

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER 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, directly or indirectly, Section Section 17(j) of the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. § 80a-17] and Rule 17j-1(b)(1), (3), and (4) [17 C.F.R. § 270.17j-1(b)(1), (3), and (4)] thereunder by, directly and indirectly, in connection with the purchase or sale of a security held or to be acquired by a registered investment company ("Fund"):

- (a) to employ any device, scheme, or artifice to defraud the Fund;
- (b) to engage in acts, practices or courses of business that operates or would operate as a fraud and deceit on the Fund; or
- (c) to engage in a manipulative practice with respect to the Fund.

III.

IT IS FURTHER 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, directly or indirectly, Section 17(j) of the Investment Company Act [15 U.S.C. § 80a-17] and Rule 17j-1(d) [17 C.F.R. §270.17j-1(d)] thereunder by, while acting as an access person of an investment adviser of or principal underwriter for a Fund, failing to submit initial, quarterly, and annual reports to the Fund, investment adviser, or principal underwriter, information regarding any transaction in a covered security in which he had any direct or indirect beneficial ownership, and information regarding any account he established in which any securities were held during the period of the report for his direct or indirect benefit.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$1.7 million, representing profits gained as a result of the conduct alleged in the Complaint. Based on the Second Amended Judgment in a Criminal Case ("Final Criminal Judgment") entered on July 17, 2015 in *United States v. Daniel Lutz Bergin*, No. 3:13-CR-408-M (N.D. Tex.) ("Criminal Matter"), the Court offsets the disgorgement amount by \$1,464,603, which consists of criminal forfeiture of \$1,384,603 (representing the "amount of gain from the offense in issue" in the Criminal Matter) and \$80,000 (representing the value of Bergin's 2012 Porsche Panamera, which the Court ordered be forfeited in the Criminal Matter).

After taking into account the foregoing offsets, the Court Orders that Defendant shall pay disgorgement of \$235,397, together with prejudgment interest thereon in the amount of \$10,763.35, and a civil penalty in the amount of \$500,000 pursuant to Sections 21A and 21(d) of the Exchange Act and Section 42(e) of the Investment Company Act. Defendant shall satisfy

this obligation by paying \$746,160.35 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment. Defendant shall also pay the \$1,384,603 forfeiture money judgment and \$500,000 fine entered in the related Criminal Matter within 30 days of entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; identifying Bergin as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

In the related Criminal Matter, to satisfy the forfeiture money judgment, Defendant may transmit payment by certified check, bank cashier's check, or United States postal money order

in the amount of \$1,384,603 payable to the United States Marshal's Service, which shall be delivered or mailed to

USMS, Attn: Gail Anderson
1100 Commerce Street, Room 1657
Dallas, Texas 75242

To satisfy the fine imposed in the related Criminal Matter, Defendant may transmit payment by certified check, bank cashier's check, or United States postal money order in the amount of \$500,000 payable to the Clerk of the United States District Court, which shall be delivered or mailed to

Clerk of the Court
1100 Commerce Street, Room 1452
Dallas, Texas 75242

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 30 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

V.

IT IS FURTHER **ORDERED, ADJUDGED, AND DECREED** that the Asset Freeze Order [Dkt. No. 10] is modified as follows:

- a. All assets held in trust by Bergin's counsel, Bell Nunnally, shall be released in order to: (1) make payment to the SEC as set forth in paragraph IV of this Final Judgment; and (2) make payment to the United States Marshal's Service (\$1,384,603) and the Clerk of the Court (\$500,000) pursuant to the Final Criminal Judgment;

- b. Any financial or brokerage institution, business entity, or person that holds or has held, controls or has controlled, or maintains or has maintained custody of any of Defendant's assets at any time since January 1, 2009, which assets were frozen pursuant to the Asset Freeze Order, shall release such funds to Defendant or his agent. Specifically, the Asset Freeze Order is lifted and no longer applies as to Fidelity account number ending in -0418 and Bank of America accounts ending in -4331 and -3986 in the name of Bergin and/or Relief Defendant Jacqueline Bergin a/k/a Jacqueline Zaun.
- c. Once funds are released from financial or brokerage institutions, business entities, or other persons, Defendant and/or his agent shall use those funds to: (1) satisfy his payment obligations under this Final Judgment; and (2) satisfy his payment obligations pursuant to the Final Criminal Judgment.
- d. Subject to subparagraphs (a) through (c) above, the Asset Freeze Order is hereby DISSOLVED and no longer in effect.

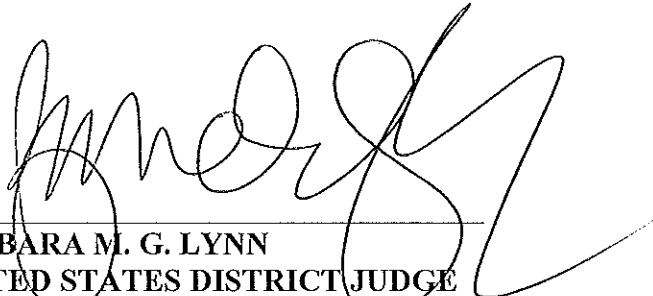
VI.

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 Final Judgment.

SO ORDERED.

Dated: _____

8/18/15



**BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS**