Andrew M. Calamari, Regional Director
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
Brookfield Place, 200 Vesey Street, Suite 400
New York, NY 10281-1022
(212) 336-0095 (Neal Jacobson, Trial Counsel)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	**COMPLAINT**
Plaintiff,	:	
-against-	:	**14 Civ. ____ ( )**
	:	**ECF CASE**
DAVID L. FLEET,	:	
Defendant.	:	

Plaintiff, Securities and Exchange Commission ("Commission"), for its complaint ("Complaint") against David L. Fleet ("Fleet"), alleges as follows:

SUMMARY

1. The Commission brings this action against Fleet for fraudulently selling approximately $16.75 million in unregistered and uncertificated notes of his wholly-owned company to more than 300 mostly elderly, unsophisticated investors between 1997 and March 2010. Approximately $15.5 million of that amount was raised between January 2006 and March 2010.

2. Prior to the appointment of a Chapter 11 Bankruptcy Trustee, Cornerstone Homes, Inc. ("Cornerstone") was engaged in the business of selling and renting distressed single family homes to low income customers. Cornerstone sold unsecured investments to its investors to finance its real estate business operations.

3. Prior to 2005, Cornerstone sold investors mostly notes secured by mortgages on single family homes, in addition to selling its unsecured notes. Beginning in or about 2005, Cornerstone made a concerted effort to increase sales of its unsecured investments and advertised them in its solicitation materials as a way to easily begin earning above-market 8%-10% annual interest.

4. Beginning in or about 2006, Fleet made several material misstatements and omitted to state material facts to existing and potential investors while continuing to sell unsecured notes.

5. First, Fleet stated to existing and potential investors in solicitation materials that Cornerstone did not use any bank financing. However, in or about 2006, Cornerstone changed its business model and began to obtain bank financing against properties that had been purchased with unsecured investor proceeds. The proceeds of these secured bank financings, which were commingled with funds raised from investors and the proceeds of Cornerstone's business operations, were used to grow the business and to pay interest on the unsecured notes.

6. Cornerstone never disclosed to investors that Cornerstone's business model had become dependent upon obtaining cash from banks by mortgaging the properties purchased with their money. Cornerstone also failed to disclose that its balance sheet was saddled with senior, secured bank debt. Cornerstone also never told its investors that interest payments to them were funded at least in part by bank financings, and not solely by the real estate business operations disclosed in its solicitation materials and newsletters.

7. Second, beginning in 2009, when Fleet realized that Cornerstone's business model was becoming unsustainable, he nevertheless continued to falsely advise existing and potential investors that Cornerstone's business was profitable.

8. Finally, beginning in July 2009, when Cornerstone's business was deteriorating, Fleet sought to raise money to pay investor interest by investing approximately $6 million of Cornerstone's funds in the stock market and engaging in frequent options trading that resulted in losses of at least $3 million. Nonetheless, in January 2010, after losing several millions of dollars in the stock market, Fleet sent a newsletter to existing and potential investors that painted a positive financial picture of Cornerstone's business, and continued to raise money from investors.

9. In April 2010, when Fleet could no longer maintain the pretense of Cornerstone's profitability, Fleet sent a newsletter to investors advising them that Cornerstone would no longer accept investments and that it would seek to implement an out-of-court restructuring of its bank debt with the goal of returning the approximately $14.5 million in principal unsecured investments to investors.

10. Thereafter, Fleet periodically updated investors with news of the progress of the restructuring. However, instead of paying back investors' principal investments, Fleet caused Cornerstone to file a fast-tracked "prepackaged" bankruptcy case in July 2013 with the goal of substantially discharging his unsecured investors' principal and releasing Cornerstone and himself from liability to Cornerstone's investors. Fleet's plan was derailed when a Chapter 11 Trustee was appointed over Cornerstone in January 2014, at the request of the Office of the United States Trustee and the Official Committee of Unsecured Creditors of Cornerstone.

11. Fleet's conduct violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)]; 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].

12. Unless restrained and enjoined by the Court, Fleet will continue to engage in the transactions, acts, practices and courses of business alleged herein, and in transactions, acts, practices, and courses of business of a similar type and object.

13. By this action, the Commission seeks: (a) permanent injunctive relief; (b) disgorgement and prejudgment interest; (c) civil money penalties; and (d) such further relief as the Court may deem appropriate.

JURISDICTION AND VENUE

14. The Commission brings this action pursuant to the authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 77u(e) and 78aa].

15. Venue lies in this district pursuant to 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]. Certain of the transactions, acts, practices and courses of business constituting the violations alleged in this Complaint occurred within the Western District of New York.

16. Fleet, directly or indirectly, singly or in concert, made use of the means or instruments of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

THE DEFENDANT

17. **David Fleet**, age 50, resides in Beaver Dams, New York, and was the president, sole officer and sole shareholder of Cornerstone until he was removed from management upon the appointment of a Chapter 11 Bankruptcy Trustee over Cornerstone in January 2014. Fleet

had sole ownership and control over Cornerstone during the period of the conduct alleged in this Complaint.

THE UNSECURED NOTES OFFERINGS

A. Cornerstone's Formation and First Solicitation of Investors

18. Fleet incorporated the predecessor to Cornerstone in Corning, NY, in 1997 and was its sole shareholder, officer and director. In 1997, Cornerstone filed a form D with the Commission for the sale of "Debenture Notes," with a minimum investment of $2,000 and an aggregate raise of $1 million. The Debenture Notes were not registered with the Commission.

19. Cornerstone advertised the Debenture Notes in one or more church-affiliated publications in the late 1990s.

20. At some time subsequent to 1997, Cornerstone began offering two types of unsecured investments: (1) a "10% - 15 year" investment that had a 15-year term and paid 10% per annum; and (2) an "8% interest only" investment that paid 8% per annum and which permitted the investor to withdraw up to $3,000 per month from his or her account and had no set term. Cornerstone did not register these unsecured investments with the Commission.

B. Cornerstone's Solicitation Packet

21. Between 2003 and 2010, Cornerstone sent a solicitation packet to existing and potential investors that described Cornerstone's 10% unsecured investments and its 8% unsecured investments, and which stated that the 8% unsecured investment program was its "most popular" investment. The solicitation packet did not include a balance sheet, income statement or any other financial information regarding Cornerstone's business.

22. The packet warned investors of the uncertainty of investing in the stock market due to its high level of risk. The solicitation packet further stated that Cornerstone did not use bank financing.

23. Cornerstone raised over $5 million of the 10% investments and over $9.5 million of the 8% investments between 2006 through 2010. Each of the offerings raised over $1 million in each of 2006 and 2007, and the 8% unsecured offering also raised over $1 million in each of 2008 and 2009. At least 116 investors invested in the 10% unsecured offering, 269 invested in the 8% offering, and 64 invested in both offerings.

C. Fleet Caused Cornerstone to Lend Him Money on a No-Interest Basis and to Pay Him Improper Rent.

24. Fleet caused Cornerstone to pay him approximately $130,000 per year in salary as its president.

25. In 2007 and 2008, Fleet also caused Cornerstone to lend him approximately $843,000 interest free and on an unsecured basis to purchase real properties for himself.

26. In 2002, Fleet caused Cornerstone to transfer to him a parcel of real property for no consideration. Fleet used the premises for Cornerstone's office after he placed a trailer on the land, and, upon information and belief, Fleet charged Cornerstone $1,500 per month in rent for the premises between 2002 through April 2010, and $2,500 per month between May 2010 until the Chapter 11 Trustee was appointed in January 2014.

27. In July 2004, Fleet also caused Cornerstone to transfer to an entity owned by Fleet and his wife three parcels of real property totaling approximately 359 acres for no consideration.

28. Fleet did not disclose any of these loans or the real property transfers to investors or potential investors.

D. In or About 2006, Cornerstone Started Mortgaging Properties Purchased With Unsecured Investor Funds to Banks to Obtain Cash.

29. In or about 2006, Cornerstone changed its business model and began to mortgage properties previously purchased with unsecured investor funds, using the proceeds to grow the

business and to pay interest to unsecured investors. Over time, Cornerstone's business model became dependent upon the ability to obtain cash through these bank financings.

30. Cornerstone's solicitation materials, prepared and signed by Fleet, falsely represented that Cornerstone did not use any bank financing.

31. Fleet also did not disclose to unsecured investors that interest payments to them were funded, in part, by Cornerstone's secured borrowings on the previously unencumbered homes. Between December 2005 and December 2009, Cornerstone's secured bank debt grew from approximately $429,000 to approximately $25 million.

E. In 2008, Cornerstone Focused on Raising Unsecured Investments From Individual Investors.

32. In January, April, September, and October 2008, Cornerstone sent newsletters to existing and potential investors touting its 8% and 10% unsecured investments, warning them of the "dangerously volatile" stock market, and assuring "safe refuge" for those who invested with Cornerstone.

33. In the April 2008 newsletter, Fleet opined that the stock market "will remain dangerously volatile and hit a bottom much lower than it is presently" and warned his investors to invest in the stock market only "money you are willing to lose." The April 2008 newsletter further stated that "we here at Cornerstone are available should you be looking for a fixed income investment" and that Cornerstone's "returns are about double what CD's are paying."

34. In the September 2008 newsletter, Fleet invited existing and potential investors "looking for a safe refuge for your money and 8%-10% is a viable enough return for you, feel free to call us." The newsletter further stated that Cornerstone's business model allowed it to do well when the economy was bad because more people were in the market for affordable, older homes, that Cornerstone could provide.

35. In the October 2008 newsletter, Fleet referred to the recent "blood letting" in the stock market, and stated that he was "more and more convinced that this downward spiral has quickened to landslide proportions." Fleet advised existing and potential investors that Cornerstone's 8% and 10% offerings were still open, and that Cornerstone paid such high interest rates because "we are profitable and have always been about sharing our profitability with our investors."

F. Despite its Deteriorating Financial Condition, Cornerstone Continued to Raise Money from Unsecured Investors and Fleet Commingled Cornerstone's Funds with His Own.

36. Cornerstone's secured bank lenders advised Fleet in late 2008 to early 2009 that they would be unable to extend credit beyond their existing commitments on the same terms as they had in the past. Although Fleet knew that a reduction in the availability of bank financing would adversely affect Cornerstone's business, he did not disclose this to Cornerstone's existing and potential investors.

37. In January 2009, Cornerstone sent out a newsletter to its existing and potential investors misrepresenting that Cornerstone had put "200 new homes in [its] system" in 2008, when it had purchased only approximately 150-160 new homes. The newsletter also stated that Cornerstone hoped to purchase between 150 to 200 new homes in 2009.

38. Fleet referred to the "uncertain times" facing the economy, but advised investors that "[f]or disciplined, streamlined, well established residential real estate firms like Cornerstone, I must admit that times have never been better. With so many companies struggling, I literally write that sheepishly." Fleet's newsletter was directed at persons of modest means. It stated:

> Our business, although large, is really quite simple. We take the money invested with us by you, our private investors, and use it to purchase, rehab and then resell basic starter homes. We have done this same thing over and over again since the mid 1990's. In short, we help average working class folks realize the dream of affordable home ownership. We help average working class investors like you

> realize the dream of reliable, fixed investments they can count on. And at the end of the day, we all sleep good, knowing that we are taking part in an organization that adheres to a win-win philosophy.

39. The January 2009 newsletter reiterated that Cornerstone's growth was "limited only by our capital flow from you our investors," and stated that "[i]f an 8% or 10% return on investment in the fixed income arena appeals to you, feel free to give us a call."

40. Later in 2009, Fleet began to commingle his funds with Cornerstone's. Cornerstone's records for 2009 reflect at least eight cash transfers totaling approximately $4,042,000 from Cornerstone accounts to Fleet's accounts and seven transfers totaling approximately $4,844,500 from Fleet's accounts to Cornerstone accounts. In addition, Fleet transferred a negative margin balance of $797,066 in his personal brokerage trading account to Cornerstone's brokerage account.

G. In 2009 and 2010, Cornerstone Ceased Purchasing Homes, Made Undisclosed Investments in the Stock Market, and Misrepresented Cornerstone's Financial Condition to Investors and Potential Investors.

