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DATE FILED:	11/15/12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 CIV 4270 (SHS)

**KENNETH IRA STARR, STARR INVESTMENT
ADVISORS, LLC, STARR & COMPANY, LLC, AND
JONATHAN S. BRISTOL**

Defendants,

DIANE PASSAGE AND COLCAVE, LLC

Relief Defendants.

12,2021

JUDGMENT AS TO DEFENDANT KENNETH IRA STARR

The Securities and Exchange Commission having filed a Complaint and Defendant Kenneth Ira Starr (“Defendant” or “Starr”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 206(1) and 206(2) of

the Investment Advisers Act of 1940 (the “Advisers Act”) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)],

by using the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme or artifice to defraud any client or prospective client; or
- (b) to engage in any transaction, practice or courses of business which operates as a fraud or deceit upon any client or prospective client.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement in the amount of \$9,300,000, representing profits gained and/or losses avoided as a result of the conduct alleged in the Complaint, plus prejudgment interest thereon in the amount of \$354,197.65 for a total of \$9,654,197.65. This disgorgement plus prejudgment interest is deemed satisfied by the entry of a forfeiture order against Defendant in the amount of \$30,112,782.69 in the criminal case before the United States District Court for the Southern District of New York, titled *United States v. Kenneth Starr, et al.*, 10 CR 520 (S.D.N.Y.) (SAS) (“*United States v. Starr*”).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on the sentence Starr received pursuant to his guilty plea in *United States v. Starr*, the Court is not ordering Starr to pay a civil penalty. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Starr knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the

Commission may, at its sole discretion and without prior notice to Starr, petition the Court for an order requiring Starr to pay a civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Starr will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Starr may not challenge the validity of this Final Judgment or his consent hereto, dated August 17, 2012 and filed herewith (the "Consent"); (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

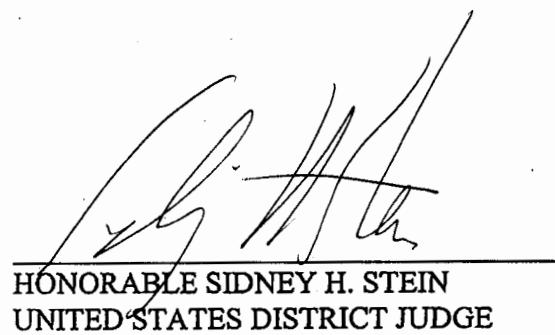
V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

VI.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

Dated: November 15, 2012



HONORABLE SIDNEY H. STEIN
UNITED STATES DISTRICT JUDGE

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 CIV 4270 (SHS)

**KENNETH IRA STARR, STARR INVESTMENT
ADVISORS, LLC, STARR & COMPANY, LLC, AND
JONATHAN S. BRISTOL**

Defendants,

DIANE PASSAGE AND COLCAVE, LLC

Relief Defendants.

CONSENT OF KENNETH IRA STARR

1. Defendant Kenneth Ira Starr ("Defendant") waives service of a summons and the Complaint in this action, enters a general appearance, and consents to the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Kenneth Starr, et al.*, 10 CR 520 (S.D.N.Y.) (SAS) ("*United States v. Starr*"), Defendant pleaded guilty to one count of wire fraud [18 U.S.C. § 1343], one count of money laundering [18 U.S.C. § 1956], and one count of investment advisor fraud [15 U.S.C. § 80b-6].

3. In connection with that plea, Defendant admitted the facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in

full force and effect regardless of the existence or outcome of any further proceedings in *United States v. Starr*.

4. Defendant hereby consents to the entry of the Judgment in the form attached hereto (the "Judgment") and incorporated by reference herein, which, among other things:
 - (a) permanently restrains and enjoins Defendant from any violations of Sections 206(1) or 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)];
 - (b) orders Defendant to pay disgorgement in the amount of \$9,300,000, representing funds misappropriated from his clients as alleged in the Complaint, plus prejudgment interest thereon in the amount of \$354,197.65, for a total of \$9,654,197.65, but provides that Defendant's disgorgement obligations are deemed satisfied by the entry of the May 6, 2011 Order of Restitution against Defendant in the amount of \$30,112,782.69 in the criminal case before the United States District Court for the Southern District of New York, titled *United States v. Kenneth Starr, et al.*, 10 CR 520 (S.D.N.Y.) (SAS) ("United States v. Starr"); and
 - (c) does not order Defendant to pay a civil penalty based upon the sentence he received pursuant to his conviction in *United States v. Starr*.
5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.
6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.
7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any

member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a

member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the Complaint in this action.

12. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant acknowledges the guilty plea for related criminal conduct described in paragraphs 2 and 3 above, and agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Defendant agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Dated: 08/17/12

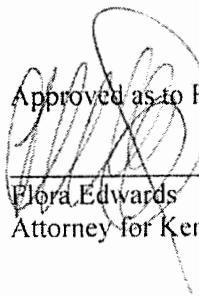
Kenneth Ira Starr

Kenneth Ira Starr

On August 17, 2012, Kenneth Ira Starr, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Notary Public
Commission expires:

Approved as to Form:


Flora Edwards
Attorney for Kenneth Ira Starr

FLORA EDWARDS
Notary Public, State of New York
No. 02ED5067131
Qualified in New York County
Commission Expires October 15, 2017

09A8STAP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v. 10 Cr. 520 (SAS)

6 KENNETH STARR,

7 Defendant.
8 -----x

September 10, 2010
11:20 a.m.

9 Before:

10 HON. THEODORE H. KATZ

11 Magistrate Judge

12 APPEARANCES

13 PREET BHARARA
14 United States Attorney for the
15 Southern District of New York

16 MICHAEL BOSWORTH
17 WILLIAM HARRINGTON
18 Assistant United States Attorneys

19 FLORA EDWARDS
20 Attorney for Defendant

21 Also present:

22 MICHAEL KITSIS
23 HOPE KORENSTEIN
24 Assistant District Attorneys
25 New York County District Attorney's Office

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record.

4 MR. BOSWORTH: Good morning, your Honor. Michael
5 Bosworth and William Harrington for the government. With us at
6 counsel table are Assistant District Attorneys Michael Kitsis
7 and Hope Korenstein of the New York County District Attorney's
8 Office.

9 MS. EDWARDS: Good morning, your Honor. Flora Edwards
10 for the defendant, Kenneth Starr, and Mr. Starr is here with me
11 today.

12 THE COURT: Good morning.

13 This matter was referred by Judge Scheindlin?

14 MR. BOSWORTH: Yes, sir.

15 THE COURT: Mr. Starr is here to enter a plea of
16 guilty to Counts 9, 21 and 22 of the indictment?

17 MS. EDWARDS: That's correct, your Honor.

18 THE COURT: Mr. Starr, Count 9 of the indictment in
19 your case charges you with wire fraud, in violation of Title 18
20 of the United States Code, Section 1343. That offense carries
21 a maximum statutory penalty of 20 years in prison, a maximum
22 fine of \$250,000 or twice the monetary gain or loss resulting
23 from the offense, whichever is greater, a maximum term of three
24 years on supervised release, and a mandatory special assessment
25 of \$100.

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1 Count 21 of the indictment charges you with money
2 laundering, in violation of Title 18 of the United States Code,
3 Section 1956(a)(1). That offense carries a maximum statutory
4 penalty of 20 years in prison, a maximum fine of \$500,000 or
5 twice the monetary gain or loss resulting from the offense,
6 whichever is greater, a maximum term of three years on
7 supervised release, and a mandatory special assessment of \$100.

8 Count 22 charges you with investment adviser fraud, in
9 violation of Title 15 of the United States Code, Sections 80b-6
10 and 80b-17. That offense carries a maximum statutory penalty
11 of five years in prison, a maximum fine of \$10,000 or twice the
12 monetary gain or loss resulting from the offense, whichever is
13 greater, a maximum term of three years on supervised release,
14 and a mandatory special assessment of \$100.

15 In addition, you would be subject to an order of
16 restitution.

17 The total maximum term of imprisonment you face is 45
18 years in prison.

19 You should also be aware that if you are sentenced to
20 time on supervised release and were to violate the terms of
21 your supervised release, you could be sentenced to additional
22 time in prison.

23 You have the right to plead not guilty to these
24 charges, and if you do so, you have the right to a jury trial,
25 and if convicted, the right to be sentenced by a United States

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1 district judge. If you choose to, however, you can enter a
2 plea of guilty to these charges. If you consent, you can enter
3 your plea before me. I am a United States magistrate judge.
4 If I were to determine that your plea was entered knowingly and
5 voluntarily and there is a factual basis for your plea, I would
6 then recommend to the district judge, Judge Scheindlin, that
7 she accept your plea of guilty, and if she does so, your
8 sentencing would take place before her.

9 Do you understand what I have just explained?

10 THE DEFENDANT: Yes, I do, your Honor.

11 THE COURT: Have you read and signed this form
12 consenting to enter your plea before a United States magistrate
13 judge?

14 THE DEFENDANT: Yes, I have, your Honor.

15 THE COURT: I accept the consent.

16 Before I can accept your plea, Mr. Starr, I have to
17 give you some information and ask you certain questions so that
18 I can be assured that you understand what rights you are giving
19 up by pleading guilty and that your plea is made voluntarily
20 and there is a factual basis for your plea. The answers to my
21 questions are to be given under oath. That means you can be
22 prosecuted for perjury if you give false statements. If you
23 don't understand any of my questions, please let me know and I
24 will clarify them.

