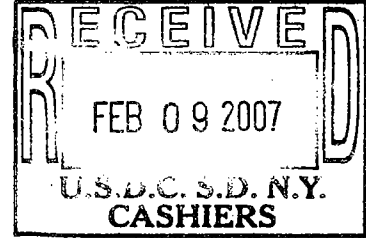


**JUDGE SWAIN**

**07 CV**

**954**

**MARK K. SCHONFELD (MS-2798)  
REGIONAL DIRECTOR  
Attorney for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
Northeast Regional Office  
3 World Financial Center  
Room 4300  
New York, New York 10281  
(212) 336-1020**



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**-against-**

**RAVI V. KOTHARE,  
STERLING CAPITAL PLANNERS, INC.,  
S.F. ADVISORS, LLC D/B/A AFFINITY CLUB  
NETWORK, LLC, and  
PLAYERS CHOICE CLUB, LLC,**

**Defendants.**  
-----X

07 Civ. ( )

**COMPLAINT**

Plaintiff Securities and Exchange Commission, for its Complaint against defendants Ravi V. Kothare ("Kothare"), Sterling Capital Planners, Inc. ("Sterling"), S.F. Advisors, LLC d/b/a Affinity Club Network, LLC ("Affinity") and Players Choice Club LLC ("Players Choice" or the "Club") (collectively the "Defendants") alleges:

## SUMMARY

1. The Commission brings this emergency action to obtain relief including asset freezes and an accounting of at least \$1.75 million that Kothare (through Sterling) misappropriated from about 18 Sterling investment advisory clients and invested in Players Choice, a web-based sports club that Kothare controls. Kothare is the chairman and sole owner of Sterling, a registered investment advisory firm. Kothare is also one of the founders of Players Choice and the chairman of its board of managers. In breach of his fiduciary duty to his advisory clients, Kothare transferred Sterling clients' funds to Players Choice without obtaining the clients' written consent and without disclosing significant conflicts of interest. At some point, Kothare disclosed the "investments" in the Club on the clients' Sterling account statements but failed to disclose that he controls Players Choice, and that, with no reasonable basis, he set the purported market value for the Players Choice units that appeared on clients' statements. Also, in another scheme, Kothare fraudulently transferred assets from a deceased client's custodial brokerage account to entities he controls, including his own law practice.

2. Kothare and Players Choice have failed to disclose, and are continuing to fail to disclose, that the Club has lost its most significant asset -- a two-year license from the Major League Baseball Players Association ("MLBPA") that allowed Players Choice to use the likenesses and names of players to, among other things, market and sell certain products. This license is critical to the Club's business. Among other things, Club membership entitled individuals to attend "meet and greet" events with major league baseball players. Having lost its license, Players Choice has no saleable assets and is likely worthless. Despite this, Kothare and Sterling have continued to misrepresent the

market value of Players Choice units on investors' account statements and have otherwise failed to disclose the loss of the license in conversations with investors.

3. Defendants have defrauded, and are continuing to defraud, Sterling clients by failing to provide all of the material facts concerning the Players Choice investment to investors before or after transferring their money to the Club.

4. Kothare and Sterling, fiduciaries to the Sterling clients invested in Players Choice, have also violated, and are continuing to violate, the custody provisions of the Investment Advisers Act of 1940 ("Advisers Act"). Had Kothare and Sterling complied with the custody provisions, Sterling clients would have known the true value of their investments, including that the investments are now worthless.

5. Specifically, as investment advisors with control over client assets, Kothare and Sterling are required, among other things, to have the Sterling accounts invested in Players Choice verified annually by surprise examination by an independent accountant. As a result of Kothare's and Sterling's failure to comply with this requirement, no independent accountant has been able to verify the Sterling clients' investments in the Club since its inception, in or about January 2005. In addition, the Defendants have refused to provide an accounting regarding the Club's use of investor funds to the Commission.

6. By Kothare's own admission, the Club's assets have dwindled from approximately \$3 million in cash to as little as \$200,000 in fewer than six months.

7. Through this abuse of trust by the Defendants, about \$1.75 million in client funds are now unaccounted for.

8. Kothare breached his fiduciary duty to at least one other investment advisory client. Kothare fraudulently transferred assets from a deceased client's custodial brokerage account to Kothare's law firm and another entity he controls. After his client's death, Kothare used a power of attorney certification to wrongfully write at least eight checks totaling approximately \$97,000 against the deceased client's custodial brokerage account.

9. After an attorney representing the client's son filed objections in a probate proceeding, Kothare failed to appear in Surrogate's Court in Suffolk County for an examination to address allegations that he had been marshalling estate assets and utilizing estate funds without preliminary letters of testamentary. Kothare was subsequently disqualified from acting as executor for the estate.

10. By this action, the Commission seeks to freeze the Defendants' assets to prevent the possible dissipation of remaining assets and compel the Defendants to submit accountings on an emergency basis.

11. The Commission also seeks, as immediate relief, a temporary restraining order and preliminary injunction order against the Defendants, the appointment of receivers over Players Choice and Sterling, and an order prohibiting the Defendants from destroying or altering documents.

### **VIOLATIONS**

12. By virtue of the conduct alleged in this Complaint:

- a. Defendants Kothare and Sterling, directly or indirectly, singly or in concert, have engaged and are engaging in violations of Sections 204, 206(1), 206(2), 206(4) and 207 of the Advisers Act [15 U.S.C. §§ 80b-

4, 80b-6(1), (2) and (4) and 80b-7] and Rules 204-2 and 206(4)-2 thereunder [17 CFR §§ 275.204-2, 275.206(4)-2]; and

- b. Defendants, directly or indirectly, singly or in concert, have engaged and are engaging in acts, practices and course of business that constitute violations of Section 17(a) of the Securities Acts 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 [17 C.F.R. § 240.10b-5].

13. Unless Defendants are temporarily restrained and preliminarily and permanently enjoined, they will continue to engage in the acts, practices, and course of business alleged herein, and in acts, practices, and courses of business of a similar type and object.

#### **JURISDICTION AND VENUE**

14. The Commission brings this action pursuant to the authority conferred by Section 209 of the Advisers Act [15 U.S.C. § 80b-9], Section 20(b) of the Securities Act [15 U.S.C. § 77t(a)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking a temporary restraining order and preliminary and permanent injunctions, asset freezes, the appointment of receivers for Players Choice and Sterling, verified accountings, expedited discovery, and an order prohibiting the Defendants from destroying or altering documents.

15. The Commission also seeks final judgments requiring the Defendants to disgorge any ill-gotten gains and to pay prejudgment interest thereon and ordering the Defendants to pay civil money penalties pursuant to Section 209(e) of the Advisers Act

[15 U.S.C. § 80b-9], Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

16. This Court has jurisdiction over this action pursuant to Section 214 of the Advisers Act [15 U.S.C. § 80b-14], Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 77u(e) and 78aa].

17. The Defendants, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged herein.

18. Venue lies in this District pursuant to Section 214 of the Advisers Act [15 U.S.C. § 80b-14], 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]. A substantial number of the events and omissions giving rise to the Commission's claims occurred in the Southern District of New York as Sterling's offices are located in the Southern District of New York and at least one victim of the fraud resides in New York, New York.

#### **THE DEFENDANTS**

19. **Kothare**, is 45 years old, a resident of Voorhees, New Jersey, and is the president and sole owner of Sterling, a registered investment advisory firm located in New York. He is also an attorney registered in New Jersey and owns and operates a law practice. Upon information and belief, Kothare is also a certified public accountant registered in New Jersey and Pennsylvania with an accounting practice, and president and

CEO of a business advisory firm. He is also the chairman of both Players Choice and its holding company, Affinity.

