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11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA  
13 SACRAMENTO DIVISION  
14

15 SECURITIES AND EXCHANGE COMMISSION,

16 Plaintiff,

17 v.

18 ANTHONY VASSALLO, KENNETH KENITZER  
19 and EQUITY INVESTMENT MANAGEMENT  
AND TRADING, INC.,

20 Defendants.  
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Case No. 2:09-CV-00665-LKK-DAD

COMPLAINT

1 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

2 **SUMMARY OF THE ACTION**

3 1. This lawsuit concerns a Ponzi scheme carried out by Folsom, California-based  
4 Equity Investment Management and Trading, Inc. ("EIMT" or the "Company") and its  
5 principals, Anthony Vassallo and Kenneth Kenitzer (together, "Defendants"). From  
6 approximately May 2004 through November 2008, Defendants obtained more than \$40 million  
7 from approximately 150 investors, purportedly to be invested in buying and selling securities.  
8 Many investors were members of defendant Vassallo's religious community.

9 2. Until November 2008, in monthly performance reports and other communications  
10 with investors, Defendants led investors to believe that EIMT was actively engaged in securities  
11 trading and was posting consistent, positive returns.

12 3. These representations were false. In fact, in September 2007 Defendants had  
13 ceased trading on behalf of EIMT, withdrawn virtually all investor funds from EIMT's brokerage  
14 accounts and misappropriated the funds for their own use.

15 4. Defendants' fraud came to light in late 2008, after EIMT failed to honor investor  
16 requests to access their funds. Vassallo initially offered several false excuses for the delays.  
17 However, in a late December 2008 meeting with a group of EIMT investors, Vassallo admitted  
18 that he did not have any active securities trading accounts and that he had been fabricating  
19 reports of his investment activities for some time. Defendants have yet to account for the EIMT  
20 investors' funds, and as a result of Defendants' fraud, investors face millions of dollars in losses.

21 5. Defendants have violated, and continue to violate, the antifraud provisions of the  
22 federal securities laws, by misappropriating investor assets and making materially false and  
23 misleading statements in connection with the purchase or sale of securities. The Commission  
24 brings this civil enforcement action to require that Defendants account for all investor funds they  
25 received, disgorge their ill-gotten gains, with prejudgment interest, pay civil money penalties,  
26 and be enjoined from future violations of the federal securities laws.

1 **JURISDICTION AND VENUE**

2 6. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the  
3 Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b) and 77t(d)]; Sections 21(d) and  
4 21(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d) and  
5 78u(e)]; and Sections 209 and 214 of the Investment Advisers Act of 1940 (“Advisers Act”)  
6 [15 U.S.C. §§ 80b-9 and 80b-14].

7 7. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a)  
8 of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)]; Sections 21(d), 21(e) and 27 of the  
9 Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]; and Sections 209 and 214 of the Advisers  
10 Act [15 U.S.C. §§ 80b-9 and 80b-14]. The defendants, directly or indirectly, have made use of  
11 the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a  
12 national securities exchange in connection with the acts, practices and courses of business  
13 alleged in this complaint.

14 8. Venue is proper in this District pursuant to Section 22(a) of the Securities Act [15  
15 U.S.C. § 77v]; Section 27 of the Exchange Act [15 U.S.C. § 78aa]; and Section 214 of the  
16 Advisers Act [15 U.S.C. § 80b-14]. During much of the period described in this complaint,  
17 Vassallo resided in the District, and EIMT’s principal place of business is located in the District.  
18 In addition, acts, practices and courses of business alleged in the complaint occurred in the  
19 District. This action has been filed in the Sacramento Division according to Local Rule 3-120(d)  
20 because the case arises from acts, practices and courses of business that occurred in Sacramento  
21 County, California.

22 **DEFENDANTS**

23 9. **Anthony Vassallo**, age 29, formerly of Folsom, California, was at all relevant  
24 times the President and a Director of EIMT. In 2005, Vassallo was the subject of a cease-and-  
25 desist action by the Utah Department of Commerce, Division of Securities, for acting as an  
26 unregistered investment adviser. Vassallo has never been registered with the Commission in any  
27 capacity.