25 Would you raise your right hand?

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1 (Defendant sworn)

2 THE COURT: Would you state your full name?

3 THE DEFENDANT: Kenneth Ira Starr.

4 THE COURT: How old are you, Mr. Starr?

5 THE DEFENDANT: 66.

6 THE COURT: How much education have you had?

7 THE DEFENDANT: Through college, law school, master's
8 in tax law.

9 THE COURT: Are you currently under the care of a
10 doctor or a psychiatrist?

11 THE DEFENDANT: No, I am not.

12 THE COURT: Have you ever been treated for alcoholism
13 or drug addiction?

14 THE DEFENDANT: No, I have not.

15 THE COURT: Have you been able to understand
16 everything I have said so far?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: Are you feeling physically all right as
19 you stand here today?

20 THE DEFENDANT: Yes, I am.

21 THE COURT: Have you seen a copy of the indictment in
22 your case?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: Have you read it or would you like me to
25 read it to you?

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1 THE DEFENDANT: I have read it.

2 THE COURT: Do you understand what it charges you with
3 doing?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Have you had an opportunity to discuss the
6 charges in the indictment with Ms. Edwards and how you wish to
7 plead today?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Are you satisfied with Ms. Edwards's
10 services?

11 THE DEFENDANT: Very much so.

12 THE COURT: Are you prepared to enter a plea to Counts
13 9, 21 and 22 in the indictment?

14 THE DEFENDANT: I am.

15 THE COURT: What plea do you wish to enter?

16 THE DEFENDANT: Guilty.

17 THE COURT: Do you understand that you have the right
18 to plead not guilty to these charges, and that if you do so,
19 you have the right to a jury trial?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Do you understand that if you chose to go
22 to trial, the burden would be on the government to prove your
23 guilt beyond a reasonable doubt and you would be presumed
24 innocent unless and until the government did prove your guilt
25 beyond a reasonable doubt?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that if you chose to go
3 to trial, you would have the right to be represented by an
4 attorney, and if necessary, an attorney would be appointed to
5 represent you?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that at a trial, your
8 attorney would have the right to cross-examine any witnesses
9 who were called to testify against you, and you and your
10 attorney would have the right to call witnesses to testify on
11 your behalf and to compel the attendance of witnesses if
12 necessary?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that at a trial, you
15 yourself would have the right to testify, but you would not be
16 required to testify or to incriminate yourself in any fashion?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that if you plead guilty
19 to these charges today, there will be no trial and the next
20 stage in this proceeding will be your sentencing by Judge
21 Scheindlin?

22 THE DEFENDANT: Yes.

23 THE COURT: You heard me describe what the maximum
24 statutory penalties are for the offenses set forth in Counts 9,
25 21 and 22?

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1 THE DEFENDANT: Yes, I have.
2 THE COURT: Have you had a chance to speak to Ms.
3 Edwards about how the United States sentencing guidelines apply
4 to your case?

5 THE DEFENDANT: Yes, I have.
6 THE COURT: Do you understand that although Judge
7 Scheindlin is obligated to consider the United States
8 sentencing guidelines, along with other information, in
9 deciding what a reasonable sentence would be in your case, she
10 is not obligated to actually sentence you under the guidelines?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Do you understand that even if Judge
13 Scheindlin chooses to sentence you under the guidelines, under
14 certain circumstances, she has the discretion to impose a
15 sentence that is even more lenient or more severe than is
16 called for in the guidelines?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Do you understand that the sentence to be
19 imposed lies solely in Judge Scheindlin's discretion?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Have any threats been made to you by
22 anyone which are causing you to plead guilty today?

23 THE DEFENDANT: No.

24 THE COURT: Have any promises been made to you about
25 the sentence you will receive?

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1 THE DEFENDANT: No.

2 THE COURT: Did you enter into a plea agreement with
3 the government?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: Have you read and signed the agreement?

6 THE DEFENDANT: Yes, I have.

7 THE COURT: Have you discussed it with Ms. Edwards?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Do you understand what it says?

10 MS. EDWARDS: If I may, your Honor. I just wanted to
11 add one thing on the plea agreement. On page 4 of the
12 agreement, it requires Mr. Starr to waive his right to file a
13 motion pursuant to 2241. I have advised Mr. Starr that the
14 preclusion relates only to conviction and sentence and does not
15 relate to conditions of confinement should that become
16 necessary.

17 THE COURT: That's true.

18 Mr. Bosworth, can you just outline the more
19 significant terms of the agreement?

20 MR. BOSWORTH: Yes, your Honor.

21 Under the stipulated guidelines range, the base
22 offense level is 7. 22 levels are added because the offenses,
23 which are grouped, collectively involved a loss of more than
24 \$20 million, but less than \$50 million. Because the offenses
25 involved a violation of securities law, and at the time of the

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1 offense the defendant was an investment adviser, four levels
2 are added. Because the defendant was convicted of the money
3 laundering charge, another two levels are added. And because
4 of his timely acceptance of responsibility, three levels are
5 reduced. Ultimately, because the defendant is in Criminal
6 History Category I and has a guidelines offense level of 32,
7 there is a stipulated guidelines range of 121 to 151 months'
8 imprisonment.

9 Additionally, the agreement provides that neither
10 party will seek any departure from the guidelines. The
11 agreement provides that either party may, however, seek a
12 sentence outside of the stipulated guidelines range, among
13 other things.

14 Furthermore, as relevant, there is an appeal waiver
15 provision. Pursuant to the appeal waiver, it's agreed that the
16 defendant will not file a direct appeal or bring any collateral
17 challenge, including the Section 2241 motion, to the extent
18 that motion challenges conviction or sentence, or a 2255 motion
19 that challenges any conviction or any sentence within or below
20 the guidelines range that is stipulated to of 121 to 151
21 months. The government agrees not to appeal any sentence
22 that's within or above that stipulated guidelines range.

23 THE COURT: So does the stipulation apply to any
24 appeal relating to the conviction, not just sentence?

25 MR. BOSWORTH: Yes, your Honor.

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1 MS. EDWARDS: That's correct, your Honor.

2 MR. BOSWORTH: Then there is one final appeal waiver
3 provision. Pursuant to this agreement, you will note, your
4 Honor, that the parties agree that the government may seek
5 restitution in an amount up to and including \$50 million. The
6 parties have not reached an agreement about what precise figure
7 restitution would be.

8 The same applies to the precise amount of funds or
9 assets that could be forfeited, except that the parties do
10 agree, one, that the government has the right to seek to
11 forfeit up to \$50 million, and the defendant pursuant to this
12 agreement has agreed to forfeit the luxury condominium at 433
13 East 74th Street, unit 1C. And so the government could seek
14 forfeiture of an amount up to \$50 million, less the value of
15 the forfeited net proceeds of the sale of that property.

16 So as a result, in the agreement, the defendant agrees
17 not to appeal any restitution amount or forfeiture amount up to
18 and including \$50 million, which is at the top of page 5, and
19 the government agrees not to appeal any restitution amount or
20 forfeiture amount that is greater or equal to the value of the
21 forfeited net proceeds of the sale of that apartment.

22 THE COURT: Is that all consistent with your
23 understanding, Ms. Edwards?

24 MS. EDWARDS: Yes, it is, your Honor.

25 THE COURT: Mr. Starr, do you understand the terms of

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1 the agreement?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Do you understand that although you and
4 your attorney have reached some understanding with the
5 government about the sentencing range you would face under the
6 sentencing guidelines, that that is not binding on Judge
7 Scheindlin and that the sentence to be imposed lies solely at
8 her discretion?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Do you understand that even if Judge
11 Scheindlin were to impose a more severe sentence than the 151
12 months, which is the top of the range stipulated to, that would
13 not be a basis for your withdrawing your plea of guilty?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Do you understand that in pleading guilty
16 and entering into this agreement, you are waiving your right to
17 appeal your sentence and conviction, and you are not going to
18 seek to challenge the sentence, certainly if it is no greater
19 than 151 months in prison, is that correct?

20 THE DEFENDANT: That's correct.

21 THE COURT: Do you still wish to plead guilty to
22 Counts 9, 21 and 22 in the indictment?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Is your plea made voluntarily and of your
25 own will?

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1 THE DEFENDANT: Yes, it is.

2 THE COURT: Did you commit the offenses set forth in
3 Counts 9, 21 and 22 of the indictment?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: Mr. Bosworth, would you identify the
6 elements of those offenses which the government would have to
7 prove at trial beyond a reasonable doubt?

8 MR. BOSWORTH: Yes, your Honor.

9 The elements of the wire fraud offense are as follows.
10 The government would be required to prove beyond a reasonable
11 doubt that on or about January 5, 2010, in the Southern
12 District of New York:

13 First, that there was a scheme or artifice to defraud
14 or to obtain money or property by materially false and
15 fraudulent pretenses, representations or promises as alleged in
16 the indictment.

17 Second, that the defendant knowingly and willfully
18 participated in that scheme or artifice to defraud with
19 knowledge of its fraudulent nature and with specific intent to
20 defraud.

21 Third, that in the execution of that scheme, the
22 defendant used or caused the use of an interstate wire,
23 specifically, the wire that's referred to in the indictment on
24 or about January 5, 2010.

25 Should I go on to the next offense, your Honor?

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1 For the money laundering count, Count 21, the
2 government would have to prove beyond a reasonable doubt that
3 from at least in or about January 2009, up to and including in
4 or about April 2010:

5 First, the defendant conducted a financial transaction
6 involving property that constitutes the proceeds of specified
7 unlawful activity, namely, the wire fraud scheme of which Count
8 9 is a part.

9 Second, that the defendant knew that the property
10 involved in the financial transaction was the proceeds of some
11 form of unlawful activity.

12 Third, that the purpose of the financial transaction
13 was to conceal or disguise the nature, location, source,
14 ownership or control of the proceeds of specified unlawful
15 activity.

16 Then, last, that the defendant knew that the financial
17 transaction was designed and that its purpose was, in whole or
18 in part, to conceal or disguise the nature, location, source,
19 ownership or control of the proceeds of specified unlawful
20 activity.

21 With respect to Count 22, the investment adviser fraud
22 count, the government would have to prove beyond a reasonable
23 doubt that from in or about 2005, up to and including in or
24 about 2010, in the Southern District of New York, and
25 elsewhere:

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1 First, the defendant was an investment adviser.
2 Second, the defendant employed any device, scheme or
3 artifice to defraud any client or prospective client, engaged
4 in any transaction, practice, or course of business which
5 operated as a fraud or deceit upon any client or prospective
6 client, or, while acting as principal for his own account,
7 knowingly sold any security to or purchased any security from a
8 client, or, acting as a broker for a person other than such
9 client, knowingly to effect any sale or purchase of any
10 security for the account of such client, without disclosing to
11 the client in writing before the completion of the transaction
12 the capacity in which he was acting and then obtaining the
13 consent of the client to such transaction, all while acting as
14 an investment adviser.

15 Third, the government would have to prove that the
16 defendant used the mails or any means or instrumentality of
17 interstate commerce, directly or indirectly, to commit the act
18 or acts.

19 Lastly, that the defendant acted unlawfully, willfully
20 and knowingly and with the intent to defraud.

21 THE COURT: Mr. Starr, can you tell me in your own
22 words now what you did that is causing you to plead guilty
23 first to the wire fraud charge?

24 THE DEFENDANT: I wrote this out, your Honor.

25 While acting as a financial adviser in Manhattan, a

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1 number of my clients entrusted me with their money so that I
2 can pay their bills and invest their funds.

3 From 2009 to 2010, instead of using my clients' money
4 as I had promised, I knowingly used a portion of the money for
5 my own purposes.

6 In diverting this money, I first wired it to an
7 attorney trust account in New Jersey so that the true source of
8 the funds would be concealed when I later used the funds for my
9 own purposes.

10 For example, on or about January 5, 2010, I
11 transferred a million dollars of one client's money to the
12 attorney trust account and later used that for money for my own
13 purposes.

14 Finally, from 2005 through 2010, while acting as an
15 investment adviser in Manhattan, and using the United States
16 mail, on at least one occasion I did not accurately convey the
17 true character of a certain investment that I encouraged my
18 client to make. For example, I encouraged one client to invest
19 in a company called Wind River, but I did not disclose that it
20 was a loan before the transaction was completed.

21 THE COURT: When you engaged in these acts, you were
22 located here in Manhattan?

23 THE DEFENDANT: Yes, I was, your Honor.

24 THE COURT: With regard to the money laundering, the
25 money that was not lawfully yours that was your clients' and

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1 that you were using for your own purposes, that money you
2 transferred to a trust account that you then accessed?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You knew that it was improper to be using
5 your clients' money for your own purposes?

6 THE DEFENDANT: Yes, I did, your Honor.

7 MS. EDWARDS: If I may, your Honor, one moment.

8 THE DEFENDANT: Your Honor, Ms. Edwards is saying I
9 wasn't clear about it. The trust account it was transferred to
10 was not mine; it was another attorney's.

11 THE COURT: Another attorney's?

12 THE DEFENDANT: Yes.

13 THE COURT: But you transferred it there for your own
14 purposes?

15 THE DEFENDANT: That is correct, your Honor.

16 THE COURT: Are there any other questions you would
17 like me to ask, Mr. Bosworth?

18 MR. BOSWORTH: Can I just have a moment to talk to Ms.
19 Edwards?

20 THE COURT: Yes.

21 (Pause)

22 MR. BOSWORTH: Your Honor, there is only one small
23 question. After conferring with Ms. Edwards, my understanding
24 is there is no dispute, the government could prove that the
25 wire that's at issue in Count 9, the wire from January 5, 2010,

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1 was in fact an interstate wire. But I think Ms. Edwards can
2 speak to that.

3 MS. EDWARDS: That is correct, your Honor.

4 THE COURT: With regard to Count 22, when you were
5 acting as an investment adviser, when you didn't convey the
6 true character of the investment, the purpose of that was to
7 secure a client's money under fraudulent pretenses?

8 THE DEFENDANT: I did not make it clear to my client
9 at the time that the money was being obtained from them that in
10 reality they were making a loan and not an investment. So by
11 not being specific enough and clear enough to them, they
12 believed it was an investment initially and not a loan.

13 THE COURT: Were you communicating with that client
14 through the mails or telephone?

15 THE DEFENDANT: I communicated with that client by
16 telephone.

17 THE COURT: Anything else, Mr. Bosworth, you think is
18 necessary?

19 MR. BOSWORTH: Just give me one moment, your Honor.

20 (Pause)

21 MS. EDWARDS: One small clarification on the
22 investment adviser count.

23 THE DEFENDANT: I am aware that by not disclosing to
24 the client that it was a loan, that that is a fraudulent
25 transaction by having them believe that it was an investment.

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1. THE COURT: So that is information that the client
2. would have wanted to know?

3. THE DEFENDANT: Yes.

4. MR. BOSWORTH: We would also ask that the Court
5. inquire whether it was Mr. Starr's intent to defraud by not
6. disclosing the true character of the investment, as that is an
7. element of that offense.

8. THE COURT: Can you answer that question?

9. THE DEFENDANT: Yes. I would say the answer is yes.

10. MR. BOSWORTH: We have no other questions.

11. THE COURT: Mr. Bosworth, do you know of any reason
12. why Mr. Starr should not plead guilty?

13. MR. BOSWORTH: No.

14. THE COURT: Ms. Edwards?

15. MS. EDWARDS: No, I do not.

16. THE COURT: I am satisfied Mr. Starr is competent to
17. enter a plea of guilty. I am satisfied that Mr. Starr
18. understands the nature of the charges against him and the
19. consequences of his plea of guilty. I am satisfied that your
20. plea is entered voluntarily of your own will and that there is
21. a factual basis for your plea. I am going to therefore
22. recommend to Judge Scheindlin that she accept your plea of
23. guilty to Counts 9, 21 and 22 in the indictment.

24. Has Judge Scheindlin set a sentencing date?

25. MR. BOSWORTH: Yes, your Honor. December 15 at 4:30

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1 p.m.

2 THE COURT: Between now and then you are going to be
3 asked to meet with the staff of the probation department so
4 that they can prepare a presentence report for the court. Ms.
5 Edwards has the right to be present at the interview and you
6 will receive a copy of that report as well.

7 Anything further?

8 MR. BOSWORTH: Nothing from the government. Thank
9 you.

10 MS. EDWARDS: Nothing from the defense. Thank you.

11 (Adjourned)

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DOC #:	
DATE FILED:	11/15/12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 CIV 4270 (SHS)

**KENNETH IRA STARR, STARR INVESTMENT
ADVISORS, LLC, STARR & COMPANY, LLC, AND
JONATHAN S. BRISTOL**

Defendants,

DIANE PASSAGE AND COLCAVE, LLC

Relief Defendants.

12,2021

JUDGMENT AS TO DEFENDANT KENNETH IRA STARR

The Securities and Exchange Commission having filed a Complaint and Defendant Kenneth Ira Starr (“Defendant” or “Starr”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 206(1) and 206(2) of

the Investment Advisers Act of 1940 (the “Advisers Act”) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)],

by using the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme or artifice to defraud any client or prospective client; or
- (b) to engage in any transaction, practice or courses of business which operates as a fraud or deceit upon any client or prospective client.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement in the amount of \$9,300,000, representing profits gained and/or losses avoided as a result of the conduct alleged in the Complaint, plus prejudgment interest thereon in the amount of \$354,197.65 for a total of \$9,654,197.65. This disgorgement plus prejudgment interest is deemed satisfied by the entry of a forfeiture order against Defendant in the amount of \$30,112,782.69 in the criminal case before the United States District Court for the Southern District of New York, titled *United States v. Kenneth Starr, et al.*, 10 CR 520 (S.D.N.Y.) (SAS) (“*United States v. Starr*”).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on the sentence Starr received pursuant to his guilty plea in *United States v. Starr*, the Court is not ordering Starr to pay a civil penalty. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Starr knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the

Commission may, at its sole discretion and without prior notice to Starr, petition the Court for an order requiring Starr to pay a civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Starr will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Starr may not challenge the validity of this Final Judgment or his consent hereto, dated August 17, 2012 and filed herewith (the "Consent"); (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

VI.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

Dated: November 5, 2012

~~HONORABLE SIDNEY H. STEIN
UNITED STATES DISTRICT JUDGE~~

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 CIV 4270 (SHS)

**KENNETH IRA STARR, STARR INVESTMENT
ADVISORS, LLC, STARR & COMPANY, LLC, AND
JONATHAN S. BRISTOL**

Defendants,

DIANE PASSAGE AND COLCAVE, LLC

Relief Defendants.

CONSENT OF KENNETH IRA STARR

1. Defendant Kenneth Ira Starr ("Defendant") waives service of a summons and the Complaint in this action, enters a general appearance, and consents to the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Kenneth Starr, et al.*, 10 CR 520 (S.D.N.Y.) (SAS) ("*United States v. Starr*"), Defendant pleaded guilty to one count of wire fraud [18 U.S.C. § 1343], one count of money laundering [18 U.S.C. § 1956], and one count of investment advisor fraud [15 U.S.C. § 80b-6].