20. **Sterling** is a registered investment advisory company with its principal place of business at 110 East 55<sup>th</sup> Street, Suite 200, New York, New York. The company has approximately \$39 million in assets under management. Upon information and belief, approximately \$1.75 million of this amount is invested in Players Choice.

21. **Affinity** is, upon information and belief, registered as a fictitious business in Pennsylvania, with a principal place of business at 1500 JFK Blvd, Suite 200, Philadelphia, PA. S.F. Advisors, Affinity's parent entity, is a Pennsylvania limited liability company located at 10 East Glenside Ave., Glenside, PA.

22. **Players Choice** is a Pennsylvania limited liability company located at Two Penn Center, Suite 200, Philadelphia, Pennsylvania.

## **FACTS**

### **A. The Players Choice Scheme**

#### **1. Kothare Founded Players Choice, Invested Many Sterling Clients' Funds in the Club without Consent and Failed to Comply with the Adviser's Act Custody Requirements**

23. Kothare is the sole owner of Sterling, an investment advisory company. Pursuant to its investment advisory agreements, Sterling exercises discretionary authority over its client accounts. However, Sterling's investment advisory agreements require the firm to obtain a client's written authorization before investing in anything other than marketable securities traded on the New York Stock Exchange or other open market. Thus, for example, Sterling is required to obtain a client's written authorization before investing a client's funds in a private placement.

24. Custody of the majority of Sterling's client accounts is maintained at TD Ameritrade. Certain clients have provided Kothare and Sterling with check-writing authority over their TD Ameritrade accounts.

25. Kothare began operating Players Choice, a web-based sports club, using his existing company, Affinity, as a holding company for Players Choice, in or about January 2005.

26. On or about November 15, 2004, the MLBPA, entered into a license agreement with Affinity, granting Affinity (Players Choice) a two-year license to use the likenesses and names of baseball players to, among other things, market and sell certain products.

27. Kothare controls Players Choice. He is the Club's chairman, makes significant decisions for the Club and has check-writing authority over at least one Players Choice bank account.

28. Upon information and belief, before the Club ceased operating in mid-December 2006, it operated two websites and purportedly had 500 subscribers. For a \$9.95 monthly or \$99.00 annual fee, the Club's subscribers could purchase discounted baseball apparel and participate in events sponsored by the Club.

29. In order to raise capital for Players Choice, beginning in or about December 2004, Kothare transferred funds from the custodial accounts of approximately 20 Sterling clients to the Club.

30. According to Sterling's records, Sterling clients' investments in Players Choice ranged from about \$25,000 up to about \$375,000, and totaled \$1.85 million.



31. Two investors subsequently redeemed their interests in the Club, leaving approximately 18 Sterling clients with purported original investments totaling \$1.75 million invested in Players Choice.

32. Despite the requirement in the investment advisory agreement that Kothare obtain client consent before investing in securities that are not traded on the New York Stock Exchange or other open market, none of the 14 Sterling clients that were interviewed by the Commission's staff as part of its investigation were asked to provide, and they did not provide, Kothare and Sterling with written authorization to transfer their money to Players Choice.

33. For those custodial accounts over which Kothare had check writing authority, it appears that he simply wrote checks on the TD Ameritrade accounts payable to Players Choice. Upon information and belief, the checks were deposited in a Players Choice bank account controlled by Kothare.

34. Kothare tried to conceal from the Commission staff the fact that he had not obtained client authorization for the investments. In July and August 2006, the Commission's Investment Adviser/Investment Company examination staff conducted an examination of Sterling. During that exam, Kothare produced photocopies of 5 signature pages that he represented were clients' signature pages for the Players Choice subscription agreements. Four of five signatures on these signature pages appear to have been forged.

35. Kothare failed to produce for inspection the Players Choice subscription agreements, including the original signature pages and investor accreditation attestations. Sterling is required to maintain these books and records. In a facsimile dated September

26, 2006, Sterling represented that the Club, not Sterling, maintained the file containing the original subscription agreements, but that the file had been “misplaced.”

