

***SEPTEMBER 2014
FOIA FILE***

***167
TOTAL DOCUMENTS***

SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for September 2014 with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

MARY L. SCHAPIRO, CHAIRMAN

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

(1 Document)

*Commissioner Walter
Not participating*

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 31238 / September 3, 2014

In the Matter of

CITIGROUP GLOBAL MARKETS INC.
CEFOF GP I CORP.
CELFOF GP CORP.
CITIGROUP CAPITAL PARTNERS I GP I CORP.
CITIGROUP CAPITAL PARTNERS I GP II CORP.
CITIGROUP PRIVATE EQUITY (OFFSHORE) LLC
CITIGROUP FIRST INVESTMENT MANAGEMENT
AMERICAS LLC
388 Greenwich Street
New York, NY 10013

CITIBANK, N.A.
CITIGROUP ALTERNATIVE INVESTMENTS LLC
399 Park Avenue
New York, NY 10043

File No. 812-13970

ORDER PURSUANT TO SECTION 9(c) OF THE INVESTMENT COMPANY ACT OF
1940 GRANTING A PERMANENT EXEMPTION FROM SECTION 9(a) OF THE ACT

Citigroup Global Markets Inc. ("CGMI"), CEFOF GP I Corp., CELFOF GP Corp., Citibank, N.A., Citigroup Alternative Investments LLC, Citigroup Capital Partners I GP I Corp., Citigroup Capital Partners I GP II Corp., Citigroup Private Equity (Offshore) LLC, Citigroup First Investment Management Americas LLC (collectively, "Applicants") filed an application on October 20, 2011 and an amendment to the application on August 5, 2014, requesting temporary and permanent orders under section 9(c) of the Investment Company Act of 1940 ("Act") exempting Applicants and any other company of which CGMI is or hereafter becomes an affiliated person (together with Applicants, "Covered Persons") from section 9(a) of the Act with respect to an injunction entered by the United States District Court for the Southern District of New York on August 5, 2014.

1 of 1

On August 6, 2014, the Commission simultaneously issued a notice of the filing of the application and a temporary conditional order exempting the Covered Persons from section 9(a) of the Act (Investment Company Act Release No. 31199) from August 5, 2014 until the Commission takes final action on the application for a permanent order. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing was ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the conduct of the Applicants has been such as not to make it against the public interest or protection of investors to grant the permanent exemption from the provisions of section 9(a) of the Act.

Accordingly,

IT IS ORDERED, pursuant to section 9(c) of the Act, on the basis of the representations contained in the application filed by Citigroup Global Markets Inc., et al. (File No. 812-13970) that Covered Persons be and hereby are permanently exempted from the provisions of section 9(a) of the Act, operative solely as a result of an injunction, described in the application, entered by the United States District Court for the Southern District of New York on August 5, 2014.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION

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MARY JO WHITE, CHAIR

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

(2 Documents)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 34-72983/ September 4, 2014

In the Matter of	:	ORDER PURSUANT TO SECTIONS
	:	13(f)(4) and 13(f)(5) OF THE SECURITIES
	:	EXCHANGE ACT OF 1934 DENYING
Brooklyn Capital Management, LLC	:	REQUESTS FOR CONFIDENTIAL
	:	TREATMENT OF INFORMATION
	:	REQUIRED TO BE FILED PURSUANT
	:	TO SECTION 13(f)(1) OF THE
	:	ACT

Brooklyn Capital Management, LLC ("Brooklyn Capital") is a Delaware limited liability company and an investment adviser registered under the Investment Advisers Act of 1940. By letter dated February 14, 2013, Brooklyn Capital submitted a written request pursuant to section 13(f)(4) of the Securities Exchange Act ("Exchange Act") and rule 24b-2 under the Exchange Act seeking confidential treatment of information that Brooklyn Capital otherwise was required to disclose on Form 13F pursuant to section 13(f)(1) of the Exchange Act and rule 13f-1 thereunder for the quarter ended December 31, 2012 ("December 2012 CT Request"). By letter dated May 15, 2013, Brooklyn Capital also submitted a written section 13(f) confidential treatment request for the quarter ended March 31, 2013 ("March 2013 CT Request") that, in substance, materially is the same as the December 2012 CT Request.

The Commission has considered the December 2012 CT Request and the March 2013 CT Request. The Commission deems it appropriate in the public interest and for the protection of investors pursuant to sections 13(f)(4) and 13(f)(5) of the Exchange Act to deny the December 2012 CT Request and the March 2013 CT Request.

Background

Section 13(f)(1) of the Exchange Act and rule 13f-1 thereunder require every "institutional investment manager," as defined in section 13(f)(6)(A) of the Exchange Act, that exercises investment discretion with respect to "section 13(f) securities," as defined in rule 13f-1, having an aggregate fair market value of at least \$100 million ("Institutional Manager," and the securities, "Reportable Securities"), to file with the Commission quarterly reports on Form 13F setting forth each Reportable Security's name, CUSIP number, the number of shares held, and the market value of the position. Form 13F must be filed within 45 days of the end of the calendar year during which the \$100 million threshold was satisfied and within 45 days of the end of the first three calendar quarters that follow.

Under section 13(f)(4) of the Exchange Act, information filed on Form 13F must be made publicly available, "except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with [the Freedom of Information Act ("FOIA")]. Under section 13(f)(5), "[i]n exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets."

Rule 200.80(b) of the Commission's FOIA rules provides that the Commission generally will not publish or make available to any person matters that fall into any of the nine specified categories ("FOIA Matters"). One of the specified FOIA Matters is "trade secrets and commercial or financial information obtained from a person and privileged or confidential" ("Commercial FOIA Matter").

An Institutional Manager seeking to delay or prevent public disclosure of any FOIA Matter provided on Form 13F must submit a written confidential treatment request following the procedures set forth in rule 24b-2 under the Exchange Act and the Commission's Instructions to Form 13F ("Instructions"). Rule 24b-2(b)(2)(ii) under the Exchange Act requires that a request for confidential treatment of Form 13F information contain, among other things, "a statement of the grounds of objection referring to, and containing an analysis of, the applicable exemption(s) from disclosure under the Commission's rules and regulations adopted under [FOIA]." Rule 24b-2(b)(2)(ii) also requires that a request for confidential treatment of Form 13F information contain "a justification of the period of time for which confidential treatment is sought." The Instructions state that an Institutional Manager "requesting confidential treatment must provide enough factual support for its request to enable the Commission to make an informed judgment as to the merits of the request" and must "address all pertinent factors."

If an Institutional Manager is requesting confidential treatment for a Commercial FOIA Matter, the Instructions indicate that the "pertinent factors" include five areas: (1) a description of the investment strategy, including the extent of any program of acquisition or disposition; (2) an explanation of why disclosure of the securities would be likely to reveal the strategy; (3) a demonstration that the revelation of the investment strategy would be premature; (4) a demonstration that failure to grant the request for confidential treatment would be likely to cause substantial harm to the Institutional Manager's competitive position; and (5) a statement of the period of time for which confidential treatment is requested. The Instructions also provide that an Institutional Manager may discuss each of the five areas listed above with respect to a class of holdings rather than with respect to each individual holding if the Institutional Manager "can identify a class or classes of holdings as to which the nature of the factual circumstances and the legal analysis are substantially the same."

The December 2012 CT Request and the March 2013 CT Request

The December 2012 CT Request and the March 2013 CT Request each makes two arguments. First, each request argues broadly that "Congress' intent is that the Commission should grant confidential treatment to a manager's Form 13F investments in every circumstance in which confidentiality is in the public interest or for the protection of investors. More specifically, the Commission should grant confidential treatment in every case in which premature disclosure of an investment manager's investments may harm the manager's clients and that harm outweighs the benefits of such disclosure to non-clients . . ." (emphasis in the original). The December 2012 CT Request and the March 2013 CT Request each proceeds to argue that confidential treatment for Brooklyn Capital's Reportable Securities is appropriate in order to protect its clients from price fluctuations that "often" follow from the revelation of Brooklyn Capital's ownership of shares in a particular security, as well as to avoid *potential* harm to "investors that track the investments of money managers via Forms 13F and seek to invest based on such information."

The second argument in each of the December 2012 CT Request and the March 2013 CT Request specifically addresses the five factors discussed in the Instructions relating to a Commercial FOIA Matter. The December 2012 CT Request and the March 2013 CT Request each requests confidential treatment for a period of one year "as to all of Brooklyn Capital's holdings that have not been the subject of a Schedule 13D or Schedule 13G filed by Brooklyn Capital or an affiliate of Brooklyn Capital." Upon the pending expiration during 2014 of the respective one-year periods of confidential treatment requested, Brooklyn Capital submitted *de novo* requests pursuant to Instruction 2.g. to extend the periods requested for an additional one year, or until January 31, 2015 for the December 2012 CT Request and until May 13, 2015 for the March 2013 CT Request. The December 2012 CT Request and the March 2013 CT Request each states that Brooklyn Capital "is a value oriented activist investor" that "follows a program of acquisition, holding, or disposition of a security based on its determination of the value of the security." The December 2012 CT Request and the March 2013 CT Request each states that "many of Brooklyn Capital's investments are in companies with a market capitalization of less than \$300 million," that "public disclosure of the securities would necessarily reveal Brooklyn Capital's opinion that such securities represent a value oriented opportunity that is susceptible to investor activism," and that "revelation of Brooklyn Capital's investment strategies through its Section 13(f) holdings . . . is *likely* to increase the cost of increasing such holdings and decrease the prices [Brooklyn Capital's] clients receive in disposing of them" (emphasis added).

The Commission's Findings

Under section 13(f)(4) of the Exchange Act, the Commission may delay or prevent public disclosure of Form 13F information only in accordance with the FOIA. Thus, section 13(f)(4) sets forth the first statutory condition that the Commission must evaluate in order to be able to grant confidential treatment under section 13(f). Brooklyn Capital must satisfy the section 13(f)(4) standard before the Commission can move on to

evaluate the additional conditions in section 13(f)(5) of the Exchange Act that any grant of confidential treatment be necessary and appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets. Thus, Brooklyn Capital's argument that the Commission should grant confidential treatment in "every" circumstance where doing so is in the public interest overlooks the prerequisite for confidential treatment that Congress established in section 13(f). Although the December 2012 CT Request and the March 2013 CT Request each does not actually specify that Brooklyn Capital is seeking confidential treatment of a FOIA Matter or state that Brooklyn Capital is seeking confidential treatment of a Commercial FOIA Matter, each appears to seek protection as a Commercial FOIA Matter because it each discusses the five factors listed in the Instructions relating to a Commercial FOIA Matter.

The December 2012 CT Request and the March 2013 CT Request each fails to establish that the Form 13F information for which it is seeking confidential treatment is "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (*i.e.*, a Commercial FOIA Matter). The December 2012 CT Request and the March 2013 CT Request each appears to want the Commission to conclude that Form 13F information should be treated as a Commercial FOIA Matter, and therefore granted confidential treatment, based on a subjective allegation by an Institutional Manager that disclosure of Reportable Securities *might* harm its clients. Such an approach would undo the entire regime calling for public availability of information about the investment activity in Reportable Securities by Institutional Managers that Congress created in section 13(f) of the Exchange Act. Congress limited confidential treatment by reference to FOIA, and to be treated as a Commercial FOIA matter, an applicant must establish that the particular security at issue fits within that category. General and/or conclusory assertions will not suffice.

Here, the information provided by Brooklyn Capital does not rise above the level of mere conclusory allegations of potential harm to its clients. The December 2012 CT Request and the March 2013 CT Request each contains but a general description of Brooklyn Capital's value oriented activist investment style, without any details about Brooklyn Capital's strategies for particular Reportable Securities. The December 2012 CT Request and the March 2013 CT Request each also does not explain why, in Brooklyn Capital's view, the 45-day pre-filing deadline lag time that is available to each public Form 13F filer after a quarter ends is not sufficient to protect Brooklyn Capital's interests. The December 2012 CT Request and the March 2013 CT Request each makes generalized statements about potential post-disclosure movements in the market price of a Reportable Security, without the data and analysis that are necessary to turn a subjective allegation of potential harm into information that could be used to support the existence of a Commercial FOIA Matter that warrants confidential treatment. Each request addresses neither the status nor the duration of any purported acquisition or disposition program, and each request fails to justify the requested period of confidential treatment.

The December 2012 CT Request and the March 2013 CT Request each fails to establish that Brooklyn Capital's Form 13F information is a Commercial FOIA Matter

that may be granted confidential treatment pursuant to section 13(f)(4) of the Exchange Act. Therefore, under sections 13(f)(4) and 13(f)(5) of the Exchange Act, the Commission finds it appropriate in the public interest and for the protection of investors to deny the December 2012 CT Request and the March 2013 CT Request.

Accordingly, IT IS ORDERED that, pursuant to sections 13(f)(4) and 13(f)(5) of the Exchange Act, the December 2012 CT Request and the March 2013 CT Request each is denied.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 34-72984/September 4, 2014

In the Matter of _____ : : Brooklyn Capital Management, LLC : : : : : : _____	ORDER PURSUANT TO SECTIONS 13(f)(3), 13(f)(5) AND 36 OF THE SECURITIES EXCHANGE ACT OF 1934 DENYING APPLICATION FOR EXEMPTION FROM RULE 13f-1 UNDER THE ACT
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Brooklyn Capital Management, LLC ("Brooklyn Capital/Full Value"), a Delaware limited liability company and an investment adviser registered under the Investment Advisers Act of 1940, is under common control with Full Value Advisors, LLC ("Full Value") and currently has investment authority over the client accounts of Full Value. Full Value, a Delaware limited liability company and an investment adviser to certain private investment companies, filed an application on October 31, 2011, and an amendment to that application on January 3, 2012, pursuant to section 13(f)(3) of the Securities Exchange Act of 1934 ("Exchange Act")¹ seeking an exemption from rule 13f-1 under the Exchange Act ("Amended Exemptive Application"). On February 14, 2013, Brooklyn Capital further amended the Amended Exemptive Application (the term "Amended Exemptive Application" includes the February 14, 2013 amendment).²

The Amended Exemptive Application was filed following a decision by the United States Court of Appeals for the District of Columbia Circuit ("Court Decision")³ denying Full Value's petition for review of 1) a Commission order ("Prior Commission

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") amended section 13(f) of the Exchange Act to renumber paragraphs (2) – (5) as sections 13(f)(3), (4), (5), and (6), respectively. See section 929X of the Dodd-Frank Act.

² The February 14, 2013 submission from Brooklyn Capital also requests confidential treatment of information filed on Form 13F pursuant to section 13(f)(4) of the Exchange Act and rule 24b-2 under the Exchange Act for the calendar quarter ended December 31, 2012 ("December 2012 CT Request"). The Commission separately is issuing an order denying, among other things, the December 2012 CT Request for failure to provide the factual support necessary for the Commission to make an informed judgment as to the merits of the December 2012 CT Request.

³ *Full Value Advisors, LLC v. SEC*, 633 F.3d 1101 (D.C. Cir. 2011), cert. denied, 131 S.Ct. 3003 (2011).

Order")⁴ denying a previous application filed by Full Value for an exemption from rule 13f-1 under the Exchange Act ("Original Exemptive Application"), and 2) a Commission order ("CT Denial Order")⁵ denying requests for confidential treatment filed by Full Value ("Full Value CT Requests").⁶

The Commission has considered the Amended Exemptive Application and finds that the standard for an exemption from section 13(f)(1) of the Exchange Act and rule 13f-1 thereunder, set forth in section 13(f)(5) of the Exchange Act, has not been met.

Background

Section 13(f)(1) of the Exchange Act and rule 13f-1 thereunder require every "institutional investment manager," as defined in section 13(f)(6)(A) of the Exchange Act, that exercises investment discretion with respect to "section 13(f) securities," as defined in rule 13f-1, having an aggregate fair market value of at least \$100 million ("Institutional Manager," and the securities, "Reportable Securities"), to file with the Commission quarterly reports on Form 13F setting forth each Reportable Security's name, CUSIP number, the number of shares held, and the market value of the position. Form 13F must be filed within 45 days of the end of the calendar year during which the \$100 million threshold was satisfied and within 45 days of the end of the first three calendar quarters that follow.

Congress enacted section 13(f) in order to both make publicly available information about Institutional Managers' holdings of Reportable Securities, and to create with the Commission a central depository of historical and current data about these holdings.⁷ The legislative history of section 13(f) suggests that the provision was designed to further regulatory and policymaking uses of the information, as well as to contribute to the transparency and integrity of, and investor confidence in, the U.S. equity markets.⁸

Under section 13(f)(4) of the Exchange Act, information filed on Form 13F must be made publicly available, "except that the Commission, as it determines to be necessary

⁴ *In the Matter of Full Value Advisors, LLC*, Exchange Act Release No. 61327 (Jan. 11, 2010).

⁵ *In the Matter of Full Value Advisors, LLC*, Exchange Act Release No. 61328 (Jan. 11, 2010).

⁶ The Full Value CT Requests were submitted by letters dated February 7, 2007 and May 8, 2007 pursuant to section 13(f)(4) of the Exchange Act and rule 24b-2 under the Exchange Act and sought confidential treatment of information that Full Value otherwise was required to disclose on Forms 13F for the quarters ended December 31, 2006 and March 31, 2007, respectively.

⁷ See Report of Senate Comm. On Banking, Housing and Urban Affairs, S.Rep.No. 75, 94th Cong., 1st Sess. 83 (1975) ("Senate Report") at 79-82, 85-87.

⁸ See Senate Report at 80-84.

or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with [the Freedom of Information Act]." An Institutional Manager seeking to delay or prevent public disclosure of information provided on Form 13F must submit a written confidential treatment request ("CT Request") following the procedures set forth in rule 24b-2 under the Exchange Act and the Commission's Instructions to Form 13F ("Instructions"). A CT Request must contain, among other things, an analysis of the asserted FOIA exemption from public disclosure.⁹

Under section 13(f)(3) of the Exchange Act, in relevant part, the Commission may by order exempt an Institutional Manager from section 13(f) of the Exchange Act or the rules thereunder. Pursuant to section 13(f)(5) of the Exchange Act, the Commission must determine that any such exemption is consistent with the protection of investors and the purposes of section 13(f). Under section 36 of the Exchange Act, in relevant part, the Commission may by order exempt any person from any provision of the Exchange Act or any rule or regulation thereunder. Rule 0-12 under the Exchange Act sets forth Commission procedures for applications for orders under section 36 of the Exchange Act. The Commission has not established separate procedures for applications under section 13(f)(3), and therefore follows the procedures set forth in rule 0-12 for issuing this order.

Prior Commission Order

The Original Exemptive Application stated that Full Value was an activist investor that "seek[s] to acquire meaningful stakes in publicly-traded companies whose stocks [it has] concluded, after extensive research, are undervalued and to influence management to take action to increase the stock prices." The Original Exemptive Application further stated that "[t]he Applicants generally do not publicly disclose their investments" and "[t]he Applicants' equity holdings are trade secrets that are protected by the Takings Clause of the Fifth Amendment [to the Constitution]" ("Fifth Amendment argument"). The Original Exemptive Application argued that "the investors in an entity advised by the Applicants may be harmed if the Applicants' trade secrets are accessed by other investors with whom it competes." The Original Exemptive Application also argued that "unless an exemption from rule 13f-1 is granted, the Applicants' trade secrets will be taken for public use without compensation in violation of the Fifth Amendment." Finally, the Original Exemptive Application alleged that "[i]nvoluntary compliance with the filing requirement of rule 13f-1 constitutes 'compelled speech'" in violation of the First Amendment to the Constitution.

The Prior Commission Order stated that "[a]bsent extraordinary circumstances, an Institutional Manager seeking protection on grounds provided for under section [13(f)(4)]

⁹ See *Requests for Confidential Treatment of Information Filed by Institutional Investment Managers*, Exchange Act Release 15979 (Jun. 28, 1979) ("Since the purpose of Section 13(f) is to require extensive disclosure of the investment activities of institutions, confidential treatment can be granted only to managers who can make an affirmative showing that they satisfy the standards of [current] Section 13(f)(4))."

must make a good faith effort to obtain that protection through the CT Request process. Because the Fifth Amendment Argument in the [Original] Exemptive Application seeks to protect from public disclosure information that is trade secrets, such protection is more properly addressed pursuant to the CT Request process." In the CT Denial Order, in turn, the Commission stated as follows:

Full Value has not identified the Reportable Securities for which it seeks confidential treatment and otherwise failed to provide the factual and analytical support necessary for the Commission to make an informed judgment as to the merits of the Full Value CT Requests. Full Value has failed to address both the status and the expected duration of its purported acquisition program in the Reportable Securities as required by rule 24b-2 and the Instructions. Full Value has not provided sufficient facts or analysis about its Reportable Securities to demonstrate that disclosure of its position in any Reportable Security would likely cause substantial harm to Full Value's competitive position. Full Value also has failed to justify any period of confidential treatment, as required by the Instructions.

With respect to Full Value's First Amendment argument, the Prior Commission Order stated that this "is a type of facial challenge to the constitutionality of a law administered by the Commission upon which the Commission generally declines to pass. Therefore, the Commission proceeds on the presumption that section 13(f) is constitutional."

The Court Decision

Full Value petitioned for review of the Prior Commission Order and the CT Denial Order in the D.C. Circuit, raising both the First and Fifth Amendment arguments. The Court Decision stated that disclosure of Full Value's Reportable Securities holdings to the Commission does not raise First or Fifth Amendment concerns. The Court Decision also stated that "[t]o the extent Full Value's claims rest on potential public disclosures of its investment positions, they are not ripe. Full Value will not have to disclose its positions to the public if the Commission grants an exemption or provides confidential treatment. Of course, for the Commission to properly consider Full Value's confidential treatment and exemption requests, Full Value must provide the Commission with sufficient information to make an informed judgment."

The Amended Exemptive Application

The Amended Exemptive Application stated that "our arguments for exemptive relief are essentially the same as those included in [the Original Exemptive Application and the Full Value CT Requests]." The Amended Exemptive Application also repeated the allegation in the Original Exemptive Application that public disclosure under section 13(f) violates the First Amendment. Finally, although the Amended Exemptive Application identified the Reportable Securities held by Full Value as of December 31, 2006, it provided no other facts or other information supplementing the Original Exemptive Application to enable the Commission to make an informed judgment.

The Amended Exemptive Application stated that Full Value does not believe that the disclosure scheme of section 13(f) of the Exchange Act enhances investor protection and that granting Full Value's requested exemption therefore "will have no adverse effect on investor protection." The Amended Exemptive Application further stated that the requested exemption was "consistent with the purposes underlying section [13(f)(4)] which expressly authorizes the Commission to 'prevent public disclosure . . . in accordance with [the Freedom of Information Act]'," and that "[the Freedom of Information Act] provides for confidentiality for 'trade secrets and commercial or financial information obtained from a person and privileged or confidential'."

The Commission's Findings

The Commission has considered the Amended Exemptive Application, which makes no new arguments for exemptive relief and repeats earlier allegations. The Commission finds that Brooklyn Capital/Full Value has failed to demonstrate that exempting it from rule 13f-1 under the Exchange Act would be consistent with the protection of investors and the purposes of section 13(f), as required by section 13(f)(5).

In enacting the disclosure requirement in the statute, Congress determined that public disclosure under section 13(f) would contribute to the transparency and integrity of the U.S. equity markets and thus to investor protection. In arguing to the contrary, Brooklyn Capital/Full Value fails to take this into account and provides no basis for the Commission to question Congress's determination. As the Commission explained in the Prior Commission Order, the "information collected on Forms 13F has been and continues to be used by U.S. regulators, academics, the media and financial information distributors, and investors and other U.S. equity markets participants, as intended by Congress."¹⁰

Brooklyn Capital/Full Value conclusorily asserts that "we will be harmed if [our equity holdings] are disclosed because others can reverse engineer our proprietary activist strategies which makes them less valuable to our investors and to us" and that "premature disclosure of an investment manager's investments may harm the manager's clients and that harm outweighs the benefits of such disclosure to non-clients." Brooklyn Capital/Full Value also asserts that Form 13F disclosure "may be harmful to investors that track the investments of money managers via Forms 13F and seek to invest based on such information." The legislative history of section 13(f), however, indicates that Congress was aware of this possibility when enacting the disclosure requirement and nonetheless determined that disclosure would be beneficial.¹¹ The Commission therefore

¹⁰ *In the Matter of Full Value Advisors, LLC*, Exchange Act Release No. 61327 (Jan. 11, 2010), at 4.

¹¹ See Senate Report at 82 ("That different investors may draw different conclusions from the data is not important; rather, what is important is that information about the securities holdings and certain transactions of institutional investment managers be available to all investors – both institutional and individual – so that they can all have it, whatever its relative usefulness in making their independent judgments.").

finds that the Amended Exemptive Application does not demonstrate that exempting Brooklyn Capital/Full Value from section 13(f) reporting is consistent with investor protection.

The Commission also finds that the Amended Exemptive Application failed to demonstrate that exempting Brooklyn Capital/Full Value from rule 13f-1 under the Exchange Act would be consistent with the purposes of section 13(f). Brooklyn Capital/Full Value asserted that its requested exemption is consistent with the purposes of section 13(f) because Brooklyn Capital/Full Value's equity holdings fit the category of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Congress specifically provided the more limited remedy of confidential treatment protection for such information as set forth in section 13(f)(4) of the Exchange Act and implemented by the Commission under rule 24b-2 under the Exchange Act and the Form 13F Instructions and therefore the broad remedy of an exemption is not ordinarily appropriate for such information.

Brooklyn Capital/Full Value's submissions are not sufficient to justify confidential treatment and satisfy the Court Decision. The Court Decision held that confidential disclosure of Form 13F holdings to the Commission does not raise compelled speech concerns under the First Amendment or takings concerns under the Fifth Amendment. In addition, the Court Decision held that Brooklyn Capital/Full Value must provide the Commission with sufficient information to make an informed decision about whether confidential treatment is merited under section 13(f) for Brooklyn Capital/Full Value. The Amended Exemptive Application does not do so. The Amended Exemptive Application submits a list of U.S. equity positions that Full Value held as of December 31, 2006, and incorporates the same Full Value confidential treatment requests for the quarters ended December 31, 2006 and March 31, 2007 that the Prior Commission Order held to be not sufficient.¹² A list of securities without the substantiation required by section 13(f)(4), the Instructions, and rule 24b-2 under the Exchange Act is not sufficient to support a grant of confidential treatment.¹³ The Amended Exemptive Application, therefore, does not satisfy the Court's holding.

The Prior Commission Order stated that Full Value's First Amendment argument was a "facial challenge to the constitutionality of a law administered by the Commission upon which the Commission generally declines to pass," and the Commission therefore proceeded "on the presumption that section 13(f) is constitutional." In reviewing the

¹² The reasons why the prior requests do not meet section 13(f)'s requirements for confidential treatment are set forth in the Prior Commission Order."

¹³ As noted above, *see supra* note 2, the Commission separately is issuing an order denying the December 2012 CT Request for also failing to provide the factual support necessary for the Commission to make an informed judgment as to the merits of the December 2012 CT Request. Such separate order also denies confidential treatment for Brooklyn Capital's CT Request, dated May 15, 2013, for the quarter ended March 31, 2013. The March 2013 CT Request is materially the same, in substance, as the December 2012 CT Request.

Prior Commission Order, the Court Decision stated that disclosure of Full Value's Reportable Securities holdings to the Commission does not raise First Amendment concerns. The Court Decision also stated that to "the extent Full Value's claims rest on potential public disclosures of its investment positions, they are not ripe," and because Full Value still has not submitted a confidential treatment request with sufficient information to enable the Commission to make an informed judgment, they remain unripe.

Accordingly, IT IS ORDERED, pursuant to sections 13(f)(3), 13(f)(5) and 36 of the Exchange Act, that the Amended Exemptive Application is denied.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION

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DANIEL M. GALLAGHER, COMMISSIONER

KARA M. STEIN, COMMISSIONER

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(164 Documents)

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MICHAEL S. PIWOWAR, COMMISSIONER

(164 Documents)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

December 13, 2013

In The Matter Of

Makism3D Corp.

File No. 500-1

**ORDER OF SUSPENSION
OF TRADING**

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Makism3D Corp. ("Makism3D") because of concerns regarding the accuracy and adequacy of information in the marketplace and potentially manipulative transactions in Makism3D's common stock. Makism3D is a Nevada corporation based in Cambridge, United Kingdom. It is quoted on OTCBB and OTC Link under the symbol MDDD.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on December 13, 2013 through 11:59 p.m. EST on December 27, 2013.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

May 23, 2014

In the Matter of

Fortitude Group, Inc.

File No. 500-1

**ORDER OF SUSPENSION OF
TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fortitude Group, Inc. because of questions regarding the accuracy of publicly available information about the company's operations.

Fortitude Group, Inc. is a Florida corporation with its principal place of business located in Erie, Pennsylvania. Its stock is quoted on OTC Link, operated by OTC Markets Group Inc., under the ticker: FRTD.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on May 23, 2014, through 11:59 p.m. EDT on June 6, 2014.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

June 25, 2014

In the Matter of

Medient Studios, Inc., TISO

File No. 500-1

**ORDER OF SUSPENSION OF
TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Medient Studios, Inc. ("Medient"), because of questions regarding the accuracy and adequacy of publicly available information about the company, including, among other things, its total shares outstanding and its operations. Medient's stock is quoted on OTC Link, operated by OTC Markets Group, Inc., under the ticker: MDNT.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on June 25, 2014, through 11:59 p.m. EDT on July 9, 2014.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

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Commissioner Gallagher
Commissioner Stead
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72952 / September 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16049

In the Matter of

CHRISTINA M. KITTERMAN,

Respondent.

ORDER OF FORTHWITH SUSPENSION
PURSUANT TO RULE 102(e)(2) OF THE
COMMISSION'S RULES OF PRACTICE

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Christina M. Kitterman ("Kitterman") pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(2)].¹

II.

The Commission finds that:

1. Kitterman was an attorney admitted to practice law in Florida in 2002.
2. On May 21, 2014, a judgment of conviction was entered against Kitterman in United States v. Kitterman, Case No. 13-60220-CR-HURLEY (S.D. Fla. 2014). As a result of this conviction, Kitterman was sentenced to five years imprisonment, followed by three years of supervised release. On February 13, 2014, a jury in the U.S. District Court for the Southern District of Florida found Kitterman guilty of three counts of wire fraud in violation of 18 U.S.C. § 1343 based on her conduct described herein.
3. As a result of this conviction, on May 29, 2014, Kitterman was disbarred from practicing law in the State of Florida by the Florida Supreme Court. The Florida Bar v. Kitterman, Case No. SC14-660 (Fla. 2014).

¹ Rule 102(e)(2) provides in pertinent part: "Any attorney who has been suspended or disbarred by a court of the United States or of any State; or ... person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

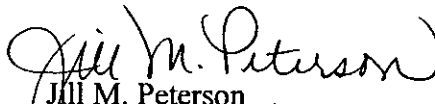
4. These proceedings arise out of Kitterman's criminal conviction for her involvement in a Ponzi scheme orchestrated by former Florida attorney Scott Rothstein ("Rothstein"). On April 22, 2009, Kitterman fraudulently posed as the head of the Fort Lauderdale office of the Florida Bar Association in a telephone conference to take place that day with certain hedge funds who had invested in Rothstein's settlements. During the conference call with the hedge funds, Kitterman falsely claimed that: (1) Rothstein was facing disciplinary action by the Florida Bar due to his failure to provide certain payments to his clients; (2) Rothstein's trust accounts had been frozen in connection with the investigation; and (3) the disciplinary action against Rothstein could be resolved if his clients were paid the money they were owed.

III.

In view of the foregoing, the Commission finds that Kitterman has been convicted of a felony and has been disbarred within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Kitterman is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Commissioner Stern
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72950 / September 2, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3907 / September 2, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31237 / September 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16047

In the Matter of

THE ROBARE GROUP,
LTD., MARK L. ROBARE,
AND JACK L. JONES JR.,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 15(b)(6) OF THE SECURITIES
EXCHANGE ACT OF 1934, SECTIONS
203(e), 203(f) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against The Robare Group, Ltd. ("Robare Group"), Mark L. Robare ("Robare") and Jack L. Jones Jr. ("Jones"), (collectively "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

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A. SUMMARY

1. This matter involves an investment adviser's failure to disclose compensation it received through agreements with a registered broker-dealer ("Broker") and conflicts arising from that compensation. In 2004, the Broker agreed to pay adviser Robare Group, of Houston, Texas, a specified amount for all client assets that Robare Group invested in certain mutual funds. The agreement created incentives for Robare Group to favor particular mutual funds over other mutual funds or other investments and to favor the Broker's platform when giving investment advice to its clients. Robare Group failed to disclose this agreement and the resulting conflicts of interest to its clients for years, and then only provided inadequate disclosure about it and a subsequent agreement with the Broker. By doing so, Robare Group and its principal Mark L. Robare willfully violated Sections 206(1), 206(2) and 207 of the Advisers Act. In addition, Jack L. Jones, Jr., also a principal of Robare Group, aided and abetted and caused Robare Group's and Robare's violations of Sections 206(1) and 206(2) of the Advisers Act and willfully violated Section 207 of the Advisers Act.

B. RESPONDENTS

2. **The Robare Group, Ltd.** is a registered investment adviser located in Houston, Texas. As of August 26, 2013, Robare Group served as investment adviser to approximately 350 separately managed discretionary accounts and had assets under management of approximately \$150 million.

3. **Mark L. Robare** founded and is a limited partner of Robare Group, and he is the president of Robare Asset Management, Inc., the managing general partner of the adviser. Robare owns approximately 83% of Robare Group, either directly or through his ownership in Robare Asset Management, Inc. Robare is also a person associated with Robare Group and is registered with the State of Texas as an investment adviser representative for Robare Group. Since 1985, Robare has been a registered representative associated with broker-dealers registered with the Commission. Robare, 62, is a resident of Cypress, Texas.

4. **Jack L. Jones, Jr.** is a limited partner of Robare Group. Jones owns approximately 17% of Robare Group, either directly or through his ownership in Robare Asset Management, Inc.. Jones is also a person associated with Robare Group and is registered with the State of Texas as an investment adviser representative for Robare Group. Since 1994, Jones has been a registered representative associated with broker-dealers registered with the Commission. Jones, 43, is a resident of Spring, Texas, and is Robare's son-in-law.

C. FACTS

5. Robare Group offers portfolio management services, primarily to retail and other high net worth individuals. From its inception, Robare Group has used the Broker for execution, custody and clearing services for its advisory clients. It also recommended that its clients invest in many mutual funds offered on the Broker's platform. Robare Group offers approximately seven different model portfolios, largely comprised of mutual fund investments

available through the Broker's platform. Robare Group invests a significant portion of its client assets in No Transaction Fee ("NTF") mutual funds that are offered on the Broker's platform.

6. In 2004, Robare Group and the Broker entered into a Commission Schedule and Servicing Fee Agreement ("Servicing Fee Agreement"). According to the Servicing Fee Agreement, Robare Group "will in those situations where it deems it appropriate and in the best interests of its clients, refer clients to [Broker]." The parties anticipated that portfolios Robare Group referred to the Broker would in the aggregate hold, among other things, approximately 77% NTF funds unaffiliated with the Broker.¹ In a section titled "Servicing Fee Revenue," the agreement contained a schedule "detail[ing] the fee payments between [Robare Group] and [the Broker]" with respect to "such asset management fee based accounts." The agreement referred to the arrangement as a "servicing fee revenue program" and stated that the Broker would pay from 2 to 12 basis points² as "eligible shareholder servicing fees on eligible NTF mutual funds" based on varying levels of NTF assets. Thus, under the Servicing Fee Agreement, the Broker paid Robare Group a percentage of every dollar that Robare Group's clients invested in NTF mutual funds unaffiliated with Broker. The percentage amount the Broker paid pursuant to the Servicing Fee Agreement increased when the amount of client assets Robare Group placed into eligible NTFs reached specified levels.³

7. The Servicing Fee Agreement remained in effect until late 2012, when Robare Group and the Broker entered into a new agreement, titled "Investment Advisor Custodial Support Services Agreement" ("Custodial Support Services Agreement"), that similarly provided for servicing fee payments by the Broker to Robare Group. The Broker currently pays 10 basis points annually on Robare Group's client assets in NTF funds unaffiliated with Broker.

8. According to the Servicing Fee Agreement, Robare Group was "responsible for reviewing and determining whether additional disclosure is necessary in the Form ADV . . . with respect to the terms and conditions of this Agreement" Similarly, in the Custodial Support Services Agreement, Robare Group represented that "it has, prior to entering into this Agreement, made and will continue to make all appropriate disclosures to Clients . . . with regard to any conflicts of interest that may arise" from the agreement, "including . . . any incentive arising in connection with [Robare Group's] receipt (or prospective receipt) of fees on Non-[Broker] no-transaction-fee ("NTF") mutual funds to favor those types of investments over others"

9. From 2005 until Robare Group filed its December 2011 Form ADV, Robare Group failed to disclose in its Forms ADV filed with the Commission, the existence of the

¹ The Servicing Fee Agreement did not cover any proprietary funds advised by affiliated persons of the Broker, even though the Broker also offered some of these funds as NTFs.

² A basis point is 1/100th of 1% or 0.0001. Correspondingly, 12 basis points means 0.12%, or 0.0012.

³ Under the Servicing Fee Agreement, the Broker paid servicing fees to Robare Group through a registered broker-dealer with which Robare and Jones were associated persons.

Servicing Fee Agreement. During this period, Robare Group also failed to disclose to its clients through means other than Form ADV the existence of the Servicing Fee Agreement. In addition, Robare Group failed to disclose that it had an incentive to prefer certain NTF funds as a result of the arrangement. Robare Group also failed to disclose an incentive to favor the Broker's platform when giving investment advice. Clients were thus unaware that Robare Group might have a bias in favor of the NTF mutual funds on the Broker's platform over other investments that would not generate revenue for Robare Group under the servicing fee deal with the Broker, leading to potentially conflicted investment advice. Item 13.A. of former Form ADV Part II specifically requires investment advisers to disclose any arrangement where they receive direct or indirect compensation in connection with giving advice to clients. Robare Group's Item 13.A. disclosures do not disclose the Servicing Fee Agreement or the servicing fee arrangement with the Broker.

10. Item 14.A of Form ADV Part 2A, in effect for Robare Group as of March 2011, requires advisers to disclose compensation from non-clients received for providing investment advisory services to clients, as well as the resulting conflicts and how the adviser addresses them.⁴ Robare Group's Item 14.A. disclosures on its Form ADV filed in March 2011 do not disclose the Servicing Fee Agreement or the compensation it received under the servicing fee arrangement with the Broker. Consequently, the disclosure failed to identify Robare Group's incentive to recommend clients to invest in non-broker NTF funds because of the fees Robare Group received from the broker.

11. Beginning in December 2011, Robare Group inadequately disclosed, in its Forms ADV filed with the Commission or otherwise, the Servicing Fee Agreement and later the Custodial Support Services Agreement and still failed to disclose that it had an incentive to prefer certain NTF funds as a result of the arrangement. In December 2011, Robare Group revised its Form ADV Part 2A to disclose the Servicing Fee Agreement. Robare Group's revised disclosure, however, continued to fail to identify that the arrangement created potential conflicts of interest for Robare Group. In addition, the revised disclosure is inadequate because it states that Robare Group may receive compensation from Broker when it was, in fact, receiving payments from Broker. Furthermore, beginning in December 2011, Robare Group falsely represented in its Form ADV that the firm does not receive any economic benefit from a non-client for providing investment advice. In addition, from December 2011 until it entered into the Custodial Support Services Agreement, Robare Group incorrectly referred to the arrangement as relating to custodial support services. It was not until the Form ADV Part 2A was filed in June 2013 that Robare Group disclosed the Custodial Support Services Agreement in Item 14A and the conflict of interest associated with the firm's arrangement with the Broker and even then, it disclosed only the incentive to use the Broker as a custodian, and made no mention of the incentive to recommend purchasing and holding unaffiliated NTF funds through the Broker platform or the magnitude of the conflict.

12. From 2005 through May 2013, Robare and Jones knew about the Servicing Fee Agreement and Custodial Support Services Agreement and the payments they generated for Robare Group on NTF funds unaffiliated with Broker. Throughout this period, Robare reviewed

⁴ Part 2 of Form ADV was amended in 2010. See IA-3060 (July 28, 2010), <http://www.sec.gov/rules/final/2010/ia-3060.pdf>.

and authorized Robare Group's Form ADV filings with the Commission with knowledge of their contents. Throughout this period, except for the Form ADV filed by Robare Group in March 2005, Jones signed the Form ADV filings with knowledge of their contents. Robare and Jones each knew the Form ADV filings failed to disclose or failed to adequately disclose the Servicing Fee Agreement and Custodial Support Services Agreement and the conflicts of interest they presented.

13. From September 2005 through September 30, 2013, Robare Group received approximately \$441,000 from the Broker pursuant to the Servicing Fee Agreement and Custodial Support Services Agreement.

D. VIOLATIONS

14. As a result of the conduct described above, Robare Group and Robare willfully violated Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for any investment adviser, by use of the mails or instrumentalities of interstate commerce, directly or indirectly, to employ any device, scheme or artifice to defraud any client or prospective client, or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

15. As a result of the conduct described above, Jones willfully aided and abetted and caused Robare Group's and Robare's violations of Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for any investment adviser, by use of the mails or instrumentalities of interstate commerce, directly or indirectly, to employ any device, scheme or artifice to defraud any client or prospective client, or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

16. As a result of the conduct described above, Robare Group, Robare, and Jones willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents Robare and Jones pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent Robare Group pursuant to Section 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents Robare and Jones pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

E. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

F. Whether, pursuant to Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(1), 206(2), and 207 of the Advisers Act, whether Respondents should be ordered to pay a civil penalty pursuant to Section 203(i) of the Advisers Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 203 of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness

or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Commissioner Stern
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72951 / September 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16048

In the Matter of

DOUGLAS L. BATES,

Respondent.

ORDER OF FORTHWITH SUSPENSION
PURSUANT TO RULE 102(e)(2) OF THE
COMMISSION'S RULES OF PRACTICE

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Douglas L. Bates ("Bates") pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(2)].¹

II.

The Commission finds that:

1. Bates was an attorney admitted to practice law in Florida in 1987.
2. On May 1, 2014, a judgment of conviction was entered against Bates in United States v. Bates, Case No. 13-60219-CR-MIDDLEBROOKS (S.D. Fla. 2014). As a result of this conviction, Bates was sentenced to five years imprisonment, followed by two years of supervised release, and ordered to pay a \$20,000 fine. On February 20, 2014, Bates entered into a plea agreement in U.S. District Court for the Southern District of Florida to one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 371 based on his conduct described herein.

¹ Rule 102(e)(2) provides in pertinent part: "Any attorney who has been suspended or disbarred by a court of the United States or of any State; or ... person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

3. As a result of this conviction, on May 29, 2014, Bates was disbarred from practicing law in the State of Florida by the Florida Supreme Court. The Florida Bar v. Bates, Case No. SC14-659 (Fla. 2014).

4. These proceedings arise out of Bates's criminal plea for his involvement in a Ponzi scheme orchestrated by former Florida attorney Scott Rothstein ("Rothstein"). Bates represented to investors that his firm had referred clients to Rothstein and by providing opinion letters asserting the legitimacy of Rothstein's settlement agreements. On December 29, 2008, Bates arranged for an attorney at his firm to meet with a representative of an investment group and falsely inform the representative that their firm then known as the Law Offices of Koppel and Bates had referred numerous cases to Rothstein's firm over an extended period of time. Moreover, in March and August 2009, Bates provided opinion letters to Rothstein falsely asserting that he had reviewed certain documentation and materials when he had not done so and vouched for the legality and propriety of the investments being offered by Rothstein.

III.

In view of the foregoing, the Commission finds that Bates has been convicted of a felony and has been disbarred within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Bates is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.


Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Commissioner Steir
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72952 / September 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16049

In the Matter of

CHRISTINA M. KITTERMAN,

Respondent.

ORDER OF FORTHWITH SUSPENSION
PURSUANT TO RULE 102(e)(2) OF THE
COMMISSION'S RULES OF PRACTICE

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Christina M. Kitterman ("Kitterman") pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(2)].¹

II.

The Commission finds that:

1. Kitterman was an attorney admitted to practice law in Florida in 2002.
2. On May 21, 2014, a judgment of conviction was entered against Kitterman in United States v. Kitterman, Case No. 13-60220-CR-HURLEY (S.D. Fla. 2014). As a result of this conviction, Kitterman was sentenced to five years imprisonment, followed by three years of supervised release. On February 13, 2014, a jury in the U.S. District Court for the Southern District of Florida found Kitterman guilty of three counts of wire fraud in violation of 18 U.S.C. § 1343 based on her conduct described herein.
3. As a result of this conviction, on May 29, 2014, Kitterman was disbarred from practicing law in the State of Florida by the Florida Supreme Court. The Florida Bar v. Kitterman, Case No. SC14-660 (Fla. 2014).

¹ Rule 102(e)(2) provides in pertinent part: "Any attorney who has been suspended or disbarred by a court of the United States or of any State; or ... person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

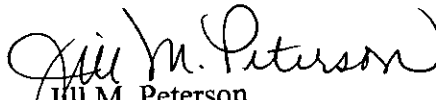
4. These proceedings arise out of Kitterman's criminal conviction for her involvement in a Ponzi scheme orchestrated by former Florida attorney Scott Rothstein ("Rothstein"). On April 22, 2009, Kitterman fraudulently posed as the head of the Fort Lauderdale office of the Florida Bar Association in a telephone conference to take place that day with certain hedge funds who had invested in Rothstein's settlements. During the conference call with the hedge funds, Kitterman falsely claimed that: (1) Rothstein was facing disciplinary action by the Florida Bar due to his failure to provide certain payments to his clients; (2) Rothstein's trust accounts had been frozen in connection with the investigation; and (3) the disciplinary action against Rothstein could be resolved if his clients were paid the money they were owed.

III.

In view of the foregoing, the Commission finds that Kitterman has been convicted of a felony and has been disbarred within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Kitterman is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3909 / September 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16051

In the Matter of

BRIAN K. VELTEN,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Brian K. Velten ("Velten" or "Respondent").

II.

In anticipation of the institution of these proceedings, Velten has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Velten consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below:

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III.

On the basis of this Order and Velten's Offer, the Commission finds that:

1. From 2009 through 2012, Velten was an unregistered investment adviser. Velten would receive money from clients, open accounts in their names at Fidelity Brokerage Services, LLC ("Fidelity"), trade securities on their behalf, and retain a portion of the funds for himself. With respect to some clients, the amount Velten retained was an agreed upon fee. With respect to other clients, Velten converted the funds for his own use. Velten, 45, resided in the Tampa and Miami, Florida areas during this time.

2. On June 9, 2014, a final judgment was entered by consent against Velten in the civil action entitled Securities and Exchange Commission v. Brian K. Velten, Case No. 13-23477-CIV, pending in the United States District Court for the Southern District of Florida. Among other things, the final judgment permanently enjoined Velten from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 10b-5, and sections 206(1) and 206(2) of the Advisers Act.

3. The Commission's complaint alleged that beginning in about 2009, Velten promised his clients—who he knew because they or their relatives had invested in annuities through Velten—large profits if they would invest their annuity funds in the stock market. For those clients who agreed to invest, Velten would open an account at Fidelity, and the clients would transfer funds from their annuities into the account, to which Velten had access through Fidelity's website. Velten then converted to his own use a substantial portion of three of these clients' funds.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Velten's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Velten be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially

waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72962 / September 3, 2014

ADMINISTRATIVE PROCEEDING
File Nos. 3-14191 and 3-14192

In the Matters of

BNY Mellon Securities, LCC

and

Mark Shaw,

Respondents.

ORDER DIRECTING
DISBURSEMENT OF FAIR FUND

On January 31, 2013, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice") in connection with this proceeding pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 CFR § 201.1103.¹ The Notice advised parties that they could obtain a copy of the Proposed Plan of Distribution ("Plan") at www.sec.gov. The Notice also advised that all persons desiring to comment on the Plan could submit their comments, in writing, within 30 days of the date of the Notice. No comments were received in response to the Notice. On February 28, 2014, the Commission issued an Order Approving Modified Plan of Distribution, Appointing Fund Administrator, and Setting Fund Administrator Bond Amount.²

The Plan provides for the distribution of the disgorgement and civil penalties paid by Respondents, plus any accumulated interest earned, less any taxes, fees, or expenses incurred in the

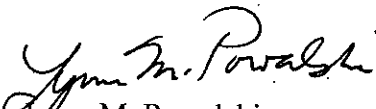
¹ Exchange Act Rel. No. 68796 (Jan. 31, 2013).

² Exchange Act Rel. No. 71638 (Feb. 28, 2014).

administration of the Plan (the "Fair Fund") to investors according to the methodology set forth in the Plan. The Fund Administrator has submitted to Commission staff a validated list of payees and their respective payment amounts. Commission staff has reviewed the validated list and requests that, pursuant to Rule 1101(b)(6) of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 CFR § 201.1101(b)(6), the Commission authorize the transfer of \$18,265,971.49 from the Fair Fund to Deutsche Bank Trust Company Americas for distribution in accordance with the Plan.

Accordingly, it is ORDERED that the Commission shall transfer \$18,265,971.49 from the Fair Fund to Deutsche Bank Trust Company Americas, and that the Fund Administrator shall distribute such monies to investors as provided for in the Plan.

By the Commission.


Lynn M. Powalski
Deputy Secretary

Commissioner Gallagher
Commissioner Stein
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 9637 / September 4, 2014

SECURITIES EXCHANGE ACT OF 1934

Release No. 72976 / September 4, 2014

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 3580 / September 4, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-15680

In the Matter of

EUGENE M. EGEBERG III, CPA,

Respondent.

ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
4C AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, AND RULES
102(e)(1)(ii) AND (iii) OF THE
COMMISSION'S RULES OF PRACTICE
AND A CEASE-AND-DESIST ORDER

I.

On January 17, 2014, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings against Eugene M. Egeberg III, CPA ("Egeberg" or "Respondent") pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 4C and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice.

II.

Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without

admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings And Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice and a Cease-and-Desist Order, as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that¹:

A. RESPONDENT

1. Eugene M. Egeberg III, CPA, a resident of Hampstead, Maryland, operates a self-named sole-proprietorship accounting firm in Baltimore, Maryland. Egeberg is a Maryland-licensed CPA and was previously registered with the Public Company Accounting Oversight Board ("PCAOB") before his voluntary request for withdrawal was accepted by the PCAOB in November 2012.

B. RELATED ISSUERS

2. Fox Petroleum, Inc. ("Fox Petroleum") is a Nevada corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Egeberg audited Fox Petroleum's financial statements for its fiscal years ended February 28, 2010, February 28, 2011, and February 28, 2012.

3. RPM Advantage, Inc. ("RPM Advantage") is a Nevada corporation located in Houston, Texas. RPM Advantage's stock was previously registered with the Commission pursuant to Exchange Act Section 12(g). On November 8, 2011, and again on January 30, 2012, RPM Advantage had its securities registration revoked by the Commission pursuant to Exchange Act Section 12(j). Egeberg audited RPM Advantage's financial statements for its fiscal years ended December 31, 2006 through December 31, 2010.

C. FACTS

Failure to Conduct Audits with Due Professional Care and Skepticism, and Failure to Obtain Competent and Sufficient Evidential Matter.

4. AU² § 230.01, *Due Professional Care in the Performance of Work*, requires that an auditor exercise due professional care in the planning and performance of an audit, and in

¹The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

preparation of the audit report. Due professional care requires an auditor to exercise professional skepticism throughout the audit process. AU § 230.07-08. Similarly, AU § 326, *Evidential Matter*, required that the auditor obtain sufficient competent audit evidence to support the opinion expressed in the auditor's report, for fiscal years beginning before December 15, 2010. AU § 315.09, *Communications Between Predecessor and Successor Auditors*, requires a successor auditor to make specific and reasonable inquiries of the predecessor auditor regarding information that might bear on the integrity of management, disagreements with management as to accounting principles or auditing procedures, communications to audit committees regarding fraud or illegal acts by clients, and the predecessor auditor's understanding as to the reasons for the change of auditors.

5. Egeberg violated AU § 230 by conducting the purported Fox Petroleum audits for Fiscal Years 2010 and 2011, without exercising appropriate due professional care or professional skepticism and violated AU § 326 by failing to obtain sufficient competent evidential matter. Egeberg did so by failing to perform any audit tests or procedures to determine the accuracy of Fox Petroleum's financial statements. On a checklist Egeberg completed for Fox Petroleum, he noted, for example, that the company's large accounts payable balance was a troublesome audit area.³ Egeberg, however, performed no tests to determine whether the balance was accurate. Instead, Egeberg simply concluded that management's representations were adequate. *See also* AU § 333.02, *Management Representations*, which states, in part, "...[R]epresentations from management are part of the evidential matter the independent auditor obtains, but they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit."

6. Similarly, Egeberg noted that unrecorded liabilities were a potential fraud risk for Fox Petroleum, but that his concerns were satisfied by the company's "overhauled financials." Egeberg never identified what he was specifically referring to by that, nor did he point to any documentation showing how the supposed overhauls satisfied him. Egeberg's acceptance of these assertions at face value, without further inspection or procedures, constituted a failure to exercise due professional care and skepticism and a failure to obtain sufficient competent evidential matter.

7. Egeberg was also required to inquire with the prior auditor for Fox Petroleum's 2009 financial statements, the period immediately prior to the 2010 financial period. Egeberg never inquired with the previous auditor regarding Fox Petroleum, in violation of AU § 315. Fox Petroleum's 2010 financial statements had already been audited and filed with the Commission in

² References in this order are to the PCAOB standards in effect at the time of the relevant conduct.

³ Egeberg downloaded the checklist from the American Institute of Certified Public Accountants' ("AICPA") website. This checklist came from the AICPA's Peer Review Program Manual. AICPA STANDARDS FOR PERFORMING AND REPORTING ON PEER REVIEWS § 20.400, *et seq.* (Am. Inst. of Certified Pub. Accountants 2009). The checklist was designed as part of the AICPA's Peer Review Programs and was designed for independent reviewers to examine member-auditors' engagements after completion of the engagement to promote accounting and auditing quality. AICPA STANDARDS FOR PERFORMING AND REPORTING ON PEER REVIEWS § 1000.02 (Am. Inst. of Certified Pub. Accountants 2013).

a Form 10-K, but the prior auditor, who was hired to audit just that one period, had his PCAOB registration permanently revoked on October 19, 2010 for non-cooperation with a PCAOB investigation. Egeberg was unaware that his audit of the 2010 financial statements was a re-audit, even though it was public knowledge and the Form 10-K was available on the Commission's website. Egeberg was required to try to inquire with the prior auditor regarding the re-audit of the 2010 financial statements for Fox Petroleum, pursuant to AU § 315.14.

8. Egeberg also violated AU § 230 by conducting the purported RPM Advantage audits without exercising appropriate due professional care or professional skepticism and violated AU § 326 by failing to obtain sufficient competent evidential matter. Much like with Fox Petroleum, Egeberg failed to document any audit procedures he performed for any of RPM Advantage's balances on its financial statements. Auditing Standard No. 3. Moreover, it is questionable that Egeberg actually audited RPM Advantage's financial statements, because they were arithmetically incorrect.

9. Egeberg claimed he inquired about RPM Advantage's predecessor auditor, but he determined that the auditor was "unavailable." RPM Advantage's prior auditor had, on January 7, 2010, just one month prior to Egeberg's engagement, been suspended from appearance or practice before the Commission as an accountant with the right to apply for reinstatement after five years pursuant to Rule of Practice 102(e)(1)(ii) and (iii) for numerous audit deficiencies, including failure to exercise due professional care and failure to maintain adequate audit documentation. The order suspending the prior auditor was publicly available, and a minimal search would have informed Egeberg of the suspension.

10. An example of Egeberg's lack of due care and skepticism on the RPM Advantage audits is the lack of work to obtain audit evidence to analyze the impact of the balances carried over from the 2005 financial statements on the 2006 financial statements and consistency of accounting principles. *See* AU § 315.12. Egeberg noted on his checklist for RPM Advantage, under the section for past adjustments and risk, that the financial statements were materially misstated and that "there was no method to ascertain." Egeberg claimed that the only records the company had were the previous SEC filings, and thus he had no method to ascertain past adjustments. Egeberg failed to point to any actual procedures that he performed. Egeberg had no audit work papers, and had no other evidence to overcome his lack of audit documentation on the subject. Because there were no records for prior periods and because Egeberg did not make inquiries of the prior auditor for RPM Advantage, due professional care and skepticism should have caused him to apply appropriate auditing procedures to account balances at the beginning of fiscal year 2006 and to transactions in prior periods, but he did not. *See* AU § 315.12. *See also* AU § 315.13 ("[t]he successor auditor's review of the predecessor auditor's working papers may affect the nature, timing, and extent of the successor auditor's procedures with respect to the opening balances and consistency of accounting principles.")

Failure to Obtain Engagement Quality Reviews.

11. Auditing Standard No. 7, *Engagement Quality Review*, requires an engagement quality review and concurring approval of issuance of audit report for each audit engagement and for each engagement to review interim financial information for fiscal years beginning after December 15, 2009. The engagement quality reviewer may not be the same person as the engagement partner. A sole practice firm, like Egeberg's, is thus required to engage a qualified individual from outside the firm to serve as the engagement quality reviewer.

12. Egeberg failed to obtain an engagement quality review for the Fox Petroleum audit engagement for its fiscal years ended February 28, 2011 and February 28, 2012, and for the audit of RPM Advantage's financial statements for its fiscal year ended December 31, 2010, in violation of Auditing Standard No. 7.

Deficiencies in the Audits of Fox Petroleum's Subsidiaries.

13. In September 2011, Fox Petroleum purchased two companies, Renfro Energy, LLC ("Renfro") and Cameron Parish Pipelines, LLC ("CPP"). Fox Petroleum engaged Egeberg to conduct audits of Renfro and CPP for each company's fiscal years ended December 31, 2009 and December 31, 2010. On November 1, 2011, at 11:49 p.m., the CEO of Fox Petroleum emailed Egeberg informing him of the purchase of the two companies. The CEO told Egeberg that the two companies' financial statements would need to be audited as part of the purchase agreement, and that the two separate auditors for each company were unable to complete the audits by November 3, less than two days later. The Fox Petroleum CEO asked whether Egeberg would be able to complete the audits for both companies for fiscal years 2009 and 2010 within the less than two-day period, and told Egeberg that a \$5 million credit line was contingent upon the deal closing, and that if the deal closed on time, Egeberg would be able to collect outstanding bills for his audit of Fox Petroleum that he had thus far been unable to collect. Less than forty hours later, Egeberg signed off on the audits of four years' worth of financial statements for Renfro and CPP. Egeberg provided audit reports stating that he conducted the audits in accordance with PCAOB standards. Those audit reports, along with the financial statements for Renfro and CPP, were both included in a Form 8-K that Fox Petroleum publicly filed on November 3, 2011.

14. It is implausible that Egeberg could have conducted proper audits for Renfro and CPP, each with two years of financial statements, in such a short time, regardless of the companies' small sizes. Further, each company had separate auditors who were each unable to complete the audits in this short time, despite having already begun the work. Similarly troubling is that Fox Petroleum's CEO enticed Egeberg to complete the two audits under significant pressure by promising him past-due payment owed for the Fox Petroleum audits, but only if Egeberg could complete the audits in the two-day timeframe. These circumstances suggest that Egeberg rubber-stamped the audit reports to help Fox Petroleum acquire the \$5 million credit line in hopes of payment for his completed audit of Fox Petroleum.

15. Neither Renfro nor CPP were SEC issuers. Notwithstanding, Egeberg included in his audit report for each company the statement that the audits were conducted "in accordance with standards required by the [PCAOB]." The audit reports were subsequently included on Forms 8-K filed by Fox Petroleum with the Commission. The egregiously deficient audits of Renfro and CPP further demonstrate Egeberg's pattern of poor audit work and strengthen the need for the Rule 102(e) suspension.

16. Egeberg violated Auditing Standard No. 3, *Audit Documentation*, for his audits of Renfro and CPP because he had no evidence demonstrating that he performed audit work for Renfro or CPP. Egeberg's failure to maintain documentation places a burden upon the auditor to provide persuasive other evidence that sufficient procedures were performed, sufficient evidence was obtained, and appropriate conclusions were reached with respect to the relevant financial statement assertions, which Egeberg failed to do.

17. Egeberg failed to perform the audits of Renfro and CPP with due professional care and professional skepticism, in violation of AU § 230. Egeberg also failed to collect competent evidential matter for those audits, in violation of AU § 326. Egeberg has provided no documented evidence of procedures performed to ensure that Renfro's and CPP's financial statements were presented fairly and accurately. Similarly, Egeberg could not identify any procedures performed to determine the accuracy of the financial statements.

18. Egeberg violated Auditing Standard No. 7 by failing to obtain an engagement quality review for Renfro's and CPP's fiscal years ended December 31, 2010.

Additional Audit Deficiencies in RPM Advantage and Fox Petroleum Audits.

19. Egeberg lacked the knowledge, proficiency, training, and skill to audit issuers registered with the Commission. AU § 210, *Training and Proficiency of the Independent Auditor*, requires that an audit be performed by "a person or persons having adequate technical training and proficiency as an auditor." AU § 210.01. AU § 230, *Due Professional Care in the Performance of Work*, further requires that auditors engage in audit tasks "commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining," and that "[t]he auditor with final responsibility for the engagement should know, at a minimum, the relevant professional accounting and auditing standards" AU § 230.06.

20. Egeberg has never had any audit training. He has taken only four courses during his professional career relating to audits and audit procedures, with at least two of them being self-directed online courses completed as part of his continuing professional education requirements. The extent of Egeberg's professional practice since college has primarily been preparing tax returns and general ledger bookkeeping for individuals and businesses. Yet he issued audit reports covering financial statements for as many as twenty public companies before withdrawing his PCAOB registration.

21. Because he had no training, Egeberg conducted all of his audits according to a checklist he downloaded from the AICPA's website, as discussed *supra* in footnote 3. This checklist came from the AICPA's Peer Review Program Manual. AICPA STANDARDS FOR PERFORMING AND REPORTING ON PEER REVIEWS § 20,400, *et seq.* (Am. Inst. of Certified Pub. Accountants 2009). The peer review checklist that Egeberg used for his engagements was not designed to substitute for the more rigorous and detail-oriented requirements for audit engagements. Furthermore, AICPA's Peer Review Program is not applicable to Commission issuers. *Id.* §1000.03.

22. By following the Peer Review Program checklist, without any other experience or guidance, Egeberg demonstrated his complete lack of understanding of public company audits. Following these checklists also contributed to Egeberg's performance of grossly deficient audits.

Failure to Design and Plan Audits.

23. AU § 311, *Planning and Supervision*, required that for audits of companies with fiscal years beginning before December 15, 2010,

the auditor should consider the nature, extent, and timing of work to be performed and should prepare a written audit program (or set of written audit programs) for every audit. The audit program should set forth in reasonable detail the audit procedures that the auditor believes are necessary to accomplish the objectives of the audit. The form of the audit program and the extent of its detail will vary with the circumstances. In developing the program, the auditor should be guided by the results of the planning considerations and procedures. As the audit progresses, changed conditions may make it necessary to modify planned audit procedures.

AU §311.05.

24. Egeberg was required to design and plan audit procedures and programs for each audit engagement. The audit programs should have taken into consideration, among other things, the companies' industries, the companies' business practices, and judgments of potential materiality and risk. AU § 311. Egeberg failed to perform any of these planning activities. Instead, he simply followed the Peer Review Program checklist for each of his clients, which simply asks whether the auditor properly designed an audit for the client, and for each of Egeberg's clients, he checked "yes." There was no planning by Egeberg for any of the audits for 2006 to 2011, in violation of AU § 311.

Egeberg's Complete Lack of Audit Work Papers.

25. Egeberg's audits completely lacked audit work papers. Thus, Egeberg repeatedly violated Auditing Standard No. 3, ¶ 6, *Audit Documentation*, which requires that audit

documentation "contain sufficient information to enable an experienced auditor, having no previous connection with the engagement (a) to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached, and (b) to determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of such review." An auditor that has not adequately documented that he performed a procedure, obtained evidence, or reached an appropriate conclusion must demonstrate with persuasive other evidence that it did so, and oral assertions and explanations alone do not constitute persuasive other evidence. *See Auditing Standard No. 3, ¶ 9.*

Egeberg's Failure to Issue Accurate Audit Reports.

26. PCAOB standards require that the auditor's report contain an opinion on the financial statements taken as a whole and contain a clear indication of the character of the auditor's work. The auditor can determine that he is able to issue an audit report containing an unqualified opinion only if he has conducted the audit in accordance with standards set forth by the PCAOB. (AU § 508.07, *Reports on Audited Financial Statements.*)

27. Additionally, Regulation S-X, 17 CFR § 210 *et seq.*, prescribes the qualifications of accountants and the contents of the accountants' reports that must be submitted with corporate financial statements. In particular, it requires that the financial statements of a public corporation must be audited by an accountant in accordance with Generally Accepted Auditing Standards ("GAAS"). 17 CFR § 210.1-02(d). "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission." (See SEC Release No. 34-49708 (May 14, 2004)). Thus, an auditor violates Regulation S-X Rule 2-02(b)(1) if it issues a report stating that it had conducted its audit in accordance with PCAOB standards when it had not. *See Andrew Sims, CPA*, Rel. No. 34-59584, AAER No. 2950 (Mar. 17, 2009) (settled action).

28. The culmination of Egeberg's numerous audit deficiencies made any representation by Egeberg in his audit reports that his audits complied with PCAOB standards inaccurate. Egeberg falsely made these representations in his audit reports for RPM Advantage and Fox Petroleum, and Fox Petroleum's subsidiaries, Renfro and CPP.

D. VIOLATIONS

29. Section 102(e)(1) of the Commission's Rules of Practice provides that: "The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter: . . . (ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or (iii) to have willfully violated, . . . any provision of the Federal securities laws or the rules and regulations thereunder." Section 4C of the Exchange Act provides, in relevant part, that: "The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the

Commission in any way, if that person is found . . . (2) to . . . have engaged in . . . improper professional conduct; or (3) to have willfully violated, . . . any provision of the securities laws or the rules and regulations thereunder.”

30. Section 4C of the Exchange Act and Rule 102(e)(1)(iv) of the Commission’s Rules of Practice define improper professional conduct with respect to persons licensed to practice as accountants. Section 4C of the Exchange Act and Rule 102(e)(1)(iv) of the Commission’s Rules of Practice provide that improper professional conduct means “intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards,” Section 4C(b)(1) of the Exchange Act and Rule 102(e)(1)(iv)(A), and the following two types of negligent conduct:

- (1) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted.
- (2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission. Rule 102(e)(1)(iv)(B).

As noted previously, “unreasonable conduct” as used in this provision means ordinary negligence. See *In re Dohan & Co. CPA, et al.*, Initial Decision Release No. 420, at p. 16, 2011 SEC LEXIS 2205, at *39 (June 27, 2011). The initial decision became the final decision of the Commission. *In re Dohan & Co. CPA, et al.*, Securities Exchange Act Rel. No. 64970, 2011 SEC LEXIS 2548 (July 26, 2011). The Commission defines recklessness under Rule 102(e) to be the same as recklessness under the antifraud provisions. Thus, recklessness is “an extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.” Amendment to Rule 102(e) of the Commission’s Rules of Practice, 63 Fed. Reg. 57164, 57167 (Oct. 26, 1998). It is “a lesser form of intent,” “not merely a heightened form of ordinary negligence.” *Id.* (internal citations and quotations omitted). Egeberg’s conduct of falsely representing that his audit reports were conducted in accordance with PCAOB standards was reckless and intentional under Rule 102(e) and Section 4C of the Exchange Act.

31. As a result of the conduct described above, Egeberg engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(iv)(B)(2) of the Commission’s Rules of Practice. Egeberg’s unreasonable conduct included his failures with respect to his audits of Fox Petroleum for its fiscal years ended February 28, 2010, 2011, and 2012, and his audits of Fox Petroleum subsidiaries Renfro and CPP for their fiscal years ended December 31, 2009 and 2010. These repeated instances of unreasonable conduct resulted in violations of PCAOB Standards AU Section 210, AU Section 230, AU Section 311, AU Section 315, AU Section 326, AU Section 508, Auditing Standard No. 3, and Auditing Standard No. 7.

32. Egeberg engaged in improper professional conduct under Rule 102(e)(1)(ii), and willfully violated Exchange Act Section 10(b) and Rule 10b-5(b) thereunder, and Rule 2-02(b)(1) of Regulation S-X, which calls for sanction under Rule 102(e)(1)(iii), because his auditing practices were so deficient that the audits amounted to no audits at all. *SEC v. Price Waterhouse*, 797 F. Supp. 1217, 1240 (S.D.N.Y. 1992) citing *McLean v. Alexander*, 599 F.2d 1190, 1198 (3rd Cir. 1979). An auditor violates Exchange Act Section 10(b) and Rule 10b-5 thereunder by issuing false audit reports. Egeberg violated these antifraud provisions by intentionally issuing audit reports that falsely stated that his audits were conducted in accordance with PCAOB standards, and these statements were material. Egeberg's audits were not conducted in accordance with PCAOB standards, but instead constituted complete departures from professional standards.

33. Egeberg willfully violated Regulation S-X Rule 2-02(b)(1) because he issued reports stating that he had conducted his audits of RPM Advantage, Fox Petroleum, Renfro, and CPP in accordance with PCAOB standards, when he had not.

34. Based on the foregoing, the Commission finds that Egeberg engaged in improper professional conduct and willfully violated the Federal securities laws and the rules and regulations thereunder pursuant to Section 4C of the Exchange Act and Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice.

35. Based on the foregoing, the Commission finds that Egeberg violated Section 10(b) of the Exchange Act, Rule 10b-5(b) and Regulation S-X Rule 2-02(b)(1) thereunder, and should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act, Rule 10b-5(b) and Regulation S-X Rule 2-02(b)(1) thereunder, and should be ordered to pay a civil money penalty pursuant to Section 8A(g) of the Securities Act and Section 21B of the Exchange Act, and should be ordered to pay disgorgement with prejudgment interest pursuant to Section 8A(e) of the Securities Act, and Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Egeberg shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act, Rule 10b-5(b) and Regulation S-X Rule 2-02(b)(1) thereunder.

B. Egeberg is denied the privilege of appearing or practicing before the Commission as an accountant.

C. Respondent shall, within ten days of the entry of this Order, pay disgorgement of \$11,250 and prejudgment interest of \$633.08 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Egeberg shall, within 10 days of the entry of this Order, pay a civil penalty of \$15,000. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

D. Payments by check or money order must be accompanied by a cover letter identifying Egeberg as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6561.

E. Based upon Respondent's sworn representations in his Statement of Financial Condition dated November 2013 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent in excess of \$15,000.

F. The Division of Enforcement may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the

findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72981 / September 4, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16053

In the Matter of

Bay Acquisition Corp.
(a/k/a SecureLogic Corp.)
(n/k/a Goozex Holdings, Inc.),
BTHC XV, Inc.,
Caleco Pharma Corp.,
CareAdvantage, Inc., and
Genta Incorporated

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS¹

1. Bay Acquisition Corp. (a/k/a SecureLogic Corp.) (n/k/a Goozex Holdings, Inc.) ("SLGI") (CIK No. 1098875) is a defaulted Nevada corporation located in Newburyport, Massachusetts with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SLGI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss applicable to common shares of \$76,000 for the prior nine months. As of September 2, 2014, the common stock of SLGI was quoted on OTC Link operated by OTC

¹The short form of each issuer's name is also its stock symbol.

Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. BTHC XV, Inc. ("BTXV") (CIK No. 1412090) is a void Delaware corporation located in Linyi City, Shandong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BTXV is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2011. As of September 2, 2014, the common stock of BTXV was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Caleco Pharma Corp. ("CAEH") (CIK No. 1312402) is a revoked Nevada corporation located in Long Valley, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CAEH is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended April 30, 2011, which reported a net loss of \$248,577 for the prior six months. As of September 2, 2014, the common stock of CAEH was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. CareAdvantage, Inc. ("CADV") (CIK No. 937252) is a void Delaware corporation located in Iselin, Jew Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CADV is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011, which reported a net loss of \$461,000 for the prior nine months. As of September 2, 2014, the common stock of CADV was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Genta Incorporated ("GNTAQ") (CIK No. 880643) is a Delaware corporation located in Berkeley Heights, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GNTAQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012. As of September 2, 2014, the common stock of GNTAQ was not publicly quoted or traded.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section

12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 4, 2014

In the Matter of

Bay Acquisition Corp.
(a/k/a SecureLogic Corp.)
(n/k/a Goozex Holdings, Inc.),
BTHC XV, Inc.,
Caleco Pharma Corp., and
CareAdvantage, Inc.,

File No. 500-1

**ORDER OF SUSPENSION OF
TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bay Acquisition Corp. (a/k/a SecureLogic Corp.) (n/k/a Goozex Holdings, Inc.) because it has not filed any periodic reports since the period ended September 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BTHC XV, Inc. because it has not filed any periodic reports since the period ended December 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Caleco Pharma Corp. because it has not filed any periodic reports since the period ended April 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CareAdvantage, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is

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ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 4, 2014, through 11:59 p.m. EDT on September 17, 2014.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 72979 / September 4, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16052

In the Matter of

**Asia Cork, Inc.,
Biocurex, Inc.,
Carthew Bay Technologies Inc.,
Current Technology Corp.,
Gamecorp Ltd.
(n/k/a DealNet Capital Corp.),
Globetech Ventures Corp., and
Pepper Rock Resources Corp.**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS AND
NOTICE OF HEARING PURSUANT TO
SECTION 12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS¹

1. Asia Cork, Inc. ("AKRK") (CIK No. 1104040) is a void Delaware corporation located in Xi'An, Shannxi, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AKRK is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011. As of September 2, 2014, the common stock of AKRK was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had six

¹The short form of each issuer's name is also its stock symbol.

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market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Biocurex, Inc. ("BOCX") (CIK No. 1092562) is a forfeited Texas corporation located in Richmond, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BOCX is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net and comprehensive loss of \$1,670,491 for the prior nine months. On April 8, 2004, the Commission suspended, for ten business days, trading in the securities of BOCX. *Whispering Oaks International, Inc. d/b/a BioCurex, Inc.*, Exchange Act Rel. No 49546 (April 8, 2004). As of September 2, 2014, the common stock of BOCX was quoted on OTC Link, had ten market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Carthew Bay Technologies Inc. ("CWBYF") (CIK No. 1022518) is an Ontario corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CWBYF is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended December 31, 2010, which reported a net loss of \$2,938,229 Canadian for the prior year. As of September 2, 2014, the common shares of CWBYF were quoted on OTC Link, had five market makers, and were eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Current Technology Corp. ("CRTCF") (CIK No. 883907) is a Canadian corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CRTCF is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2009, which reported a net loss of \$7,127,085 for the prior nine months. As of September 2, 2014, the common stock of CRTCF was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Gamecorp Ltd. (n/k/a DealNet Capital Corp.) ("GAIMF") (CIK No. 1040702) is an Ontario corporation located in King City, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GAIMF is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended September 30, 2009, which reported a net loss of \$2,952,000 Canadian for the prior year. As of September 2, 2014, the common stock of GAIMF was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Globetech Ventures Corp. ("GTVCF") (CIK No. 947994) is a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GTVCF is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended September 30, 2010, which reported a net loss of \$236,714 Canadian for the prior year. As of September 2, 2014, the common shares of GTVCF were quoted on

OTC Link, had seven market makers, and were eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. Pepper Rock Resources Corp. ("PEPR") (CIK No. 1448242) is a revoked Nevada corporation located in Calgary, Alberta, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PEPR is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended April 30, 2011, which reported a net loss of \$8,920,238 for the prior nine months. As of September 2, 2014, the common stock of PEPR was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 4, 2014

In the Matter of

**Asia Cork, Inc.,
Biocurex, Inc.,
Carthew Bay Technologies Inc.,
Current Technology Corp.,
Gamecorp Ltd.
(n/k/a DealNet Capital Corp.),
Globetech Ventures Corp., and
Pepper Rock Resources Corp.**

File No. 500-1

**ORDER OF SUSPENSION OF
TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Asia Cork, Inc. because it has not filed any periodic reports since the period ended March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Biocurex, Inc. because it has not filed any periodic reports since the period ended September 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Carthew Bay Technologies Inc. because it has not filed any periodic reports since the period ended December 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Current Technology Corp. because it has not filed any periodic reports since the period ended September 30, 2009.

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It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Gamecorp Ltd. (n/k/a DealNet Capital Corp.) because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Globetech Ventures Corp. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pepper Rock Resources Corp. because it has not filed any periodic reports since the period ended April 30, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 4, 2014, through 11:59 p.m. EDT on September 17, 2014.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

Commissioner Stein
Commissioner Kowar
Not participating

SECURITIES EXCHANGE ACT OF 1934
Release No. 72985 / September 4, 2014

In the Matter of

Brooklyn Capital Management, LLC

STAY ORDER

On September 4, 2014, the Commission issued an order denying an application filed by Brooklyn Capital Management, LLC ("Brooklyn Capital"), an institutional investment manager that is required pursuant to Section 13(f) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 13f-1 thereunder to file quarterly reports of its U.S. exchange-traded equity securities.¹ Brooklyn Capital's application, which it filed on October 31, 2011 pursuant to Section 13(f)(3) of the Exchange Act, and amended on January 3, 2012 and February 14, 2013, sought an exemption from Rule 13f-1 under the Exchange Act ("Exemptive Application"). On September 4, 2014, the Commission also issued a separate order denying two written requests made by Brooklyn Capital pursuant to Section 13(f)(4) of the Exchange Act and Rule 24b-2 thereunder seeking confidential treatment of certain information that Brooklyn Capital otherwise was required to disclose on Form 13F ("CT Requests") for the quarters ended December 31, 2012 and March 31, 2013, respectively.² Previously, on January 11, 2010, the Commission

¹ *Brooklyn Capital Management, LLC*, Securities Exchange Act Rel. No. 72984 (September 4, 2014), ___ SEC Docket ___. Brooklyn Capital notified the Commission by letter dated February 14, 2013 that it was replacing Full Value Advisors, LLC ("Full Value") as the named party in requests to the Commission seeking exemptive relief and confidential treatment under Section 13(f) of the Exchange Act. Brooklyn Capital is an affiliate of, and under common control with, Full Value. As used herein, Brooklyn Capital includes both Brooklyn Capital and Full Value.

² *Brooklyn Capital Management, LLC*, Securities Exchange Act Rel. No. 72983 (September 4, 2014), ___ SEC Docket ___. Under Form 13F Confidential Treatment Instruction 4, Brooklyn Capital must disclose the holdings information that is listed on its December 31, 2012 and March 31, 2013 CT Requests within six business days of notification of the Commission's denial of such requests.

issued an order denying Brooklyn Capital's CT Requests for the quarters ended December 31, 2006 and March 31, 2007, respectively.³

We understand that Brooklyn Capital may file a petition for review. Therefore, it appears appropriate under the circumstances to grant a stay of the Commission's orders denying Brooklyn Capital's Exemptive Application and CT Requests for sixty days. Should Brooklyn Capital file a timely appeal in a Court of Appeals specified in Section 25 of the Exchange Act, the stay would continue pending determination of that appeal.

Accordingly, it is ORDERED that the Commission's September 4, 2014 order denying Brooklyn Capital's Exemptive Application be, and it hereby is, stayed for sixty (60) days from September 4, 2014; and it is further

ORDERED that the Commission's September 4, 2014 order denying Brooklyn Capital's CT Requests for the quarters ended December 31, 2012 and March 31, 2013 be, and it hereby is, stayed for sixty (60) days from September 4, 2014; and it is further

ORDERED that the Commission's January 11, 2010 order denying Brooklyn Capital's CT Requests for the quarters ended December 31, 2006 and March 31, 2007 be, and it hereby is, stayed for sixty (60) days from September 4, 2014; and it is further

ORDERED that, if Brooklyn Capital files a timely appeal with an appropriate Court of Appeals, the stay of the denial of Brooklyn Capital's Exemptive Application and CT Requests shall continue pending the determination of that appeal by such Court of Appeals.

By the Commission.

Kevin M. O'Neill

Kevin O'Neill
Deputy Secretary

³ *Brooklyn Capital Management, LLC*, Securities Exchange Act Rel. No. 61328 (Jan. 11, 2010), 2010 WL 94591. The CT Requests for the quarters ended December 31, 2006 and March 31, 2007 are addressed in a 2011 federal court of appeals decision finding that Brooklyn Capital's constitutional claims were not ripe, and stating that "[Brooklyn Capital] must provide the Commission with sufficient information to make an informed judgment" in order for the Commission to properly consider Brooklyn Capital's confidential treatment and exemption requests. See *Full Value Advisors, LLC v. SEC*, 633 F.3d 1101, 1110 (D.C. Cir. 2011).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 240, 243, and 249

Release Nos. 33-9638; 34-72982; File No. S7-08-10

RIN 3235-AK37

Asset-Backed Securities Disclosure and Registration

AGENCY: Securities and Exchange Commission

ACTION: Final rule.

SUMMARY: We are adopting significant revisions to Regulation AB and other rules governing the offering process, disclosure, and reporting for asset-backed securities ("ABS"). The final rules require that, with some exceptions, prospectuses for public offerings under the Securities Act of 1933 ("Securities Act") and ongoing reports under the Securities Exchange Act of 1934 ("Exchange Act") of asset-backed securities backed by real estate related assets, auto related assets, or backed by debt securities, including resecuritizations, contain specified asset-level information about each of the assets in the pool. The asset-level information is required to be provided according to specified standards and in a tagged data format using eXtensible Markup Language ("XML"). We also are adopting rules to revise filing deadlines for ABS offerings to provide investors with more time to consider transaction-specific information, including information about the pool assets. We are also adopting new registration forms tailored to ABS offerings. The final rules also repeal the credit ratings references in shelf eligibility criteria for ABS issuers and establish new shelf eligibility criteria.

DATES:

Effective Date: [insert date 60 days after publication in the Federal Register].

Compliance Dates:

Offerings on Forms SF-1 and SF-3: Registrants must comply with new rules, forms, and disclosures no later than [insert date 60 days plus one year after publication in the Federal Register].

Asset level Disclosures: Offerings of asset-backed securities backed by residential mortgages, commercial mortgages, auto loans, auto leases, and debt securities (including resecuritizations) must comply with asset-level disclosure requirements no later than [insert date 60 days plus two years after publication in the Federal Register].

Forms 10-D and 10-K: Any Form 10-D or Form 10-K that is filed after [insert date 60 days plus one year after publication in the Federal Register] must comply with new rules and disclosures, except asset-level disclosures.

FOR FURTHER INFORMATION CONTACT: Rolaine S. Bancroft, Senior Special Counsel, Michelle M. Stasny, Special Counsel, M. Hughes Bates, Attorney-Advisor, or Kayla Florio, Attorney-Advisor, in the Office of Structured Finance at (202) 551-3850, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Items 512¹ and 601² of Regulation S-K;³ Items 1100, 1101, 1102, 1103, 1104, 1105, 1108, 1109, 1110, 1111, 1112,

¹ 17 CFR 229.512.

² 17 CFR 229.601.

³ 17 CFR 229.10 et al.

1113, 1114, 1119, 1121, and 1122⁴ of Regulation AB⁵ (a subpart of Regulation S-K); Rules 139a, 167, 190, 193, 401, 405, 415, 424, 430B, 430C, 433, 456, and 457,⁶ and Forms S-1 and S-3⁷ under the Securities Act of 1933 (Securities Act);⁸ Rules 11, 101, 201, 202, and 305⁹ of Regulation S-T;¹⁰ and Rules 3a68-1a, 3a68-1b, 15c2-8, 15d-22, 15Ga-1, and 17g-7¹¹ and Forms 8-K, 10-K, and 10-D¹² under the Securities Exchange Act of 1934;¹³ and Rule 103¹⁴ of Regulation FD.¹⁵ We also are adding new Items 1124 and 1125¹⁶ to Regulation AB, and Rule 430D,¹⁷ Form SF-1,¹⁸ Form SF-3,¹⁹ and Form ABS-EE²⁰ under the Securities Act.

⁴ 17 CFR 229.1100, 17 CFR 229.1101, 17 CFR 229.1102, 17 CFR 229.1103, 17 CFR 229.1104, 17 CFR 229.1105, 17 CFR 229.1108, 17 CFR 229.1109, 17 CFR 229.1110, 17 CFR 229.1111, 17 CFR 229.1112, 17 CFR 229.1113, 17 CFR 229.1114, 17 CFR 229.1119, 17 CFR 229.1121, and 17 CFR 229.1122.

⁵ 17 CFR 229.1100 through 17 CFR 229.1124.

⁶ 17 CFR 230.139a, 17 CFR 230.167, 17 CFR 230.190, 17 CFR 230.193, 17 CFR 230.401, 17 CFR 230.405, 17 CFR 230.415, 17 CFR 230.424, 17 CFR 230.430B, 17 CFR 230.430C, 17 CFR 230.433, 17 CFR 230.456, and 17 CFR 230.457.

⁷ 17 CFR 239.11 and 17 CFR 239.13.

⁸ 15 U.S.C. 77a et seq.

⁹ 17 CFR 232.11, 17 CFR 232.101, 17 CFR 232.201, 17 CFR 232.202, and 17 CFR 232.305.

¹⁰ 17 CFR 232.10 et seq.

¹¹ 17 CFR 240.3a68-1a, 17 CFR 240.3a68-1b, 17 CFR 240.15c2-8, 17 CFR 240.15d-22, 17 CFR 240.15Ga-1, and 17 CFR 240.17g-7.

¹² 17 CFR 249.308, 17 CFR 249.310, and 17 CFR 249.312.

¹³ 15 U.S.C. 78a et seq.

¹⁴ 17 CFR 243.103.

¹⁵ 17 CFR 243.100 et seq.

¹⁶ 17 CFR 229.1124 and 17 CFR 229.1125.

¹⁷ 17 CFR 230.430D.

¹⁸ 17 CFR 239.44.

¹⁹ 17 CFR 239.45.

²⁰ 17 CFR 249.1500.

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I. Executive Summary

A. Background

The Commission addressed the registration, disclosure, and reporting requirements for asset-backed securities in 2004 when it adopted new rules and amendments under the Securities Act and the Exchange Act.²¹ Among other changes, the 2004 rules updated and clarified the Securities Act registration requirements for asset-backed securities offerings and allowed modified Exchange Act reporting tailored to asset-backed securities offerings. In April 2010, we proposed revisions to the registration, disclosure, and reporting requirements for ABS offerings in an effort to improve investor protection and promote more efficient asset-backed markets.²²

In the 2010 ABS Proposing Release we noted that the financial crisis highlighted that investors and other participants in the securitization market did not have the necessary information and time to be able to fully assess the risks underlying asset-backed securities and

²¹ See Asset-Backed Securities, Release No. 33-8518 (Jan. 7, 2005) [70 FR 1506] (the “2004 ABS Adopting Release”).

²² See Asset-Backed Securities, Release No. 33-9117 (Apr. 7, 2010) [75 FR 23328] (the “2010 ABS Proposing Release” or the “2010 ABS Proposal”).

did not value asset-backed securities properly or accurately. This lack of understanding and the extent to which it impacted the U.S. and global economy prompted us to revisit several aspects of our regulation of asset-backed securities.²³ To address these issues, we proposed to require that, with some exceptions, prospectuses for public offerings of asset-backed securities and ongoing Exchange Act reports contain specified asset-level information about each of the assets in the pool in a standardized tagged data format. Further, we proposed a rule that asset-backed issuers provide investors with more time to consider transaction-specific information about the pool assets. We also proposed to require asset-backed issuers to file a computer program modeling the flow of funds, or waterfall, provisions of the transaction to help investors analyze the offering and monitor ongoing performance. For offerings of asset-backed securities that qualify for shelf registration, we proposed investor protection-focused shelf eligibility and offering requirements that would indicate which types of offerings qualify for delayed shelf eligibility and also proposed to remove the investment-grade ratings requirement.²⁴ Finally, we proposed to require disclosure provisions in unregistered ABS transaction agreements as a condition to certain safe harbors for exempt offerings and resales of ABS.

In July 2010, subsequent to the 2010 ABS Proposing Release, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”),²⁵ which directed the Commission to prescribe several ABS related rules, some of which were included in

²³ See the 2010 ABS Proposing Release at 23329.

²⁴ In this Release, we also refer to such offerings as shelf offerings.

²⁵ Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

the 2010 ABS Proposals and others of which were not. Two of the proposed shelf eligibility requirements – risk retention and continued Exchange Act reporting – were addressed by provisions of the Dodd-Frank Act. After taking the Dodd-Frank requirements into account, and considering comments received in connection with the 2010 ABS Proposing Release, in 2011 we re-proposed some of the 2010 ABS Proposals, including the shelf eligibility requirements. In that same release, we also sought additional comment on asset-level disclosure, including comment on how best to implement Section 7(c) of the Securities Act, as added by Section 942(b) of the Dodd-Frank Act, which directed the Commission to adopt regulations to require asset-level information.²⁶

In February 2014, the Commission re-opened the comment period²⁷ on the 2010 ABS Proposals and the 2011 ABS Re-Proposals to permit interested persons to comment on an approach for the dissemination of asset-level data, which is described in a staff memorandum, dated February 25, 2014, that was posted to the public comment file.²⁸

²⁶ See Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, Release No. 33-9244 (July 26, 2011) [76 FR 47948] (the “2011 ABS Re-Proposing Release” or the “2011 ABS Re-Proposal”).

²⁷ See Re-Opening of Comment Period for Asset-Backed Securities, Release No. 33-9552 (Feb. 25, 2014), [79 FR 11361] (“the 2014 Re-Opening Release”).

²⁸ See Memorandum from the Commission’s Division of Corporation Finance (Feb. 25, 2014), available at <http://www.sec.gov/comments/s7-08-10/s70810.shtml> (the “2014 Staff Memorandum”).

B. Problems in the ABS Markets

The financial crisis highlighted a number of concerns about the operation of our rules in the securitization market.²⁹ The failures of credit ratings to accurately measure and account for the risks associated with certain asset-backed securities have been well documented by lawmakers, market observers, and academics.³⁰ The collapse of these “investment-grade” rated securities was a major contributor to the financial crisis, and demonstrated the risks to investors of unduly relying on these securities’ credit ratings without engaging in independent due diligence.³¹ Although academic research suggests that some investors might have been able to

²⁹ For a more detailed discussion of the issues mentioned in this section and other economic problems that affected the ABS market, see Section II.B Economic Motivations below.

³⁰ See, e.g., H.R. Rep. No. 4173 (2010) (Conf. Rep.) (Dodd-Frank Wall Street Reform and Consumer Protection Act- Conference Report) (noting that the performance of credit rating agencies, particularly their ratings of asset-backed securities, contributed significantly to the financial crisis); John Griffin & Dragon Tang, Did Subjectivity Play a Role in CDO Credit Ratings?, 67 J. FIN. 1293-1328 (2012) (discussing discretionary out-of-model adjustments to collateralized debt obligation (“CDO”) ratings made by one nationally recognized statistical rating organization); Adam Ashcraft, Paul Goldsmith-Pinkham & James Vickery, MBS Ratings and the Mortgage Credit Boom (2010 Working Paper Federal Reserve Bank of New York) (arguing, among other things, that MBS ratings did not fully reflect publicly available data).

³¹ See the 2011 ABS Re-Proposal. See also Federal Reserve, Report to Congress on Risk Retention 49-66 (2010) (documenting the extent of the collapse of the investment-grade ABS market); Efraim Benmelech & Jennifer Dlugosz, The Credit Rating Crisis, in 24 NBER MACROECONOMICS ANN. 161-207 (Daron Acemoglu, Kenneth Rogoff & Michael Woodford, eds., Univ. of Chicago Press, Apr. 2010) (2009) (arguing that credit rating agency models did not adequately anticipate how poorly the assets underlying many structured finance products performed during economic downturns, that the ratings models failed to account for the correlation among underlying assets (e.g., residential home prices) at the national level, and that “ratings shopping” by issuers exacerbated the severity of the poor performance of structured finance products during the economic downturn); Patrick Bolton, Xavier Freixas & Joel Shapiro, The Credit Ratings Game, 67(1) J. FIN. 85-111 (2012) (arguing that credit rating agency competition can reduce the efficiency of credit ratings, as it facilitates “ratings shopping,” and that ratings are more likely to be inflated during economic booms and when investors are more trusting).

price ABS credit risk beyond what the ratings implied, there is also evidence that investors in triple-A rated tranches were less informed than investors in lower tranches.³²

In addition, investors have expressed concern about a lack of time to analyze securitization transactions and make informed investment decisions.³³ Time to analyze an offering is necessary if investors are being encouraged to perform their own diligence and to not over rely on credit ratings. While the Commission has not generally built waiting periods into its shelf offering registration process,³⁴ and instead has believed investors can take the time they believe is adequate to analyze securities (and refuse to invest if not provided sufficient time), investors have indicated that this is not generally possible in the ABS market, particularly in a heated market.³⁵

Investors and others have also expressed concerns about other aspects of the securitization market, including concern about a lack of effective oversight by the principal

³² See Manuel Adelino, How Much Do Investors Rely on Ratings? The Case of Mortgage-Backed Securities, (2009 Working Paper Dartmouth College) (suggesting that investors in certain RMBS triple-A rated tranches relied more on ratings because they were less informed about the quality of the underlying assets than investors in lower tranches based on a comparison between yield spreads at securitization and actual defaults). But see Jie Jack He, Jun QJ Qian & Philip E. Strahan, Are All Ratings Created Equal? The Impact of Issuer Size on the Pricing of Mortgage-Backed Securities, 67 J. FIN. 2097-2137 (2012) (suggesting that investors did not over rely on ratings by arguing that investors were able to price the risk of large RMBS issuers receiving more inflated ratings by comparing yields on RMBS sold by large issuers against the yields on RMBS sold by small issuers).

³³ See discussion in Section V.B.1.a) Rule 424(h) and Rule 430D below.

³⁴ See, e.g., Section IV.A. of Securities Offering Reform, Release No. 33-8591 (July 19, 2005) [70 FR 44722] (the "Securities Offering Reform Release") (adopting significant revisions to registration, communications and offering process under the Securities Act and stating that Rule 159 would not result in a speed bump or otherwise slow down the offering process).

³⁵ See discussion in Section V.B.1.a) Rule 424(h) and Rule 430D below.

officers of the ABS issuer.³⁶ In particular, investors have been concerned that these officers have not conducted sufficient due diligence when reviewing the pool assets and designing the securitization structure. Additionally, investors have noted that the mechanisms for enforcing the representations and warranties contained in the securitization transaction documents are weak, and thus they are not confident that even strong representations and warranties provide them with adequate protection.³⁷ They have also noted that difficulties in locating fellow ABS investors have prevented them from exercising rights under the transaction agreement, including requirements that an originator or sponsor repurchase an asset if it does not comply with the representations and warranties.³⁸

Market participants have also expressed a desire for expanded disclosure about the assets underlying securitizations in order to conduct an analysis of the offering.³⁹ The financial crisis underscored that the information available to investors about ABS may not have provided them

³⁶ See, e.g., letters from Better Markets dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("Better Markets"), CFA Institute dated Nov. 9, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("CFA II"), Securities Industry and Financial Markets Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("SIFMA I") (expressed views of investors only), and Vanguard dated Aug. 27, 2010 submitted in response to the 2010 ABS Proposing Release ("Vanguard").

³⁷ See letters from Metropolitan Life Insurance Company dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("Metlife II"), Prudential Investment Management, Inc. dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("Prudential II"), and Securities Industry and Financial Markets Association, Asset Management Group dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("SIFMA II-investors") (stating that they do not believe the ABS market will recover without a mechanism to enforce breaches of representations and warranties). See also Section V.B.3.a)(2) Asset Review Provision below.

³⁸ See letters from CFA II and Investment Company Institute dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("ICI II").

³⁹ See discussion in Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement below.

with all the information necessary to fully understand and correctly gauge the risks underlying the securities. As a result, investors may not have been able to accurately value those securities.⁴⁰

C. Summary of Final Rules

We are adopting significant revisions to the rules governing disclosure, reporting, registration, and the offering process for asset-backed securities. The revised rules are designed to address the problems discussed above and to enhance investor protection in the ABS market.⁴¹ In adopting these changes, we have taken into consideration the comments and recommendations made by commenters in connection with the 2010 ABS Proposing Release, the 2011 ABS Re-Proposing Release and the 2014 Re-Opening Release, which are reflected in the changes made in the final rules.⁴² We received a total of 240 comment letters in connection with the 2010 ABS Proposals, 2011 ABS Re-Proposal and the 2014 Re-Opening Release.

The final rules are intended to provide investors with timely and sufficient information, reduce the likelihood of undue reliance on credit ratings, and provide mechanisms to help to

⁴⁰ See SHEILA BAIR, BULL BY THE HORNS: FIGHTING TO SAVE MAIN STREET FROM WALL STREET AND WALL STREET FROM ITSELF 52 (2012) (noting that, based on data analysis conducted by the FDIC, ABS investors did not look at the quality of the individual loans in the asset pools and lacked detailed loan-level information and adequate time to analyze the information before making an investment decision). See also footnote 882 and discussions in Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement and Section V.B.1.a) Rule 424(h) and Rule 430D below.

⁴¹ The rules do not affect the applicability of the Investment Company Act (15 U.S.C. 80a-1 *et seq.*) to ABS issuers, including the availability of exclusions from such Act. See, e.g., Section 3(c)(1) or Section 3(c)(7) (15 U.S.C. 80a-3(c)(1) and 80a-3(c)(7)) (for unregistered transactions); Rule 3a-7 [17 CFR 270.3a-7] (for registered and unregistered transactions).

⁴² The 2014 Re-Opening Release provided for a thirty-day comment period. In response to commenters' requests, on March 28, 2014, we extended the comment period until April 28, 2014.

enforce the representations and warranties made about the underlying assets. These revisions are comprehensive and although they will impose new burdens on issuers, we believe they will protect investors and promote efficient capital formation. The rules cover the following areas:

- Securities Act and Exchange Act disclosures, including new requirements for certain asset classes to disclose standardized asset-level information;
- Revisions to the shelf offering process, eligibility criteria, and prospectus delivery requirements; and
- Several changes to the Asset-Backed Issuer Distribution Report on Form 10-D, the Annual Report on Form 10-K, and the Current Report on Form 8-K.⁴³

In addition, we are adopting clarifying, technical, and other changes to the current rules.

Some of the rules we are adopting are designed to address and improve areas that we believe have the potential to raise issues similar to those highlighted in the financial crisis. Furthermore, some of the rules we are adopting respond to Sections 939A and 942(b) of the Dodd-Frank Act.

1. Asset-Level Disclosure

Investors, other market participants, academics, and policy makers have increasingly noted that asset-level information is essential to evaluating an asset-backed security.⁴⁴ We

⁴³ See Section I.C.5 Proposed Rules Not Being Adopted At This Time for a list of proposed rules that we are not adopting at this time.

⁴⁴ See, e.g., The Private Mortgage Market Investment Act, Part I, Hearing on H.R. 3644 Before the Subcomm. on Capital Mkts. & Gov't Sponsored Enters. of the H. Comm. on Fin. Servs., 112th Cong. 3 (2011) (statement of Rep. Scott Garrett, Chairman, Subcomm. on Capital Mkts. & Gov't Sponsored Enters.) (stating "in regards to transparency and disclosure, investors should be empowered, if you will, and enabled to do their own analysis of the assets underlying the securities that they are investing in. So by disclosing more detailed loan level data, while at the same time protecting the privacy of the borrowers, and

believe that all investors and market participants should have access to the information they need to assess the credit quality of the assets underlying a securitization at inception and over the life of a security. In 2010, we proposed to require standardized asset-level information in prospectuses and on an ongoing basis in periodic reports. The 2010 ABS Proposals called for ABS issuers to disclose standardized asset-level information for most asset classes.

We are adopting standardized asset-level disclosure requirements because we believe this information will allow an investor to better conduct his or her own evaluation of the ongoing credit quality of a particular asset, risk layering of assets, and overall risks in the pool underlying the ABS. In our discussion below, we refer to each individual asset-level disclosure requirement as an asset-level data point. The asset-level data will be provided at the time of the offering and on an ongoing basis. The disclosures are required to be provided in a standardized XML format, so that they are more useful to investors and markets. We have revised the required data points to address commenters' concerns about a variety of topics that we discuss further below, such as the availability of data, market practice, need for increased transparency and privacy concerns.

by allowing more time for the investors to study that additional information, investors will be able to conduct more due diligence and lessen their reliance on rating agencies"); Securitization of Assets: Problems & Solutions Hearing Before the Subcomm. on Secs., Ins., & Inv. of S. Comm. on Banking, Housing & Urban Affairs, 111th Cong. 39 (2009) (statement of Patricia McCoy, law professor at the University of Connecticut School of Law) (recommending that "[t]he SEC should require securitizers to provide investors with all of the loan-level data they need to assess the risks involved" and "should require securitizers and servicers to provide loan-level information on a monthly basis on the performance of each loan and the incidence of loan modifications and recourse"). See also letters from Moody's Investors Service dated Aug. 31, 2010 submitted in response to the 2010 ABS Proposing Release ("Moody's I") (suggesting increased ABS data information will restore confidence in the structured finance market), Prudential Investment Management, Inc. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Prudential I") (supporting the SEC's proposal for investors to have access to asset-level data in order to provide investors with a better understanding of risk), and SIFMA I (suggesting that asset-level data is important to an investor's investment decision and is needed to restore investor confidence).

While we are adopting asset-level disclosure requirements for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans, auto leases and resecuritizations of ABS that include these asset types, or of debt securities,⁴⁵ we are continuing to consider the best approach for requiring more information about underlying assets for the remaining asset classes covered by the 2010 ABS Proposal.⁴⁶

We have modified some of the proposed data points in response to comments. The new disclosure requirements include the following standardized data points:

- Data points about the payment stream related to a particular asset, such as the contractual terms, scheduled payment amounts, basis for interest rate calculations and whether and how payment terms change over time;
- Data points that allow for an analysis of the collateral related to the asset, such as the geographic location of the property, property valuation data and loan-to-value (“LTV”) ratio;
- Data points about the performance of each asset over time, for example, data about whether an obligor is making payments as scheduled; and

⁴⁵ Under the proposal, this asset class was titled “corporate debt.” However, we are using the term “debt security ABS” to provide clarification because, as we discuss below, the same set of requirements will also apply to resecuritizations.

⁴⁶ While the 2010 ABS Proposal applied across asset classes, we had also proposed specific requirements for equipment loans and leases, student loans, floorplan financings, and credit card receivables. As discussed below, Section 7(c) of the Securities Act [15 U.S.C. 77g(c)] also requires, in relevant part, that the Commission adopt regulations requiring an issuer of an asset-backed security to disclose, for each tranche or class of security, information about the assets backing that security, including asset-level or loan-level data, if such data is necessary for investors to independently perform due diligence.

- Data points about the loss mitigation efforts by the servicer to collect amounts past due and the losses that may pass on to the investors.

Other key data points we are adopting will provide data about the extent to which income and employment status have been verified, mortgage insurance coverage, and lien position.

We have also made modifications from the 2010 ABS Proposal in light of privacy concerns. As we discuss below, many commenters were concerned with the privacy implications of asset-level disclosure, particularly the risk that the information could be combined with other publicly available information to discover, or “re-identify,” the identities of the obligors in ABS pools, thereby revealing potentially sensitive personal and financial information about an obligor. In light of these concerns, we are omitting or modifying certain asset-level disclosures for RMBS and securities backed by auto loans and leases (collectively, “Auto ABS”) to reduce the potential risk that the obligors could be re-identified. We refer to this risk throughout the release as “re-identification risk”. Additionally, in response to commenters’ suggestions, we have sought and obtained guidance from the Consumer Financial Protection Bureau (“CFPB”) on the application of the Fair Credit Reporting Act (“FCRA”)⁴⁷ to the required disclosures. We believe these steps implement the statutory mandate of Section 7(c) and will provide investors with the asset-level information they need while reducing concerns about the

⁴⁷ 15 U.S.C. 1681 et seq. FCRA generally regulates the use of “consumer reports” furnished by a “consumer reporting agency,” as those terms are defined in the statute. The CFPB has authority to interpret FCRA.

potential re-identification risk associated with disclosing consumers' personal and financial information.⁴⁸

2. Other Disclosure Requirements

We are also adopting other amendments to the prospectus disclosure requirements, which will require:

- A summary of statistical information about the pool of underlying assets in the prospectus summary;
- A description of the provisions in the transaction agreements about modification of the terms of the underlying assets;
- More explanatory language about the static pool disclosures and standardized delinquency presentation and, for static pool filings on Form 8-K, a new separate Form 8-K item and exhibit number;
- Expanded disclosure about transaction parties; and
- Filing of the transaction documents, by the date of the final prospectus, which is a clarification of the current rules.

3. Securities Act Registration

ABS issuers have emphasized their desire to access the capital markets quickly through shelf registration. ABS shelf registration offers significant flexibility and timing benefits to issuers, but these interests must be balanced against investors' need for adequate information and

⁴⁸ 15 U.S.C. 77g(c).

time to make informed investment decisions. Investors have expressed concerns about not having adequate time to review the prospectus in order to make a well-informed investment decision, especially in an active market.⁴⁹ This lack of time to adequately review the transaction contributed to investors placing undue reliance on the investment-grade ratings of these securities.⁵⁰ Consequently, we are adopting a requirement that ABS issuers using a shelf registration statement on new Form SF-3 file a preliminary prospectus under new Rule 424(h) containing transaction-specific information at least three business days in advance of the first sale of securities in the offering.⁵¹ The preliminary prospectus will give investors additional time to analyze the specific structure, assets, and contractual rights regarding each transaction. We had originally proposed that any material change to the preliminary prospectus, other than offering price, would require the filing of a new preliminary prospectus and re-starting the waiting period. In response to commenters' concerns, we are requiring, instead, that issuers file material changes in a prospectus supplement that provides a clear description of how the information has changed at least 48 hours before the first sale.

⁴⁹ See the 2010 ABS Proposing Release at 23334, including footnote 80, and the 2011 ABS Re-Proposal at 47950, including footnote 19. See also the discussion in Section V.B.1.a)(1), below (discussing investors' concerns about the lack of adequate time).

⁵⁰ See, e.g., Securitization of Assets: Problems & Solutions Hearing Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs, 111th Cong. 71 (2009) (statement of William W. Irving, Portfolio Manager at Fidelity Investments) (noting "high demand [for ABS] put investors in the position of competing with each other, making it difficult for any of them to demand better underwriting, more disclosure, simpler product structures, or other favorable terms").

⁵¹ We use the term "preliminary prospectus" to mean the Rule 424(h) preliminary prospectus; similarly we use the term "final prospectus" to mean the Rule 424(b)(2) or (5) prospectus.

As noted above, while we recognize that ABS issuers have expressed the desire to use shelf registration in order to access the capital markets quickly, we believe that the shelf eligibility requirements should be designed to help ensure a certain quality and character for asset-backed securities eligible for delayed shelf registrations given the speed of these offerings. Prior to today, one of the shelf eligibility requirements for offerings of asset-backed securities was that the securities were investment-grade securities – meaning that at least one of the nationally recognized statistical rating organizations (“NRSRO”) rated them in one of its generic rating categories that signifies investment grade and is typically one of the four highest categories. As noted above, the financial crisis revealed that credit rating agencies had generally not appropriately evaluated the credit risk of the securities and that some investors may have placed too much reliance on these ratings without conducting their own analysis.⁵² We proposed to replace the investment-grade ratings requirement with alternative shelf eligibility criteria. These proposals were part of a broad ongoing effort to remove references to NRSRO credit ratings from our rules in order to reduce the risk of undue reliance on ratings and also to eliminate the appearance of an imprimatur that such references may create.⁵³ Additionally,

⁵² See footnote 31. See also, e.g., Joshua D. Coval, Jakub W. Jurek & Erik Stafford, Economic Catastrophe Bonds, 99(3) AM. ECON. REV. 628-66 (2009) (arguing that senior CDO tranches have significantly different risk exposures than their credit rating-matched single-name counterparts, and thus should command different risk premia, and that the information provided by the credit ratings agencies to their customers is inadequate for purposes of accurately pricing these risks); John Griffin & Dragon Tang, Did Subjectivity Play a Role in CDO Credit Ratings?, 67(4) J. FIN. 1293-1328 (2012) (analyzing 916 CDOs and finding that credit rating agencies frequently made favorable pro-issuer adjustments beyond what their own risk models suggested, thereby subjectively increasing the size of triple-A tranches in the CDOs, and, subsequently, the CDOs with larger subjective adjustments experienced more severe downgrades during the economic crisis).

⁵³ See, e.g., Security Ratings, Release No. 33-9245 (July 27, 2011) [76 FR 46606] (the “Security Ratings Release”) (amending rules and forms under the Securities Act and the Securities Exchange Act); Removal

Section 939A of the Dodd-Frank Act requires us to review and eliminate the use of credit ratings as an assessment of creditworthiness in our rules.⁵⁴ Consequently, we are adopting four transaction requirements for ABS shelf eligibility to indicate which types of offerings qualify for shelf registration, and we are removing the prior investment-grade ratings requirement. The four new transaction requirements are:

- A certification by the chief executive officer;
- An asset review provision requiring review of the assets for compliance with the representations and warranties upon the occurrence of certain trigger events;
- A dispute resolution provision; and
- Disclosure of investors' requests to communicate.

We believe that these new shelf eligibility and offering requirements will reduce undue reliance on credit ratings and also help to ensure that ABS issued in shelf offerings are designed

of Certain References to Credit Ratings Under the Securities Exchange Act of 1934, Release No. 34-64352 (Apr. 27, 2011) [76 FR 26550] (proposing amendments to rules and one form under the Securities Exchange Act).

⁵⁴

Section 939A of the Dodd-Frank Act requires that the Commission review any regulation issued by the Commission that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. We completed this review and issued a report on July 21, 2011 (see Report on Review of Reliance on Credit Ratings, available at <http://www.sec.gov/news/studies/2011/939astudy.pdf>). We have removed references from a significant number of rules and forms both as a result of our broad ongoing effort to remove credit rating references from our rules as well as in light of the requirements in Section 939A of the Dodd-Frank Act. See, e.g., Rules 15c3-1 [17 CFR 240.15c3-1], 15c3-3 [17 CFR 240.15c3-3], 10b-10 [17 CFR 240.10b-10] and 17i-8(a)(4) [17 CFR 240.17i-8(a)(4)] under the Exchange Act, Form X-17A-5, Part IIB [17 CFR 249.617] under the Exchange Act, Schedule 14A [17 CFR 240.14a-101] under the Exchange Act, Rule 100(b)(2) of Regulation FD [17 CFR 243.100(b)(2)], Rule 5b-3 [17 CFR 270.5b-3] under the Investment Company Act, Forms N-1A [17 CFR 274.11A], N-2 [17 CFR 274.11a-1] and N-3 [17 CFR 274.11b] under the Investment Company Act, Rules 134 [17 CFR 230.134], 138 [17 CFR 230.138], 139 [17 CFR 230.139] and 168 [17 CFR 230.168] under the Securities Act and Forms S-3 (non-ABS) [17 CFR 239.13], S-4 [17 CFR 239.25], F-3 [17 CFR 239.33], F-4 [17 CFR 239.34] and F-9 (rescinded) under the Securities Act.

and prepared with more oversight and care that make them appropriate to be issued off a shelf, which we define as being “shelf appropriate” securities.

a) Certification

In the aftermath of the financial crisis, investors have expressed concern that ABS issuers were creating securitization transactions that could not support the scheduled payments due to investors.⁵⁵ We are concerned, in particular, that issuers were not adequately reviewing the disclosure provided in the prospectus, examining the assets included in the pool, and assessing the security structure and the expected pool-asset cash flows. To address this concern, we are adopting, as a shelf eligibility requirement, a certification by the chief executive officer of the depositor at the time of each takedown about the disclosures contained in the prospectus and the structure of the securitization. We believe that a certification should cause the chief executive officer to participate more extensively in the oversight of the transaction. The certification will also provide explicit evidence of the certifier’s belief about the securitization at the time of the takedown.

We have made revisions to the certification in order to address commenters’ concerns about the certification constituting a guarantee about future performance and possibly increased liability for certifiers. To address commenters’ concerns about certifier liability, we have added a paragraph to clarify that the certifier has any and all defenses available under the securities laws.

⁵⁵ See, e.g., letters from Better Markets and Prudential I (highlighting the problem with the “originate-to-distribute” model where the focus is on whether the asset can be sold into a securitization rather than on its likely long-term performance).

b) Asset Review Provision

We have noted investors' concerns about the effectiveness of contractual provisions related to the representations and warranties about the pool assets and the lack of responsiveness by sponsors and other parties to the transaction about potential breaches.⁵⁶ Commenters shared this concern⁵⁷ and, to address it, we are requiring, as proposed that the relevant transaction agreements include provisions providing for a review of the underlying assets for compliance with the representations and warranties upon the occurrence of certain post-securitization trigger events. The rule is designed to address comments received related to the triggers and potential costs, while at the same time balance the need for stronger mechanisms to enforce underlying contract terms. Under the final rule, the agreements must require a review, at a minimum, upon the occurrence of a two-pronged trigger. The first prong of the trigger is the occurrence of a specified percentage of delinquencies in the pool. If the delinquency trigger is met, the second prong of the trigger is the direction of investors by vote. The report of the reviewer's findings and conclusions for all assets reviewed will be required to be provided to the trustee in order for the trustee to determine whether a repurchase request would be appropriate under the terms of the transaction agreements, and a summary of the report must be included on the Form 10-D. We believe that this shelf requirement will address investors' concerns about the enforceability

⁵⁶ See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Release No. 33-9175 (Jan. 20, 2011) [76 FR 4489, 4490] (the "Section 943 Adopting Release"). We also note, for example, that transaction agreements typically have not included specific mechanisms to identify possible breaches of representations and warranties or to resolve a question of whether a breach of the representations and warranties has occurred.

⁵⁷ See footnotes 1050 and 1051.

of the representations and warranties and also will incentivize the obligated parties to better consider the disclosure, characteristics, and quality of the assets in the pool.

c) Dispute Resolution

As demonstrated by events surrounding the financial crisis, investors have not only lacked an effective mechanism to identify potential breaches of the representations and warranties, they have also lacked a mechanism to require sponsors to address their repurchase requests in a timely manner.⁵⁸ We are requiring that the underlying transaction agreements include a provision providing that, if an asset subject to a repurchase request is not repurchased by the end of a 180-day period beginning when notice is received, then the party submitting such repurchase request would have the right to refer the matter, at its discretion, to either mediation or third-party arbitration. Under the final rule, the dispute resolution provision is a separate and distinct shelf eligibility requirement; investors will be able to take advantage of the dispute resolution provision regardless of whether they had utilized the asset review process.

d) Investor Communication

The aftermath of the financial crisis has demonstrated that investors have also encountered difficulty in locating other investors in order to enforce rights collectively under the terms of the ABS transaction, especially those related to repurchase demands due to breaches of

⁵⁸

See Alex Ulam, Investors Try to Use Trustees as Wedge in Mortgage Put-Back Fight, AM. BANKER, June 24, 2011 (noting that many attempted put-backs have “flamed out after investor coalitions failed to get the 25% bondholder votes that pooling and servicing agreements require for a trustee to be forced to take action against a mortgage servicer”). See also Tom Hals & Al Yoon, Mortgage Investors Zeroing in on Subprime Lender, THOMSON REUTERS, May 9, 2011 (noting that gathering the requisite number of investors needed to demand accountability for faulty loans pooled into investments is a “laborious” task).

the representations and warranties.⁵⁹ Without an effective means for investors to communicate with each other, investors have told us that they are unable to utilize the contractual rights provided in the underlying transaction agreements. To address this concern, we are requiring as proposed that the underlying transaction agreements must include a provision to require that a request by an investor to communicate with other investors be included in ongoing distribution reports filed on Form 10-D.

e) Other Shelf Offering Provisions

We are also adopting various other changes to the procedures and forms related to shelf offerings substantially as proposed, with some changes in response to comments, including:

- Limiting registration of continuous ABS shelf offerings to “all or none offerings.”
- Eliminating Rule 415(a)(1)(vii) that provided shelf eligibility to certain investment-grade mortgage related securities regardless of the registration statement form.
- Permitting a pay-as-you-go registration fee alternative, allowing ABS issuers to pay registration fees at the time of filing the preliminary prospectus, as opposed to paying all registration fees upfront at the time of filing the registration statement.
- Creating new Forms SF-1 and SF-3 for ABS issuers that will replace the usage of current Forms S-1 and S-3 in order to delineate between ABS filers and corporate filers and to tailor requirements for ABS offerings.

⁵⁹ See Katy Burne, Banker's Latest Bet: Teamwork on Bonds, WALL ST. J., Jan. 22, 2013 (illustrating the difficulty that investors encounter in attempting to communicate with one another and noting one investor's efforts to locate other RMBS investors by publishing advertisements in national newspapers).

- Eliminating the ABS investment-grade exemptive provision in Rule 15c2-8(b) so that a broker or dealer will be required to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale.
- Revising the current practice of providing a base prospectus and prospectus supplement for ABS issuers and instead requiring that a single prospectus be filed for each takedown (except that it would be permissible to highlight material changes from the preliminary prospectus in a separate supplement to the preliminary prospectus).

4. Other Changes to ABS Rules

In addition to the prospectus disclosure changes and shelf requirements, we are also adopting other changes related to ABS. For example, we are adopting a revision to the prefunding exception provided in the definition of ABS, which will decrease the prefunding limit from 50% to 25% of the offering proceeds. Additionally, we are adopting several changes to Forms 10-D, 10-K and 8-K.

5. Proposed Rules Not Being Adopted At This Time

We are not adopting at this time, however, several rules that we proposed in the 2010 ABS Proposing Release or the 2011 ABS Re-Proposing Release. These proposals remain outstanding. They include:

- Requiring issuers to provide the same disclosure for Rule 144A offering as required for registered offerings;

- Making the general asset-level requirements applicable to all asset classes and asset-class specific requirements for equipment loans and leases, student loans, and floorplan financings;
- Requiring grouped-account disclosure for credit and charge card ABS;
- Filing of a waterfall computer program of the contractual cash flow provisions of the securities;
- Requiring the transaction documents, in substantially final form, be filed by the date the preliminary prospectus is required to be filed;
- Exempting ABS issuers from current requirements that the depositor's principal accounting officer or controller sign the registration statement and in lieu requiring an executive officer in charge of securitization sign the registration statement; and
- Revising when pool disclosure must be updated on Form 8-K.

II. Economic Overview

We are mindful of the economic consequences and effects, including costs and benefits, of our rules, and we discuss them throughout this release when we explain the new rules that we are adopting. Further, Section 2(b) of the Securities Act⁶⁰ and Section 3(f) of the Exchange Act⁶¹ require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.

⁶⁰ 15 U.S.C. 77b(b).

⁶¹ 15 U.S.C. 78c(f).

In addition, Section 23(a) of the Exchange Act requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition.⁶² Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.⁶³

To assess these economic consequences, we are using as our baseline the ABS market as it exists at the end of 2013, including applicable rules adopted by the Commission but excluding the rules adopted herein. Because activity in the ABS market has changed due to the financial crisis, we will refer to market statistics that encompass the pre-crisis period, the crisis period, and the current period as appropriate in order to provide a more comprehensive picture of the ABS market. To the extent that certain amendments are mandated by statute, the economic analysis considers the consequences and effects that stem from statutory mandates, as well as those that are affected by the discretion we exercise in implementing the mandates. We provide a qualitative, and whenever possible quantitative, discussion of the costs, benefits, and the effects on efficiency, competition, and capital formation of individual rule provisions in the corresponding sections of the release. We anticipate, however, that the elements of the rules will interact with each other and also with other regulations to generate combined economic effects. Thus, it is appropriate to expand the analysis to include disparate elements of the rule. While we make every reasonable attempt to quantify the economic impact of the rules that we are adopting,

⁶² 15 U.S.C. 78w(a).

⁶³ 15 U.S.C. 78w(a)(2).

we are unable to do so for several components of the new rules due to the lack of available data.⁶⁴ We also recognize that several components of the new rules are designed to change existing market practices and as a result, existing data may not provide a basis to fully assess the rules' economic impact. Specifically, the rules' effects will depend on how issuers, their investors, and other parties to the transactions (e.g., trustees, underwriters, and other parties that facilitate transactions between issuers and investors) will adjust on a long-term basis to these new rules and the resulting evolving conditions. The ways in which these groups could adjust, and the associated effects, are complex and interrelated and thus we are unable to predict them with specificity nor are we able to quantify them at this time.

The new rules are designed to improve investor protections and promote a more efficient asset-backed market. The new transaction requirements for shelf eligibility should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. It is these transactions that are appropriate to be offered to the public off a shelf without prior staff review. The new requirements for more asset-level information and more time for investors to review this information will provide more disclosure and greater transparency about the underlying assets. The effect of the increased disclosure on competition, efficiency, and capital formation will depend, in part, on the level of granularity and standardization of information currently available and disclosed. The remaining changes to

⁶⁴ We note the lack of quantitative analysis provided by commenters about the impact of the proposals on the market. Some commenters did, however, provide us with some limited qualitative descriptions of potential impacts, which we took into consideration in adopting the final rules.

Regulation AB that we are adopting are refinements to existing Regulation AB. We recognize that these new and amended rules that we are adopting may impose costs on asset-backed issuers, investors, servicers, and other transaction participants and may affect competition, efficiency, and capital formation. The effect of the refinements to existing Regulation AB will depend, in part, on issuers' current methods to comply with the existing rules. While we cannot predict or quantify precisely all effects the new rules will have on competition, efficiency, and capital formation, we believe that the rules we are adopting will improve the asset-backed securities market.

A. Market Overview and Economic Baseline

For many asset classes, the ABS market before the 2007-2009 financial crisis differed significantly from the one immediately after the crisis, and even from our baseline, the market that exists today, as illustrated in Figure 1. Private-label (non-U.S. agency) ABS issuers held \$2.6 trillion in assets in 2004, which grew to \$4.5 trillion in 2007, and declined to \$1.63 trillion in 2013.⁶⁵ This distinction is most stark in the case of private-label residential mortgage-backed securities ("RMBS"), including home equity lines of credit. In 2004, prior to the crisis, new issuances of registered private-label RMBS totaled \$746 billion.⁶⁶ The overwhelming majority

⁶⁵ See Federal Reserve Board, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts (published quarterly), available at <http://www.federalreserve.gov/releases/z1/>. Each report contains data for the previous five years; data for earlier years can be accessed through the Federal Reserve's Data Download Program, available at <http://www.federalreserve.gov/datadownload/Choose.aspx?rel=Z.1>. We use aggregate data for private mortgage pools, consumer credit, business loans, student loans, consumer leases, and trade credit securitization.

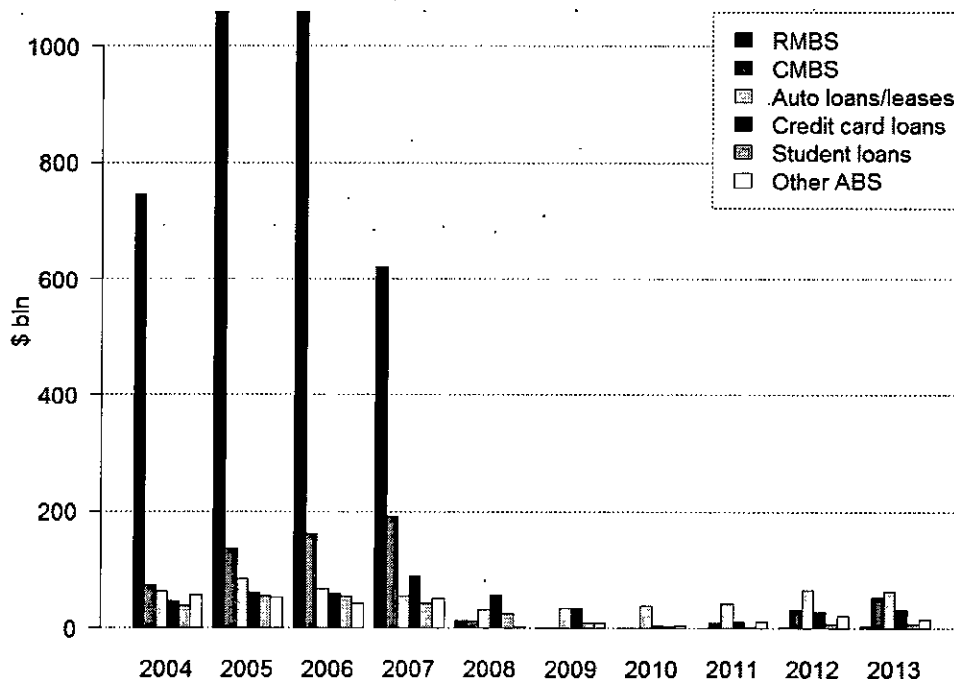
⁶⁶ The figure and statistics in this section are based on the issuance data from AB Alert and CM Alert databases. The deals are categorized by offering year, underlying asset type, and offering type (SEC

of private-label RMBS deals issued before the crisis were registered offerings. In 2008, registered private-label RMBS issuance drastically dropped to \$12 billion. Today, the private-label RMBS market remains exceptionally weak overall and consists almost exclusively of unregistered RMBS offerings.⁶⁷ For 2013, new issuances of registered private-label RMBS totaled \$4 billion, which represents 0.54% of the issuance level in 2004. Similarly, a drop in issuance level was evident with registered commercial mortgage-backed securities ("CMBS"), which totaled \$74 billion in 2004, declined to \$11 billion in 2008, and totaled \$53 billion in 2013. The consumer finance ABS market, including credit card and auto securitizations, also declined drastically both in terms of number of deals and issuance volume after the financial crisis. For example, \$85 billion of Auto ABS were issued in 2005, but after the crisis, in 2008, issuance plummeted to \$32 billion. Unlike RMBS, consumer finance ABS, especially Auto ABS, has since 2008 steadily increased to \$42 billion of issuance in 2011 and to \$62 billion in 2013. Almost all ABS markets experienced historic downturns following the crisis, and the recovery of these markets has not been uniform.

registered, Rule 144A, or traditional private offerings). Private-label RMBS include residential, Alt-A, and subprime RMBS, and ABS backed by home equity loans and lines of credit. Only private-label (non-GSE) RMBS deals sold in the United States and sponsors of such deals are counted. Auto loan ABS include ABS backed by auto loans, both prime and subprime, motorcycle loans, truck loans, and RV loans.

⁶⁷ As of December 2013, roughly 99% of new residential mortgage-related securitizations were government sponsored (market statistics from the Securities Industry and Financial Markets Association (SIFMA)). See also Tracy Alloway, "Private-Label Mortgage Securities Take Root," *FIN. TIMES* (Feb. 22, 2013) (noting a recent spurt in private-label RMBS issuances but also indicating that the volume of private-label RMBS is likely to remain suppressed for some time). The outstanding private-label RMBS market fell to \$1.1 trillion in the last quarter of 2013, down from \$1.4 trillion in 2011 and \$2.3 trillion in 2007. See also Diana Olick, "Why Private Investors Are Staying Away From Mortgages," *CNBC* (Aug. 6, 2012) (citing lack of investor confidence in the quality and ratings of RMBS).

Figure 1. Issuance volume (in billions of dollars) of SEC-registered ABS deals in 2004-2013 by main asset classes. For a description of the data, see footnote 66.



The number of sponsors in the registered ABS markets has undergone changes similar to the issuance activity described above. In 2004 there were 131 sponsors of registered ABS, while currently there are 61 sponsors of registered ABS.⁶⁸ The decline in the number of sponsors is most dramatic in the RMBS segment where only a single sponsor of private-label RMBS was issuing registered securities as of the end of 2013 – down from 52 sponsors in 2004. In the RMBS market, private-label RMBS issuers encounter competitive pressure from government-sponsored enterprises, whose mortgage-backed securities are guaranteed and exempt from registration and reporting requirements. As private-label issuance has declined, issuance of

⁶⁸ For a description of the data, see footnote 66. The 2004 numbers in this release have been revised from those provided in the 2010 ABS Proposal to include CMBS sponsors from the CM Alert database.

agency RMBS has increased. Issuances of Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), and Government National Mortgage Association ("Ginnie Mae") mortgage-related securities were \$1.4 trillion in 2004, and grew to \$1.9 trillion in 2013.⁶⁹

Many factors contributed to the financial crisis, including some that involved mortgage-backed securities.⁷⁰ The low interest rate environment prior to the crisis drove investor demand for high-yield, high-credit rated products, including mortgage-backed securities.⁷¹ Among the many factors relating to mortgage-backed securities that contributed to the financial crisis, mortgage originators largely exhausted the supply of traditional quality mortgages, and to keep up with investor demand for mortgage-backed securities, subprime lending became increasingly popular.⁷² During the crisis, as the default rate for subprime mortgages soared, such securities, including those with high credit ratings, lost value (up to 95% for triple-B rated and 70% for triple-A rated subprime RMBS issued in 2006), making investors reluctant to purchase these

⁶⁹ See SIFMA, U.S. Mortgage-Related Issuance, available at <http://www.sifma.org/research/statistics.aspx>.

⁷⁰ A report by the U.S. Government Accountability Office ("GAO") noted that subprime and near-prime mortgages increased dramatically in popularity during the 2000's, accounting for nearly 40% of mortgage originations by 2006. The high foreclosure and default rates of these mortgages contributed precipitously to the financial crisis. See U.S. Government Accountability Office, Mortgage Reform: Potential Impacts of Provisions in the Dodd-Frank Act on Homebuyers and the Mortgage Market (July 2011) at 11.

⁷¹ See, e.g., Eamonn K. Moran, Wall Street Meets Main Street: Understanding the Financial Crisis, N.C. BANKING INST. 7, 14 & 35 (2009) ("Low interest rates set by the Federal Reserve, as a result, led to low returns on traditionally safe U.S. Treasury bonds. Therefore, securitized investments, which yielded a premium but many of which carried AAA-ratings even if the underlying mortgages were dubious, were quite attractive to domestic and foreign investors.").

⁷² See *id.* at 35 (noting "voracious demand exhausted the supply of prime mortgage loan securitizations and investment bankers began seeking subprime mortgage loans to continue to generate mortgage-backed securities").

securities.⁷³ Some of the decline in the value began to reverse in 2010 as housing prices started to stabilize and investors gained a better understanding of the mortgage modification process. This reversal has been concentrated in the subprime RMBS tranches that were highly rated. As indicated above, activity in some parts of the ABS market continues to remain weak.

B. Economic Motivations

As described at the end of the previous section, during the financial crisis, many securitizations performed exceptionally poorly as investments. This has been attributed to the dual problems of moral hazard and asymmetric information.⁷⁴ In particular, many believe that originators and securitizers have more information about the credit quality and other relevant characteristics of the borrower than the ultimate investors; for example, they may have been aware that the underlying assets were of poor quality and, thus, presented greater risks. This leads to a potential moral hazard problem – the situation where one party (e.g., the loan originator or ABS sponsor) may have a tendency to incur risks because another party (e.g., investors) will bear the costs or burdens of these risks. Hence, when there are inadequate processes in place to encourage (or require) sufficient transparency to overcome concerns about informational differences, the securitization process could lead certain participants to maximize

⁷³ See, e.g., Board of Governors of the Federal Reserve System, Report to the Congress on Risk Retention, (Oct. 2010) at 50-51 (discussing the dramatic drop in the triple-A and triple-B ABX.HE 2006-2 index).

⁷⁴ See, Adam B. Ashcraft & Til Schuermann, Understanding the Securitization of Subprime Mortgage Credit (Staff Report, Fed. Reserve Bank of N.Y., Working Paper No. 318, 2008) (identifying at least seven different frictions in the residential mortgage securitization chain that can cause agency and adverse selection problems in a securitization transaction and explaining that given that there are many different parties in a securitization, each with differing economic interests and incentives, the overarching friction that creates all other problems at every step in the securitization process is asymmetric information).

their own welfare and interests at the expense of other participants. Before and during the crisis, information regarding the quality of the underlying assets was not generally known by investors, and certain originators and sponsors were frequently able to transfer the financial consequences of poor origination decisions by packaging the assets in complex and often opaque securitization structures.⁷⁵ The incentives to maintain opacity were particularly acute for those securitizations where the originator and securitizer received full compensation for their services before investors could become informed about the loan quality of the underlying pool.⁷⁶

At that time, many investors unduly relied upon the major credit rating agencies for credit analysis of these structures rather than conducting their own due diligence, and these agencies often failed to accurately evaluate and rate the securitization structures.⁷⁷ Many observers believe that inflated and inaccurate credit ratings contributed to the financial crisis in a significant way.⁷⁸ Investment in securitizations has diminished substantially since the financial

⁷⁵ See, e.g., Chris Downing, Dwight Jaffee & Nancy Wallace, Is the Market for Mortgage-Backed Securities a Market for Lemons?, 22(7) REV. FIN. STUD. 2457-94 (2009) (stating that the quality of the assets sold to investors through securitizations is lower than the quality of similar assets that are not sold to investors); Amiyatosh Purnanandam, Originate-to-Distribute Model and the Subprime Mortgage Crisis, 24(6) REV. FIN. STUD. 1881-1915 (2011) (stating that banks with high involvement in the originate-to-distribute market originated excessively poor-quality mortgages and noting that this evidence is consistent with the view that the originating banks did not expend resources to adequately screen the quality of their borrowers).

⁷⁶ See also Section C.2.b. Broad Economic Considerations of the Credit Risk Retention, Release No. 34-70277 (Aug. 28, 2013) [78 FR 57928] (the "2013 Risk Retention Re-Proposing Release").

⁷⁷ See footnotes 30, 31 and 52.

⁷⁸ Observers identified several weaknesses in the credit rating process, which in many instances contributed to inaccurate ratings and were made apparent in the aftermath of the financial crisis. One of the weaknesses is the availability of ratings shopping, whereby issuers can request and privately observe multiple ratings and then choose to disclose publicly only the most favorable. Complex assets that are difficult to rate and that are likely to generate differences in ratings can create incentives for issuers to shop for ratings and disclose only those ratings that are high. Competition among credit rating agencies can exacerbate the problem, by providing rating agencies with incentive to compete for business through favorable ratings and providing

crisis, in part, because investors have significantly less trust that incentives are properly aligned among originators, securitizers, independent evaluators (rating agencies), and investors.⁷⁹

The rules we are adopting apply to private-label RMBS securitizations, and do not apply to Government Sponsored Entities (GSEs) such as Fannie Mae and Freddie Mac, whose principal and interest on issued securities is currently guaranteed, while the GSEs remain in conservatorship,⁸⁰ and otherwise may be perceived by market participants to carry an implicit guarantee.⁸¹ Private-label RMBS securitizations are not guaranteed by the federal government

issuers with options to choose among the rating agencies – commonly referred to as a race to the bottom. As a result of these weaknesses in the credit rating process, overreliance on credit ratings of complex or potentially opaque assets, such as in the case with asset-backed securities, can lead to excess investment with poor risk/return characteristics. See, e.g., NAT'L COMM'N ON THE CAUSES OF THE FIN. AND ECON. CRISIS IN THE U.S., THE FINANCIAL CRISIS INQUIRY REPORT xxv, 43-44 (2011) ("Participants in the securitization industry realized that they needed to secure favorable credit ratings in order to sell structured products to investors. Investment banks therefore paid handsome fees to the ratings agencies to obtain the desired ratings."); Vasiliki Skreta & Laura Veldkamp, Ratings Shopping and Asset Complexity: A Theory of Ratings Inflation, 56 J. MONETARY ECON. 678-95 (2009); Bo Becker & Todd Milbourn, How Did Increased Competition Affect Credit Ratings?, 101 J. FIN. ECON. 493-514 (2011); John Griffin & Dragon Tang, Did Subjectivity Play a Role in CDO Credit Ratings?, 67(4) J. FIN. 1293-1328 (2012).

⁷⁹ Adam B. Ashcraft & Til Schuermann, Understanding the Securitization of Subprime Mortgage Credit (Staff Report, Fed. Reserve Bank of N.Y., Working Paper No. 318, 2008) (discussing the ways that market participants work to minimize informational frictions that arise among and between the different participants in the securitization process and providing thoughts and evidence on how this process broke down during the financial crisis); Joshua Coval, Jakub Jurek & Erik Stafford, The Economics of Structured Finance, 23(1) J. ECON. PERSP. 3-25 (2009) (providing a detailed assessment of the relative importance of rating agency errors, investor credulity, and perverse incentives and suspect behavior on the part of issuers, rating agencies, and borrowers).

⁸⁰ In September 2008, Fannie Mae and Freddie Mac agreed to be placed under direct government control, through conservatorship.

⁸¹ N. ERIC WEISS, CONG. RESEARCH SERV., R40800, GSEs AND THE GOVERNMENT'S ROLE IN HOUSING FINANCE: ISSUES FOR THE 113TH CONGRESS (2013). For the estimates of the value of the implicit government guarantee, see Wayne Passmore, The GSE Implicit Subsidy and the Value of Government Ambiguity, 33(3) REAL EST. ECON. 465-86 (2005) (finding that GSE shareholders benefit substantially from the ambiguous government relationship, largely due to the fact that purchasers of the GSEs' debt securities believe the debt is implicitly backed by the U.S. government (despite the lack of a legal basis for such a belief)); Deborah Lucas & Robert McDonald, Valuing Government Guarantees: Fannie and Freddie Revisited, in MEASURING AND MANAGING FEDERAL FINANCIAL RISK 131-154 (Deborah Lucas, ed., Univ.

and had a much higher serious delinquency rate than GSE-purchased loans, even after accounting for different underlying loan characteristics.⁸² This historical performance-based evidence suggests that GSE underwriting standards offset the incentive to incur excess risk because of their capital support, at least in relation to the private-label securitizers that did not have such capital support. In particular, GSE purchased loans were six times less likely to default than private-label loans with similar characteristics.⁸³ The focus of the final rules is on private-label securitizations, which is the segment of the market where investors are more likely to experience losses.

We note that the rules are intended to increase transparency about the potential risks in the ABS market through greater loan-level disclosure and to provide additional recourse for investors when issues arise, thus providing better tools for investors to evaluate their capital allocation decisions. These measures should lessen the risk of overreliance on credit ratings as investors will now be able to conduct their own due diligence using more transparent and fuller disclosures regarding the assets underlying a securitization. Disclosure of higher quality and more complete data regarding the loan characteristics of the underlying collateral should result in

of Chicago Press, Feb. 2010) (2010) (estimating the value of the implicit guarantee on GSEs' debt issues to be approximately \$28 billion).

⁸² See JOSHUA WHITE & SCOTT BAUGUESS, QUALIFIED RESIDENTIAL MORTGAGE: BACKGROUND DATA ANALYSIS ON CREDIT RISK RETENTION, Division of Economic and Risk Analysis, U.S. Securities and Exchange Commission (Aug. 2013) (the "White-Bauguess Study"), available at <http://www.sec.gov/divisions/riskfin/whitepapers/qrm-analysis-08-2013.pdf>.

⁸³ Id.

better capital allocation decisions, improved capital formation and, ultimately, lower capital costs by making the markets more informationally-efficient.

One key objective of the final rules is to eliminate the reliance on credit ratings in the determination of shelf eligibility of asset-backed securities. Replacing the investment-grade rating requirement for the purposes of shelf eligibility may result in securitizers finding it uneconomic or unnecessary to obtain credit ratings for their securitizations, thus lowering the demand for the services of third-party evaluators. The rules do not, however, preclude investors from utilizing credit ratings in their investment analysis and decision-making, and asset-backed securities issuers are not prohibited from having their offerings rated. Thus, if there is sufficient demand for ratings due to a perception of value in the ratings, then securitizers may continue to obtain ratings and credit rating agencies would suffer a relatively small decrease in the demand for their ratings services.

The rules we are adopting are designed to work with other regulations to provide additional disclosures, further align incentives in the securitization market, and restore confidence in the ABS market. Specifically, Section 941(b) of the Dodd-Frank Act requires regulations that mandate that certain securitizers have “skin in the game” through the retention of a meaningful risk exposure in securitizations (at least a 5% economic loss exposure).⁸⁴ The requirement that securitizers hold risk exposure is likely to affect their decisions regarding the quality of assets to include in such structures. While we expect that the risk retention rules

⁸⁴

See 15 U.S.C. 78o-11(b), (c)(1)(A) and (c)(1)(B)(ii). See also Credit Risk Retention, Release No. 34-64148 (Mar. 30, 2011) [76 FR 24090] (the “2011 Risk Retention Proposing Release”) and the 2013 Risk Retention Re-Proposing Release (both proposed to implement the Dodd-Frank requirement).

required by the Dodd-Frank Act, when adopted, will result in better underwriting practices, we believe that further regulation is necessary to align incentives and facilitate credit evaluation in the securitization market.⁸⁵

In summary, the amendments to our regulations and forms for asset-backed securities are designed to enhance investor protection by reducing the likelihood of overreliance on ratings and increasing transparency to market participants.

C. Potential Effects on the ABS Market

We believe that these amendments will work together to also improve investors' willingness to invest in asset-backed securities and to help the recovery in the ABS market with attendant positive effects on informational and allocative efficiency, competition, and the level of capital formation. Enhanced ABS disclosures and the potential for improved pricing accuracy of the ABS market should ultimately benefit issuers in the form of a lower cost of capital and increased investor participation. We expect that increased transparency in the market and more certainty about the quality of underlying assets should result in lower required yields, and a larger number of investors should be willing to participate in the market because of reduced uncertainty and risk. This, in turn, would allow originators to conserve costly capital and to diversify credit risks among many investors. Further, we believe that credit risk transfer will

⁸⁵ We also continue to separately consider the comments received in connection with the proposal to implement the prohibition under Section 621 of the Dodd-Frank Act on material conflicts of interest in connection with certain securitizations. See Prohibition Against Conflicts of Interest in Certain Securitizations, Release No. 65355 (Sept. 19, 2011) [76 FR 60320] (the "ABS Conflicts Proposal").

result in greater efficiency in the lending decisions of originators, the lowering of credit costs, and ultimately greater capital availability through higher loan levels.⁸⁶

Asset-level disclosure requirements will provide information about underlying asset quality that was not consistently available to investors prior to these rules. The new rules also standardize the reporting of asset-level information, thus lowering the cost of acquiring information and search costs for investors. The disclosure and the reduction in search costs should directly increase the transparency of the market and, thus, the informational efficiency in pricing ABS, both in the primary and secondary markets. This should lead to increased investor participation and more efficient allocation of capital.

There are important benefits to issuers from heightened disclosures of a structured finance asset base. In the absence of adequate information about the quality of assets in the ABS structure, as was the case in the RMBS market leading up to the start of the financial crisis, the market for structured products may break down.⁸⁷ The continuing problems in the CMBS and

⁸⁶ See, e.g., Darrell Duffie, *Innovations in Credit Risk Transfer: Implications for Financial Stability* (Bank for Int'l Settlements Working Paper No. 255, 2008), available at <http://www.bis.org/publ/work255.pdf> (stating that innovation in credit risk transfer through security design (such as ABS) increase the liquidity of credit markets, lowers credit risk premia, allows for the efficient distribution of risk among investors, and offers investors an improved menu and supply of assets and hedging opportunities); A. Sinan Cebenoyan & Philip E. Strahan, *Risk Management, Capital Structure and Lending at Banks*, 28(1) J. BANKING & FIN. 19-43 (2004) (finding that increasingly sophisticated risk management practices (through activities such as loan sales) in banking are likely to improve the availability of bank credit, but are unlikely to reduce bank risk); Benedikt Goderis, Ian W. Marsh, Judit Vall Castello & Wolf Wagner, *Bank Behavior with Access to Credit Risk Transfer Markets* (Oct. 2006) (unpublished manuscript) (finding that banks that adopt advanced credit risk management techniques (measured in their study by the issuance of at least one collateralized loan obligation) experience a permanent increase in their target loan levels of around 50%, and interpreting their findings as a confirmation of the general efficiency enhancing implications of new risk management techniques).

⁸⁷ This is commonly referred to as the "lemons problem." See, e.g., George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q. J. ECON. 488-500 (1970) (discussing the

RMBS markets may be an extended manifestation of this problem.⁸⁸ Investors that previously (and erroneously) relied on credit rating agencies to mitigate the informational asymmetry problem about asset quality can avail themselves of improved disclosures that allow them to conduct their own due diligence on an issuer's structured product. This will benefit issuers of high quality ABS because if investors are better able to independently verify the quality of and value underlying assets, they will be better able to distinguish high quality ABS issuers from other issuers, where otherwise the distinction between different types of issuers' disclosures would be obfuscated because the quality of the underlying ABS assets could not be verified. This differentiation between good and bad quality issuers would also lead to more efficient allocation of capital.

Another consequence of the final rules is the increase in availability of capital through the potential expansion of the set of ABS eligible for shelf registration. A larger set of ABS will be eligible for shelf registration if they meet the new shelf eligibility requirements, namely, non-investment grade ABS tranches that were not eligible before. This may result in greater credit availability to issuers of non-investment grade ABS that would have otherwise been difficult or more costly to obtain.

difficulty of distinguishing good quality from bad quality in the business world and suggesting that many economic phenomena may be explained and understood as a response to the demand for the need to distinguish).

