UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. MARK F. SPANGLER and THE SPANGLER GROUP, INC., Defendants.	Case No. **COMPLAINT**

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

SUMMARY OF THE ACTION

1. From at least 2003 through 2011, The Spangler Group, Inc. ("TSG"), a Seattle, Washington investment adviser, and its president, Mark Spangler, defrauded clients by secretly investing them in Spangler's risky start-up companies. Spangler used client money to fund his companies even though such investments were inconsistent with the investment strategies he had promised his clients and contrary to his clients' stated investment objectives.

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2. Beginning in 1998, Spangler and TSG raised over $56 million for several private funds Spangler created and managed. Spangler and TSG advised that the funds would invest in publicly traded securities. In actuality, from at least 2003 and continuing through 2011, Spangler and TSG liquidated the private funds' positions in publicly traded securities and funneled the proceeds primarily to two private companies for which Spangler served as Chairman and, at times, Chief Executive Officer.

3. By 2011, Spangler had invested approximately $47.7 million of fund assets in the two private companies; almost $42 million alone was invested into one company, which ceased operations in March 2011. In the summer of 2011, when the private funds were unable to satisfy redemption requests, TSG, Spangler, the private funds, and the defunct company initiated state court receivership proceedings.

4. In addition, from 2005 through April 2011, the two private companies paid TSG $830,000 in fees for "financial and operational support" not actually rendered. These payments, which came from the assets of the private funds, were hidden from clients who invested in the funds. At no time did Spangler or TSG tell investors – who were already paying TSG management fees – that TSG collected additional fees from the two companies. Spangler and TSG also never disclosed the conflict this double-dipping on fees created.

5. By engaging in the acts alleged in this Complaint, Mark Spangler and TSG, among other things, violated the antifraud provisions of the federal securities laws. The Commission seeks an order enjoining Mark Spangler and TSG from future violations of the securities laws and requiring them to disgorge ill-gotten gains with prejudgment interest and pay civil monetary penalties.

JURISDICTION, VENUE, AND INTRADISTRICT ASSIGMENT

6. The Commission brings this action under Section 209(d) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-9(d)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)].

7. This Court has jurisdiction over this action under Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

8. Venue in this District is proper under Section 214 of the Advisers Act [15 U.S.C. § 80b-14] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because defendants Spangler and TSG reside in, and a substantial portion of the conduct alleged in this complaint occurred within, the Western District of Washington.

DEFENDANTS

9. **Mark F. Spangler**, 57, was, at all times relevant, a resident of Seattle, Washington and president of TSG. Spangler regularly provided clients with investment advice and managed private funds. Spangler is a Certified Financial Planner and served as Chairman of the National Association of Personal Financial Advisors Board of Directors from 1996-1998.

10. **The Spangler Group, Inc.** ("TSG"), a Washington corporation with a principal place of business in Seattle, Washington, has been registered as an investment adviser with the Commission since March 15, 1990. At one point TSG had approximately $100 million in assets under management and more than 50 clients. Mark Spangler founded the firm, served as its president, and made all of its investment decisions. TSG's office was in Spangler's house. It filed for receivership protection on June 28, 2011.

RELEVANT ENTITIES

11. **The Spangler Private Funds**: Spangler created and managed the following entities, which were placed in receivership on June 28, 2011.

a. **Equity Investors Group, LLC** is a Washington limited liability company with a principal place of business in Seattle, Washington. The private placement memorandum ("PPM") stated that investments would be placed, initially, with a specific third-party adviser, who was expected to invest in equity securities traded in public markets. Its name changed to SG Growth+ Investors Group, LLC in June 2008. For simplicity, the Commission uses the term "Equity Group" throughout this Complaint to refer to this fund both before and after the 2008 renaming.

b. **Long/Short Equity Investors Group, LLC** was a Washington limited liability company with a principal place of business in Seattle, Washington. The PPM stated that investments would be placed in an identified third-party hedge fund vehicle. It merged into what became known as SG Growth+ Investors Group, LLC in June 2008.