36. On October 2, 2006, Kothare represented that he would have each client invested in Players Choice re-execute the subscription documents. In a January 18, 2007 interview with the Commission staff, Kothare claimed that he had submitted these documents to the staff. However, none of the 14 investors contacted by the Commission staff have executed any documents concerning Players Choice.

**2. Kothare Misrepresented the Nature and Purported Value of the Players Choice Investment to His Advisory Clients**

37. Sterling and Kothare subsequently issued account statements to clients that reported the transfers of funds to Players Choice as the purchase of units in Players Choice, at the price of \$1.00 per unit. These account statements were prepared by Sterling and are not audited. The Players Choice investment appeared under the heading “other assets,” and reflects a purported market value and symbol next to the listing, as if to suggest that Players Choice is an exchange traded security or that the security has liquidity.

38. Initially, the statements disclosed the “market value” of the Sterling clients’ investments in Players Choice as \$1 per unit. In fact, the Private Placement Memorandum, which investors did not receive, discloses that there is no market value for these securities.

39. By February 28, 2006, Kothare (through Sterling) inflated the purported market value of the Club’s investments to 110 percent of the original investment on statements that Sterling issued to clients. But Kothare has since admitted that there had

been no increased revenue or other tangible justification that warranted the increase in valuation of the clients' Players Choice investments.

40. Kothare advised at least one investor and the Commission staff that he increased the price for the units because he believed new investors should pay a higher price for the units than the original investors had paid.

41. At least one investor thought that the additional value reflected on the Sterling statement represented a kind of "dividend" on his investment.

42. Sterling continued to issue portfolio statements reflecting Sterling clients' investments in Players Choice at 110 percent of the original investment through November 30, 2006. Sterling revised the value of Players Choice on the December 31, 2006 portfolio statement, reflecting the investment at the original cost of \$1.00 per unit.

43. Kothare and Sterling included the value of the Players Choice investment, and the increase in value to 110 percent, which they set, when calculating advisory fees paid by Sterling clients invested in the Club.

44. The Sterling portfolio statements provided to clients invested in Players Choice have not been subjected to an annual surprise examination by an independent accountant.

45. Thus, no independent accountant has verified the Sterling clients' investments in Players Choice since the Club's inception in January 2005.

**3. The Defendants Have Made Numerous Misrepresentations and Failed to Disclose Material Information to Investors**

46. Kothare drafted the Club's Private Placement Memorandum, which discloses that an investment in the Club involved "significant risks." It also discloses that: "These securities are speculative and an investment in the securities involves a high

degree of risk” and that “no public market is expected to develop in connection with this Offering.”

47. None of the 14 Sterling clients interviewed by the Commission staff in connection with its investigation were given the Club’s private placement memorandum, which contained the material terms of the investment.

48. At least five investors have told the Commission staff that they did not know that they were invested in the Club until they saw the investment reflected on their Sterling account statements or noticed that the money had been deducted from their brokerage accounts. Several of these investors have said that they contacted Kothare after seeing Players Choice listed on their account statements. According to one of these investors, after she asked Kothare about the investment, he characterized Players Choice as a “safe” investment.

49. Through Kothare, Players Choice made seemingly baseless representations to investors. One investor told the Commission staff that Kothare had said that he expected the value of the investment to double within three to four years. During his interview with the Commission staff, Kothare admitted that he conveyed this projection to Sterling clients.

50. Several other investors have told the Commission staff that they did not know that Kothare was a principal of, or had a management role in, Players Choice.

51. Finally, other Sterling clients whose money Kothare had invested in Players Choice had never heard of the Club prior to being contacted by the Commission staff.

52. Kothare failed to disclose the significant self-dealing and conflicts of interest created by his dual role as investment adviser on the one hand, and investor in and chairman of Players Choice on the other hand.