3. In connection with that plea, Defendant admitted the facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in

full force and effect regardless of the existence or outcome of any further proceedings in *United States v. Starr*.

4. Defendant hereby consents to the entry of the Judgment in the form attached hereto (the "Judgment") and incorporated by reference herein, which, among other things:
 - (a) permanently restrains and enjoins Defendant from any violations of Sections 206(1) or 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)];
 - (b) orders Defendant to pay disgorgement in the amount of \$9,300,000, representing funds misappropriated from his clients as alleged in the Complaint, plus prejudgment interest thereon in the amount of \$354,197.65, for a total of \$9,654,197.65, but provides that Defendant's disgorgement obligations are deemed satisfied by the entry of the May 6, 2011 Order of Restitution against Defendant in the amount of \$30,112,782.69 in the criminal case before the United States District Court for the Southern District of New York, titled *United States v. Kenneth Starr, et al.*, 10 CR 520 (S.D.N.Y.) (SAS) ("United States v. Starr"); and
 - (c) does not order Defendant to pay a civil penalty based upon the sentence he received pursuant to his conviction in *United States v. Starr*.
5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.
6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.
7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any

member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a

member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the Complaint in this action.

12. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant acknowledges the guilty plea for related criminal conduct described in paragraphs 2 and 3 above, and agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Defendant agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Dated: 08/17/12

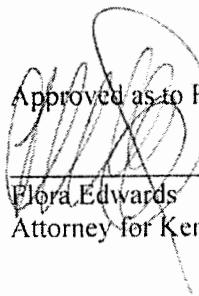
Kenneth Ira Starr

Kenneth Ira Starr

On August 17, 2012, Kenneth Ira Starr, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Notary Public
Commission expires:

Approved as to Form:


Flora Edwards
Attorney for Kenneth Ira Starr

FLORA EDWARDS
Notary Public, State of New York
No. 02ED5067131
Qualified in New York County
Commission Expires October 15, 2017

09A8STAP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,
5 v.
6 10 Cr. 520 (SAS)

7 KENNETH STARR,
8 Defendant.
9 -----x

10 September 10, 2010
11 11:20 a.m.

12 Before:

13 HON. THEODORE H. KATZ
14 Magistrate Judge

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
18 Southern District of New York
19 MICHAEL BOSWORTH
20 WILLIAM HARRINGTON
21 Assistant United States Attorneys
22 FLORA EDWARDS
23 Attorney for Defendant

24 Also present:

25 MICHAEL KITSIS
HOPE KORENSTEIN
Assistant District Attorneys
New York County District Attorney's Office

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record.

4 MR. BOSWORTH: Good morning, your Honor. Michael
5 Bosworth and William Harrington for the government. With us at
6 counsel table are Assistant District Attorneys Michael Kitsis
7 and Hope Korenstein of the New York County District Attorney's
8 Office.

9 MS. EDWARDS: Good morning, your Honor. Flora Edwards
10 for the defendant, Kenneth Starr, and Mr. Starr is here with me
11 today.

12 THE COURT: Good morning.

13 This matter was referred by Judge Scheindlin?

14 MR. BOSWORTH: Yes, sir.

15 THE COURT: Mr. Starr is here to enter a plea of
16 guilty to Counts 9, 21 and 22 of the indictment?

17 MS. EDWARDS: That's correct, your Honor.

18 THE COURT: Mr. Starr, Count 9 of the indictment in
19 your case charges you with wire fraud, in violation of Title 18
20 of the United States Code, Section 1343. That offense carries
21 a maximum statutory penalty of 20 years in prison, a maximum
22 fine of \$250,000 or twice the monetary gain or loss resulting
23 from the offense, whichever is greater, a maximum term of three
24 years on supervised release, and a mandatory special assessment
25 of \$100.

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1 Count 21 of the indictment charges you with money
2 laundering, in violation of Title 18 of the United States Code,
3 Section 1956(a)(1). That offense carries a maximum statutory
4 penalty of 20 years in prison, a maximum fine of \$500,000 or
5 twice the monetary gain or loss resulting from the offense,
6 whichever is greater, a maximum term of three years on
7 supervised release, and a mandatory special assessment of \$100.

8 Count 22 charges you with investment adviser fraud, in
9 violation of Title 15 of the United States Code, Sections 80b-6
10 and 80b-17. That offense carries a maximum statutory penalty
11 of five years in prison, a maximum fine of \$10,000 or twice the
12 monetary gain or loss resulting from the offense, whichever is
13 greater, a maximum term of three years on supervised release,
14 and a mandatory special assessment of \$100.

15 In addition, you would be subject to an order of
16 restitution.

17 The total maximum term of imprisonment you face is 45
18 years in prison.

19 You should also be aware that if you are sentenced to
20 time on supervised release and were to violate the terms of
21 your supervised release, you could be sentenced to additional
22 time in prison.

23 You have the right to plead not guilty to these
24 charges, and if you do so, you have the right to a jury trial,
25 and if convicted, the right to be sentenced by a United States

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1 district judge. If you choose to, however, you can enter a
2 plea of guilty to these charges. If you consent, you can enter
3 your plea before me. I am a United States magistrate judge.
4 If I were to determine that your plea was entered knowingly and
5 voluntarily and there is a factual basis for your plea, I would
6 then recommend to the district judge, Judge Scheindlin, that
7 she accept your plea of guilty, and if she does so, your
8 sentencing would take place before her.

9 Do you understand what I have just explained?

10 THE DEFENDANT: Yes, I do, your Honor.

11 THE COURT: Have you read and signed this form
12 consenting to enter your plea before a United States magistrate
13 judge?

14 THE DEFENDANT: Yes, I have, your Honor.

15 THE COURT: I accept the consent.

16 Before I can accept your plea, Mr. Starr, I have to
17 give you some information and ask you certain questions so that
18 I can be assured that you understand what rights you are giving
19 up by pleading guilty and that your plea is made voluntarily
20 and there is a factual basis for your plea. The answers to my
21 questions are to be given under oath. That means you can be
22 prosecuted for perjury if you give false statements. If you
23 don't understand any of my questions, please let me know and I
24 will clarify them.

25 Would you raise your right hand?

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1 (Defendant sworn)

2 THE COURT: Would you state your full name?

3 THE DEFENDANT: Kenneth Ira Starr.

4 THE COURT: How old are you, Mr. Starr?

5 THE DEFENDANT: 66.

6 THE COURT: How much education have you had?

7 THE DEFENDANT: Through college, law school, master's
8 in tax law.

9 THE COURT: Are you currently under the care of a
10 doctor or a psychiatrist?

11 THE DEFENDANT: No, I am not.

12 THE COURT: Have you ever been treated for alcoholism
13 or drug addiction?

14 THE DEFENDANT: No, I have not.

15 THE COURT: Have you been able to understand
16 everything I have said so far?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: Are you feeling physically all right as
19 you stand here today?

20 THE DEFENDANT: Yes, I am.

21 THE COURT: Have you seen a copy of the indictment in
22 your case?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: Have you read it or would you like me to
25 read it to you?

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1 THE DEFENDANT: I have read it.

2 THE COURT: Do you understand what it charges you with
3 doing?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Have you had an opportunity to discuss the
6 charges in the indictment with Ms. Edwards and how you wish to
7 plead today?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Are you satisfied with Ms. Edwards's
10 services?

11 THE DEFENDANT: Very much so.

12 THE COURT: Are you prepared to enter a plea to Counts
13 9, 21 and 22 in the indictment?

14 THE DEFENDANT: I am.

15 THE COURT: What plea do you wish to enter?

16 THE DEFENDANT: Guilty.

17 THE COURT: Do you understand that you have the right
18 to plead not guilty to these charges, and that if you do so,
19 you have the right to a jury trial?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Do you understand that if you chose to go
22 to trial, the burden would be on the government to prove your
23 guilt beyond a reasonable doubt and you would be presumed
24 innocent unless and until the government did prove your guilt
25 beyond a reasonable doubt?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that if you chose to go
3 to trial, you would have the right to be represented by an
4 attorney, and if necessary, an attorney would be appointed to
5 represent you?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that at a trial, your
8 attorney would have the right to cross-examine any witnesses
9 who were called to testify against you, and you and your
10 attorney would have the right to call witnesses to testify on
11 your behalf and to compel the attendance of witnesses if
12 necessary?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that at a trial, you
15 yourself would have the right to testify, but you would not be
16 required to testify or to incriminate yourself in any fashion?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that if you plead guilty
19 to these charges today, there will be no trial and the next
20 stage in this proceeding will be your sentencing by Judge
21 Scheindlin?

22 THE DEFENDANT: Yes.

23 THE COURT: You heard me describe what the maximum
24 statutory penalties are for the offenses set forth in Counts 9,
25 21 and 22?

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1 THE DEFENDANT: Yes, I have.
2 THE COURT: Have you had a chance to speak to Ms.
3 Edwards about how the United States sentencing guidelines apply
4 to your case?

5 THE DEFENDANT: Yes, I have.
6 THE COURT: Do you understand that although Judge
7 Scheindlin is obligated to consider the United States
8 sentencing guidelines, along with other information, in
9 deciding what a reasonable sentence would be in your case, she
10 is not obligated to actually sentence you under the guidelines?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Do you understand that even if Judge
13 Scheindlin chooses to sentence you under the guidelines, under
14 certain circumstances, she has the discretion to impose a
15 sentence that is even more lenient or more severe than is
16 called for in the guidelines?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Do you understand that the sentence to be
19 imposed lies solely in Judge Scheindlin's discretion?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Have any threats been made to you by
22 anyone which are causing you to plead guilty today?

23 THE DEFENDANT: No.

24 THE COURT: Have any promises been made to you about
25 the sentence you will receive?

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1 THE DEFENDANT: No.

2 THE COURT: Did you enter into a plea agreement with
3 the government?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: Have you read and signed the agreement?

6 THE DEFENDANT: Yes, I have.

7 THE COURT: Have you discussed it with Ms. Edwards?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Do you understand what it says?

10 MS. EDWARDS: If I may, your Honor. I just wanted to
11 add one thing on the plea agreement. On page 4 of the
12 agreement, it requires Mr. Starr to waive his right to file a
13 motion pursuant to 2241. I have advised Mr. Starr that the
14 preclusion relates only to conviction and sentence and does not
15 relate to conditions of confinement should that become
16 necessary.

17 THE COURT: That's true.

18 Mr. Bosworth, can you just outline the more
19 significant terms of the agreement?

20 MR. BOSWORTH: Yes, your Honor.

21 Under the stipulated guidelines range, the base
22 offense level is 7. 22 levels are added because the offenses,
23 which are grouped, collectively involved a loss of more than
24 \$20 million, but less than \$50 million. Because the offenses
25 involved a violation of securities law, and at the time of the

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1 offense the defendant was an investment adviser, four levels
2 are added. Because the defendant was convicted of the money
3 laundering charge, another two levels are added. And because
4 of his timely acceptance of responsibility, three levels are
5 reduced. Ultimately, because the defendant is in Criminal
6 History Category I and has a guidelines offense level of 32,
7 there is a stipulated guidelines range of 121 to 151 months'
8 imprisonment.

9 Additionally, the agreement provides that neither
10 party will seek any departure from the guidelines. The
11 agreement provides that either party may, however, seek a
12 sentence outside of the stipulated guidelines range, among
13 other things.

14 Furthermore, as relevant, there is an appeal waiver
15 provision. Pursuant to the appeal waiver, it's agreed that the
16 defendant will not file a direct appeal or bring any collateral
17 challenge, including the Section 2241 motion, to the extent
18 that motion challenges conviction or sentence, or a 2255 motion
19 that challenges any conviction or any sentence within or below
20 the guidelines range that is stipulated to of 121 to 151
21 months. The government agrees not to appeal any sentence
22 that's within or above that stipulated guidelines range.

23 THE COURT: So does the stipulation apply to any
24 appeal relating to the conviction, not just sentence?

25 MR. BOSWORTH: Yes, your Honor.

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1 MS. EDWARDS: That's correct, your Honor.

2 MR. BOSWORTH: Then there is one final appeal waiver
3 provision. Pursuant to this agreement, you will note, your
4 Honor, that the parties agree that the government may seek
5 restitution in an amount up to and including \$50 million. The
6 parties have not reached an agreement about what precise figure
7 restitution would be.

8 The same applies to the precise amount of funds or
9 assets that could be forfeited, except that the parties do
10 agree, one, that the government has the right to seek to
11 forfeit up to \$50 million, and the defendant pursuant to this
12 agreement has agreed to forfeit the luxury condominium at 433
13 East 74th Street, unit 1C. And so the government could seek
14 forfeiture of an amount up to \$50 million, less the value of
15 the forfeited net proceeds of the sale of that property.

16 So as a result, in the agreement, the defendant agrees
17 not to appeal any restitution amount or forfeiture amount up to
18 and including \$50 million, which is at the top of page 5, and
19 the government agrees not to appeal any restitution amount or
20 forfeiture amount that is greater or equal to the value of the
21 forfeited net proceeds of the sale of that apartment.

22 THE COURT: Is that all consistent with your
23 understanding, Ms. Edwards?

24 MS. EDWARDS: Yes, it is, your Honor.

25 THE COURT: Mr. Starr, do you understand the terms of

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1 the agreement?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Do you understand that although you and
4 your attorney have reached some understanding with the
5 government about the sentencing range you would face under the
6 sentencing guidelines, that that is not binding on Judge
7 Scheindlin and that the sentence to be imposed lies solely at
8 her discretion?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Do you understand that even if Judge
11 Scheindlin were to impose a more severe sentence than the 151
12 months, which is the top of the range stipulated to, that would
13 not be a basis for your withdrawing your plea of guilty?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Do you understand that in pleading guilty
16 and entering into this agreement, you are waiving your right to
17 appeal your sentence and conviction, and you are not going to
18 seek to challenge the sentence, certainly if it is no greater
19 than 151 months in prison, is that correct?

20 THE DEFENDANT: That's correct.

21 THE COURT: Do you still wish to plead guilty to
22 Counts 9, 21 and 22 in the indictment?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Is your plea made voluntarily and of your
25 own will?

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1 THE DEFENDANT: Yes, it is.

2 THE COURT: Did you commit the offenses set forth in
3 Counts 9, 21 and 22 of the indictment?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: Mr. Bosworth, would you identify the
6 elements of those offenses which the government would have to
7 prove at trial beyond a reasonable doubt?

8 MR. BOSWORTH: Yes, your Honor.

9 The elements of the wire fraud offense are as follows.
10 The government would be required to prove beyond a reasonable
11 doubt that on or about January 5, 2010, in the Southern
12 District of New York:

13 First, that there was a scheme or artifice to defraud
14 or to obtain money or property by materially false and
15 fraudulent pretenses, representations or promises as alleged in
16 the indictment.

17 Second, that the defendant knowingly and willfully
18 participated in that scheme or artifice to defraud with
19 knowledge of its fraudulent nature and with specific intent to
20 defraud.

21 Third, that in the execution of that scheme, the
22 defendant used or caused the use of an interstate wire,
23 specifically, the wire that's referred to in the indictment on
24 or about January 5, 2010.

25 Should I go on to the next offense, your Honor?

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1 For the money laundering count, Count 21, the
2 government would have to prove beyond a reasonable doubt that
3 from at least in or about January 2009, up to and including in
4 or about April 2010:

5 First, the defendant conducted a financial transaction
6 involving property that constitutes the proceeds of specified
7 unlawful activity, namely, the wire fraud scheme of which Count
8 9 is a part.

9 Second, that the defendant knew that the property
10 involved in the financial transaction was the proceeds of some
11 form of unlawful activity.

12 Third, that the purpose of the financial transaction
13 was to conceal or disguise the nature, location, source,
14 ownership or control of the proceeds of specified unlawful
15 activity.

16 Then, last, that the defendant knew that the financial
17 transaction was designed and that its purpose was, in whole or
18 in part, to conceal or disguise the nature, location, source,
19 ownership or control of the proceeds of specified unlawful
20 activity.

21 With respect to Count 22, the investment adviser fraud
22 count, the government would have to prove beyond a reasonable
23 doubt that from in or about 2005, up to and including in or
24 about 2010, in the Southern District of New York, and
25 elsewhere:

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1 First, the defendant was an investment adviser.
2 Second, the defendant employed any device, scheme or
3 artifice to defraud any client or prospective client, engaged
4 in any transaction, practice, or course of business which
5 operated as a fraud or deceit upon any client or prospective
6 client, or, while acting as principal for his own account,
7 knowingly sold any security to or purchased any security from a
8 client, or, acting as a broker for a person other than such
9 client, knowingly to effect any sale or purchase of any
10 security for the account of such client, without disclosing to
11 the client in writing before the completion of the transaction
12 the capacity in which he was acting and then obtaining the
13 consent of the client to such transaction, all while acting as
14 an investment adviser.

15 Third, the government would have to prove that the
16 defendant used the mails or any means or instrumentality of
17 interstate commerce, directly or indirectly, to commit the act
18 or acts.

19 Lastly, that the defendant acted unlawfully, willfully
20 and knowingly and with the intent to defraud.

21 THE COURT: Mr. Starr, can you tell me in your own
22 words now what you did that is causing you to plead guilty
23 first to the wire fraud charge?

24 THE DEFENDANT: I wrote this out, your Honor.

25 While acting as a financial adviser in Manhattan, a

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1 number of my clients entrusted me with their money so that I
2 can pay their bills and invest their funds.

3 From 2009 to 2010, instead of using my clients' money
4 as I had promised, I knowingly used a portion of the money for
5 my own purposes.

6 In diverting this money, I first wired it to an
7 attorney trust account in New Jersey so that the true source of
8 the funds would be concealed when I later used the funds for my
9 own purposes.

10 For example, on or about January 5, 2010, I
11 transferred a million dollars of one client's money to the
12 attorney trust account and later used that for money for my own
13 purposes.

14 Finally, from 2005 through 2010, while acting as an
15 investment adviser in Manhattan, and using the United States
16 mail, on at least one occasion I did not accurately convey the
17 true character of a certain investment that I encouraged my
18 client to make. For example, I encouraged one client to invest
19 in a company called Wind River, but I did not disclose that it
20 was a loan before the transaction was completed.

21 THE COURT: When you engaged in these acts, you were
22 located here in Manhattan?

23 THE DEFENDANT: Yes, I was, your Honor.

24 THE COURT: With regard to the money laundering, the
25 money that was not lawfully yours that was your clients' and

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1 that you were using for your own purposes, that money you
2 transferred to a trust account that you then accessed?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You knew that it was improper to be using
5 your clients' money for your own purposes?

6 THE DEFENDANT: Yes, I did, your Honor.

7 MS. EDWARDS: If I may, your Honor, one moment.

8 THE DEFENDANT: Your Honor, Ms. Edwards is saying I
9 wasn't clear about it. The trust account it was transferred to
10 was not mine; it was another attorney's.