⁸⁸

See Figure 1 in Section II.A Market Overview and Economic Baseline and accompanying discussion (noting that the RMBS and CMBS markets have not recovered since the crisis, whereas the issuance of consumer finance ABS, especially Auto ABS, has steadily increased in the recent years and almost reached the pre-crisis levels).

D. Potential Market Participants' Responses

We recognize that the final rules may have direct and indirect economic impacts on various market participants. Importantly, as noted above, the market practices of participants are likely to evolve in response to the final rules. While we lack the ability to predict those effects with certainty, we qualitatively consider some of the potential effects of these rules by discussing the trade-offs various market participants may face when complying with these rules.

Most of the direct costs of these rules fall onto the sponsors of ABS, since they will initially bear any increased costs of compliance and implementation of the new requirements; however, there is some uncertainty surrounding who will ultimately bear these direct compliance costs. Depending on market conditions, the degree of competition at different levels of the securitization chain, and the availability of other forms of credit, the sponsors may attempt to pass some or all of these costs on to other market participants.

One way in which the sponsors may elect to pass costs to market participants is through lower returns paid to investors in securitizations. Promised returns to investors will typically depend on the costs of creating and maintaining the securitized credit structure, including new costs associated with compliance. If investors are willing to absorb some or all of these costs and yet still expect to receive an acceptable risk-adjusted return on their investment, then investor returns could be lower on these investments than in the past. How much of the higher costs sponsors can realistically pass through to investors will depend on the risk and return opportunities available from other similar investments in the market.

We also recognize that some of the new asset-level disclosure and shelf registration costs may be passed down the chain of securitization and ultimately to borrowers. In particular, and in

the short term when new reporting and data handling systems have to be developed, borrowers may ultimately bear higher credit costs to compensate sponsors for these increased compliance costs. The ability to pass costs on to borrowers will be constrained by competition from lenders that do not securitize in the registered market. If the costs of compliance are significant, the competitive position of firms that are subject to the requirements of the final rules and that rely on securitization in the public market for funding, in particular through shelf registrations, could weaken relative to other financial firms that are not subject to these requirements, or that have other sources of funding.

If asset-backed issuers are unable to pass along their shelf registration costs as described above, and thus bear all or most of these new costs, then they might choose to avoid the shelf registration process by registering their ABS on Form SF-1 or they might choose to bypass registration altogether and issue through unregistered offerings instead to avoid the new shelf registration costs. Similarly, if asset-backed issuers are unable to pass along the costs incurred to provide asset-level disclosure (for those asset classes subject to it), then they may issue through unregistered offerings. Such actions could have the effect of reducing efficiency and could impede capital formation; however, there are reasons to believe that some investors may support the market for registered ABS despite additional costs. First, because the prospectus disclosure requirements are the same for both types of registered offerings, a shift from shelf-registration to non-shelf-registration may occur only due to the new shelf registration costs, and the shift would be constrained by the speed and convenience of shelf takedowns. Moreover, the reallocation of newly issued registered ABS between shelf- and non-shelf registration should not have a substantial effect on capital formation as long as new and existing issuers of registered ABS

choose to or continue to choose to issue registered ABS (and accordingly provide the same disclosures). Second, not all investors satisfy the criteria of qualified institutional buyers ("QIBs") under Rule 144A,⁸⁹ and, although such investors might be interested in investing in Rule 144A ABS, they would not be able to do so due to inability to qualify to participate in that market. To the extent that this segment of the investor base is sufficiently large, ABS issuers might experience substantial demand for their securities from investors that are not qualified to invest in unregistered offerings. Such demand would reduce the cost of capital for public ABS issuers, creating incentives to issue through registered rather than unregistered offerings. Third, since the final rule applies to registered offerings of ABS, to the extent that there are investors willing to pay (in the form of a reduced yield) for the resolution of uncertainty regarding the asset pool quality and reduced risk of investments, there again may be a substantial enough demand to fund ABS in the registered market. Thus, we believe that the shift from the registered ABS segment to other market segments should not be substantial. The potential expansion of the registered ABS market and wider investor participation discussed previously in this section should allow ABS sponsors to recoup some of the costs introduced by these rules and, thus, should increase the attractiveness of issuing ABS through registered offerings as opposed to through unregistered offerings.

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The term "qualified institutional buyer" is defined in Rule 144A(a)(1) [17 CFR 230.144A(a)(1)] and includes specified institutions that, in the aggregate, own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with such institutions. Banks and other specified financial institutions must also have a net worth of at least \$25 million. A registered broker-dealer qualifies as a QIB if it, in the aggregate, owns and invests on a discretionary basis at least \$10 million in securities of issuers that are not affiliated with the broker-dealer.

The enhancement of registered transactions could potentially reduce the degree to which credit is intermediated by banks.⁹⁰ In particular, greater availability of credit for borrowers through securitizations may result in less reliance on traditional bank loans and greater reliance on other financial intermediation mechanisms. This is especially likely to happen if and when the new capital and liquidity requirements (Basel III) result in an increase in the regulatory capital costs for financial institutions subject to regulatory capital and liquidity requirements.

One potential source of competition for private-label securitizers impacted by these rules is the GSEs in the mortgage market. As previously mentioned, the principal and interest on GSE-issued securities is currently guaranteed, while the GSEs are in conservatorship. Even upon resolution of their current status, their congressional charter and past government intervention will likely perpetuate a widely held view of an implicit federal guarantee of their securities.⁹¹ This explicit or future implicit government support provides a competitive advantage over private-label securitizers through lower funding costs. In addition to this cost of capital advantage, GSEs will not be subject to these new rules and the costs associated with the enhanced disclosure rules,⁹² which as we previously discussed are less relevant to investors of

⁹⁰ See Darrell Duffie, *Innovations in Credit Risk Transfer: Implications for Financial Stability* (Bank for Int'l Settlements Working Paper No. 255, 2008), available at <http://www.bis.org/publ/work255.pdf> (observing that financial innovations, such as ABS, designed for more efficient credit risk transfer, have facilitated a reduction in the degree to which credit is intermediated by banks).

⁹¹ See footnote 81.

⁹² MBS issued by these GSE's and Ginnie Mae have been and continue to be exempt from registration under the Securities Act and most provisions of the federal securities laws. For example, Ginnie Mae guarantees are exempt securities under Section 3(a)(2) of the Securities Act (15 U.S.C. 77c(a)(2)) and Section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)). The chartering legislation for Fannie Mae and Freddie Mac contain exemptions with respect to those entities. See 12 U.S.C. 1723c and 12 U.S.C. 1455g.

GSE securities because of the government support in the event of credit problems. Thus, to the extent that the adopted rules impose additional costs on securitizers, their offerings will either not be as competitive as those of the GSEs or potentially be crowded out of the market altogether.

The current federal guarantee of mortgage-backed securities issued by GSEs (and/or the market perception of an implicit guarantee) may explain why, among all the securitized asset categories impacted by the financial crisis, the private-label RMBS and CMBS have been the slowest to regain volume.⁹³ Thus, while the rules we are adopting are intended to create transparency in the market for private-label securitizations, the additional costs imposed on securitizers may be sufficiently large that, at least as long as the GSEs remain in federal government conservatorship, the cost differences between GSE and private-label securitizations may remain large enough to discourage substantial investment through the latter channel.⁹⁴ Longer-term, the competitiveness of private-label securitizations may depend as much on the ultimate fate of the GSEs as on the effectiveness of the rules we adopt.

III. Asset-Level Disclosure

We are adopting a requirement for standardized asset-level disclosures for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans, auto

⁹³ See Figure 1 in Section II.A Market Overview and Economic Baseline and accompanying discussion.

⁹⁴ Even though the GSEs currently collect and disseminate asset-level information to the public (as discussed in Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement), the disclosure regime for GSEs would not change as a result of adopting these rules. Accordingly, the costs that GSEs incur due to their current asset-level disclosures will not change, and the GSEs will likely benefit from the cost advantage over private-label ABS issuers introduced by the rules being adopted.

leases, and resecuritizations of ABS that include these asset types or of debt securities. The disclosure is required to be provided in a standardized tagged XML format. We are also adopting many of the proposed refinements to other disclosure requirements. At this time, we are not adopting our proposal for other asset classes.

A. Asset-Level Disclosure Requirement

1. Background and Economic Baseline for the Asset-Level Disclosure Requirement

Prior to these amendments, the Commission had not historically required the disclosure of asset-level data. Instead, issuers were only required to provide information about the composition and characteristics of the asset pool, tailored to the asset type and asset pool involved for the particular offering.⁹⁵ In the past, some transaction agreements for securitizations required issuers to provide investors with asset-level information, or information on each asset in the pool backing the securities, but generally there was no mandatory regulatory requirement that asset-level data be provided.⁹⁶ Furthermore, such information was generally not standardized or required to be standardized.

Many investors and other participants in the securitization market did not previously have sufficient time and information to be able to understand the risks underlying the ABS and were

⁹⁵ See Item 1111 of Regulation AB [17 CFR 229.1111].

⁹⁶ Under Item 1111(b)(9) of Regulation AB [17 CFR 229.1111(b)(9)] as it existed prior to this adoption, if the asset pool included commercial mortgages, certain non-standardized asset-level information about the properties underlying the mortgage was required for all commercial mortgages to the extent material. Further, for each commercial mortgage that represented, by dollar value, 10% or more of the asset pool, as measured as of the cut-off date, additional non-standardized asset-level information about the properties was required.

not able to value the ABS accordingly.⁹⁷ This lack of understanding and the extent to which it impacted the U.S. and global economies prompted us to revisit several aspects of our regulation of ABS, including the information available to investors. This review led us to determine that investors need access to more robust and standardized information about the assets underlying a particular ABS in order to allow them to make informed investment decisions. To accomplish this, we proposed in the 2010 ABS Proposing Release several changes to the disclosure requirements in Regulation AB including, subject to certain exceptions, a new requirement that issuers provide asset-level information about each asset in the pool backing the ABS. The asset-level data requirements were proposed to apply to all asset types, except ABS backed by credit cards, charge cards and stranded costs. For ABS backed by credit or charge card receivables, we proposed that issuers provide standardized grouped-account disclosures about the underlying asset pool instead of asset-level disclosures. Taken together, we believed these disclosures would provide robust data about each ABS, which would allow investors to analyze for each securitization transaction, at the time of inception and over the life of a security, the characteristics of each asset, including the collateral supporting each asset and the cash flows derived from each asset in the transaction.

Subsequent to the 2010 ABS Proposing Release, Congress passed the Dodd-Frank Act. Section 942(b) of the Dodd-Frank Act added Section 7(c) to the Securities Act, which requires, in relevant part, that the Commission adopt regulations requiring an issuer of an asset-backed

⁹⁷ See footnotes 40 and 44.

security to disclose, for each tranche or class of security, information regarding the assets backing that security, including asset-level or loan-level data, if such data is necessary for investors to independently perform due diligence.⁹⁸ In July 2011, we re-proposed some of the rules proposed in the 2010 ABS Proposing Release in light of the provisions added by the Dodd-Frank Act and comments received on our 2010 ABS Proposals. In the 2011 ABS Re-Proposing Release, we requested comment on whether the asset-level disclosure requirements proposed in the 2010 ABS Proposals implemented Section 7(c) effectively and whether there were any changes or additions that would better implement Section 7(c). The Commission also requested comment on whether certain asset-level disclosures enumerated in Section 7(c) are necessary for investor due diligence.⁹⁹

We received comments on the potential privacy implications of the proposed asset-level data requirements, including comments suggesting that the required asset-level information be provided by means other than public dissemination on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").¹⁰⁰ In light of the privacy concerns about

⁹⁸ See Section 7(c) of the Securities Act [15 U.S.C. 77g(c)]. Section 7(c) also requires, among other things, that we set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible facilitate the comparison of such data across securities in similar types of asset classes.

⁹⁹ In particular, the 2011 ABS Re-Proposing Release requested comment on whether asset-level disclosures of unique identifiers for loan brokers and originators, broker and originator compensation and the risk retention held by the originator and the sponsor are necessary for investor due diligence. As noted below, in general, most commenters did not believe those particular asset-level disclosures were necessary for investor due diligence.

¹⁰⁰ See letters from Ally Financial Inc., et al dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("VABSS I"), Ally Financial Inc. et al dated Oct. 13, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("VABSS III"), and Ally Financial Inc. et al dated Aug. 3, 2012 submitted in response to the 2011 ABS Re-Proposing Release ("VABSS IV") (urging the Commission "to

the proposed asset-level requirements, we re-opened the comment period on the 2010 ABS Proposals and the 2011 ABS Re-Proposals in February 2014 to permit interested persons to comment on an approach for the dissemination of asset-level data, which was described in the 2014 Staff Memorandum. The 2014 Staff Memorandum summarized the comments that had been received related to potential privacy concerns and outlined an approach that would require issuers to make asset-level information available to investors and potential investors through an issuer-sponsored Web site rather than having issuers file and make all of the information publicly available on EDGAR (the "Web site approach"). The Web site approach noted various ways in which issuers could address potential privacy concerns associated with the disclosure of asset-level information, including through restricting Web site access to such information.

To assess the economic consequences of these asset-level disclosure requirements, we are using as our baseline the ABS market as it existed at the end of 2013. Today, we note that for some types of ABS, issuers have begun or have continued to provide asset-level data. For instance, some registered RMBS issuers before the financial crisis provided asset-level disclosures, although the disclosures were not standardized. Since then, there have been a limited number of registered RMBS transactions. Those transactions have provided asset-level

consider whether loan-level data (or even grouped data) needs to be made publicly available or could be made available to investors and other legitimate users in a more limited manner, such as through a limited access website"). See also letters from Consumer Data Industry Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("CDIA") (suggesting that the Commission require parties that want to access the data on EDGAR register to use the data, acknowledge the sensitive nature of the data and agree to maintain its confidentiality) and Epicurus Institute dated Aug. 1, 2010 submitted in response to the 2010 ABS Proposing Release ("Epicurus") (stating that they believe "that the prospectus should contain a hypertext link (with instructions for accessing a website to obtain the data)...[and only] prospective investors should have traceable access to the data, and that they never have the opportunity to download... raw data in any format").

disclosures pursuant to recently developed industry standards.¹⁰¹ Further, sellers of mortgage loans to Fannie Mae and Freddie Mac are required to deliver certain asset-level data in a standardized electronic form.¹⁰² In turn, Fannie Mae and Freddie Mac provide investors loan-level disclosures about the assets underlying their securitizations.¹⁰³ For CMBS, we note that issuers commonly provide investors with asset-level disclosures at the time of securitization and on an ongoing basis pursuant to industry developed standards.¹⁰⁴ For other asset classes, we remain unaware of any publicly available data standards or instances where issuers have provided asset-level data.

We also note that prudential regulators in other jurisdictions require asset-level data about certain ABS in certain instances. For instance, the European Central Bank requires asset-level

¹⁰¹ Since 2010, only one sponsor has been publicly issuing private-label RMBS. This issuer has disclosed at the time of securitization asset-level data about the assets underlying the RMBS in a format developed by the American Securitization Forum (ASF). The ASF Project on Residential Securitization Transparency and Reporting ("Project RESTART") published a disclosure and reporting package for residential mortgage-backed securities. See American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009), available at <http://www.americansecuritization.com/>. ASF is a securitization trade association that represents issuers, investors, financial intermediaries, rating agencies, legal and accounting firms, trustees, servicers, guarantors, and other market participants.

¹⁰² See Fannie Mae Uniform Loan Delivery Dataset available at <https://www.fanniemae.com/singlefamily/uniform-loan-delivery-dataset-uldd>. See also Freddie Mac Uniform Loan Delivery Dataset available at http://www.freddiemac.com/singlefamily/sell/uniform_delivery.html.

¹⁰³ See Section III.A.2.b)(1) Residential Mortgage-Backed Securities for a discussion of loan-level disclosures provided by Fannie Mae and Freddie Mac.

¹⁰⁴ The CRE Finance Council's Investor Reporting Package includes data points on loan, property and bond-level information for CMBS at issuance and while the securities are outstanding. Materials related to the CRE Finance Council Investor Reporting Package are available at <http://www.crefc.org/>. The CRE Finance Council is a trade organization for the commercial real estate finance industry.

information for ABS accepted as collateral in the Eurosystem credit operations.¹⁰⁵ Additionally, the Bank of England requires that asset-level information be provided for certain ABS submitted as collateral against transactions with the Bank of England.¹⁰⁶ Some asset-level data is available today through third-party data providers who collect asset-level information about agency and non-agency mortgage loans and provide, for a fee, access to the data.¹⁰⁷ In addition, many third-party data providers have developed products to analyze and model asset-level data.¹⁰⁸

After considering the comments received, the ABS market and the availability and use of asset-level data regarding ABS as they exist today, we are adopting, with modifications, the proposed asset-level disclosure requirements for ABS where the underlying assets consist of

¹⁰⁵ See details about the European Central Bank's loan-level for ABS accepted as collateral in Eurosystem credit operations available at <http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html>.

¹⁰⁶ See the market notices from the Bank of England discussing its eligibility requirements for RMBS and covered bonds backed by residential mortgages, CMBS, small-medium enterprise loan backed securities and asset-backed commercial paper, and asset-backed securities backed by consumer loans, auto loans, and leases that are delivered as collateral against transactions in the Bank's operations at: <http://www.bankofengland.co.uk/markets/Documents/marketnotice121002abs.pdf>, <http://www.bankofengland.co.uk/markets/Documents/marketnotice111220.pdf>, and <http://www.bankofengland.co.uk/markets/Documents/marketnotice121217.pdf>.

¹⁰⁷ See, e.g., Blackbox Logic (providing RMBS loan-level data aggregation and processing services allowing clients to analyze both current and historical RMBS trends), <http://www.bbxlogic.com/>, Core Logic (providing data and analytic services), <http://www.corelogic.com/>, LPS McDash Online (providing access to loan-level data), <http://www.lpsvcs.com/Products/CapitalMarkets/LoanData/Products/Pages/McDashOnline.aspx> and Lewtan (providing data and analytic services), <http://www.lewtan.com/>.

¹⁰⁸ See, e.g., Experian Credit Horizons (providing products to analyze consumer mortgage and non-mortgage assets), <https://www.experian.com/capital-markets/credithorizons-product.html> and Kroll Factual Data (providing data on credit, income collateral, employment, etc.), <http://www.krollfactualdata.com/Industry/Lending/Mortgage>.

residential mortgages, commercial mortgages, auto loans or auto leases, resecuritizations of ABS that include these asset types, or of debt securities.¹⁰⁹ We provide detail on the final rules below.

As noted above, the proposed asset-level data requirements were to apply to all asset types, except ABS backed by credit cards, charge cards and stranded costs. For ABS backed by credit or charge card receivables, we proposed that issuers provide standardized grouped-account disclosures about the underlying asset pool instead of asset-level disclosures.

Asset-level information should provide investors with information that allows them to independently perform due diligence and make informed investment decisions; however, each asset class presents its own unique considerations. The response to our proposal was mixed, with some commenters supporting asset-level disclosure across asset classes and some commenters suggesting that alternative forms of disclosure were more appropriate for certain asset classes. We believe that the mix of information needed for analysis varies from asset class to asset class, and as we discuss in greater detail below, we have tailored the requirements for each asset class. While we are adopting requirements for only certain asset classes, we continue to consider the appropriate disclosure requirements for other asset classes and those proposals remain unchanged and outstanding.¹¹⁰

¹⁰⁹ In the 2010 ABS Proposing Release, the debt security asset class was categorized as "Corporate Debt."

¹¹⁰ See footnote 46 and accompanying text and Section I.C.5 Proposed Rules Not Being Adopted At This Time.

a) Proposed Rule

To augment our current principles-based, pool-level disclosure requirements, we proposed to require that issuers disclose standardized asset-level information about the assets underlying the ABS at the time of offering and on an ongoing basis in Exchange Act reports.¹¹¹ Proposed Item 1111(h) and Schedule L of Regulation AB enumerated all of the data points that were to be provided for each asset in the asset pool at the time of offering. Proposed Item 1121(d) and Schedule L-D enumerated all of the data points that were to be provided in periodic reports required under Sections 13 and 15(d) of the Exchange Act. These requirements contained data points requiring general information or item requirements applicable to all asset types underlying an ABS transaction and specialized item requirements applicable to only certain asset types. For instance, the proposal included specialized data points for ABS backed by the following: residential mortgages, commercial mortgages, auto loans, auto leases, equipment loans, equipment leases, student loans, floorplan financings, and debt securities and also for resecuritizations. Each proposed data point contained a title, definition, and a standardized response. The standardized response could be a date, number, text, or coded response.¹¹² Finally, in order to facilitate investors' use of the asset-level data, we proposed that the data be filed with the Commission on EDGAR in a standardized tagged data format using XML.

¹¹¹ See Section III of the 2010 ABS Proposing Release.

¹¹² If a data point required a "coded response," we proposed a set of predefined responses that were coded with a number that an issuer could select in providing the information.

b) Comments on Proposed Rule

Support for requiring asset-level disclosures varied across asset types, and in some cases, between issuers and investors. Some commenters, mainly investors, generally indicated broad support for asset-level disclosure across asset types.¹¹³ In general, these commenters suggested

¹¹³ See, e.g., letters from Appraisal Institute dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("AI"), Association of Mortgage Investors dated July 31, 2010 submitted in response to the 2010 ABS Proposing Release ("AMI"), American Securitization Forum, Auto Issuer Subforum and Auto Investor Subcommittee dated Aug. 31, 2010 submitted in response to the 2010 ABS Proposing Release ("ASF II") (expressed views of loan-level investors only), California Public Employees' Retirement System dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("CalPERS"), The Beached Consultancy dated July 8, 2010 submitted in response to the 2010 ABS Proposing Release ("Beached Consultancy"), Martha Coakley, Massachusetts Attorney General dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Mass. Atty. Gen."), Metropolitan Life Insurance Company dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("MetLife I"), Prudential I, SIFMA I (expressed views of investors only), Vanguard, Americans for Financial Reform dated Apr. 21, 2014 submitted in response to the 2014 Re-Opening Release ("AFR") (suggesting that asset-level disclosure should be required for all ABS ultimately backed by loans, including non-public ABS), Committee on Capital Markets Regulation dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release ("CCMR"), Council of Institutional Investors dated Mar. 26, 2014 submitted in response to the 2014 Re-Opening Release ("CII"), CRE Finance Council dated Mar. 2, 2014 submitted in response to the 2014 Re-Opening Release ("CREFC III"), Lewtan dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release ("Lewtan"), Prudential Investment Management, Inc. dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release ("Prudential III") (noting that loan-level data (e.g., current asset balance, next interest rate, current delinquency status, remaining term to maturity) will allow investors to better estimate the timing of the principal and interest cash flows of the collateral pool, which will in turn allow investors to better estimate the cash flow of the securitization and be more confident in their risk/reward consideration of the security), Allison Schwartz dated May 21, 2014 submitted in response to the 2014 Re-Opening Release ("A. Schwartz"), Securities Industry and Financial Markets Association/Financial Services Roundtable dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release ("SIFMA/FSR I-dealers and sponsors"), Vantage Score Solutions LLC dated Apr. 17, 2014 submitted in response to the 2014 Re-Opening Release ("Vantage II") (supporting industry efforts to align asset-level disclosure reporting for GSEs and private label securities), and Wells Fargo & Co. dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release ("Wells Fargo III"). But see letters from ASF II (indicating that, for ABS backed by automotive loans and leases, part of their investor membership supported loan-level and part of their investor membership supported grouped account data and for ABS backed by floorplan receivables their investor members supported grouped account data), and American Securitization Forum dated Nov. 2, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("ASF IV") (indicating that for ABS backed by equipment loans and leases part of their investor membership supported loan-level, another portion supported grouped-account disclosures, and another portion supported additional pool-level disclosure).

that asset-level disclosures would lead to better informed investment decisions,¹¹⁴ better evaluation of the risk profile of the securities,¹¹⁵ better pricing,¹¹⁶ more transparency with respect to loan servicing operations,¹¹⁷ and a broader range of opinions and analysis available with respect to ABS.¹¹⁸ Certain commenters noted that the disclosure of asset-level data is an existing market practice,¹¹⁹ and some commenters noted that asset-level disclosure requirements already exist in other jurisdictions.¹²⁰ Some commenters requested that the Commission require additional asset-level data fields,¹²¹ and one commenter noted that asset-level data is necessary

¹¹⁴ See, e.g., letters from CDIA, Investment Company Institute dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("ICI I"), MetLife I, and MSCI Inc. dated July 27, 2010 submitted in response to the 2010 ABS Proposing Release ("MSCI").

¹¹⁵ See letter from AML (stating that the disclosures described in Schedule L and L-D are essential for investors to properly evaluate the risk profile of securities offered for purchase).

¹¹⁶ See letter from Vanguard.

¹¹⁷ See letter from MetLife I (referring to the loan-level templates for RMBS).

¹¹⁸ See letters from Moody's I and Moody's Investor Service dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release ("Moody's II").

¹¹⁹ See letters from Lewtan, R&R Consulting dated Mar. 25, 2014 submitted in response to the 2014 Re-Opening Release ("R&R"), A. Schwartz (noting Fannie Mae has disclosed asset-level data and stating that such data is available from many commercial vendors and has not compromised borrower privacy), and SIFMA/FSR I-dealers and sponsors (noting, however, that the proposed requirements represent a dramatic departure from the type and amount of asset-level information issuers provide to investors and others under past industry asset-level practices).

¹²⁰ See, e.g., letters from American Bar Association dated May 6, 2014 submitted in response to the 2014 Re-Opening Release ("ABA III") (noting that the Bank of England requires the disclosure of anonymized loan-level data and the European Securities and Market Authority ("ESMA") recently published a consultation paper that included draft templates for asset-level disclosures for asset-backed securities), AFR (noting that other jurisdictions, such as the European Union and the United Kingdom, are already providing asset-level information to investors), and Global Financial Markets Association/Australian Securitisation Forum dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release ("GFMA/AusSF") (noting that the Bank of England, the European Central Bank, ESMA and the Reserve Bank of Australia already currently require, will soon require, or are in the process of developing templates to require asset-level disclosure at some point in the future).

¹²¹ See letters from the Structured Finance Industry Group dated February 18, 2014 submitted in response to the 2011 ABS Re-Proposing Release ("SFIG I"), Jeremy Calva dated Mar. 21, 2014 submitted in response

for implementation of the Commission's proposed waterfall computer program.¹²² While most investors supported requiring asset-level disclosure across asset types,¹²³ some commenters, mainly issuers or entities representing issuers, generally limited their support for asset-level disclosures to RMBS and CMBS.¹²⁴ Some commenters expressed concern about whether the materiality of the information that was proposed to be required has been considered or shown to affect the performance of the securities or the pricing of securities.¹²⁵ Some commenters suggested that we address this concern by either adopting industry standards¹²⁶ or adopting a "provide-or-explain" type regime.¹²⁷

to the 2014 Re-Opening Release ("J. Calva") (suggesting that certain asset-level data also be required in Form ABS-15G filings to identify repurchase request activity), CCMR (supporting additional disclosures, including more detailed information about obligors), and Vantage II (requesting updated credit scores and requesting that the rules not specifically refer to the FICO brand credit score or, in the alternative, refer to FICO and other credit score types, such as Vantage Score).

¹²² See letter from A. Schwartz.

¹²³ See footnote 113.

¹²⁴ See, e.g., letters from American Securitization Forum dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("ASF I") (indicating support for asset-level disclosures for RMBS), Bank of America dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("BoA I"), Citigroup Global Markets dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Citi") (supporting transparency and meaningful disclosure in connection with the issuance of ABS), J.P. Morgan Chase & Co. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("J.P. Morgan I"), Wells Fargo & Co. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Wells Fargo I"), Marc Joffe dated Mar. 27, 2014 submitted in response to the 2014 Re-Opening Release ("M. Joffe") (suggesting asset-level requirements only for RMBS), and R&R (stating that asset-level information is necessary only for asset classes that are resecuritized, such as RMBS).

¹²⁵ See, e.g., letters from BoA I (suggesting that while some investors may suspect that the asset-level information would be helpful, the "lack of any historic reliance on some of this data suggests that it may be per se immaterial"), Citi, and SIFMA I (expressed views of dealer and sponsors only) (stating that while they support the disclosure of data that facilitates an informed investment decision, requiring information that is not material merely increases the costs to issuers of providing that information without a corresponding benefit).

¹²⁶ See, e.g., letters from American Bar Association dated Aug. 17, 2010 submitted in response to the 2010 ABS Proposing Release ("ABA I"), BoA I, CMBS.Com dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("CMBS.com I"), CoStar Group dated Aug. 2, 2010 submitted in response to

In addition to comments indicating general support or opposition to the proposal, as discussed further below, we also received comments expressing more specific concerns about the proposal, such as the costs to provide the disclosures, the value of the disclosure to investors, the liability for errors in the data, individual privacy issues, the potential release of proprietary data, and whether asset-level disclosures were necessary to evaluate ABS involving certain asset classes.