53. Pursuant to Sections 203 and 204 of the Advisers Act, 15 U.S.C. §§ 80b-3 and 80b-4, Sterling filed Form ADVs with the Commission dated March 14, 2005, September 26, 2005 and March 7, 2006. On each of these forms, Item 8, entitled “Participation in Client Transactions” asks “[d]o you or any related person recommend securities (or other related products) to advisory clients in which you or any related person has some proprietary interest?” Kothare and Sterling answered “no” to this question. This response was false. In fact, Kothare and Sterling recommended — and executed — securities purchases in Players Choice, an entity which Kothare controls.

**B. The Players Choice Scheme Begins to Unravel**

**1. The Club’s Business Model Fails**

54. According to Kothare, at its height, the Club had only 500 subscribers paying between approximately \$100 and \$120 per year for their memberships. Thus, using the figures provided by Kothare, revenue generated from these subscriptions would have been between \$50,000 and \$60,000 per year.

55. Pursuant to its license from the MLBPA, Affinity (Players Choice) had agreed to pay guaranteed minimum royalty payments of \$400,000 in 2005 and \$1,200,000 in 2006.

56. According to Kothare, in June 2006, Kothare requested that the MLBPA lower the Club’s guaranteed minimum royalty payments due under the license agreement because these payments and anticipated marketing costs left the Club with essentially no

potential for profit. According to Kothare, the MLBPA did not agree to lower the guaranteed minimum royalty payments.

57. Kothare did not disclose these facts to investors, and Sterling continued to issue portfolio statements reflecting a “market value” of 110 per cent of the original invested amount.

58. Kothare failed to make the Club’s June 30, 2006 guaranteed minimum royalty payment timely. Kothare has admitted that Players Choice also failed to make a total of \$700,000 in payments due on September 30, 2006 and December 31, 2006.

59. In letters from the MLBPA to Kothare dated October 23, 2006 and November 14, 2006, the MLBPA informed Kothare that effective immediately, the MLBPA had terminated Affinity (Players Choice Club) as a licensee of the MLBPA.

60. On November 28, 2006, the MLBPA filed a civil complaint against Affinity, Kothare and others in federal court in Pennsylvania, seeking, among other relief, to enjoin Affinity from using its license.

61. On or about December 11, 2006, Affinity, Kothare and the Club’s general counsel consented to a preliminary injunction agreeing, among other things, to shut down the Club’s websites; to refund existing memberships for months beyond October 2006; and to stop: (i) using the MLBPA’s license and trademarks, (ii) representing their products as licensed by the MLBPA, (iii) selling products with Players Choice logos, and (iv) selling new memberships and billing current members.

62. During this period, Kothare and Sterling continued to issue portfolio statements reflecting a “market value” for the Players Choice units of 110% of the amount originally invested.

63. In Kothare's January 18 interview with the Commission's staff, Kothare initially told the staff that the Club was then currently operating under a license with the MLBPA, and he denied that he had consented to a preliminary injunction preventing Players Choice from using the license.

64. When confronted with a copy of the *Stipulation and Consent Injunction* dated December 11, 2006, Kothare told the Commission staff that he had "misspoken" in his earlier response. He then clarified that, in his view, Players Choice does not have a license from a "legal perspective," but that from a business perspective, he believes the Club does have a license because the Club will prevail in litigation with the MLBPA.

**C. The Dissipation of the Club's Assets**

65. According to the Club's unaudited balance sheet dated July 31, 2006, which, according to Kothare, was not prepared in accordance with U.S. GAAP, Players Choice had lost a total of about \$1.7 million of its approximately \$5 million in capital, but maintained about \$3.3 million dollars in cash held in two accounts.

66. According to Kothare, as of January 18, 2007, the Club had only between \$200,000 and \$500,000 in cash remaining. Thus, in the last five months of 2006, the Club's cash has decreased by between \$2.8 and \$3.1 million. The Club also has current liabilities, at least \$700,000 in debt and contingent litigation liabilities. Thus, the business appears to be worthless.