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c. **Income+ Investors Group, LLC** is a Washington limited liability company with a principal place of business in Seattle, Washington. The PPM stated that investments would be placed, initially, into an identified municipal bond fund which was expected to "invest the capital invested by [Income+] in mutual funds holding debt securities and other instruments and which may engage in short sales of securities and trade in publicly traded and over-the-counter options." Its name changed to SG Income + Investors Group, LLC in June 2008. The Commission uses the term "Income+" throughout this Complaint to refer to this fund both before and after the 2008 renaming.

d. **Spangler Ventures Seven, LLC** is a Washington limited liability company with a principal place of business in Seattle, Washington. Formed on July 5, 2000, this company was created to invest in what became TeraHop Networks, Inc., one of Mark Spangler's start-up companies.

e. **Spangler Ventures Nine, LLC** is a Washington limited liability company with a principal place of business in Seattle, Washington. Formed on June 20, 2001, this company was created to invest in Tamarac Inc., one of Mark Spangler's start-up companies.

f. **Spangler Ventures Eleven, LP** is a Delaware partnership with a principal place of business in Seattle, Washington. Formed on May 28, 2003, this company was created to invest in TeraHop Networks, Inc., one of Mark Spangler's start-up companies.

12. **TeraHop Networks, Inc.**, a Delaware corporation with its principal place of business in Alpharetta, Georgia, was formed on December 6, 2001. It attempted to develop and market various technology products. Mark Spangler co-founded the company and also served as Chairman of the Board and, at times, CEO. After failing to generate any meaningful revenue, it ceased operations and filed for receivership protection on September 24, 2011.

13. **Tamarac Inc.**, a Washington corporation with its principal place of business in Seattle, Washington, was formed on March 9, 2000. It provides portfolio management technology to investment advisers. Until early 2011, Spangler served as Chairman of the Board.

FACTUAL ALLEGATIONS

A. Spangler Created Three Private Funds Investors Expected Would Invest in Public Equity and Debt Securities.

14. Beginning in or around 1998, Spangler formed a number of private funds which he marketed to his advisory clients. Three of these funds were Equity Investors Group, LLC ("Equity Group"), Long/Short Equity Investors Group, LLC ("Long/Short"), and Income+ Investors Group, LLC ("Income+") (collectively "Private Funds"). Spangler was the manager of each of the Private Funds, but each had a different investment strategy.

15. Equity Group's PPM stated that the fund intended to invest substantially all of its assets with a third-party investment adviser, who would invest the money in equity securities. It further stated that the securities in which the fund would invest were expected to be traded in public markets. The PPM also stated that Spangler could from time to time invest the fund's assets "in one or more other investment vehicles having similar investment objectives and with one or more additional or supplemental investment advisors."

16. The PPM for Long/Short stated that the fund would invest in a hedge fund vehicle managed by a third-party that seeks long-term capital appreciation with moderate market risk. The PPM went on to state that the fund would invest in equity securities and options and engage in short selling and margin transactions.

17. The PPM for Income+ stated that the fund would invest in a municipal bond fund that was invested in mutual funds and managed by a third-party. The PPM stated "the mutual funds in which the Fund invests . . . are expected to be traded in public markets."

18. Between 1998 and 2011, Spangler raised approximately $56 million for the Private Funds from his clients.

B. Beginning in 2003, Spangler and TSG Secretly Invested the Private Funds in Privately Held Companies in Which Spangler and TSG Had Interests.

19. Beginning in or around 2003, without notifying investors in the Private Funds (who were also advisory clients), Spangler began investing money from the Private Funds into privately held companies, primarily two companies in which TSG and Spangler had significant interests,

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TeraHop Networks, Inc. ("TeraHop') and Tamarac Inc. Spangler liquidated assets managed by the third-party advisers and sent the proceeds to Spangler Ventures 7, LLC ("SV 7") and Spangler Ventures 11, LP ("SV 11"), which were formed for the purpose of investing in TeraHop, and Spangler Ventures 9, LLC ("SV 9"), which was formed for the purpose of investing in Tamarac. On occasion, Spangler sent the proceeds directly to TeraHop and Tamarac.