41. Cornerstone advised existing and potential investors in January 2009 that it had hoped to purchase 150-200 new homes in 2009. However, due to Cornerstone's banks' reduction in financing commitments and its deteriorating financial condition, by the end of 2009, Cornerstone had purchased only 22 new homes.

42. Cornerstone's business model had become dependent upon its ability to generate cash through bank financings of homes previously purchased with investor funds. As bank lenders became reluctant to make new loan commitments to Cornerstone, Cornerstone stopped purchasing new homes.

43. In addition, the number of properties sold on monthly installment land purchase contracts that were returned to Cornerstone "increased drastically" in 2009. This resulted in a significant reduction to Cornerstone's cash flow because it reduced the amount of money being

paid to Cornerstone on the land contracts and increased the amount of money Cornerstone had to expend in order to refurbish the returned homes.

44. Due to its financial difficulties, Cornerstone was unable to generate a sufficient return from its real estate operations to make the payments due to its investors.

45. To keep Cornerstone's finances afloat, Fleet decided to invest Cornerstone's funds in the stock options market.

46. In July 2009, Fleet opened a stock margin trading account for Cornerstone with OptionsHouse, Inc., an online retail brokerage, and funded it with approximately $3.2 million of Cornerstone's cash.

47. Also in July 2009, Fleet transferred a total of approximately $1,450,000 of Cornerstone's funds to his personal joint stock margin trading account with his wife at OptionsHouse.

48. In October 2009, Fleet deposited another $1 million of Cornerstone's cash into Cornerstone's OptionsHouse account.

49. In December 2009, Fleet transferred the remaining contents of his personal OptionsHouse stock margin trading account to Cornerstone's OptionsHouse stock margin trading account. At the time of the transfer, the account had a negative margin balance of $797,066 and shares valued at $1,462,500, for a net value of $665,434.

50. Between July 2009 and March 2010, Fleet actively traded in the OptionsHouse accounts, directing approximately 750 separate purchases and sales of options and other securities in those accounts. By the end of 2010, Fleet and Cornerstone had lost between $3 million to $4 million in stock and options trading.

51. On January 5, 2010, after Cornerstone had lost several millions of dollars in the stock market, Fleet again mailed out a positive newsletter to investors and potential investors that

did not disclose Cornerstone's investments in the stock market or its deteriorating financial condition.

52. The newsletter stated that "[i]n 2009, we sold 183 homes across New York State. Demand for our remodeled housing has been at unprecedented levels. . . . [T]he need for owner financed homes is at levels I have frankly never seen. This of course has allowed us to capture huge market share." Although Cornerstone's January 2009 newsletter told existing and potential investors that Cornerstone hoped to purchase 150-200 homes in 2009, the January 2010 newsletter was silent on the number of homes purchased in 2009.

53. Fleet did not disclose to investors that the growth of Cornerstone's real estate business had come to a virtual standstill, and that it purchased only 22 homes in 2009 despite having raised over $4 million from individual investors and over $6 million in secured bank financing.

54. Between July 13, 2009, when Cornerstone first began investing in the stock market, through March 2010, when it ceased taking funds from investors, Cornerstone raised approximately $2.3 million from individual investors.

55. Cornerstone's 2009 and 2010 tax returns reflect a net loss of $1,824,982 and $1,001,239, respectively, mostly attributable to capital losses of $1,877,780 in 2009 and $1,068,497 in 2010 from Fleet's undisclosed stock market trading. Fleet admitted that the capital losses reflected in Cornerstone's tax returns did not include the approximately $900,000 Fleet lost trading in his personal OptionsHouse account. That account had also been funded primarily with Cornerstone's funds.

H. Cornerstone Stopped Accepting Investments in Late March 2010 and Filed for Bankruptcy in July 2013.

56. In March 2010, Cornerstone retained bankruptcy counsel and stopped accepting new investor checks. Upon information and belief, at or about the same time, Fleet caused Cornerstone to make a preferential payment to a family member by issuing a check in the amount of $70,000 to repay the family member's prior principal investment.

57. Fleet has admitted in testimony given in the bankruptcy proceeding that, notwithstanding the interruption to Cornerstone's business in 2009, he nonetheless continued to raise funds from individual investors into March of 2010, and that "April 2010 was the first time a letter went out to all the private creditors" advising them of Cornerstone's financial difficulties.

