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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 CV06-2595 GAF (EX)

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 vs.

19 CMG-CAPITAL MANAGEMENT
20 GROUP HOLDING COMPANY, LLC
and KEITH G. GILABERT,

21 Defendants

Case No.:

COMPLAINT FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS

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1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
2 follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
5 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
6 §§ 77t(b), 77t(d)(1) & 77v(a), Sections 21(d)(1), 21(d)(1)(3)(A), 21(e) and 27 of
7 the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
8 78u(d)(3)(A), 78u(e) & 78aa, and Sections 209(e)(1) and 214 of the Investment
9 Advisers Act of 1940 (“Investment Advisers Act”), 15 U.S.C. §§ 80b-9(e)(1) &
10 80b-14. Defendants have, directly or indirectly, made use of the means or
11 instrumentalities of interstate commerce, of the mails, or of the facilities of a
12 national securities exchange, in connection with the transactions, acts, practices,
13 and courses of business alleged in this complaint.

14 2. Venue is proper in this district pursuant to Section 22(a) of the
15 Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C.
16 § 78aa, and Section 214 of the Investment Advisers Act, 15 U.S.C. § 80b-14,
17 because certain of the transactions, acts, practices, and courses of conduct
18 constituting violations of the federal securities laws occurred within this district.

19 **SUMMARY**

20 3. This case involves a fraudulent and unregistered securities offering of
21 limited partnership interests in a purported hedge fund, The GLT Venture Fund,
22 L.P. (“GLT”), and the misappropriation of GLT’s assets by its two investment
23 advisers, defendants CMG-Capital Management Group Holding Company, LLC
24 (“CMG”) and Keith G. Gilabert (“Gilabert”) (collectively hereinafter the
25 “defendants”).

26 4. From September 2001 to January 2005, the defendants raised
27 approximately \$14.1 million from at least 38 investors. They initially deposited
28 the \$14.1 million of investor funds into GLT’s retail brokerage account (“Retail

1 Brokerage Account”). They subsequently transferred the funds to a prime
2 brokerage account (“Prime Brokerage Account”), where CMG and Gilabert
3 conducted GLT’s trading.

4 5. Gilabert controlled the sales effort, which included recruiting and
5 training sales agents, called “relationship managers,” to solicit investors. He also
6 created a website (www.cmgfund.com) to sell the offering and sent out a mass
7 mailing to prospective investors. The defendants represented that GLT would use
8 investor funds to establish a portfolio of stocks and options, seeking returns
9 through long-term appreciation, short-term trading, and hedging strategies to
10 mitigate risk. They also claimed that GLT generated average annual returns of
11 19% to 36%, but it actually suffered losses of more than \$7.8 million, or
12 approximately 55% of the amount raised. The defendants also stated that CMG
13 would receive annual, performance-based compensation only if GLT was
14 profitable. Despite GLT’s losses, the defendants nevertheless misappropriated
15 nearly \$1.7 million, or 12% of investor funds raised. The misappropriation
16 included approximately \$700,000 in undisclosed commission rebates that CMG
17 received from one of the broker-dealers that executed GLT’s trades.

18 6. Besides misappropriating investor funds, the defendants also used
19 approximately \$4.6 million in investor funds, or 32.6% of the amount raised, to
20 pay “returns” to investors. Given that GLT was never profitable and suffered
21 substantial trading losses, the only source of available funds to pay returns to
22 investors were monies from new investors or additional investments from existing
23 investors – a classic Ponzi scheme. Furthermore, the defendants falsely
24 represented that the GLT portfolio would be diversified, and that no single stock
25 would account for more than 1.5% of GLT’s portfolio. Finally, none of the
26 defendants disclosed that on August 22, 2003, the California Department of
27 Corporations had revoked CMG’s investment adviser registration.

28 *

1 THE FRAUDULENT SCHEME

2 THE GLT LIMITED PARTNERSHIP OFFERING

3 11. From September 2001 to January 2005, the defendants raised
4 approximately \$14.1 million from at least 38 investors through a nationwide,
5 public offering of GLT limited partnership interests. The investors paid for their
6 limited partnership interests in both cash and securities, most of which were
7 deposited into the Retail Brokerage Account and some of which were deposited
8 into the Prime Brokerage Account. Once an investor's securities in the Retail
9 Brokerage Account were liquidated, the defendants then transferred the cash and
10 the liquidated proceeds to the Prime Brokerage Account where CMG and Gilabert
11 conducted GLT's trading. A prime broker oftentimes offers specialized brokerage
12 services to sophisticated customers, such as the ability to trade with multiple
13 brokerage firms while maintaining, in a centralized master account, all of the
14 customer's cash and securities. Additionally, prime brokers may also offer other
15 services, such as customized technology for securities trading, stock loan services,
16 and risk management advisory services.