Both investors and issuers noted that the disclosure requirements will impose costs and burdens on ABS issuers. Investors, however, also believed asset-level information is necessary to properly analyze ABS, and some investors believed that the concerns about the costs and burdens of providing such data may be exaggerated. For instance, the investor membership of one trade association acknowledged that requiring asset-level disclosures will impose costs and burdens on ABS issuers, but believed the information is a “necessary and key element of restoring investor confidence in the ABS markets.”¹²⁸ Another investor acknowledged that the

the 2010 ABS Proposing Release (“CoStar”), CRE Finance Council dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (“CREFC I”), Mortgage Bankers Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (“MBA I”), MERSCorp, Inc. dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release (“MERS”), MetLife I (supporting the use of an existing CMBS industry standard), Mortgage Industry Standards Maintenance Organization dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release (“MISMO”), Real Analytics dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, Vanguard, and Wells Fargo I.

¹²⁷ See letters from BoA I, Citi, SIFMA I (expressed views of dealer and sponsors only), and Securities Industry and Financial Markets Association, Dealers and Sponsors dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (“SIFMA III-dealers and sponsors”). These commenters suggested that under a provide-or-explain regime if an issuer omits any asset-level data point the issuer would be required to identify the omitted field and explain why the data was not disclosed. These commenters seemed to suggest that a provide-or-explain regime should apply to any asset type required to provide asset-level data.

¹²⁸ See letter from SIFMA I (expressed views of investors only).

proposed asset-level disclosures, among other proposed reforms, would increase costs, but the investor believed the reforms would “instill stronger origination and servicing of securitized assets, allow for more complete investor reviews and foster a more stable securitization market, which is a benefit to all borrowers, lenders and investors.”¹²⁹ One investor noted that the additional costs allegedly arising from some of the proposed reforms, including asset-level disclosures, may be “greatly exaggerated.”¹³⁰ This investor suggested that the deficiencies in “governance and transparency have dramatically increased the costs of securitization in the current market.” The investor also noted that asset-level disclosures are routinely provided in various global securitization sectors, such as U.S. CMBS and Australian CMBS, and these markets have not shut down.

Several commenters did not support asset-level requirements for certain asset classes, noting that the value of the disclosures to investors or market participants may not justify the potential costs and burdens derived from the disclosures.¹³¹ Commenters expressed these

¹²⁹ See letter from Prudential II.

¹³⁰ See letter from MetLife II.

¹³¹ See, e.g., letters from ABA I, ABA III, American Financial Services Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (“AFSA I”), American Financial Services Association dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (“AFSA II”), American Bankers Association/ABA Securities Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (“ABAASA I”), Capital One Financial Corporation dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (“Capital One II”), J.P. Morgan I (stating that the asset-level and grouped-account disclosures will impose significant costs on issuers and may, for most asset classes other than RMBS and CMBS, only provide incremental value to investors relative to what is currently disclosed), SIFMA I (expressed views of dealers and sponsors only), Equipment Leasing and Finance Association, dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (“ELFA II”), IPFS Corporation dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (“IPFS II”), Structured Finance Industry Group dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (“SFIG II”), and Wells Fargo III.

concerns with respect to specific asset types, such as Auto ABS,¹³² student loan ABS,¹³³ equipment ABS,¹³⁴ or credit card ABS.¹³⁵ One commenter stated that for Auto ABS the proposed disclosure requirements would require significant reprogramming and technological investment.¹³⁶ Another commenter noted that the proposal would require sponsors to gather and present data in ways that differ from the way sponsors currently maintain and evaluate data.¹³⁷ This commenter also believed the preparation of such information would likely impose burdens upon sponsors' systems, auditing costs and create management oversight burdens that it believed the Commission had significantly underestimated. This commenter, however, did not quantify the amount that the Commission had underestimated these costs and burdens or provide its own estimate of these costs.¹³⁸ Also without providing a cost estimate, another commenter suggested

¹³² See, e.g., letters from AmeriCredit Corp. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("AmeriCredit"), ASF II (expressed views of dealers and sponsors only), Capital One II, Financial Services Roundtable dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("FSR"), VABSS I, Vehicle ABS Sponsors dated Nov. 8, 2010 submitted in response to the 2010 ABS Proposing Release ("VABSS II"), VABSS III, and Wells Fargo I.

¹³³ See letter from Student Loan Servicing Alliance dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("SLSA").

¹³⁴ See, e.g., letters from Equipment Leasing and Finance Association dated July 22, 2010 submitted in response to the 2010 ABS Proposing Release ("ELFA I"), CNH Capital America LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("CNH I"), Navistar Financial Corporation dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Navistar"), and Wells Fargo I.

¹³⁵ See, e.g., letters from BoA I, Capital One Financial Corporation dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Capital One I"), Discover Financial Services dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Discover"), and J.P. Morgan I.

¹³⁶ See letter from BoA I.

¹³⁷ See letter from ABA I.

¹³⁸ See letter from ABA I (expressing concerns about the costs or even the ability to verify certain data, such as property appraisals, residual value estimates, status of occupancy of the property, the effect on competition from the public release of proprietary data, which, for some asset classes, may deter

that the Commission had not evaluated the entire cost of ongoing reporting for RMBS.¹³⁹

Another commenter expressed concern that if the new standards are not well integrated with existing industry practices, the data may be less reliable because reformatting data leads to a greater possibility for errors in the data.¹⁴⁰ Some commenters advised that the costs to implement the changes necessary to comply with the requirements may drive certain issuers from the market.¹⁴¹ A few commenters suggested, without referencing a particular asset type, that the proposed disclosures may overwhelm investors¹⁴² and a few commenters raised a similar concern solely with respect to the disclosures applicable to Auto ABS.¹⁴³

securitizations, restrict capital formation and eliminate market access for some issuers and affect the availability of consumer and business credit without providing additional benefits to investors).

¹³⁹ See letter from MBA I (suggesting that the Commission has not identified any costs associated with (1) initially establishing the new fields; (2) the cost of redefining many of the fields already in existence; (3) the labor cost of collecting and inputting significant new data elements into the servicing systems; (4) the costs to validate the new data on an ongoing and operational basis; (5) the cost for controls needed to ensure the data is accurate and complete; (6) the need for servicers and their data providers to build functionality within the project, to test and verify the new ongoing reporting; (7) introducing new elements not listed in proposed L-D, such as updated credit scores).

¹⁴⁰ See letter from eSignSystems dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("eSign"). See also letter from ABA I (stating that data point descriptions may not be entirely consistent with how information about obligors is captured or comparable to other similarly styled information and issuers should be able to provide narrative analysis of this data in order to ensure their disclosure is meaningful and not misleading).

¹⁴¹ See, e.g., letters from ABAASA I (noting, without further explanation, that the competitive impact on business models and potential legal risks in providing asset-level data may drive issuers from the market or make them pass these costs on to investors and borrowers) and BoA I. See also SIFMA I (expressed views of dealers and sponsors only) (expressing concern about the effect on small originators and that if small originators leave the securitization market, the value of portfolio of assets would drop due to lower liquidity).

¹⁴² See letters from CFA Institute dated Aug. 20, 2010 submitted in response to the 2010 ABS Proposing Release ("CFA I") and Epicurus.

¹⁴³ See letters from AmeriCredit and VABSS I.

Commenters also raised concerns about liability for inaccuracies.¹⁴⁴ Some commenters expressed concern that there will inevitably be errors in documents including typographical errors, information entered incorrectly (or not at all) into the files and other errors.¹⁴⁵ One concern was that some data may be difficult to objectively verify,¹⁴⁶ which one commenter referred to as “soft data.”¹⁴⁷ This commenter defined soft data as data that “is often self-reported by obligors, cannot be verified by issuers at a reasonable cost, cannot be confirmed by auditors, may not be consistent with (or comparable to) information obtained or presented by other issuers and may reflect subjective judgments.”¹⁴⁸ A few commenters noted that some soft data is used to calculate the response to other item requirements¹⁴⁹ and one of these commenters suggested issuers should have the discretion to include or exclude soft data from their disclosures.¹⁵⁰ In

¹⁴⁴ See, e.g., letters from ASF I, ABA I, and ABAASA I.

¹⁴⁵ See letters from ABA I and ABAASA I.

¹⁴⁶ See, e.g., letters from ABA I and ABAASA I. See also BoA I (noting that numerous disclosure items in proposed Schedule L relate to information that is obtained from borrowers and verified to the extent provided by an originator's underwriting policies and procedures in the application and underwriting process and such information is not subsequently updated or verified by originators or servicers in the normal course of business).

¹⁴⁷ See letter from ABA I (suggesting that the proposal contained some data points requiring empirically verifiable data, such as outstanding balances, scheduled payments, interest rates and pre-payment penalties, while other data points require data which may not be verifiable because they are “factual representations” or “subjective judgments,” such as property appraisals, residual value estimates, or status of occupancy of the property).

¹⁴⁸ See letter from ABA I.

¹⁴⁹ See letters from ABA I and ABAASA I.

¹⁵⁰ See letter from ABA I (suggesting that the Commission provide issuers the discretion to include or exclude soft data from their disclosures and, where such information is included, it should be described as information obtained from third parties and allow issuers to disclaim liability absent actual knowledge by the issuer that such information is materially incorrect). See also letter from ABAASA I (suggesting that the Commission clarify that for liability purposes soft data is not part of the prospectus or registration statement).

general, these commenters suggested that the materiality of individual data points should be determined on an aggregate basis across the entire asset portfolio, rather than at the level of the individual loan. Further, these commenters stated that even if an inaccuracy is material to a particular loan, the inaccuracy should not subject the issuer to the potential remedy of rescission of the entire issuance. The commenters urged that liability be based on the aggregate materiality in the context of the entire asset pool, the full offering disclosures and whether the securitization structure and documentation provide adequate remedies. Another commenter echoed this point.¹⁵¹

As noted above, some commenters did not support requiring asset-level disclosures for certain asset types. For example, several commenters, mainly issuers of ABS backed by automobile loans or leases,¹⁵² equipment loans or leases,¹⁵³ floorplan financings,¹⁵⁴ and student loans,¹⁵⁵ opposed asset-level disclosures requirements for these asset types because the disclosures would raise individual privacy concerns, result in the release of proprietary data, and

¹⁵¹ See letter from ASF I (suggesting that the extent to which the data in any individual field or group of fields is material to a particular transaction should remain a factual matter, based on the facts and circumstances of the transaction, the underlying loans, the securities and the individual circumstances of the investor).

¹⁵² See, e.g., letters from ABA I, American Bar Association dated Nov. 16, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("ABA II"), AmeriCredit, ASF II (expressed views of a portion of their investor membership only), BoA I, Capital One I, VABSS I, and Wells Fargo I.

¹⁵³ See, e.g., letters from CNH I, ELFA I, FSR, Navistar, and VABSS I.

¹⁵⁴ See, e.g., letters from ABA I and ASF II. See also memorandum to comment file dated Mar. 8, 2011 regarding staff's telephone call with members of the Financial Services Roundtable with letter attached from the Captive Commercial Equipment ABS Issuers Group ("Captive Equipment Group"), and VABSS I.

¹⁵⁵ See, e.g., letters from ABA I, Sallie Mae, Inc. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Sallie Mae I"), and SLISA.

the disclosures would be of limited value to investors. To alleviate these concerns, some of these commenters suggested grouped-account disclosure or a combination of grouped account and standardized pool-level disclosures.¹⁵⁶ For equipment ABS, some commenters suggested standardized pool-level data was sufficient.¹⁵⁷ As discussed below, individual privacy concerns were also raised with respect to the proposed asset level disclosures for RMBS¹⁵⁸ and with respect to the Web site approach described in the 2014 Staff Memorandum.¹⁵⁹

c) Final Rule and Economic Analysis of the Final Rule

As noted above, the public availability of asset-level information has historically been limited. In the past, some transaction agreements for securitizations required issuers to provide investors with asset-level information, or information on each asset in the pool backing the securities.¹⁶⁰ Such information is sometimes filed as part of the pooling and servicing agreement or as a free writing prospectus; however, the information provided varied from issuer to issuer

¹⁵⁶ See, e.g., letters from ASF II, Navistar, Sallie Mae I, and VABSS I.

¹⁵⁷ See, e.g., letters from Captive Equipment Group, CNH I, and ELFA I.

¹⁵⁸ See, e.g., letters from ABA I, ASF I, Consumers Union dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("CU"), MBA I, and World Privacy Forum dated Aug. 2010 submitted in response to the 2010 ABS Proposing Release ("WPF I").

¹⁵⁹ See, e.g., letters from ABA III, CCMR, Mortgage Bankers Association dated Mar. 28, 2014 ("MBA IV"), SIFMA/FSR I-dealers and sponsors (noting that "[t]his puts issuers in an untenable position – the more carefully an issuer protects customer data by restricting access to its website, the more risk it bears of an investor suit for failing to disclose all material information"), and SFIG II. See also Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

¹⁶⁰ This usually included, for example, information about the principal balance at the time of origination, the date of origination, the original interest rate, the type of loan (e.g., fixed, ARM, hybrid), the obligor's debt-to-income ("DTI") ratio, the documentation level for origination of the loan, and the LTV ratio.

and was not standardized.¹⁶¹ We believe, however, that all investors and market participants should have access to information to analyze the risk and return characteristics of ABS offerings and that asset-level information about the assets underlying a securitization transaction at inception and over the life of a security provides a more complete picture of the composition and characteristics of the pool assets and the performance of those assets than pool-level information alone, and forms an integral part of ABS investment analysis.¹⁶² Therefore, we are adopting, with modifications, a requirement that standardized asset-level data be provided, for certain asset types, in the prospectus and in Exchange Act reports. We are also adopting a requirement that the required asset-level disclosures be provided in XML, a machine-readable format.

At this time, we are adopting asset-level requirements for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans or leases, and resecuritizations of ABS, or of debt securities and we continue to consider whether asset-level disclosure would be useful to investors across other asset classes. Prior to the financial crisis, RMBS and CMBS had historically represented a large portion of the registered ABS market while Auto ABS represents a large portion of the current registered ABS market. Accordingly, these disclosures should benefit the largest number of investors, especially as greater numbers of

¹⁶¹ Under our current requirements the servicing agreement should be filed as an exhibit to the registration statement. See Item 601 of Regulation S-K and Section III.B.3.c of the 2004 ABS Adopting Release. See also Item 1108(c)(1) of Regulation AB. We remind registrants that the pooling and servicing agreement that is filed must contain all parts of the pooling and servicing agreement, including, but not limited to, any schedules, exhibits, addendums or appendices, unless a request for confidential treatment was submitted and granted to allow for the redaction of such information. See, e.g., Securities Act Rule 406 [17 CFR 230.406], Exchange Act Rule 24b-2 [17 CFR 240.24b-2], and Division of Corporation Finance Staff Legal Bulletins Nos. 1 (Feb. 28, 1997) and 1A (July 11, 2001).

¹⁶² Others have noted the importance of loan-level data to investors. See, e.g., footnote 44.

RMBS and CMBS are issued. Although comments about the asset-level requirements for Auto ABS were mixed, with some opposing any asset-level requirements for Auto ABS, Auto ABS investors have indicated in comment letters that they believe that asset-level data will strengthen the Auto ABS market and make it more resilient over the long term.¹⁶³ We also note that the European Central Bank recently began requiring the disclosure of standardized asset-level data for all Auto ABS accepted as collateral in the Eurosystem credit operations.¹⁶⁴ For these reasons, we prioritized our efforts to develop asset-level requirements for these asset classes.

The asset-level disclosure requirements for debt security ABS are relatively limited in scope and primarily consist of information that should be readily available to issuers. These disclosures, while consisting of only the basic characteristics of the debt security, will provide useful information to investors, such as the cash flows associated with the debt security, and identifiers, such as the SEC file number of the debt security. Using the SEC file number of the debt security, investors will be able to access other disclosures filed with the Commission about the debt security. No commenters specifically opposed these requirements.

We are also adopting asset-level disclosure requirements for resecuritization ABS. In an ABS resecuritization, the asset pool is comprised of one or more ABS. The new rules require disclosures about the ABS in the pool and, if the ABS in the asset pool is an RMBS, CMBS or

¹⁶³ See letters from ASF II (expressed views of loan-level investors only) and Prudential III.

¹⁶⁴ See details about the European Central Bank's Auto ABS loan-level requirements at <http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html>. We have sought to address cost concerns raised by Auto ABS issuers through our changes to the Auto ABS requirements, as discussed below.

Auto ABS, issuers are also required to provide asset-level disclosures about the assets underlying the ABS. We are requiring disclosures about the ABS being resecutitized for the same reasons we are requiring disclosure for debt security ABS, which is to provide investors with information about the ultimate source of cash flows of assets underlying the resecutitization. As a result, we believe investors in resecutitization ABS should derive the same benefits as investors in other ABS.

Under current requirements the securities being resecutitized must be registered or exempt from registration under Section 3 of the Securities Act.¹⁶⁵ As a result, all disclosures for a registered offering are required. Therefore, requiring asset-level data for the assets underlying resecutitizations of RMBS, CMBS, Auto ABS or debt security ABS is consistent with our current disclosure requirements, which also prevents issuers from circumventing our asset-level requirements for these asset classes. We also note that over the past several years there have been no registered resecutitizations of RMBS, CMBS or Auto ABS. We recognize, however, that such a requirement could increase the disclosure costs of resecutitizations relative to disclosure costs of ABS backed by other assets should an issuer choose to do a resecutitization of RMBS, CMBS or Auto ABS in the future because sponsors may need to collect information about underlying assets from additional sources. We have made some revisions to the proposal to address some of those costs. To the extent that the pass-through of required asset level

¹⁶⁵ See Securities Act Rule 190 [17 CFR 230.190]. An asset pool of an issuing entity includes all instruments which support the underlying assets of the pool. If those instruments are securities under the Securities Act, the offering must be registered or exempt from registration if the instruments are included in the asset pool as provided in Securities Act Rule 190, regardless of their concentration in the pool. See Securities Act Rule 190(a) and (b). See also Section III.A.6.a of the 2004 ABS Adopting Release.

disclosures imposes costs above that required for the original securitization, this could limit the benefits of resecuritizations and potentially inhibit the issuance of resecuritizations.

We also believe the same benefits will accrue to investors in resecuritization ABS as to investors in RMBS, CMBS, Auto ABS or debt security ABS. Similar to a direct investment in an RMBS, CMBS, Auto ABS or debt security ABS, access to this information should provide further transparency about the assets underlying the security or securities underlying the resecuritization ABS. This additional information should allow investors to analyze the collateral supporting the security being resecuritized, the cash flows derived from each asset underlying the security being resecuritized, and the risk of each asset underlying the security being resecuritized.

We acknowledge commenters' concerns about other asset classes, which we think warrant further consideration. For instance, we continue to consider commenters' concerns about how asset-level disclosures should apply where there is lack of uniformity amongst the types of collateral or terms of the underlying contracts,¹⁶⁶ there is a large volume of assets in a pool,¹⁶⁷ and there are unique features to the ABS structure.¹⁶⁸ For those asset classes where we are deferring action, we will continue to consider the best approach for providing more information about underlying assets to investors, including possibly requiring asset-level data in the future.

¹⁶⁶ See letter from ELFA I.

¹⁶⁷ See letters from Sallie Mae I and ASF I.

¹⁶⁸ See letters from ABA I and ABA III.

We also believe that, for most investors, the usefulness of asset-level data is generally limited unless the asset-level data requirements, which include the following components, are standardized: the definitions of each data point; the format for providing the asset-level data (e.g., XML), and the scope of the information required, such as what data is required about each obligor, the related collateral, and the cash flows related to each asset. We believe that standardizing the asset-level disclosures facilitates the ability to compare and analyze the underlying asset-level data of a particular asset pool as well as compare that pool to other recent ABS offerings involving similar assets.¹⁶⁹ Over time, asset-level information about past ABS offerings, including asset-level information about the performance of those offerings, will be available to further facilitate the ability for issuers to assess expected performance of a new offering based on the performance of past offerings involving similar assets.

The asset-level data required will, in general, include information about the credit quality of the obligor, the collateral related to each asset, the cash flows related to a particular asset, such as the terms, expected payment amounts, indices and whether and how payment terms change over time and the performance of each asset over the life of a security. This information should allow investors to better understand, analyze, and track the performance of ABS. We believe the final requirements we are adopting for RMBS, CMBS, Auto ABS, debt security ABS and

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See Statement of Former Federal Reserve Governor Randall S. Kroszner at the Federal Reserve System Conference on Housing and Mortgage Markets, Washington, DC, Dec. 4, 2008 (stating that a necessary condition for the potential of private-label MBS to be realized going forward is for comprehensive and standardized loan-level data covering the entire pool of loans backing MBS be made available and easily accessible so that the underlying credit quality can be rigorously analyzed by market participants).

res securitizations will implement the requirements of Section 7(c) for these asset classes.¹⁷⁰ Some commenters expressed concern that the proposed data points require more information than necessary for investor due diligence and could increase re-identification risk.¹⁷¹ As discussed in further detail below, we have modified the proposed data set for RMBS and Auto ABS in response to these concerns. We believe these modifications will help to reduce re-identification risk without materially affecting investors' ability to evaluate ABS. We believe that the disclosure requirements that we are adopting will provide investors with information they need to independently perform due diligence and make informed investment decisions.

As noted above, we believe the usefulness of the asset-level information is further increased by our formatting requirements. We believe providing standardized data definitions and requiring the data to be in a machine-readable format will provide investors the ability to download the data into software tools that can promptly analyze the asset pool. While some investors may need to obtain the software or other tools needed to analyze the data, we believe such costs would be offset by a reduction or elimination of the costs investors would incur to convert non-machine-readable data into a format that makes analyzing it easier. As a result, this should reduce the time investors need to analyze the offering. We also believe requiring the data to be in a machine-readable format addresses concerns that investors will be overwhelmed by the

¹⁷⁰ See Section III.A.4 Requirements under Section 7(c) of the Securities Act for a discussion regarding Section 7(c) and the requirements applicable to RMBS, CMBS, debt security ABS and resecuritizations. See Section III.A.2.b)(3) Automobile Loan or Lease ABS for a discussion regarding Section 7(c) of the Securities Act and the requirements applicable to Auto ABS.

¹⁷¹ See letters from ABA III and MBA IV (with respect to RMBS).

granularity of the data, because investors can quickly extract the data most relevant to their analysis. Section 7(c) also requires that we set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate the comparison of such data across securities in similar types of asset classes.

The requirements of standardized asset-level information in a machine-readable format coupled with, as we discuss in Section V.B.1.a Rule 424(h) and Rule 430D, more time to consider transaction-specific information provided through the new preliminary prospectus and three-day offering period rules that we are adopting¹⁷² are aimed at addressing concerns, highlighted by the recent financial crisis, that investors and other participants in the securitization market may not have had the necessary time and information to be able to understand and analyze the risk underlying those securities and may not have valued those securities properly or accurately.¹⁷³ Taken together, standardized asset-level information in a machine-readable format and more time to consider the information should enable investors to analyze offerings more effectively and efficiently to better understand and gauge the risk underlying the securities. This, in turn should lead to better pricing, a reduced need to rely on credit ratings and a greater ability of investors to match their risk and return preferences with ABS issuances having the same risk and return profile. These benefits should improve allocative efficiency and facilitate capital formation.

¹⁷² See Section V.B.1.a) Rule 424(h) and Rule 430D [17 CFR 230.430D].

¹⁷³ See footnote 40.

Providing investors access to such information should reduce their cost of information gathering because they will not need to purchase the data from intermediaries or otherwise gather the information. Furthermore, requiring that a single entity, the issuer, provide the information rather than requiring each investor to collect it will reduce duplicative information-gathering efforts. Also, data accuracy may increase because issuers are incentivized to confirm the accuracy of the required asset-level disclosures provided in public filings.

Finally, we note that the public availability of standardized machine-readable data may encourage new entities to enter the ABS credit-analysis industry previously dominated by the top three largest NRSROs. This could increase competition in that industry and provide those investors who prefer not to analyze ABS themselves with more options when purchasing credit-risk assessments and reports from third parties. In addition, since asset-level information in standardized and machine-readable format will now be available, investors will have the ability to better assess the rating performance of NRSROs and other credit-analysis firms.

While we expect that the asset-level disclosure requirements we are adopting will generate the benefits described above, we also recognize that they will impose costs upon the issuers required to provide asset-level disclosures and on other market participants. We received only a few quantitative estimates of the potential costs to comply with the proposed asset-level disclosure requirements.¹⁷⁴ As discussed above, however, some commenters did express general

¹⁷⁴ See, e.g., letter from VABSS IV (stating that several Auto ABS sponsors estimated the costs and employee hours necessary to reprogram systems and business procedures to capture, track, and report all of the proposed data points for auto loans to be approximately \$2 million, and that the estimated number of employee hours needed to provide the required disclosures was approximately 12,000). See also letter

concerns about the costs and burdens that would be imposed in order to comply with the requirements. After considering comments received, we acknowledge that, taken together, the asset-level disclosure requirements may result in the costs detailed immediately below.¹⁷⁵

The asset-level disclosures, as commenters noted, will result in costs related to revising existing information systems to capture, store and report the data as required. These costs may be incurred by several parties along the securitization chain, including loan originators who pass the information to sponsors and ABS issuers who file the information with the Commission. As we describe later in the release, there could be significant start-up costs¹⁷⁶ to sponsors to comply with the asset level disclosures, but ongoing costs to sponsors likely will be significantly less than the initial costs. We recognize that our estimates may not reflect the actual costs sponsors will incur, particularly to the extent that there are differences in system implementation costs relative to our estimates. We also recognize that there are likely to be significant differences across sponsors in their current internal data collection practices and that implementation costs will depend on how the new requirements differ from the methods sponsors and ABS issuers currently use to maintain and transmit data. Additionally, we recognize that these costs will differ by asset class, depending on whether sponsors and ABS issuers within an asset class have

from ELFA I (suggesting that one computer systems vendor estimated that the cost to implement a computer system to monitor and produce the required asset-level information for equipment ABS would be approximately \$250,000 in direct programming costs plus the additional staff time devoted to preparing such reports and posting them).

¹⁷⁵ Costs related to concerns about re-identification risk are detailed separately in Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

¹⁷⁶ See footnote 748.

a history of collecting and providing the asset-level information to investors. Further, in the last four years (2010-2013) only 296 registered RMBS, CMBS, Auto ABS, debt security ABS and resecuritization transactions took place. This limited issuance activity may discourage issuers and other market participants from investing in the new systems necessary to provide asset-level disclosures required by the final rules. As a result, several commenters stated that some entities may choose to exit the securitization market or not re-enter the market, which could decrease the availability of credit to consumers and increase the cost of available credit.¹⁷⁷ Furthermore, as we discussed earlier in this release, some sponsors may choose to issue through unregistered offerings where no asset-level disclosures are required.¹⁷⁸

We also note that sponsors and ABS issuers may pass the costs they incur to comply with the requirements on to investors in the form of lower promised returns and/or originators may pass their costs on to borrowers in the form of higher interest rates or fees. We note, however, that some of these costs may be offset by a reduction in other expenses. For example, investors who previously paid data aggregators for access to relevant information may no longer be required to purchase this data and, to the extent that they do, lower data collection costs on the

¹⁷⁷ See letters from ABAASA I (suggesting that if the costs of the disclosure, plus the competitive impact on business models and the potential legal risks outweigh the advantages of securitization, issuers may choose to leave the market or pass along increased costs to investors and borrowers, thereby reducing the amount of credit or increasing the cost of credit), BoA I (stating that the uncertain costs and burdens associated with building the infrastructure to capture the data needs to be “rationalized” given the fact that the non-agency securitization markets are not currently robust), and SIFMA I (expressed views of dealers and sponsors only) (suggesting the proposed asset-level requirements would most likely prevent some securitizers, in particular smaller originators, from accessing capital through the securitization markets because they may not be able to incur the costs of overhauling their current systems and practices, and that without these smaller originators the value of portfolio assets would likely be reduced due to lower liquidity). See also letter from SIFMA III-dealers and sponsors.

¹⁷⁸ See Section II.D Potential Market Participants’ Responses.

part of the data aggregators may flow through to investors. Many of the data gathering costs that previously were borne by several data aggregators and/or investors would be performed by the sponsor, eliminating the potential duplication of effort. Thus, the net effect of the new rules could be a reduction in the aggregate data collection costs imposed on the entire market through more efficient dissemination of relevant information. As a result, in the aggregate, the increase of the costs to investors in the form of lower returns may be offset by the reduction of the costs that are no longer paid to third-party data providers.

The 2010 ABS Proposing Release noted that the proposed standard definitions for asset-level information for RMBS and CMBS were similar to, and in part based on, other standards that have been developed by the industry, such as those developed under the American Securitization Forum's (ASF) Project on Residential Securitization Transparency and Reporting ("Project RESTART") or those developed by CRE Finance Council (CREFC). We continue to acknowledge that to the extent that there are differences between standards for asset-level information, additional costs would be imposed on issuers and servicers to reconcile differences between standards. Further, servicers may incur some costs in monitoring their compliance with servicing criteria and requirements under the servicing agreement given that periodic reports will now include asset-level information. As we discuss in more depth below in the discussions about the requirements applicable to each asset type, we have attempted to reduce burden and cost concerns by further aligning the disclosure requirements with industry standards where feasible. Further, as discussed below, we are providing for an extended implementation

timeframe, which we also believe will reduce the burden of implementing the requirements.¹⁷⁹

We discuss in greater detail below in Section III.A.2 Specific Asset-Level Data Points in Schedule AL the comments received with respect to RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations and the changes to the final requirements to address these comments.