11 THE COURT: Another attorney's?

12 THE DEFENDANT: Yes.

13 THE COURT: But you transferred it there for your own
14 purposes?

15 THE DEFENDANT: That is correct, your Honor.

16 THE COURT: Are there any other questions you would
17 like me to ask, Mr. Bosworth?

18 MR. BOSWORTH: Can I just have a moment to talk to Ms.
19 Edwards?

20 THE COURT: Yes.

21 (Pause)

22 MR. BOSWORTH: Your Honor, there is only one small
23 question. After conferring with Ms. Edwards, my understanding
24 is there is no dispute, the government could prove that the
25 wire that's at issue in Count 9, the wire from January 5, 2010,

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1 was in fact an interstate wire. But I think Ms. Edwards can
2 speak to that.

3 MS. EDWARDS: That is correct, your Honor.

4 THE COURT: With regard to Count 22, when you were
5 acting as an investment adviser, when you didn't convey the
6 true character of the investment, the purpose of that was to
7 secure a client's money under fraudulent pretenses?

8 THE DEFENDANT: I did not make it clear to my client
9 at the time that the money was being obtained from them that in
10 reality they were making a loan and not an investment. So by
11 not being specific enough and clear enough to them, they
12 believed it was an investment initially and not a loan.

13 THE COURT: Were you communicating with that client
14 through the mails or telephone?

15 THE DEFENDANT: I communicated with that client by
16 telephone.

17 THE COURT: Anything else, Mr. Bosworth, you think is
18 necessary?

19 MR. BOSWORTH: Just give me one moment, your Honor.

20 (Pause)

21 MS. EDWARDS: One small clarification on the
22 investment adviser count.

23 THE DEFENDANT: I am aware that by not disclosing to
24 the client that it was a loan, that that is a fraudulent
25 transaction by having them believe that it was an investment.

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1. THE COURT: So that is information that the client
2. would have wanted to know?

3. THE DEFENDANT: Yes.

4. MR. BOSWORTH: We would also ask that the Court
5. inquire whether it was Mr. Starr's intent to defraud by not
6. disclosing the true character of the investment, as that is an
7. element of that offense.

8. THE COURT: Can you answer that question?

9. THE DEFENDANT: Yes. I would say the answer is yes.

10. MR. BOSWORTH: We have no other questions.

11. THE COURT: Mr. Bosworth, do you know of any reason
12. why Mr. Starr should not plead guilty?

13. MR. BOSWORTH: No.

14. THE COURT: Ms. Edwards?

15. MS. EDWARDS: No, I do not.

16. THE COURT: I am satisfied Mr. Starr is competent to
17. enter a plea of guilty. I am satisfied that Mr. Starr
18. understands the nature of the charges against him and the
19. consequences of his plea of guilty. I am satisfied that your
20. plea is entered voluntarily of your own will and that there is
21. a factual basis for your plea. I am going to therefore
22. recommend to Judge Scheindlin that she accept your plea of
23. guilty to Counts 9, 21 and 22 in the indictment.

24. Has Judge Scheindlin set a sentencing date?

25. MR. BOSWORTH: Yes, your Honor. December 15 at 4:30

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1 p.m.

2 THE COURT: Between now and then you are going to be
3 asked to meet with the staff of the probation department so
4 that they can prepare a presentence report for the court. Ms.
5 Edwards has the right to be present at the interview and you
6 will receive a copy of that report as well.

7 Anything further?

8 MR. BOSWORTH: Nothing from the government. Thank
9 you.

10 MS. EDWARDS: Nothing from the defense. Thank you.

11 (Adjourned)

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DOC #:	
DATE FILED:	11/15/12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 CIV 4270 (SHS)

**KENNETH IRA STARR, STARR INVESTMENT
ADVISORS, LLC, STARR & COMPANY, LLC, AND
JONATHAN S. BRISTOL**

Defendants,

DIANE PASSAGE AND COLCAVE, LLC

Relief Defendants.

12,2021

JUDGMENT AS TO DEFENDANT KENNETH IRA STARR

The Securities and Exchange Commission having filed a Complaint and Defendant Kenneth Ira Starr (“Defendant” or “Starr”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 206(1) and 206(2) of

the Investment Advisers Act of 1940 (the “Advisers Act”) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)],

by using the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme or artifice to defraud any client or prospective client; or
- (b) to engage in any transaction, practice or courses of business which operates as a fraud or deceit upon any client or prospective client.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement in the amount of \$9,300,000, representing profits gained and/or losses avoided as a result of the conduct alleged in the Complaint, plus prejudgment interest thereon in the amount of \$354,197.65 for a total of \$9,654,197.65. This disgorgement plus prejudgment interest is deemed satisfied by the entry of a forfeiture order against Defendant in the amount of \$30,112,782.69 in the criminal case before the United States District Court for the Southern District of New York, titled *United States v. Kenneth Starr, et al.*, 10 CR 520 (S.D.N.Y.) (SAS) (“*United States v. Starr*”).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on the sentence Starr received pursuant to his guilty plea in *United States v. Starr*, the Court is not ordering Starr to pay a civil penalty. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Starr knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the

Commission may, at its sole discretion and without prior notice to Starr, petition the Court for an order requiring Starr to pay a civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Starr will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Starr may not challenge the validity of this Final Judgment or his consent hereto, dated August 17, 2012 and filed herewith (the "Consent"); (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

VI.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

Dated: November 5, 2012

**HONORABLE SIDNEY H. STEIN
UNITED STATES DISTRICT JUDGE**

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 CIV 4270 (SHS)

**KENNETH IRA STARR, STARR INVESTMENT
ADVISORS, LLC, STARR & COMPANY, LLC, AND
JONATHAN S. BRISTOL**

Defendants,

DIANE PASSAGE AND COLCAVE, LLC

Relief Defendants.

CONSENT OF KENNETH IRA STARR

1. Defendant Kenneth Ira Starr ("Defendant") waives service of a summons and the Complaint in this action, enters a general appearance, and consents to the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Kenneth Starr, et al.*, 10 CR 520 (S.D.N.Y.) (SAS) ("*United States v. Starr*"), Defendant pleaded guilty to one count of wire fraud [18 U.S.C. § 1343], one count of money laundering [18 U.S.C. § 1956], and one count of investment advisor fraud [15 U.S.C. § 80b-6].

3. In connection with that plea, Defendant admitted the facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in

full force and effect regardless of the existence or outcome of any further proceedings in *United States v. Starr*.

4. Defendant hereby consents to the entry of the Judgment in the form attached hereto (the "Judgment") and incorporated by reference herein, which, among other things:
 - (a) permanently restrains and enjoins Defendant from any violations of Sections 206(1) or 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)];
 - (b) orders Defendant to pay disgorgement in the amount of \$9,300,000, representing funds misappropriated from his clients as alleged in the Complaint, plus prejudgment interest thereon in the amount of \$354,197.65, for a total of \$9,654,197.65, but provides that Defendant's disgorgement obligations are deemed satisfied by the entry of the May 6, 2011 Order of Restitution against Defendant in the amount of \$30,112,782.69 in the criminal case before the United States District Court for the Southern District of New York, titled *United States v. Kenneth Starr, et al.*, 10 CR 520 (S.D.N.Y.) (SAS) ("United States v. Starr"); and
 - (c) does not order Defendant to pay a civil penalty based upon the sentence he received pursuant to his conviction in *United States v. Starr*.
5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.
6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.
7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any

member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a

member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the Complaint in this action.

12. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant acknowledges the guilty plea for related criminal conduct described in paragraphs 2 and 3 above, and agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Defendant agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Dated: 08/17/12

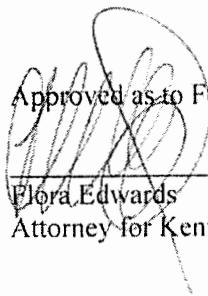
Kenneth Ira Starr

Kenneth Ira Starr

On August 17, 2012, Kenneth Ira Starr, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Notary Public
Commission expires:

Approved as to Form:


Flora Edwards
Attorney for Kenneth Ira Starr

FLORA EDWARDS
Notary Public, State of New York
No. 02ED5067131
Qualified in New York County
Commission Expires October 15, 2017

09A8STAP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v. 10 Cr. 520 (SAS)

6 KENNETH STARR,

7 Defendant.
8 -----x

September 10, 2010
11:20 a.m.

9 Before:

10 HON. THEODORE H. KATZ

11 Magistrate Judge

12 APPEARANCES

13 PREET BHARARA
14 United States Attorney for the
15 Southern District of New York

16 MICHAEL BOSWORTH
17 WILLIAM HARRINGTON
18 Assistant United States Attorneys

19 FLORA EDWARDS
20 Attorney for Defendant

21 Also present:

22 MICHAEL KITSIS
23 HOPE KORENSTEIN
24 Assistant District Attorneys
25 New York County District Attorney's Office

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record.

4 MR. BOSWORTH: Good morning, your Honor. Michael
5 Bosworth and William Harrington for the government. With us at
6 counsel table are Assistant District Attorneys Michael Kitsis
7 and Hope Korenstein of the New York County District Attorney's
8 Office.

9 MS. EDWARDS: Good morning, your Honor. Flora Edwards
10 for the defendant, Kenneth Starr, and Mr. Starr is here with me
11 today.

12 THE COURT: Good morning.

13 This matter was referred by Judge Scheindlin?

14 MR. BOSWORTH: Yes, sir.

15 THE COURT: Mr. Starr is here to enter a plea of
16 guilty to Counts 9, 21 and 22 of the indictment?

17 MS. EDWARDS: That's correct, your Honor.

18 THE COURT: Mr. Starr, Count 9 of the indictment in
19 your case charges you with wire fraud, in violation of Title 18
20 of the United States Code, Section 1343. That offense carries
21 a maximum statutory penalty of 20 years in prison, a maximum
22 fine of \$250,000 or twice the monetary gain or loss resulting
23 from the offense, whichever is greater, a maximum term of three
24 years on supervised release, and a mandatory special assessment
25 of \$100.

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1 Count 21 of the indictment charges you with money
2 laundering, in violation of Title 18 of the United States Code,
3 Section 1956(a)(1). That offense carries a maximum statutory
4 penalty of 20 years in prison, a maximum fine of \$500,000 or
5 twice the monetary gain or loss resulting from the offense,
6 whichever is greater, a maximum term of three years on
7 supervised release, and a mandatory special assessment of \$100.

8 Count 22 charges you with investment adviser fraud, in
9 violation of Title 15 of the United States Code, Sections 80b-6
10 and 80b-17. That offense carries a maximum statutory penalty
11 of five years in prison, a maximum fine of \$10,000 or twice the
12 monetary gain or loss resulting from the offense, whichever is
13 greater, a maximum term of three years on supervised release,
14 and a mandatory special assessment of \$100.

15 In addition, you would be subject to an order of
16 restitution.

17 The total maximum term of imprisonment you face is 45
18 years in prison.

19 You should also be aware that if you are sentenced to
20 time on supervised release and were to violate the terms of
21 your supervised release, you could be sentenced to additional
22 time in prison.

23 You have the right to plead not guilty to these
24 charges, and if you do so, you have the right to a jury trial,
25 and if convicted, the right to be sentenced by a United States

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1 district judge. If you choose to, however, you can enter a
2 plea of guilty to these charges. If you consent, you can enter
3 your plea before me. I am a United States magistrate judge.
4 If I were to determine that your plea was entered knowingly and
5 voluntarily and there is a factual basis for your plea, I would
6 then recommend to the district judge, Judge Scheindlin, that
7 she accept your plea of guilty, and if she does so, your
8 sentencing would take place before her.

9 Do you understand what I have just explained?

10 THE DEFENDANT: Yes, I do, your Honor.

11 THE COURT: Have you read and signed this form
12 consenting to enter your plea before a United States magistrate
13 judge?

14 THE DEFENDANT: Yes, I have, your Honor.

15 THE COURT: I accept the consent.

16 Before I can accept your plea, Mr. Starr, I have to
17 give you some information and ask you certain questions so that
18 I can be assured that you understand what rights you are giving
19 up by pleading guilty and that your plea is made voluntarily
20 and there is a factual basis for your plea. The answers to my
21 questions are to be given under oath. That means you can be
22 prosecuted for perjury if you give false statements. If you
23 don't understand any of my questions, please let me know and I
24 will clarify them.

25 Would you raise your right hand?

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1 (Defendant sworn)

2 THE COURT: Would you state your full name?

3 THE DEFENDANT: Kenneth Ira Starr.

4 THE COURT: How old are you, Mr. Starr?

5 THE DEFENDANT: 66.

6 THE COURT: How much education have you had?

7 THE DEFENDANT: Through college, law school, master's
8 in tax law.

9 THE COURT: Are you currently under the care of a
10 doctor or a psychiatrist?

11 THE DEFENDANT: No, I am not.

12 THE COURT: Have you ever been treated for alcoholism
13 or drug addiction?

14 THE DEFENDANT: No, I have not.

15 THE COURT: Have you been able to understand
16 everything I have said so far?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: Are you feeling physically all right as
19 you stand here today?

20 THE DEFENDANT: Yes, I am.

21 THE COURT: Have you seen a copy of the indictment in
22 your case?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: Have you read it or would you like me to
25 read it to you?

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1 THE DEFENDANT: I have read it.

2 THE COURT: Do you understand what it charges you with
3 doing?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Have you had an opportunity to discuss the
6 charges in the indictment with Ms. Edwards and how you wish to
7 plead today?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Are you satisfied with Ms. Edwards's
10 services?

11 THE DEFENDANT: Very much so.

12 THE COURT: Are you prepared to enter a plea to Counts
13 9, 21 and 22 in the indictment?

14 THE DEFENDANT: I am.

15 THE COURT: What plea do you wish to enter?

16 THE DEFENDANT: Guilty.

17 THE COURT: Do you understand that you have the right
18 to plead not guilty to these charges, and that if you do so,
19 you have the right to a jury trial?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Do you understand that if you chose to go
22 to trial, the burden would be on the government to prove your
23 guilt beyond a reasonable doubt and you would be presumed
24 innocent unless and until the government did prove your guilt
25 beyond a reasonable doubt?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that if you chose to go
3 to trial, you would have the right to be represented by an
4 attorney, and if necessary, an attorney would be appointed to
5 represent you?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that at a trial, your
8 attorney would have the right to cross-examine any witnesses
9 who were called to testify against you, and you and your
10 attorney would have the right to call witnesses to testify on
11 your behalf and to compel the attendance of witnesses if
12 necessary?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that at a trial, you
15 yourself would have the right to testify, but you would not be
16 required to testify or to incriminate yourself in any fashion?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that if you plead guilty
19 to these charges today, there will be no trial and the next
20 stage in this proceeding will be your sentencing by Judge
21 Scheindlin?

22 THE DEFENDANT: Yes.

23 THE COURT: You heard me describe what the maximum
24 statutory penalties are for the offenses set forth in Counts 9,
25 21 and 22?

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1 THE DEFENDANT: Yes, I have.
2 THE COURT: Have you had a chance to speak to Ms.
3 Edwards about how the United States sentencing guidelines apply
4 to your case?

5 THE DEFENDANT: Yes, I have.
6 THE COURT: Do you understand that although Judge
7 Scheindlin is obligated to consider the United States
8 sentencing guidelines, along with other information, in
9 deciding what a reasonable sentence would be in your case, she
10 is not obligated to actually sentence you under the guidelines?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Do you understand that even if Judge
13 Scheindlin chooses to sentence you under the guidelines, under
14 certain circumstances, she has the discretion to impose a
15 sentence that is even more lenient or more severe than is
16 called for in the guidelines?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Do you understand that the sentence to be
19 imposed lies solely in Judge Scheindlin's discretion?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Have any threats been made to you by
22 anyone which are causing you to plead guilty today?

23 THE DEFENDANT: No.

24 THE COURT: Have any promises been made to you about
25 the sentence you will receive?

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1 THE DEFENDANT: No.

2 THE COURT: Did you enter into a plea agreement with
3 the government?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: Have you read and signed the agreement?

6 THE DEFENDANT: Yes, I have.

7 THE COURT: Have you discussed it with Ms. Edwards?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Do you understand what it says?

10 MS. EDWARDS: If I may, your Honor. I just wanted to
11 add one thing on the plea agreement. On page 4 of the
12 agreement, it requires Mr. Starr to waive his right to file a
13 motion pursuant to 2241. I have advised Mr. Starr that the
14 preclusion relates only to conviction and sentence and does not
15 relate to conditions of confinement should that become
16 necessary.

17 THE COURT: That's true.

18 Mr. Bosworth, can you just outline the more
19 significant terms of the agreement?

20 MR. BOSWORTH: Yes, your Honor.

21 Under the stipulated guidelines range, the base
22 offense level is 7. 22 levels are added because the offenses,
23 which are grouped, collectively involved a loss of more than
24 \$20 million, but less than \$50 million. Because the offenses
25 involved a violation of securities law, and at the time of the

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1 offense the defendant was an investment adviser, four levels
2 are added. Because the defendant was convicted of the money
3 laundering charge, another two levels are added. And because
4 of his timely acceptance of responsibility, three levels are
5 reduced. Ultimately, because the defendant is in Criminal
6 History Category I and has a guidelines offense level of 32,
7 there is a stipulated guidelines range of 121 to 151 months'
8 imprisonment.

9 Additionally, the agreement provides that neither
10 party will seek any departure from the guidelines. The
11 agreement provides that either party may, however, seek a
12 sentence outside of the stipulated guidelines range, among
13 other things.

14 Furthermore, as relevant, there is an appeal waiver
15 provision. Pursuant to the appeal waiver, it's agreed that the
16 defendant will not file a direct appeal or bring any collateral
17 challenge, including the Section 2241 motion, to the extent
18 that motion challenges conviction or sentence, or a 2255 motion
19 that challenges any conviction or any sentence within or below
20 the guidelines range that is stipulated to of 121 to 151
21 months. The government agrees not to appeal any sentence
22 that's within or above that stipulated guidelines range.

23 THE COURT: So does the stipulation apply to any
24 appeal relating to the conviction, not just sentence?

25 MR. BOSWORTH: Yes, your Honor.

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1 MS. EDWARDS: That's correct, your Honor.

2 MR. BOSWORTH: Then there is one final appeal waiver
3 provision. Pursuant to this agreement, you will note, your
4 Honor, that the parties agree that the government may seek
5 restitution in an amount up to and including \$50 million. The
6 parties have not reached an agreement about what precise figure
7 restitution would be.

8 The same applies to the precise amount of funds or
9 assets that could be forfeited, except that the parties do
10 agree, one, that the government has the right to seek to
11 forfeit up to \$50 million, and the defendant pursuant to this
12 agreement has agreed to forfeit the luxury condominium at 433
13 East 74th Street, unit 1C. And so the government could seek
14 forfeiture of an amount up to \$50 million, less the value of
15 the forfeited net proceeds of the sale of that property.

16 So as a result, in the agreement, the defendant agrees
17 not to appeal any restitution amount or forfeiture amount up to
18 and including \$50 million, which is at the top of page 5, and
19 the government agrees not to appeal any restitution amount or
20 forfeiture amount that is greater or equal to the value of the
21 forfeited net proceeds of the sale of that apartment.