17 12. The defendants solicited investors directly and through sales agents
18 called "relationship managers," a website, and a mass mailing, and provided
19 prospects with a private placement memorandum ("PPM") or brochure. None of
20 the foregoing documents or the website included financial statements, and the
21 offering was not registered with the Commission.

22 13. Gilabert sent the mass mailer to prospects in March 2002. It touted
23 GLT's returns, representing that GLT had achieved a 19% return in 2001.

24 14. The PPM provided to prospective investors stated that GLT would
25 pool investor funds to trade securities and other financial instruments with the
26 objective of "consistent above average returns primarily through long-term capital
27 appreciation, while also attempting to preserve capital and mitigate risk through
28 diversification of investments and hedging activities." According to the PPM,

1 CMG was GLT's general partner, manager, and investment adviser; Gilabert was
2 GLT's managing partner and CMG's portfolio manager and managing member.
3 GLT's asset allocation would be concentrated primarily in publicly traded equities,
4 and a majority of its portfolio would be long-term investments in common stocks.
5 Investors were not permitted to manage GLT and could not select or evaluate
6 CMG's investment strategies. The PPM also stated that investor returns were to be
7 paid to them based on the amount of their respective investments. The PPM
8 further stated that CMG would receive a management fee of 2% of GLT's net
9 worth and reimbursement for certain expenses. If GLT was profitable, CMG could
10 also earn a "Performance Allocation" of 20% to 30% of GLT's net returns.

11 15. In May 2004, the defendants stopped distributing the PPM to
12 prospective investors and replaced it with a six-page brochure that represented that
13 CMG focused upon "high quality, large capitalization, world-class growth
14 companies" resulting in a 27% annual return for GLT since 1997. The brochure
15 also recapped the fee structure for CMG set forth in the PPM. Gilabert gave the
16 brochure to new sales agents to use as the offering document rather than the PPM.
17 Indeed, he never mentioned that there was a PPM.

18 16. The website made similar claims regarding the fund's performance,
19 stating that GLT had generated annual returns of 26.4% to 27.6% since 1997. At
20 the end of 2004, Gilabert revised the website to state that GLT was achieving 36%
21 annual returns and had achieved cumulative returns of 94% for the last five years.

22 17. The defendants further represented on the website that no single
23 equity security would constitute more than 1.5% of the entire fund, thereby
24 spreading risk. The PPM, however, contradicted the website and stated that it was
25 possible that a "significant amount" of GLT's portfolio could be invested in just a
26 few securities. The defendants, however, stopped using the PPM in May 2004 and
27 sold GLT interests to 21 of the 38 investors without this disclosure.

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1 **MISREPRESENTATIONS AND OMISSIONS**

2 **GLT ACTUALLY LOST MONEY RATHER THAN ACHIEVING 19% TO**
3 **36% RETURNS**

4 18. The defendants falsely represented that GLT achieved annual returns
5 ranging from 19% to 36% during various time periods starting as early as 1997.
6 But GLT was not even formed until March 2000. And contrary to the defendants'
7 representations, as they well knew, GLT actually lost over \$7.8 million, or
8 approximately 55%, of the \$14.1 million raised from investors. In fact, the fund
9 was never profitable.

10 **THE DEFENDANTS MISAPPROPRIATED INVESTOR FUNDS**

11 19. In addition to sustaining massive trading losses, the defendants
12 misappropriated nearly \$1.7 million in investor funds, which Gilabert used to pay
13 personal expenses, including personal credit card charges and flying lessons. The
14 \$1.7 million in misappropriated investor funds included almost \$700,000 in
15 undisclosed commission rebates on GLT's securities trades. The defendants
16 placed GLT's securities trades through executing brokers as part of its activity in
17 the Prime Brokerage Account. Unbeknownst to investors since May 2004,
18 however, CMG received rebates on the trading commissions that one of the
19 executing brokers charged. Specifically, CMG received nearly \$700,000 in
20 commission rebates, which were paid directly into a bank account controlled by
21 Gilabert. Rather than returning these funds to GLT or the investors, however, they
22 remained in CMG's account where Gilabert used the funds to pay his own personal
23 expenses.