20. Spangler and TSG changed the investment strategies of the Private Funds without disclosure to or consent from the funds' investors. Nothing in the materials provided to investors told them that Spangler and TSG were investing in ways outside the stated purposes, intent, and strategies of these three funds. Nothing in the quarterly statements Spangler provided his clients informed them that he had invested the Private Funds in SV 7, SV 9, SV 11, TeraHop, or Tamarac. To the contrary, Spangler's clients believed that the money they had invested in the Private Funds remained invested in liquid, publicly traded securities.

21. Notably, in 2008 Spangler revised the PPMs and operating agreements for Equity Group and Income+, yet failed to revise the documents to reflect his new strategy of investing significant client funds in his two related private companies. To the contrary, a letter Spangler sent to investors in May 2008 highlighted that the documents were amended in various ways, ranging from changes to the names of the funds to various non-substantive typographical changes, yet made no reference to the significant strategy shift.

22. Spangler kept secret from clients the fact that he had been and planned to continue investing the Private Funds in TeraHop and Tamarac, companies in which he personally had an interest. He did not disclose that, at the same time he was revising these PPMs and operating agreements, TeraHop was preparing for a new financing round and was depending on Spangler funds – *i.e.*, money invested by Spangler's clients – to meet its financing needs. Spangler also did not tell investors that TSG collected fees for "financial and operational support" from these companies, let alone that the companies were able to pay these fees because they had received money from the Private Funds.

23. This is especially true in the case of TeraHop, which, during its eleven year history, generated less than $100,000 in revenue. TeraHop was a cash-poor company with a history of net

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losses, yet Spangler continued to treat the Private Funds as its piggybank. Spangler had a personal interest in keeping TeraHop operating and, as a result, used his clients' funds as its lifeline. He kept all these facts to himself, having not included any of them on the materials he sent via UPS to his clients regarding the revised governing fund documents.

24. As an investment adviser registered with the Commission, TSG is required to file a "Form ADV" with the Commission. Form ADV contains disclosures about the registered investment adviser, including any conflicts of interest and "related party" transactions, such as the facts that Spangler invested client assets in companies in which he has a personal interest and that TSG was receiving fees from these companies. Spangler filed TSG's most recent Form ADV with the Commission on March 31, 2011, and despite being required to disclose conflicts of interest, Spangler made no disclosure regarding his personal ties to TeraHop or Tamarac, entities in which he invested a significant portion of his clients' funds.

25. By summer of 2011, Spangler had invested almost $42 million in TeraHop (79% of the Private Funds' assets at that time) and over $6 million in Tamarac (more than 11% of the Private Funds' assets at that time), but Spangler did not tell his clients that he had diverted 90% of the money invested to two illiquid, private companies.

26. By that same time, TSG had received $830,000 in fees from TeraHop and Tamarac. Nothing in the PPMs or operating agreements for the funds informed investors that the funds may invest in companies in which Mark Spangler founded, controlled, or otherwise had a financial interest. And nothing in those documents disclosed that TeraHop or Tamarac paid TSG "financial and operational support" fees. These fees were on top of the advisory fees paid by TSG's clients for Spangler's management of their assets.

C. Three Clients Learned How Their Money Was Invested and Sought Withdrawals, Resulting in Spangler Placing TSG and the Funds in Receivership.

27. In late 2010 and early 2011, three advisory clients who had invested in the Private Funds learned that Spangler had invested these funds in TeraHop and Tamarac. Each of these clients requested a complete withdrawal from the Private Funds, following the procedures specified in the

funds' governing documents. The capital account balances of these three individuals totaled approximately $10.5 million. Spangler did not have the money.

28. During this time period, Spangler continued to mislead investors in the Private Funds regarding TeraHop and Tamarac. In April 2011, Spangler sent his advisory clients a letter summarizing "important events that affected the year-end results," including the announcement that "this week we received some sad news. TeraHop has closed." This language is misleading, as Spangler (CEO and Chairman of TeraHop) did not receive news that TeraHop closed; rather, he was the one who made the decision to close the company. The importance of this development was lost on most of Spangler's clients, who remained in the dark about how heavily he had invested their money in TeraHop.

29. On June 28, 2011, Spangler placed TSG and the funds (Equity Group, Income+, SV 7, SV9, and SV 11) in receivership. Subsequently, Spangler, his wife, and TeraHop also filed for receivership protection. Only after this time did the majority of Spangler's clients learn the truth about how Spangler had invested their money.

30. TSG and Spangler owe a fiduciary duty to their advisory clients. This means that TSG and Spangler must act for the benefit of their clients and must exercise the utmost good faith in dealing with their clients. It also means that TSG and Spangler have a duty to disclose all material facts that might influence their recommendations to their clients and must employ reasonable care to avoid misleading clients. TSG and Spangler must also disclose economic conflicts of interest, including money received from third parties, especially if the third parties are involved in client transactions. In short, as investment advisers, TSG and Spangler are required to act in the utmost good faith, making full and fair disclosure of all material facts.

FIRST CLAIM FOR RELIEF

Violations of Sections 206(1) and (2) of the Advisers Act
(Against Both Defendants)

31. The Commission realleges and incorporates by reference paragraphs 1 through 30.

32. By engaging in the acts and conduct alleged above, Spangler and TSG, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or of the mails, and while engaged in the business of advising others for compensation as

to the advisability of investing in, purchasing, or selling securities: (1) with scienter employed devices, schemes, and artifices to defraud clients or prospective clients; and (2) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients.

33. By reason of the foregoing, Spangler and TSG have violated and, unless restrained and enjoined, will continue to violate Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

SECOND CLAIM FOR RELIEF
Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8
(Against Both Defendants)

34. The Commission realleges and incorporates by reference paragraphs 1 through 30.

35. The Private Funds, including the Equity Group, the Long/Short, and Income+ funds described above, are pooled investment vehicles, as defined in Rule 206(4)-8 under the Advisers Act, engaged primarily in the business of investing, directly or indirectly, in securities.

36. By engaging in the acts and conduct alleged above, Spangler and TSG, while acting as investment advisers to a pooled investment vehicle, have made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to an investor or prospective investor in the pooled investment vehicle or otherwise engaged in acts, practices, or courses of business that are fraudulent, deceptive or manipulative with respect to an investor or prospective investor in the pooled investment vehicle.

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

THIRD CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b)
(Against Both Defendants)

38. The Commission realleges and incorporates by reference paragraphs 1 through 30.

39. By engaging in the conduct described above, Spangler and TSG, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of

interstate commerce, or the mails, with scienter, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

40. By reason of the foregoing, Spangler and TSG have violated and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5(b)].

FOURTH CLAIM FOR RELIEF
Violations of Section 207 of the Advisers Act
(Against Both Defendants)

41. The Commission realleges and incorporates by reference paragraphs 1 through 30.

42. Spangler and TGS willfully made untrue statements of material fact in Forms ADV filed with the Commission, or willfully omitted to state in such Forms ADV a material fact which is required to be stated therein.

43. By reason of the foregoing, Spangler and TSG have violated and, unless restrained and enjoined, will continue to violate Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently enjoin Mark Spangler and TSG from directly or indirectly violating 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rule 206(4)-8 thereunder [15 U.S.C. §§ 80b-6(1), 80b-6(2),80b-6(4), and 80b-7 and 17 C.F.R. § 275.206-(4)-8] and Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b)];

II.

Order Mark Spangler and TSG to disgorge any wrongfully obtained benefits, including prejudgment interest;

III.

Order Mark Spangler and TSG to pay civil penalties pursuant to Section 209 of the Advisers Act [15 U.S.C. § 80b-9] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)];

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IV.

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

V.

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

DATED: May 17, 2012

Respectfully Submitted,

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