28 10. **Kenneth Kenitzer**, age 66, is a Pleasanton, California resident and was at all

1 relevant times a Vice President and Director of EIMT. Kenitzer has never been registered with  
2 the Commission in any capacity.

3 11. **Equity Investment Management and Trading, Inc.** is a Nevada corporation  
4 with headquarters in Folsom, California. EIMT purports to be a private investment company that  
5 invests assets pursuant to a proprietary securities trading strategy. EIMT has never been  
6 registered with the Commission in any capacity.

7 **FACTUAL ALLEGATIONS**

8 **A. EIMT Operated Through Its Principals, Vassallo and Kenitzer**

9 12. From approximately May 2004 through late 2008, Defendant Vassallo solicited  
10 investors for a securities trading investment program. In soliciting investors, Vassallo claimed  
11 that he had a proprietary computer software program that allowed him to buy and sell stock  
12 options and make approximately 3.5% per month on his investments with little risk of loss.  
13 Vassallo also provided prospective investors documents that purported to demonstrate his  
14 historic returns. In some instances, Vassallo provided investors with documents that purported  
15 to show that, with one exception that had occurred years earlier, Vassallo had never suffered a  
16 monthly loss.

17 13. Over time, Vassallo used different names to describe his investment scheme. In  
18 or around 2004, he solicited investors to participate through an entity called the Vassallo Group.  
19 However, since 2005 Vassallo has commonly referred to his investment scheme as EIMT. In  
20 total, since 2004 EIMT has obtained more than \$40 million from approximately 150 investors,  
21 for the purpose of investing in securities. Vassallo knew many EIMT investors because they  
22 were members of his religious community.

23 14. In order to invest with EIMT, many investors purchased an interest in one of  
24 several limited liability companies, which Defendants commonly referred to as "sub-funds."  
25 EIMT entered into agreements to serve as the manager for each sub-fund, with authority to use  
26 the sub-fund's assets, in a common pool with assets from other sub-funds, to buy and sell  
27 securities. Although the specific compensation formula varied, Vassallo was compensated for  
28 his service to each sub-fund based in part on a percentage of the return he achieved for that sub-

1 fund. Any remaining profits were to be allocated to the members of each sub-fund in proportion  
2 to their respective membership shares.

3 15. Vassallo held himself out to investors as being responsible for EIMT's investment  
4 strategies and trading decisions.

5 16. Defendant Kenitzer has been a principal of EIMT since approximately 2005.  
6 Among other things, Kenitzer participated in EIMT's day-to-day operations, including the  
7 receipt of new investor funds, the transfer of investor funds from EIMT to EIMT's brokerage  
8 accounts, and the release of funds from EIMT to investors who requested the return of all or a  
9 portion of their investments. In addition, Kenitzer regularly posted information showing EIMT's  
10 monthly investment returns on the Company's password-protected website, which investors used  
11 to monitor the supposed performance of their investments.

12 **B. By September 2007, Defendants Had Withdrawn Millions of Dollars in**  
13 **Investor Funds From EIMT's Brokerage Firm**

14 17. On or about April 11, 2006, EIMT opened an account at the brokerage firm  
15 TradeStation Securities, Inc. ("TradeStation"). EIMT conducted trades in this account (referred  
16 to herein as "EIMT TradeStation Account 1") until approximately April 2007. However, in  
17 approximately April 2007, Vassallo and Kenitzer issued wire instructions to transfer virtually all  
18 of the funds then on deposit in EIMT TradeStation Account 1 (approximately \$14 million) to an  
19 EIMT bank account. Since that time, EIMT has not made any additional deposits to, or  
20 conducted any trades through, EIMT TradeStation Account 1.

21 18. In or about June 2007, EIMT opened a second account at TradeStation (referred  
22 to herein as "EIMT TradeStation Account 2") into which EIMT deposited a total of \$16 million.  
23 However, in or about July 2007, Kenitzer issued wire instructions to transfer \$12.3 million of  
24 those funds out of EIMT TradeStation Account 2, and back to an EIMT bank account. Then, in  
25 or about mid-September 2007, EIMT's TradeStation Account 2 was closed, and all the  
26 remaining funds were transferred back to an EIMT bank account. Since that time, EIMT has not  
27 made any additional deposits to, or conducted any trades through, EIMT TradeStation Account

28 2.

