants Payne, Smith, Danker, Brooks-Keifer, Heartland, and JMS their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are temporarily restrained and enjoined 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 Defendants or in their possession, custody or control, wherever located;
- 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;
- C. destroying, mutilating, concealing, altering or disposing of in any manner, any of the books, records, documents, correspondence, brochures, manuals, obligations or other property (including records contained on any computer or computer diskette) in Defendants' possession, custody or control, wherever located;
- D. depositing checks received in connection with investment opportunities offered and sold by the Defendants; and
- E. offering to sell and selling investment opportunities.

## VII.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants Payne, Smith, Danker, Brooks-Keifer, Heartland, and JMS shall produce to the Plaintiff, within four (4) days of the issuance of the Order:

- A. all current accountant's reports, bank statements, brokerage statements, documents indicating title to real or personal property and any other indicia of current asset ownership or interest in their possession, custody or control;

- B. All books, records and other documents in their actual or constructive possession, custody or control relating to investment opportunities offered, purchased, or sold by the Defendants; and
- C. An accounting of all funds received from investors in connection with the investment opportunities offered and sold by the Defendants and the Defendants' uses to which such investor funds were put and the amounts of any remaining assets of the Defendants, and their location.

**VIII.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that nothing in the Order shall be construed to require that Defendants Payne, Smith, Danker, Brooks-Keifer, Heartland, and JMS abandon or waive any constitutional or other legal privilege which they may have available to them.

**IX.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that:

- A. This Order shall expire at 12:00 o'clock P.m., on Aug. 21, 2000 or such later date as may be extended by the Court, or agreed upon by the parties hereto.
- B. That Defendants Payne, Smith, Danker, Brooks-Keifer, Heartland, and JMS appear before this Court on the 21<sup>st</sup> day of August, 2000 at the hour of 12:00 o'clock, P.m., and then and there show cause why a Preliminary Injunction should not be granted in accord with the Prayer in Plaintiff's Complaint.

**SO ORDERED:**

John Daniel Tinder  
UNITED STATES DISTRICT COURT JUDGE

Dated: 8/10, 2000