58. On April 16, 2010, Cornerstone sent a newsletter to all investors advising them that due to the unavailability of bank financing Cornerstone had to restructure its finances, that all interest payments would be reduced to 1%, and that no principal could be withdrawn. The newsletter further stated that "[t]he proposed restructure will not impair repayment of your invested capital."

59. Between April 2010 and June 2013, Fleet sent periodic newsletters to investors advising them of his progress in restructuring Cornerstone's bank debt and devising a plan to return investors' principal. It was only in June 2013 that Fleet first advised investors that a bankruptcy filing was imminent. Fleet never disclosed in any of the newsletters that Cornerstone had invested money in the stock market or suffered stock market losses.

60. In July 2013, Cornerstone filed for Chapter 11 bankruptcy protection. Cornerstone's schedules listed approximately $14.5 million owing to 315 unsecured investors, and its prepackaged bankruptcy plan contemplated paying investors their pro-rata share of $1 million over a ten-year period and releasing Fleet and Cornerstone from all liabilities. The

bankruptcy schedules also revealed that Cornerstone was insolvent on a balance sheet basis, with $18,561,028 in assets and $36,248,526 in liabilities.

FIRST CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5

61. The Commission repeats and realleges the allegations contained in paragraphs 1 through 60 by reference as if fully set forth herein.

62. Fleet, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact and/or omitted 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 /or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon persons.

63. By reason of the acts, omissions, practices, and courses of business set forth in this Complaint, Fleet violated, and unless restrained and enjoined, is reasonably likely to continue to 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].

SECOND CLAIM FOR RELIEF
Violations of Section 17(a) of the Securities Act

64. The Commission repeats and realleges the allegations contained in paragraphs 1 through 60 by reference as if fully set forth herein.

65. Fleet, in the offer or sale of securities, by use of means or instruments of transportation or communication in interstate commerce or by the mails, directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions of material facts necessary in order to make the

statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities.

66. By reason of the foregoing, Fleet directly and indirectly violated, and unless enjoined, is reasonably likely to continue to violate, Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), §§ 77(q)(a)(2) and 77(q)(a)(3].

THIRD CLAIM FOR RELIEF
Violations of Sections 5(a) and 5(c) of the Securities Act

67. The Commission repeats and realleges the allegations contained in paragraphs 1 through 60 by reference as if fully set forth herein.

68. Cornerstone's 8% and 10% unsecured investment programs are securities.

69. Between 1997 and March 2010, Fleet raised at least $16.75 million in unsecured investments from investors. Of that amount, approximately $15.5 million was raised between January 2006 and March 2010.

70. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities and transactions described in this Complaint and no exemption from registration existed with respect to such securities and transactions.

71. Fleet, directly or indirectly: (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of a prospectus or otherwise; or carried securities or caused such securities to be carried through the mails or in interstate commerce, by means or instruments of transportation, for the purpose of sale or for delivery after sale; and (b) made use of the 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 without

a registration statement having been filed with the Commission or being in effect as to such securities, and no exemption from registration is applicable.

72. By reason of the foregoing, Fleet has violated, and unless enjoined, is reasonably likely to continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter Orders:

I.

Permanently restraining and enjoining the Fleet, his agents, servants, employees, attorneys in-fact, and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77(e)(c), and 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5].

II.

Requiring the Fleet to disgorge his ill-gotten gains from the violative conduct alleged in this Complaint, and to pay prejudgment interest thereon.

III.

Imposing civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)] against Fleet; and

IV.

Granting such other and further relief as the Court deems appropriate.

Dated: December 12, 2014
New York, New York

Respectfully submitted,

/s/Andrew M. Calamari
Andrew M. Calamari, Regional Director
ATTORNEY FOR PLAINTIFF
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
Brookfield Place
200 Vesey Street, Suite 400
New York, New York 10281-1022
(212) 336-0095 (Neal Jacobson, Trial Counsel)
Jacobsonn@sec.gov

Of Counsel:
Alistaire Bambach
Neal Jacobson
Patricia Schrage