24 **THE DEFENDANTS OPERATED A PONZI SCHEME**

25 20. While the defendants claimed that GLT would use investor funds to
26 trade securities, and GLT did some securities trading, they in fact operated a Ponzi
27 scheme. GLT generated no profits from its securities trading, and GLT had no
28 other revenue source. But the defendants nevertheless paid out approximately \$4.6

1 million, or over 32% of the total amount raised, in purported trading profits to
2 investors, all of which were in fact investor funds. Indeed, the only way that the
3 defendants were able to pay returns to existing investors was by using funds from
4 new investors or additional investments made by existing investors. The
5 undisclosed use of new investor funds to pay purported returns to existing
6 investors constituted a Ponzi scheme.

7 **THE DEFENDANTS MISREPRESENTED THE DIVERSIFICATION OF THE**
8 **GLT PORTFOLIO**

9 21. On the website, the defendants stated that no single equity security
10 would constitute more than 1.5% of the entire fund. As defendants well knew, this
11 representation was false. From July 2002 to January 2005, there were at least 155
12 instances in which GLT held positions in a single security that exceeded 1.5% of
13 its portfolio. Using month-ending positions, a single stock accounted for 5% to
14 19% of the portfolio fifty-one times, 20% to 49% eighteen times, and 50% or more
15 six times.

16 **THE DEFENDANTS FAILED TO DISCLOSE THAT CMG'S INVESTMENT**
17 **ADVISER'S REGISTRATION HAD BEEN REVOKED**

18 22. On August 22, 2003, the California Department of Corporations
19 revoked CMG's investment adviser registration. As a result, CMG was not
20 allowed to conduct investment adviser activities in California, where it was based,
21 including those related to GLT. After the August 2003 revocation, however, the
22 defendants failed to disclose this fact to prospective investors and continued to
23 offer and sell GLT's limited partnership interests.

24 **GILABERT'S ROLE IN THE SCHEME**

25 23. Gilabert, working through CMG, orchestrated this hedge fund fraud,
26 and he acted knowingly or, at a minimum, recklessly. He prepared the PPM, the
27 website, and the brochure, and he enlisted and trained the sales agents to sell
28 GLT's securities. Gilabert was in charge of GLT's trading as its managing partner

1 and as CMG's portfolio manager and managing member. He had sole authority
2 and control over the GLT brokerage accounts and received monthly account
3 statements, which set forth GLT's losses, the withdrawals from its brokerage
4 accounts, and the composition of GLT's portfolio holdings. Nevertheless, Gilbert
5 touted GLT's performance and the diversification of its portfolio. He also
6 controlled CMG's bank account where the executing broker sent the undisclosed
7 commission rebates, and used these and other investor funds to pay personal
8 expenses. Finally, Gilbert knew, or was reckless in not knowing, that the
9 California Department of Corporations had revoked CMG's investment adviser
10 registration.

11 **FIRST CLAIM FOR RELIEF**

12 **UNREGISTERED OFFER AND SALE OF SECURITIES**

13 **Violations of Sections 5(a) and 5(c) of the Securities Act**

14 **(Against All Defendants)**

15 24. The Commission realleges and incorporates by reference paragraphs 1
16 through 23 above.

17 25. The defendants, and each of them, by engaging in the conduct
18 described above, directly or indirectly, made use of means or instruments of
19 transportation or communication in interstate commerce or of the mails, to offer to
20 sell or to sell securities, or to carry or cause such securities to be carried through
21 the mails or in interstate commerce for the purpose of sale or for delivery after
22 sale.

23 26. No registration statement has been filed with the Commission or has
24 been in effect with respect to the offering alleged herein.

25 27. By engaging in the conduct described above, each of the defendants
26 violated, and unless restrained and enjoined will continue to violate, Sections 5(a)
27 and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

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1 **SECOND CLAIM FOR RELIEF**

2 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

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

4 **(Against All Defendants)**

5 28. The Commission realleges and incorporates by reference paragraphs 1
6 through 23 above.

7 29. The defendants, and each of them, by engaging in the conduct
8 described above, directly or indirectly, in the offer or sale of securities by the use
9 of means or instruments of transportation or communication in interstate
10 commerce or by use of the mails:

- 11 a. with scienter, employed devices, schemes, or artifices to
12 defraud;
- 13 b. obtained money or property by means of untrue statements of a
14 material fact or by omitting to state a material fact necessary in
15 order to make the statements made, in light of the
16 circumstances under which they were made, not misleading; or
- 17 c. engaged in transactions, practices, or courses of business which
18 operated or would operate as a fraud or deceit upon the
19 purchaser.

20 30. By engaging in the conduct described above, each of the defendants
21 violated, and unless restrained and enjoined will continue to violate, Section 17(a)
22 of the Securities Act, 15 U.S.C. § 77q(a).