67. In his interview with the Commission staff, Kothare attributed the cash depletion to a number of events that the Club had paid for during the last five months of 2006. He did not, however, provide specific details about the Club's expenditures.

68. As of January 18, 2007, Kothare acknowledged that he had not disclosed to the Sterling clients that the value of their investment in the Club is impaired. In fact, Kothare recently told one investor that he expects to sell Players Choice in the spring of 2007, a second investor that Players Choice is a “good investment” and a third investor that the Players Choice website was down for maintenance.

69. Kothare acknowledged that if all of the Sterling clients invested in the Club sought to redeem their investments in the near term, the Club could not satisfy the redemptions.

70. Despite a request from the Commission staff, Kothare has not provided an accounting of the Club’s funds for the period from January 1, 2006 through the present.

**D. Kothare Misappropriated Funds From Another Advisory Client**

71. Upon information and belief, Kothare breached his fiduciary duty to at least one other investment advisory client by fraudulently transferring assets from a deceased client’s custodial brokerage account to Kothare’s law firm and another entity Kothare controls.

72. On or about September 21, 2004, Kothare submitted a Power of Attorney Certification to TD Waterhouse, the custodian of the deceased client’s brokerage account, affirming a power of attorney the client had granted to Kothare three years earlier. Kothare purportedly executed the certification on August 4, 2004 – one day before his client’s death on August 5, 2004.

73. From October 2004 through March 2005, Kothare used the certification to write at least eight checks totaling approximately of \$97,000 to Kothare’s law firm and another entity Kothare controls.



74. Kothare used the certification even though the underlying power of attorney terminated on the client's death and the certification submitted to the custodian specifically states "I agree that I will promptly notify TD Waterhouse of the principal's death or incapacity, of any termination or revocation of the power, and/or any amendment of the power."

75. After an attorney representing the client's son filed objections in a probate proceeding, Kothare failed to appear in Surrogate's Court in Suffolk County for an examination to address allegations that he had been marshalling estate assets and utilizing estate funds without preliminary letters of testamentary ordered by the Surrogate's Court on October 12, 2006. Kothare was subsequently disqualified from acting as executor of this estate and ordered to file an account of his stewardship as a de facto fiduciary by on or about February 13, 2007.

### **FIRST CLAIM FOR RELIEF**

#### **Violations of Sections 206(1) and 206(2) of the Advisers Act**

(Fraud Upon Advisory Clients and Breach  
Of Fiduciary Duty By Investment Adviser)  
(Defendants Kothare and Sterling)

76. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 75 above.

77. Kothare and Sterling at all relevant times were investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

78. Kothare and Sterling directly or indirectly, singly or in concert, knowingly or recklessly, through use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(11) of

the Advisers Act [15 U.S.C. § 80b-2(11)]: (a) have employed, are employing, or are about to employ devices, schemes, and artifices to defraud any client or prospective client; or (b) have engaged, are engaging, or are about to engage in acts, practices, or courses of business with operates as a fraud or deceit upon any client or prospective client.

79. As described in the paragraphs above, Kothare and Sterling violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)], and unless enjoined will continue to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

### **SECOND CLAIM FOR RELIEF**

#### **Violations of Section 17(a) of the Securities Act**

(Violations of General Antifraud Provision in  
Offer or Sale of Securities)  
(All Defendants)

80. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 75 above.

81. The Defendants, directly and indirectly, singly and in concert, knowingly or recklessly, by the use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or by the use of the mails, in the offer or sale of securities: (a) have employed, are employing, or are about to employ devices, schemes or artifices to defraud; (b) have obtained, are obtaining, or are about to obtain money or property by means of untrue statements of material fact, or 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) have engaged,

are engaging, or are about to engage in transactions, acts, practices and courses of business which operated or would operate as a fraud or deceit upon purchasers of securities or other persons.

82. As described in the paragraphs above, the Defendants, directly or indirectly, singly or in concert, have violated, are violating, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

### **THIRD CLAIM FOR RELIEF**

#### **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

(Violations of General Antifraud Provision in  
Purchase or Sale of Securities)  
(All Defendants)

83. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 75 above.