1           19.     In or about late September 2007, due to irregularities with documents and  
2 information provided by Vassallo, TradeStation terminated Vassallo's trading privileges at the  
3 brokerage firm. Since that time, Vassallo has not been authorized to trade in any account at  
4 TradeStation.

5           **C.     Defendants Falsely Claimed To Be Trading Securities and Reported False**  
6           **Performance Results to Investors**

7           20.     From approximately September 2007 through approximately November 2008,  
8 Defendants falsely reported to investors that EIMT was achieving consistent, positive returns  
9 through its trades at the TradeStation brokerage. In some instances, Vassallo issued the false  
10 reports, either directly or through Kenitzer. In other instances, Kenitzer posted false  
11 TradeStation trading results to EIMT's website, or otherwise distributed such false reports to  
12 investors. During the period from approximately September 2007 through approximately  
13 November 2008, all of these reports were fabrications, and did not reflect actual trading by  
14 EIMT.

15           21.     Defendants, and each of them, knew or were reckless in not knowing that the  
16 trading results they reported to investors from approximately September 2007 through  
17 approximately November 2008 were materially false and misleading because, among other  
18 reasons, they knew EIMT had withdrawn virtually all of its investor funds from TradeStation by  
19 September 2007 and was no longer conducting any securities trading through that brokerage.

20           22.     Also from approximately September 2007 through November 2008, Defendants  
21 continued to solicit and obtain additional investment funds on behalf of EIMT, falsely claiming it  
22 was for the purpose of funding EIMT's purported trading strategy, when by that time EIMT's  
23 brokerage accounts had been closed and no securities trades were being made.

24           23.     Because EIMT was not engaged in any securities trading activities from  
25 approximately September 2007 through November 2008, any payments the Company made to  
26 investors during this period necessarily came not from EIMT's investment earnings, but rather  
27 from other investor funds, and constituted a Ponzi scheme.

1           24. From approximately September 2007 to the present, Defendants have  
2 misappropriated EIMT investor funds by using them for unauthorized purposes and transferring  
3 them to accounts under their control, and they continue to do so by refusing to return funds in  
4 response to investors' requests.

5           **D. After Providing False Excuses, Vassallo Admitted His Wrongdoing**

6           25. Around the fall of 2008, several EIMT investors failed to receive monthly  
7 payments they were due from EIMT. Also around the fall of 2008, other investors attempted to  
8 redeem their investments, but EIMT denied their requests.

9           26. When investors asked Vassallo to explain why they could not access their funds,  
10 he offered a series of false excuses. At first, Vassallo told investors that EIMT could not  
11 distribute funds due to a technical problem at TradeStation. Later, Vassallo claimed that EIMT's  
12 funds at TradeStation were unavailable due to an audit of TradeStation by the Securities and  
13 Exchange Commission. As Vassallo knew, both of these excuses were false.

14           27. In a further effort to mislead investors, on several occasions in late 2008 Vassallo  
15 displayed to some investors what he claimed were computer "screen shot" records of EIMT's  
16 accounts at TradeStation. Those supposed screen shots showed that EIMT had more than \$53  
17 million in assets invested through TradeStation. In fact, as Vassallo knew, the screen shots were  
18 fabricated, and no assets remained in the brokerage account.

19           28. In approximately late December 2008, two EIMT investors spoke with an official  
20 at TradeStation to inquire about the EIMT accounts. The TradeStation official informed the  
21 investors that Vassallo had not had an active trading account at TradeStation for more than one  
22 year, and that TradeStation had terminated Vassallo's trading privileges for "compliance  
23 reasons."

24           29. On or about December 31, 2008, a group of EIMT investors met with Vassallo at  
25 EIMT's office in Folsom, California. At the meeting, investors challenged the accuracy of the  
26 EIMT investment reports provided by Vassallo and Kenitzer. During this meeting, Vassallo  
27 admitted that he had not had any active accounts at TradeStation for some time. In addition,  
28 during this meeting Vassallo admitted that he had prepared what he called "simulated"

1 TradeStation account statements purporting to show trading on behalf of EIMT. Vassallo  
2 claimed that he had lost some investor funds through securities trading, and that he had placed  
3 other funds in a variety of other schemes, including purported loans to a Utah company, a mine,  
4 and a strip mall.

5 30. Despite Vassallo's claims and admissions at the meeting on approximately  
6 December 31, 2008, to date he has failed to give EIMT investors any accounting of exactly what  
7 funds EIMT invested through TradeStation (or through any other brokerage); what gains or  
8 losses EIMT incurred on those investments; or the disposition of any other EIMT investor funds.  
9 Instead, Vassallo has continued to mislead investors by offering contradictory and unsupported  
10 claims about his use of EIMT investor funds.

11 31. At all relevant times, Defendants Vassallo and Kenitzer controlled EIMT, and  
12 their knowledge and actions are attributable to the Company.

13 32. From approximately September 2007 through approximately December 2008,  
14 Defendants defrauded EIMT investors by misappropriating EIMT investor funds for their own  
15 use, while at the same time issuing false and misleading monthly performance reports and other  
16 communications designed to lead EIMT investors to believe that their funds were invested in  
17 securities trading and were earning consistent, positive returns. Defendants knew or were  
18 reckless in not knowing that their false representations and omissions regarding their misuse of  
19 EIMT investor funds were material.

20 **FIRST CLAIM FOR RELIEF**

21 **Violations of Section 17(a) of the Securities Act by All Defendants**

22 33. The Commission hereby incorporates paragraphs 1 through 32 by reference.

23 34. Defendants have, by engaging in the conduct set forth above, directly or  
24 indirectly, in the offer or sale of securities, by the use of means or instruments of transportation  
25 or communication in interstate commerce, or of the mails: (a) with scienter, employed devices,  
26 schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements  
27 of material fact or by omitting to state material facts necessary in order to make statements made,  
28 in the light of the circumstances under which they were made, not misleading; and (c) engaged in



1 transactions, practices, or courses of business which operated or would operate as a fraud or  
2 deceit upon the purchasers of such securities.

3 35. By reason of the foregoing, Defendants have directly or indirectly violated  
4 Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and unless enjoined will continue to  
5 violate Section 17(a) of the Securities Act.

6 **SECOND CLAIM FOR RELIEF**

7 **Violations of Section 10(b) of the Exchange Act and**  
8 **Rule 10b-5 Thereunder by All Defendants**

9 36. The Commission hereby incorporates Paragraphs 1 through 32 by reference.

10 37. Defendants, by engaging in the conduct set forth above, directly or indirectly, by  
11 use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a  
12 national security exchange, with scienter: (a) employed devices, schemes, or artifices to defraud;  
13 (b) made untrue statements of material fact or omitted to state material facts necessary in order to  
14 make the statements made, in light of the circumstances under which they were made, not  
15 misleading; and (c) engaged in acts, practices, or courses of business which operated or would  
16 operate as a fraud or deceit upon other persons, in connection with the purchase or sale of  
17 securities.

18 38. By reason of the foregoing, Defendants have directly or indirectly violated  
19 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R.  
20 §§ 240.10b-5] and unless enjoined will continue to violate Section 10(b) of the Exchange Act  
21 and Rule 10b-5.

22 **THIRD CLAIM FOR RELIEF**

23 **Aiding and Abetting Violations of Section 10(b) of the Exchange**  
24 **Act and Rule 10b-5 Thereunder by Kenitzer**

25 39. The Commission hereby incorporates Paragraphs 1 through 32 by reference.