23 **THIRD CLAIM FOR RELIEF**

24 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES**

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

26 **(Against All Defendants)**

27 31. The Commission realleges and incorporates by reference paragraphs 1
28 through 23 above.

1 32. The defendants, and each of them, by engaging in the conduct
2 described above, directly or indirectly, in connection with the purchase or sale of a
3 security, by the use of means or instrumentalities of interstate commerce, of the
4 mails, or of the facilities of a national securities exchange, with scienter:

- 5 a. employed devices, schemes, or artifices to defraud;
- 6 b. made untrue statements of a material fact or omitted to state a
7 material fact necessary in order to make the statements made,
8 in the light of the circumstances under which they were made,
9 not misleading; or
- 10 c. engaged in acts, practices, or courses of business which
11 operated or would operate as a fraud or deceit upon other
12 persons.

13 33. By engaging in the conduct described above, each of the defendants
14 violated, and unless restrained and enjoined will continue to violate, Section 10(b)
15 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.
16 § 240.10b-5.

17 **FOURTH CLAIM FOR RELIEF**

18 **FRAUD BY AN INVESTMENT ADVISER**

19 **Violations of Section 206(1) and 206(2) of the Investment Advisers Act**
20 **(Against All Defendants)**

21 34. The Commission realleges and incorporates by reference paragraphs 1
22 through 23 above.

23 35. Defendants, and each of them, by engaging in the conduct described
24 above, directly or indirectly, by the use of the mails or means or instrumentalities
25 of interstate commerce:

- 26 a. with scienter, employed devices, schemes, or artifices to
27 defraud clients or prospective clients; or

28 *

1 b. engaged in transactions, practices, or courses of business which
2 operated as a fraud or deceit upon clients or prospective clients.

3 36. By engaging in the conduct described above, defendants violated, and
4 unless restrained and enjoined will continue to violate, Sections 206(1) and 206(2)
5 of the Investment Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

6 **FIFTH CLAIM FOR RELIEF**

7 **FAILURE TO REGISTER AS A BROKER-DEALER**

8 **Violation of Section 15(a) of the Exchange Act**

9 **(Against Defendant Gilabert)**

10 37. The Commission realleges and incorporates by reference paragraphs 1
11 through 23 above.

12 38. Defendant Gilabert, by engaging in the conduct described above,
13 directly or indirectly, made use of the mails or means or instrumentalities of
14 interstate commerce to effect transactions in, or to induce or attempt to induce, the
15 purchase or sale of securities, without being registered as a broker or dealer in
16 accordance with Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

17 39. By engaging in the conduct described above, defendant Gilabert
18 violated, and unless restrained and enjoined will continue to violate, Section 15(a)
19 of the Exchange Act, 15 U.S.C. § 78o(a).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, the Commission respectfully requests that the Court:

22 **I.**

23 Issue findings of fact and conclusions of law that the defendants committed
24 the alleged violations.

25 **II.**

26 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),
27 permanently enjoining defendant CMG and its officers, agents, servants,
28 employees, and attorneys, and those persons in active concert or participation with

1 any of them, who receive actual notice of the judgment by personal service or
2 otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the
3 Securities Act, 15 U.S.C. §§ 77e(a), 77e(c) & 77q(a), Section 10(b) of the
4 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
5 240.10b-5, and Sections 206(1) and 206(2) of the Investment Advisers Act, 15
6 U.S.C. §§ 80b-6(1) & 80b-6(2).

7 III.

8 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),
9 permanently enjoining defendant Gilabert and his officers, agents, servants,
10 employees, and attorneys, and those persons in active concert or participation with
11 any of them, who receive actual notice of the judgment by personal service or
12 otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the
13 Securities Act, 15 U.S.C. §§ 77e(a), 77e(c) & 77q(a), Sections 10(b) and 15(a) of
14 the Exchange Act, 15 U.S.C. §§ 78j(b) & 78o(a), and Rule 10b-5 thereunder, 17
15 C.F.R. § 240.10b-5, and Sections 206(1) and 206(2) of the Investment Advisers
16 Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

17 IV.

18 Order defendants CMG and Gilabert to disgorge all ill-gotten gains from
19 their illegal conduct, together with prejudgment interest thereon.

20 V.

21 Order defendants CMG and Gilabert to pay civil penalties under Section
22 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange
23 Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Investment Advisers Act, 15
24 U.S.C. § 80b-9(e)(1).

25 VI.


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

3 **VII.**

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

6
7 DATED: April 28, 2006



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10 Attorneys for Plaintiff
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