22 THE COURT: Is that all consistent with your
23 understanding, Ms. Edwards?

24 MS. EDWARDS: Yes, it is, your Honor.

25 THE COURT: Mr. Starr, do you understand the terms of

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1 the agreement?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Do you understand that although you and
4 your attorney have reached some understanding with the
5 government about the sentencing range you would face under the
6 sentencing guidelines, that that is not binding on Judge
7 Scheindlin and that the sentence to be imposed lies solely at
8 her discretion?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Do you understand that even if Judge
11 Scheindlin were to impose a more severe sentence than the 151
12 months, which is the top of the range stipulated to, that would
13 not be a basis for your withdrawing your plea of guilty?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Do you understand that in pleading guilty
16 and entering into this agreement, you are waiving your right to
17 appeal your sentence and conviction, and you are not going to
18 seek to challenge the sentence, certainly if it is no greater
19 than 151 months in prison, is that correct?

20 THE DEFENDANT: That's correct.

21 THE COURT: Do you still wish to plead guilty to
22 Counts 9, 21 and 22 in the indictment?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Is your plea made voluntarily and of your
25 own will?

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1 THE DEFENDANT: Yes, it is.

2 THE COURT: Did you commit the offenses set forth in
3 Counts 9, 21 and 22 of the indictment?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: Mr. Bosworth, would you identify the
6 elements of those offenses which the government would have to
7 prove at trial beyond a reasonable doubt?

8 MR. BOSWORTH: Yes, your Honor.

9 The elements of the wire fraud offense are as follows.
10 The government would be required to prove beyond a reasonable
11 doubt that on or about January 5, 2010, in the Southern
12 District of New York:

13 First, that there was a scheme or artifice to defraud
14 or to obtain money or property by materially false and
15 fraudulent pretenses, representations or promises as alleged in
16 the indictment.

17 Second, that the defendant knowingly and willfully
18 participated in that scheme or artifice to defraud with
19 knowledge of its fraudulent nature and with specific intent to
20 defraud.

21 Third, that in the execution of that scheme, the
22 defendant used or caused the use of an interstate wire,
23 specifically, the wire that's referred to in the indictment on
24 or about January 5, 2010.

25 Should I go on to the next offense, your Honor?

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1 For the money laundering count, Count 21, the
2 government would have to prove beyond a reasonable doubt that
3 from at least in or about January 2009, up to and including in
4 or about April 2010:

5 First, the defendant conducted a financial transaction
6 involving property that constitutes the proceeds of specified
7 unlawful activity, namely, the wire fraud scheme of which Count
8 9 is a part.

9 Second, that the defendant knew that the property
10 involved in the financial transaction was the proceeds of some
11 form of unlawful activity.

12 Third, that the purpose of the financial transaction
13 was to conceal or disguise the nature, location, source,
14 ownership or control of the proceeds of specified unlawful
15 activity.

16 Then, last, that the defendant knew that the financial
17 transaction was designed and that its purpose was, in whole or
18 in part, to conceal or disguise the nature, location, source,
19 ownership or control of the proceeds of specified unlawful
20 activity.

21 With respect to Count 22, the investment adviser fraud
22 count, the government would have to prove beyond a reasonable
23 doubt that from in or about 2005, up to and including in or
24 about 2010, in the Southern District of New York, and
25 elsewhere:

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1 First, the defendant was an investment adviser.
2 Second, the defendant employed any device, scheme or
3 artifice to defraud any client or prospective client, engaged
4 in any transaction, practice, or course of business which
5 operated as a fraud or deceit upon any client or prospective
6 client, or, while acting as principal for his own account,
7 knowingly sold any security to or purchased any security from a
8 client, or, acting as a broker for a person other than such
9 client, knowingly to effect any sale or purchase of any
10 security for the account of such client, without disclosing to
11 the client in writing before the completion of the transaction
12 the capacity in which he was acting and then obtaining the
13 consent of the client to such transaction, all while acting as
14 an investment adviser.

15 Third, the government would have to prove that the
16 defendant used the mails or any means or instrumentality of
17 interstate commerce, directly or indirectly, to commit the act
18 or acts.

19 Lastly, that the defendant acted unlawfully, willfully
20 and knowingly and with the intent to defraud.

21 THE COURT: Mr. Starr, can you tell me in your own
22 words now what you did that is causing you to plead guilty
23 first to the wire fraud charge?

24 THE DEFENDANT: I wrote this out, your Honor.

25 While acting as a financial adviser in Manhattan, a

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1 number of my clients entrusted me with their money so that I
2 can pay their bills and invest their funds.

3 From 2009 to 2010, instead of using my clients' money
4 as I had promised, I knowingly used a portion of the money for
5 my own purposes.

6 In diverting this money, I first wired it to an
7 attorney trust account in New Jersey so that the true source of
8 the funds would be concealed when I later used the funds for my
9 own purposes.

10 For example, on or about January 5, 2010, I
11 transferred a million dollars of one client's money to the
12 attorney trust account and later used that for money for my own
13 purposes.

14 Finally, from 2005 through 2010, while acting as an
15 investment adviser in Manhattan, and using the United States
16 mail, on at least one occasion I did not accurately convey the
17 true character of a certain investment that I encouraged my
18 client to make. For example, I encouraged one client to invest
19 in a company called Wind River, but I did not disclose that it
20 was a loan before the transaction was completed.

21 THE COURT: When you engaged in these acts, you were
22 located here in Manhattan?

23 THE DEFENDANT: Yes, I was, your Honor.

24 THE COURT: With regard to the money laundering, the
25 money that was not lawfully yours that was your clients' and

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1 that you were using for your own purposes, that money you
2 transferred to a trust account that you then accessed?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You knew that it was improper to be using
5 your clients' money for your own purposes?

6 THE DEFENDANT: Yes, I did, your Honor.

7 MS. EDWARDS: If I may, your Honor, one moment.

8 THE DEFENDANT: Your Honor, Ms. Edwards is saying I
9 wasn't clear about it. The trust account it was transferred to
10 was not mine; it was another attorney's.

11 THE COURT: Another attorney's?

12 THE DEFENDANT: Yes.

13 THE COURT: But you transferred it there for your own
14 purposes?

15 THE DEFENDANT: That is correct, your Honor.

16 THE COURT: Are there any other questions you would
17 like me to ask, Mr. Bosworth?

18 MR. BOSWORTH: Can I just have a moment to talk to Ms.
19 Edwards?

20 THE COURT: Yes.

21 (Pause)

22 MR. BOSWORTH: Your Honor, there is only one small
23 question. After conferring with Ms. Edwards, my understanding
24 is there is no dispute, the government could prove that the
25 wire that's at issue in Count 9, the wire from January 5, 2010,

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1 was in fact an interstate wire. But I think Ms. Edwards can
2 speak to that.

3 MS. EDWARDS: That is correct, your Honor.

4 THE COURT: With regard to Count 22, when you were
5 acting as an investment adviser, when you didn't convey the
6 true character of the investment, the purpose of that was to
7 secure a client's money under fraudulent pretenses?

8 THE DEFENDANT: I did not make it clear to my client
9 at the time that the money was being obtained from them that in
10 reality they were making a loan and not an investment. So by
11 not being specific enough and clear enough to them, they
12 believed it was an investment initially and not a loan.

13 THE COURT: Were you communicating with that client
14 through the mails or telephone?

15 THE DEFENDANT: I communicated with that client by
16 telephone.

17 THE COURT: Anything else, Mr. Bosworth, you think is
18 necessary?

19 MR. BOSWORTH: Just give me one moment, your Honor.

20 (Pause)

21 MS. EDWARDS: One small clarification on the
22 investment adviser count.

23 THE DEFENDANT: I am aware that by not disclosing to
24 the client that it was a loan, that that is a fraudulent
25 transaction by having them believe that it was an investment.

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1. THE COURT: So that is information that the client
2. would have wanted to know?

3. THE DEFENDANT: Yes.

4. MR. BOSWORTH: We would also ask that the Court
5. inquire whether it was Mr. Starr's intent to defraud by not
6. disclosing the true character of the investment, as that is an
7. element of that offense.

8. THE COURT: Can you answer that question?

9. THE DEFENDANT: Yes. I would say the answer is yes.

10. MR. BOSWORTH: We have no other questions.

11. THE COURT: Mr. Bosworth, do you know of any reason
12. why Mr. Starr should not plead guilty?

13. MR. BOSWORTH: No.

14. THE COURT: Ms. Edwards?

15. MS. EDWARDS: No, I do not.

16. THE COURT: I am satisfied Mr. Starr is competent to
17. enter a plea of guilty. I am satisfied that Mr. Starr
18. understands the nature of the charges against him and the
19. consequences of his plea of guilty. I am satisfied that your
20. plea is entered voluntarily of your own will and that there is
21. a factual basis for your plea. I am going to therefore
22. recommend to Judge Scheindlin that she accept your plea of
23. guilty to Counts 9, 21 and 22 in the indictment.

24. Has Judge Scheindlin set a sentencing date?

25. MR. BOSWORTH: Yes, your Honor. December 15 at 4:30

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1 p.m.

2 THE COURT: Between now and then you are going to be
3 asked to meet with the staff of the probation department so
4 that they can prepare a presentence report for the court. Ms.
5 Edwards has the right to be present at the interview and you
6 will receive a copy of that report as well.

7 Anything further?

8 MR. BOSWORTH: Nothing from the government. Thank
9 you.

10 MS. EDWARDS: Nothing from the defense. Thank you.

11 (Adjourned)

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