26 40. Through the conduct alleged above, EIMT and Vassallo directly or indirectly, by  
27 use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a  
28 national security exchange, with scienter: (a) employed devices, schemes or artifices to defraud;

1 (b) made untrue statements of material fact or omitted to state material facts necessary in order to  
2 make the statements made, in light of the circumstances under which they were made, not  
3 misleading; or (c) engaged in acts, practices, or courses of business which operated or would  
4 operate as a fraud or deceit upon other persons, in connection with the purchase or sale of  
5 securities.

6 41. Defendant Kenitzer knowingly provided substantial assistance to EIMT's and  
7 Vassallo's violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5  
8 [17 C.F.R. §§240.10b-5] thereunder.

9 42. By reason of the foregoing, defendant Kenitzer has aided and abetted, and unless  
10 enjoined, will continue to aid and abet, violations of Section 10(b) [15 U.S.C. §78j(b)] and Rule  
11 10b-5 [17 C.F.R. §§240.10b-5] thereunder.

12 **FOURTH CLAIM FOR RELIEF**

13 **Violations of Sections 206(1) and (2) of the Investment Advisers**  
14 **Act of 1940 by Vassallo**

15 43. The Commission hereby incorporates Paragraphs 1 through 32 by reference.

16 44. At all relevant times, Vassallo acted as an investment adviser, as defined by  
17 Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)], to the EIMT funds.

18 45. Vassallo, by engaging in the acts and conduct alleged above, directly or  
19 indirectly, through use of the means or instruments of transportation or communication in  
20 interstate commerce or of the mails, and while engaged in the business of advising others for  
21 compensation as to the advisability of investing in, purchasing, or selling securities: (a) with  
22 scienter, employed devices, schemes, and artifices to defraud; and (b) engaged in acts, practices,  
23 or courses of business which operated or would operate as a fraud or deceit upon clients or  
24 prospective clients.

25 46. By reason of the foregoing, Kenitzer has violated Sections 206(1) and 206(2) of  
26 the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)] and unless enjoined will continue to  
27 violate Sections 206(1) and 206(2) of the Advisers Act.

**FIFTH CLAIM FOR RELIEF**

**Violations of Section 206(4) of the Advisers Act and  
Rule 206(4)-8 Thereunder by Vassallo**

47. The Commission hereby incorporates Paragraphs 1 through 32 by reference.

48. At all relevant times, Vassallo acted as an investment adviser, as defined by Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b 2(a)(11)], to the EIMT fund.

49. At all relevant times, EIMT operated as a pooled investment vehicle, as defined by Rule 206(4)-8(b) promulgated under the Advisers Act [17 C.F.R. § 275.206(4)-8(b)].

50. Vassallo, by engaging in the acts and conduct alleged above, while acting as an investment adviser to a pooled investment vehicle, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, has engaged in transactions, practices, and courses of business which operate as a fraud or deceit upon investors in the EIMT fund. Vassallo made untrue statements of a material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the EIMT fund, and otherwise engaged in acts, practices or courses of business that were fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the EIMT fund.

51. By reason of the foregoing, Vassallo has violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8] and unless enjoined will continue to violate Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

**RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enjoin Defendants temporarily, preliminarily, and permanently from directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

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II.

Enjoin Vassallo temporarily, preliminarily, and permanently from directly or indirectly violating Sections 206(1), 206(2), and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

III.

Enter an order freezing the assets of Vassallo and EIMT.

IV.

Order Defendants to provide a verified accounting, identifying: (i) the location and disposition of all funds received from EIMT investors; (ii) the location and disposition of all accounts controlled by Defendants or held for their benefit; and (iii) the location and value of all investor, as well as personal or other, assets currently held by Defendants, or under Defendants' control or over which they may exercise actual or apparent authority.

V.

Order Defendants to disgorge their ill-gotten gains according to proof, plus prejudgment interest thereon.

VI.

Order Vassallo and Kenitzer to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

VII.

Order Vassallo to pay civil penalties pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

VIII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

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IX.

Grant such other and further relief as this Court may determine to be just, equitable, and necessary.

Dated: March 10, 2009

Respectfully submitted,

/s/ Monique C. Winkler  
MONIQUE C. WINKLER

Attorney for Plaintiff  
SECURITIES AND EXCHANGE  
COMMISSION