84. The Defendants, directly or indirectly, singly or in concert, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase and sale of securities: (a) have employed, are employing, or are about to employ, devices, schemes and artifices to defraud; (b) have made, are making, or are about to make untrue statements of material fact, and have omitted, are omitting, or are about to omit to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or (c) have engaged, are engaging, or are about to engage in transactions, acts, practices and courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

85. As described in the paragraphs above, the Defendants, directly or indirectly, singly or in concert, have violated, are violating, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5].

#### **FOURTH CLAIM FOR RELIEF**

##### **Violations of Sections 206(4) and 206(4)-2 of the Advisers Act**

(Fraudulently Taking Custody of Clients' Assets)  
[Defendants Kothare and Sterling]

86. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 75 above.

87. Kothare and Sterling at all relevant times were investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

88. Kothare and Sterling directly or indirectly, singly or in concert, knowingly or recklessly, through use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)] engaged in acts, practices, or courses of business which were fraudulent, deceptive or manipulative in that, while in custody or possession of funds or securities in which clients had a beneficial interest, did an act or took an action, directly or indirectly with respect to those securities, without verifying by actual examination at least once during each calendar year by an independent public accountant at a time chosen by such accountant without prior notice to Kothare and Sterling, all such funds and securities of Kothare's and Sterling's advisory clients, and attaching to a completed Form ADV-E and transmitting to the Commission a certificate of such an accountant that an examination of such funds and securities has been made,

and describing the nature and extent of the examination.

89. As described in the paragraphs above, Kothare and Sterling violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-2 thereunder [17 CFR § 275.206(4)-2], and unless enjoined will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6 (4)] and Rule 206(4)-2 thereunder [17 CFR § 275.206(4)-2].

### **FIFTH CLAIM FOR RELIEF**

#### **Violations of Section 207 of the Advisers Act**

(Material Misstatements in Forms ADV  
Filed with the Commission)  
(Defendants Kothare and Sterling)

90. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 75 above.

91. Kothare and Sterling at all relevant times were investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

92. Kothare and Sterling directly or indirectly, singly or in concert, knowingly or recklessly, while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)] willfully made an untrue statement of material fact in a registration application or report filed with the Commission or willfully omitted to state in any such application or report a material fact which is required to be stated therein by failing to disclose that they recommend securities of Players Choice, an entity which Kothare controls.

93. As described in the paragraphs above, Kothare and Sterling violated Section 207 of the Advisers Act [15 U.S.C. § 80b-7], and unless enjoined will continue to

violate Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

**SIXTH CLAIM FOR RELIEF**

**Violations of Section 204 and Rule 204-2 of the Advisers Act**

(Books and Records Violations)  
(Defendants Kothare and Sterling)

94. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 75 above.

95. Kothare and Sterling at all relevant times were investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

96. Kothare and Sterling directly or indirectly, singly or in concert, knowingly or recklessly, through use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)] failed to make and keep true, accurate and complete records and current books and records, and to maintain certain other records for a period of 5 years. Rule 204-2(e) requires that such records for the most recent two years be maintained on the premises. Section 204 also requires that investment advisers made such records available to the examination staff for inspection.

97. As described in the paragraphs above, Kothare and Sterling violated Rule 204-2(a)(7) by failing to maintain copies of Sterling client's subscription agreements, and by maintaining forged subscription agreement signature pages.

98. As described in the paragraphs above, Kothare and Sterling violated Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 CFR § 275.204-2], and unless enjoined will continue to violate Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 CFR § 275.204-2].

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that the Court grant the following relief:

### **I.**

An Order temporarily and preliminarily, and Final Judgments permanently restraining and enjoining Kothare and Sterling, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 204, 206(1), 206(2), 206(4) and 207 of the Advisers Act [15 U.S.C. §§ 80b-4, 80b-6(1), (2), (4), 80b-7] and Rules 204-2 and 206(4)-2 thereunder [17 CFR §§ 275.204-2, 275.206(4)-2].

### **II.**

An Order temporarily and preliminarily, and Final Judgments permanently, restraining and enjoining the Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future 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].

### **III.**

An Order appointing a temporary receiver and receiver for Players Choice: (1) to preserve the status quo; (2) to ascertain the financial condition of Players Choice, and the disposition of investor funds; (3) to prevent further dissipation of Players Choice's property and assets, to prevent loss, damage, and injury to investors; (4) to preserve

Players Choice's books, records, and documents; and (5) to be available to respond to investor inquiries.

#### IV.

An Order appointing a temporary receiver and receiver for Sterling: (1) to preserve the status quo; (2) to ascertain the financial condition of Sterling, and the disposition of investor funds; (3) to prevent further dissipation of Sterling's property and assets, to prevent loss, damage, and injury to investors; (4) to preserve Sterling's books, records, and documents; and (5) to be available to respond to investor inquiries.

#### V.

An Order directing the Defendants, and their financial and brokerage institutions, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of such Order by personal service, facsimile service, or otherwise, to hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the control of the Defendants, whether held in their names or for their direct or indirect beneficial interest wherever situated.

#### VI.

An Order directing each Defendant to file with this Court and serve upon the Commission, within five (5) business days, or within such extension of time as the Commission agrees in writing or as otherwise ordered by the Court, a verified written accounting, signed by each such Defendant, and under penalty of perjury, setting forth:



- (1) All assets, liabilities and property currently held, directly or indirectly, by or for the benefit of Players Choice, including, without limitation, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, its current location and amount;
- (2) All money, property, assets and income received by each such Defendant for his direct or indirect benefit from Players Choice, at any time from November 1, 2004 through the date of such accounting, describing the amount, disposition and current location of each of the items listed;
- (3) The names and last known addresses of all bailees, debtors, and other persons and entities that currently are holding the assets, funds or property of Players Choice; and
- (4) All assets, funds, securities and real or personal property invested by each such Defendant, or any other person controlled by them, on behalf of Sterling clients in connection with the offer, purchase or sale of units of Players Choice from November 1, 2004 to the date of the accounting, and the disposition of such assets, funds, securities, real or personal property.

## VII.

An Order directing Kothare and Sterling to file with this Court and to serve upon the Commission, a full verified accounting of all assets, liabilities, and property currently held directly or indirectly by or for the benefit of Kothare and Sterling, and an accounting of all clients' funds and securities holdings.

**VIII.**

An Order permitting expedited discovery.

**IX.**

A Final Judgment ordering Defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon.

**X.**

An Order enjoining and restraining each of the Defendants, and any person or entity acting at their direction or on their behalf, from destroying, altering, concealing, or otherwise interfering with the access of the Commission to relevant documents, books and records.

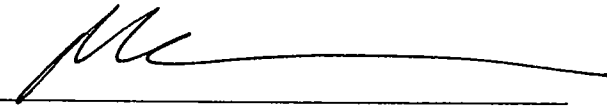
**XI.**

A Final Judgment ordering the Defendants to pay civil penalties pursuant to Section 209(e) of the Advisers Act, Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

**XII.**

Such other and further relief as the Court deems appropriate.

Dated: New York, New York  
February 9, 2007



---

MARK K. SCHONFELD (MS-2798)

Attorney for Plaintiff  
SECURITIES AND EXCHANGE  
COMMISSION  
Northeast Regional Office  
3 World Financial Center  
Room 4300  
New York, New York 10281  
Tel: (212) 336-1020

***Of Counsel:***

Andrew M. Calamari  
Doria Stetch Bachenheimer  
Alexander M. Vasilescu  
Alison T. Conn (admitted only in Pennsylvania)  
Maureen Peyton King (admitted only in New York; moving to appear pro hac  
vice)