To further minimize implementation costs, we also removed the “General” category. We incorporated the data points proposed under this category into each of the asset class-specific requirements in order to tailor the requirements for each asset class.¹⁸⁰ We believe removing the General category and tailoring the disclosure requirements to each asset class minimizes implementation costs because issuers will not need to respond to generic disclosure requirements that may not be applicable to the particular asset class or that may not align with how the particular asset class captures and stores data.

We also understand the asset-level data requirements may also affect other market participants. For instance, some investors may have used the services of data providers to obtain the type of data that will now be mandatory under the requirements we are adopting. As a result, these data providers may experience reduced demand for their data aggregation business as investors may no longer seek such services since these requirements may provide them access to

¹⁷⁹ See Section IX.B Transition Period for Asset-Level Disclosure Requirements.

¹⁸⁰ Under the proposal, asset pools containing only residential mortgages would need to provide, as applicable, the asset-level disclosures for residential mortgages and also the general item requirements applicable to all ABS. Under the new rules, if, for example, the asset pool contains residential mortgages, then issuers only need to provide the asset-level disclosures applicable to residential mortgages. As noted above, proposed data points in the general category remain outstanding for asset classes other than the ones we are adopting today.

similar data. We believe, however, that this concern is mitigated as these entities will also be able to access the publicly available data. As a result, these data providers may not need to gather this asset-level data from other sources, thereby reducing their costs to obtain the data. Further, third-party data providers have developed products to analyze and model the asset-level data. Since the asset-level data will be standardized it may increase the utility of their current products or allow them to develop new products, thus increasing demand for their data analysis business.

We note that commenters raised other concerns regarding the asset-level reporting requirements beyond the cost to implement the requirements. One concern, as noted above, is that the proposed asset-level data may result in the release of an originator's proprietary data.¹⁸¹ A commenter noted that if originators determine that asset-level disclosures reveal their proprietary business model to competitors they may refrain from securitizing assets.¹⁸² We note, however, that one commenter believed that the proprietary concerns were unfounded.¹⁸³ While we acknowledge competitive concerns still may exist, we believe that information we are requiring about the underlying assets, including information about the obligors, will provide investors and potential investors with information they need to perform due diligence and make

¹⁸¹ See, e.g., letters from ABA I, AmeriCredit, ABAASA I, ASF II (expressed views of issuers only), AFSA I, BoA I, FSR, J.P. Morgan I, SIFMA I, and VABSS I (noting that for Auto ABS a competitor could take data on values such as credit score, LTV, and payment-to-income and combine it with other information (e.g., make, model, interest rate, loan maturity) to ascertain proprietary scoring models, build their own models or greatly improve the performance of their existing models).

¹⁸² See, e.g., letter from ABA I.

¹⁸³ See letter from AMI.

informed investment decisions and therefore should be disclosed. We also note that some of the asset-level data that we are requiring to be disclosed are available to the public, for a fee, through third-party data providers.¹⁸⁴

Another concern that some commenters raised was the potential for securities law liability for inaccuracies in data points that require so-called “soft data.”¹⁸⁵ The commenters suggested that soft data includes data that may originate from representations provided by an obligor at origination or may represent a subjective judgment of a third party, such as property valuations of an appraiser. We note commenters’ concerns about the potential cost to verify data of this type and whether such data can be verified objectively. We are not, however, persuaded by commenters’ suggestions that we address these concerns by providing issuers with the discretion to include or exclude soft data from their disclosures. As noted below, we believe the discretion to determine what data would be included or excluded from their disclosures would reduce the comparability of asset pools. Further, we note that much of the required soft data includes data that is commonly part of the universe of data that originators use to make a credit decision, and we believe that investors should have access to similar data for each loan in order to evaluate the creditworthiness of the assets that they are dependent upon for payment of the securities. We note that some soft data, as defined by commenters, has been included in pool-level information provided in prior registered offerings and thus is already subject to potential securities law liability. In some instances the data will provide investors a baseline to compare

¹⁸⁴ See footnote 107 and accompanying text.

¹⁸⁵ See letter from ABA I.

how certain characteristics of the asset have changed over time. Finally, an investor's analysis can take into account the age of such disclosures.

In addition to concerns about the accuracy of data points requiring soft data, some commenters expressed concern about potential liability cost for errors or inaccuracies in the responses provided to other data points. Assessing materiality for purposes of securities law liability for an error or inaccuracy in an individual data point would depend on a traditional analysis of the particular facts and circumstances.¹⁸⁶ We agree with commenters that suggested that issuers should be able to provide narrative analysis of data in order to make their disclosure not misleading. Such additional explanatory disclosure can and should be added to the prospectus or the Form 10-D as may be necessary to make the asset-level disclosures, in the light of the circumstances under which they are made, not misleading.¹⁸⁷ Also, issuers that wish to

¹⁸⁶ Whether any particular statement or omission is material will depend on the particular facts and circumstances. Information is material if "there is a substantial likelihood that a reasonable shareholder would consider it important" in making an investment decision. The question of materiality is an objective one involving the significance of an omitted or misrepresented fact to a reasonable investor. See TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 448-49 (1976) (stating that to fulfill the materiality requirement, there must be a substantial likelihood that the fact "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available"); see also Basic v. Levinson, 485 U.S. 224, 231-32 (1988).

Courts have analyzed materiality under Exchange Act Section 10(b) and Exchange Act Rule 10b-5, and Securities Act Sections 11 and 12(a)(2) in a similar fashion. See, e.g., In re Donald J. Trump Casino Sec. Litig., 7 F.3d 357, 368 n.10 (3d Cir. 1993) (noting that while there are substantial differences in the elements that a plaintiff must establish under these provisions, they all have a materiality requirement and this element is analyzed the same under all of the provisions). See also Securities Act Sections 11, 12(a)(2) and 17(a), Securities Act Rule 408 [17 CFR 230.408]; Securities Act Sections 11 [15 U.S.C. 77k(a)], 12(a)(2) [15 U.S.C. 77l] and 17(a) [15 U.S.C. 17(a)]; Exchange Act Section 10(b) [15 U.S.C. 78j(b)]; Exchange Act Rule 10b-5 [17 CFR 240.10b-5]; and Exchange Act Rule 12b-20 [17 CFR 240.12b-20].

¹⁸⁷ See, e.g., Securities Act Rule 408 and Exchange Act Rule 12b-20 [17 CFR 229.408 and 17 CFR 240.12b-20].

provide other explanatory disclosure about the asset-level disclosures can provide such disclosures in a separate exhibit.¹⁸⁸

We considered several possible alternatives to the new asset-level requirements we are adopting. Some alternatives we considered to address various concerns, including re-identification risk, included: requiring more pool-level data in lieu of asset-level data, grouped account data in lieu of asset-level data, allowing a “provide-or-explain” type regime, only defining the type of information to be provided and allowing the registrant or other market participants to define the asset-level information or the Web site approach.¹⁸⁹

We are concerned that these alternatives would be of limited benefit to investors, since they will not go far enough in providing them with information best suited to assessing the risk and return tradeoff presented by RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations and to independently perform due diligence. Pool-level and grouped account data does not provide investors with the opportunity to develop the same level of understanding, because when loans or assets are aggregated into groups of information, certain characteristics of individual assets are lost. For example, investors may know how many loans fall in a particular loan-to-value range but may not know whether most loans are at the top, middle or bottom of

¹⁸⁸ New Item 601(b)(103) Asset Related Documents of Regulation S-K is an exhibit that allows for explanatory disclosure regarding the asset-level data file(s) filed pursuant to Item 601(b)(102) Asset Data File. Item 601(b)(103) is required to be incorporated by reference into the prospectus. See Section III.B.5 New Form ABS-EE.

¹⁸⁹ See Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

that range.¹⁹⁰ This cross-sectional distribution of loans within a given loan-to-value range may have important implications for the pool's expected losses. A grouped account data approach groups loans based on certain loan characteristics, which does not allow investors to analyze the asset pool based on the loan characteristics the investors deem most important to their analysis. As a commenter noted, however, asset-level data provides investors the opportunity to analyze a broad set of loan characteristics and to assess risks based on the characteristics investors believe are most predictive of expected losses.¹⁹¹ With standardized asset-level data in a machine readable format provided at issuance and over the life of a security, the data can be run through a risk model at issuance and over the life of a security to assess the risk profile of the transaction at issuance and any changes to the risk profile of the asset pool over time.

As noted above, we also considered the alternative suggested by some commenters that we require asset-level disclosure generally but allow an issuer or an industry group to define the disclosures. We also considered a provide-or-explain type regime that would permit an issuer to omit any asset-level data point and provide an explanation as to why the data was not disclosed.¹⁹² We believe such approaches may limit the value of such disclosures. As noted above, the usefulness of asset-level data is generally limited unless the individual data points are

¹⁹⁰ See letter from A. Schwartz (noting that "[f]rom a statistical perspective, disclosing asset-level data to investors is materially superior to providing them with statistical summaries of the asset pool, because it conveys more information").

¹⁹¹ See letter from Prudential II.

¹⁹² See letters from BoA I, Citi, and SIFMA I (expressed views of dealers and sponsors only). Some commenters also suggested that issuers should have the flexibility to modify the disclosures to address privacy concerns. See, e.g., letters from ABA III and Securities Industry and Financial Markets Association and the Financial Services Roundtable dated Apr. 28, 2014 responding to the 2014 Re-Opening Release ("SIFMA/FSR II-dealers and sponsors").

standardized in terms of the definitions, the scope of information to be disclosed, and the format of the data points. A provide-or-explain regime may result in differing levels of disclosure provided about similar asset pools, as some may provide the required asset-level disclosures and others may exclude certain data points and only provide an explanation of why the information was excluded. This would inhibit the comparability of disclosures across ABS. Similarly, setting general asset-level disclosure requirements and allowing the issuer to define the data to be included and how the information is presented may result in differing levels of disclosure or different presentations of the data. This may limit the ability to compare across asset pools within the same asset class, which may reduce the usefulness of the data. Standardizing the information facilitates the ability to analyze the underlying asset-level data of a particular asset pool and the ability to compare the assets in one pool to assets in other pools.¹⁹³ As we note elsewhere in this release, we believe standardized disclosure requirements and making the disclosures easily accessible may facilitate stronger independent evaluations of ABS by market participants.

In addition to considering the alternatives we discussed above, we also considered adopting industry developed asset-level disclosure standards already in existence for RMBS and CMBS. We discuss in Section III.A.2.b.1 Residential Mortgage-Backed Securities and Section

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See letters from MetLife I (stating that the Commission should require standardized disclosure templates with the relevant fields for each ABS sector with the key benefit of standard disclosure being a significantly enhanced ability for investors to compare and contrast different ABS transactions in connection with their investment decisions and ongoing portfolio management) and Prudential I (stating that if two sponsors within the same asset class can provide information on different standards, it will be impossible for investors to efficiently compare asset-level files).

III.A.2.b.2 Commercial Mortgage-Backed Securities our consideration of adopting industry developed asset-level disclosure standards for these asset types.

Finally, as mentioned above, the final rules include several changes from the proposal. The changes are aimed at simplifying the requirements, addressing cost concerns and conforming our requirements, to the extent feasible, to other pre-existing asset-level disclosure templates. The discussions below address, for each asset type, the economic effects of the specific requirements, such as when the data is required and the types of disclosures required for each asset type. We also discuss the likely costs and benefits of the new rules and their effect on efficiency, competition and capital formation.

2. Specific Asset-Level Data Points in Schedule AL

This section is divided into several parts. Each part discusses the specific requirements we are adopting today for RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations and highlights, for each asset class, the significant changes from the proposal.

a) Disclosure Requirements for All Asset Classes and Economic Analysis of These Requirements

In the 2010 ABS Proposing Release, we proposed, between Schedule L and Schedule L-D, 74 general data points. We believed the proposed general item requirements captured basic characteristics of assets that would be useful to investors in ABS across asset types. As discussed below in Section III.B.2 The Scope of New Schedule AL, we have condensed the information previously proposed to be provided in either Schedule L or Schedule L-D into a single schedule, titled Schedule AL. Schedule AL enumerates all of the asset-level disclosures to be provided, if applicable, about the assets in the pool at securitization and on an ongoing basis.

We received a substantial number of comments directed at making technical changes to the data points and in some cases requesting we delete or add certain data points or that we change a data point to accommodate the characteristics of specified assets types.¹⁹⁴ Many commenters sought changes to the format of the information,¹⁹⁵ the range of possible responses for a particular data point, or the data point's title or definition in order to increase the usefulness of the information required, to address cost concerns or to align the data point with industry standards.¹⁹⁶

To address comments that we revise data points to accommodate the characteristics of certain assets types, we integrated the proposed Item 1 General Requirements into the asset-specific requirements. This change permitted us to tailor the data points to each particular asset type and allowed us to further incorporate applicable industry standards. The data points we discuss below are incorporated into the rules for RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations. In incorporating the proposed General Requirements into the requirements

¹⁹⁴ See, e.g., letters from ASF I, ASF II, BoA I, CREFC I, Mass. Atty. Gen., MBA I, Mortgage Bankers Association dated Nov. 22, 2010 submitted in response to the 2010 ABS Proposing Release ("MBA II"), MetLife I, MISMO, SIFMA I, VABSS I, VABSS IV, Wells Fargo I and SFIG I.

¹⁹⁵ For example, proposed Item 1(a)(15) of Schedule L, "Primary Servicer" provided that the format of the response should be a "text" entry. Under this format the names of the servicers could be entered or some other identifier of services, such as the MERS organization identification number. One commenter suggested that the format of the response be a number entry and that we require the MERS "Mortgage Identification Number" or "MIN." The MIN is an 18-digit number used to track a mortgage loan throughout its life, from origination to securitization to pay-off or foreclosure. We did not adopt this suggested change because there may be instances where a servicing organization may not have a MERS number. See letter from ASF I.

¹⁹⁶ For example, SIFMA I stated that the title of Item 1(a)(12) of Schedule L "Amortization Type" does not describe the two options, fixed or adjustable. They recommended changing the title to "Interest rate type." We revised the data point title to "Original interest rate type." SFIG I recommended that we add explanatory language for interest-only and balloon loans to the definition of proposed Item 1(a)(9) Original amortization term of Schedule L. See new Item 1(c)(5) of Schedule AL.

for each asset type, we are also making changes to the data points, based in large part on comments received, that we believe improve or clarify the disclosure, mitigate cost concerns and/or implement industry standards when we believe doing so would not materially diminish the value of the disclosures to investors.

Asset Number

We proposed that issuers provide a unique asset number for each asset that is applicable only to that asset and identify the source of the asset number.¹⁹⁷ We did not propose requiring that issuers use a specific naming or numbering convention. We asked for comment, however, about whether we should require or permit one type of asset number that is applicable to all asset types.¹⁹⁸ In response, several commenters urged that we recognize a specific type of asset numbering system currently in use within the industry for each asset type.¹⁹⁹ A few commenters were against a uniform number system that would apply across asset classes.²⁰⁰ A few commenters, however, cautioned against requiring an asset number because privacy issues may arise if the asset number is associated with an individual.²⁰¹

¹⁹⁷ See proposed Items 1(a)(1) and 1(a)(2) of Schedule L. If an issuer uses its own unique numbering system to track the asset throughout its life, disclosure of that number would satisfy this proposed item requirement.

¹⁹⁸ See the 2010 ABS Proposing Release at 23359.

¹⁹⁹ See letters from ASF I (supporting the use of CUSIP number in debt repackagings and resecuritizations and the ASF Loan Identification Number Code ("ASF LINC™") for securitizations backed by assets other than securities), eSign, MERS, MISMO (eSign, MERS and MISMO each support the use of the MERS "Mortgage Identification Number" for real estate assets), and SIFMA I (supporting the use of CUSIP numbers in debt repackagings and resecuritizations).

²⁰⁰ See letters from eSign and MISMO.

²⁰¹ See letters from CDIA and Epicurus (both suggesting that privacy issues could result if the asset number is published and then associated with asset records).

We are adopting, as proposed, that issuers provide for each asset in the pool a unique asset number applicable only to that asset and the source of the number.²⁰² We believe the use of an asset number is necessary and to the benefit of market participants, because it will allow them to follow the performance of an asset from securitization through ongoing periodic reporting. We remind issuers and underwriters that they should be mindful of the sensitive nature of the asset number and ensure that appropriate measures are taken to prevent the number from being associated with a particular person. While some commenters requested we adopt a specific type of identifier, we believe that identifiers for each asset may be generated in many ways and currently there is no single uniform asset identifier. These data points, as adopted, provide flexibility to issuers to use any numbering system, including those numbering systems that commenters recommended, and we believe this minimizes compliance costs. We are also adopting a data point, as proposed, that requires the identification of the source of the asset number. We recognize, however, that by not standardizing the numbering system, the usefulness of the data will be limited to the extent that investors intend to combine it with other data already incorporating a particular numbering system.

Underwriting Indicator

We proposed a data point that would disclose whether the loan or asset was an exception to defined or standardized underwriting criteria. The response to this data point was mixed. One commenter suggested that we correlate this data point with the then proposed Item 1111(a)(3) of

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Under this requirement each asset number should only be used to reference a single asset within the pool. If an asset in the pool is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

Regulation AB that would have required disclosure on the underwriting of assets that deviate from the underwriting criteria disclosed in the prospectus.²⁰³ Another commenter suggested the data point be omitted because the time and resources to provide the disclosures were not necessary or desired.²⁰⁴ This commenter also noted that if we adopt the disclosure, then we should more precisely define what is considered defined and/or standardized underwriting criteria to avoid confusion.²⁰⁵ An Auto ABS commenter stated that the exception disclosure required by Item 1111(a)(8) is sufficient and therefore this data point should be eliminated, but if this data point is adopted, the Commission should instruct registrants to omit it if no exceptions to the underwriting guidelines are reported in the prospectus.²⁰⁶ Another commenter stated underwriting standards often contain certain elements of discretionary authority for an underwriter to vary from the stated criteria and an exercise of this discretion does not constitute an exception.²⁰⁷ This commenter also noted specific concerns about the application of this data

²⁰³ See letter from ASF I. In the 2010 ABS Proposing Release we proposed to amend Item 1111(a)(3) of Regulation AB. At the time of the proposal, we proposed to require a description of the solicitation credit-granting or underwriting criteria used to originate or purchase the pool assets, including any changes in such criteria and the extent to which such policies and criteria are or could be overridden. We proposed to revise the requirement to also require data to accompany this disclosure on the amount and characteristics of those assets that did not meet the disclosed standards. Further, if disclosure was provided regarding compensating or other factors, if any, that were used to determine that those assets should be included in the pool despite not having met the disclosed underwriting standards, then a description of those factors and data on the amount of assets in the pool that are represented as meeting those factors and the amount of assets that do not meet those factors would also be required. We discuss below that the proposed amendments to Item 1111(a)(3) were incorporated into Item 1111(a)(8) of Regulation AB.

²⁰⁴ See letter from BoA I (without providing a costs estimate).

²⁰⁵ See letter from BoA I (requesting confirmation that the proposed data point correlates to proposed Item 1111(a)(3)).

²⁰⁶ See letter from VABSS IV.

²⁰⁷ See letter from ABA I (suggesting that other than possibly in the context of RMBS, it would be preferable to permit textual disclosure of originators' trends in underwriting standards and risk-management activities

point to CMBS. The commenter stated that underwriting criteria for commercial mortgage loans are generally not clearly prescribed and the judgment of the originator is commonly used rather than an objective test based on established mathematical or financial models. Therefore, we should only require disclosure of exceptions to underwriting criteria in cases where such criteria are well defined, are fundamental to the credit analysis and are consistently applied.²⁰⁸

In contrast, one commenter requested additional disclosure because some market participants use “exception” to refer to loans that are unacceptable under the underwriting guidelines (i.e. they do not comply with the underwriting guidelines and do not meet the “compensating factor” standard set out in the guidelines to otherwise allow the approval of such loans) and at other times market participants use the term “exception” to refer to loans that are acceptable under the underwriting guidelines because they demonstrated sufficient compensating factors. The commenter suggested we require disclosure on an asset-level basis of exceptions both with and without the presence of sufficient compensating factors, the compensating factors relied upon and the specific underwriting exception.²⁰⁹ Another commenter noted that this data point is not provided in asset-level disclosures for offerings of CMBS based on market practice

because more specific disclosure may lead to the disclosure of proprietary underwriting standards, which may make the securitization markets unattractive and may also lead to less specific underwriting standards).

²⁰⁸ See letter from ABA I.

²⁰⁹ See letter from Mass. Atty. Gen.

and this data point should only be required if underwriting criteria become defined or standardized for commercial or multi-family mortgages.²¹⁰

The proposed amendments to Item 1111(a)(3) were incorporated into Item 1111(a)(8) of Regulation AB which was added to Item 1111 of Regulation AB in early 2011.²¹¹ Item 1111(a)(8) requires issuers, in part, to disclose how the assets in the pool deviate from the disclosed underwriting criteria. Rule 193 implements Section 945 of the Dodd-Frank Act by requiring that any issuer registering the offer and sale of an ABS perform a review of the assets underlying the ABS.²¹² This review provides a basis for the Item 1111(a)(8) disclosure discussed above. Under Rule 193, such review, at a minimum, must be designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the prospectus is accurate in all material respects. The release adopting Item 1111(a)(8) noted that where originators may approve loans at a variety of levels, and the loans underwritten at an incrementally higher level of approval may be evaluated based on judgmental underwriting decisions, the criteria for the first level of underwriting should be disclosed. In addition, Item 1111(a)(8) requires disclosure of the loans that are included in the pool despite not meeting the criteria for this first level of underwriting criteria.

²¹⁰ See letter from MBA II.

²¹¹ See Issuer Review of Assets in Offerings of Asset-Backed Securities, Release No. 33-9176 (Jan. 20, 2011) [76 FR 4231] (the "January 2011 ABS Issuer Review Release").

²¹² See Securities Act Rule 193 [17 CFR 230.193]. See also the January 2011 ABS Issuer Review Release.

In light of comments received and the subsequent adoption of Item 1111(a)(8), we are adopting this data point with modifications.²¹³ As we noted when adopting the changes to Item 1111(a)(8), originators may approve loans at a variety of levels, and the loans underwritten at an incrementally higher level of approval are evaluated based on judgmental underwriting decisions. Therefore, we believe it is appropriate to base the data point on the standards of Item 1111(a)(8) and, in particular, on whether the asset met the disclosed underwriting criteria or benchmark used to originate the asset. We revised this data point to state: “indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.” Since originators may approve loans at a variety of levels, and the loans underwritten at an incrementally higher level of approval may be evaluated based on judgmental underwriting decisions, the data point, as defined, will capture whether the loan or asset met the criteria for the first level of underwriting. We believe aligning this data point to Item 1111(a)(8) responds to comments, including the concerns raised by a commenter with respect to CMBS, and minimizes confusion because the data point does not rely on what constitutes an exception to a defined and/or standardized set of underwriting criteria and instead focuses on whether the loan or asset met the disclosed underwriting criteria. For the same reasons, we also believe it addresses concerns that underwriting standards often contain certain elements of discretionary authority for an underwriter to vary from the stated criteria without being considered an exception or that the disclosure may release proprietary underwriting

²¹³ See new Items 1(c)(10), 2(c)(13), 3(c)(11), 4(c)(7), and 5(c)(12) of Schedule AL. Each of these items is titled underwriting indicator.

standards.²¹⁴ We are not persuaded that disclosures, on an asset-level basis, of exceptions both with and without the presence of sufficient compensating factors, the compensating factors relied upon and the specific underwriting exception, are necessary. We believe such disclosure is unnecessary because this data point, as adopted, captures whether an asset met the first applicable level of underwriting criteria.

We acknowledge a commenter's position, which was provided prior to the adoption of Rule 193, that a substantial expenditure of time and resources would be required to enable issuers to provide the proposed disclosures. We anticipate that in order to provide the new disclosure, an issuer could rely, in part, on the review that is already required in order for an issuer to comply with Rule 193. Since issuers can rely, in part, on the review that is required under Rule 193, issuers should incur less cost to provide this disclosure than if Rule 193 had not been implemented. We acknowledge that the information gained through a Rule 193 review may not provide all of the information needed to provide the disclosures.

Although issuers will incur potential costs to provide this disclosure, investors should benefit from the insight these disclosures will provide about the originator's underwriting of the pool assets and the originator's ongoing underwriting practices. For instance, the disclosures should provide investors the ability to identify the particular assets in the pool that did not meet the disclosed underwriting standards. Investors can then analyze whether these assets alter the risk profile of the asset pool and monitor the performance of these particular assets. In addition,

²¹⁴ See footnote 207.

we believe this information will allow investors to compare, over time, the performance of assets that met the disclosed underwriting criteria against those assets that did not meet the disclosed underwriting criteria used to originate the assets. This should allow investors to better evaluate an originator's underwriting practices.

Information about Repurchases

We proposed a data point to capture whether an asset had been repurchased from the pool.²¹⁵ If the asset had been repurchased, then the registrant would have to indicate through additional data points whether a notice of repurchase had been received,²¹⁶ the date the asset was repurchased,²¹⁷ the name of the repurchaser,²¹⁸ and the reason for the repurchase.²¹⁹

One commenter suggested we clarify that the repurchase notice data point is intended to track whether a repurchase request has been made before the repurchase has been completed and add an option to indicate whether a repurchase request was made but the parties later agreed that a repurchase was not required.²²⁰ Two commenters requested we delete the repurchase notice data point.²²¹

²¹⁵ See proposed Item 1(i) of Schedule L-D.

²¹⁶ See proposed Item 1(i)(1) of Schedule L-D.

²¹⁷ See proposed Item 1(i)(2) of Schedule L-D.

²¹⁸ See proposed Item 1(i)(3) of Schedule L-D.

²¹⁹ See proposed Item 1(i)(4) of Schedule L-D.

²²⁰ See letter from SIFMA I.

²²¹ See letters from ASF I (requesting that we not adopt the repurchase notice data point because RMBS transactions do not typically require notices in connection with repurchases) and VABSS IV (noting that repurchase notices are rarely delivered in Auto ABS).

The dealer and sponsor members of one commenter suggested we delete the data point identifying the name of the repurchaser because transaction documents will contain the name of the person obligated to make repurchases based on breaches of representations and warranties.²²² The investor members of the same commenter, however, suggested we retain the data point because multiple parties could be responsible for the repurchase of individual assets.²²³

We are adopting this group of data points with revisions in response to comments to align the data points with other disclosures about asset repurchases now required pursuant to the Dodd-Frank Act. As one commenter noted, Rule 15Ga-1 was adopted subsequent to the 2010 ABS Proposing Release.²²⁴ Unlike the aggregated disclosures under Rule 15Ga-1, these data points provide transparency about fulfilled and unfulfilled demands for repurchase or replacement on an individual asset-level basis for investors in a particular transaction. We believe these data points provide investors with a more complete picture regarding the number of assets subject to a repurchase demand, including whether repurchases occur only after the receipt

²²² See letter from SIFMA I (dealer and sponsors).

²²³ See letter from SIFMA I (investors).

²²⁴ See letter from VABSS IV (asserting that a repurchase data point should not be adopted because "securitizers have been required to disclose repurchase demands pursuant to Rule 15Ga-1 of the Securities Exchange Act since February 14, 2012). But see letter from J. Calva (stating that investors need loan-level data in order to verify the accuracy of disclosures made under Rule 15Ga-1). Current Exchange Act Rule 15Ga-1 requires that any securitizer of an Exchange Act ABS provide tabular disclosure of fulfilled and unfulfilled demand requests aggregated across all of the securitizer's ABS that fall within the Exchange Act definition of ABS, whether or not these ABS are Securities Act registered transactions. See the Rule 15Ga-1 Adopting Release. With the passage of the Jumpstart Our Business Startups Act (Pub. L. No. 112-103, 126 Stat. 306 (2012)) (the "JOBS Act") the Exchange Act definition of ABS was redesignated from section 3(a)(77) to section 3(a)(79). As a result of these statutory changes, we are adopting with this release technical amendments throughout the CFR, including in Rule 15Ga-1, to reflect this redesignation.

of a repurchase demand and the potential effects a repurchase may have on the cash flows generated by pool assets.

To address concerns about the costs to capture and report such data and to make the disclosure most useful and effective, we are aligning the data points to the type of demands that must be reported pursuant to Rule 15Ga-1. We believe this should minimize confusion, make the disclosures consistent with Rule 15Ga-1 disclosures, and help minimize costs because sponsors will already be required to capture such data to fulfill the disclosure requirements of Rule 15Ga-1. In particular, we are revising the titles and definitions of this group of data points in order to align them with the Rule 15Ga-1 disclosure requirements.²²⁵ We expect that the information on the asset level should feed the aggregated disclosures already required pursuant to Rule 15Ga-1.²²⁶

We are also adding a data point to capture the status of an asset that is subject to a demand to repurchase or replace for breach of representations and warranties.²²⁷ A commenter suggested that we should include an option to indicate assets subject to a repurchase or replacement demand, but where the relevant parties later agreed the repurchase or replacement

²²⁵ For example, new Item 1(i) Asset subject to demand of Schedule AL requires disclosure of whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. New Item 1(i)(3) Demand resolution date of Schedule AL requires disclosure of the date the loan repurchase or replacement demand was resolved, rather than, as proposed, the date the notice was resolved. See also Items 2(g) and 2(g)(3), 3(h) and 3(h)(3), 4(h) and 4(h)(3), and 5(f) and 5(f)(3) of Schedule AL.

²²⁶ For instance, Rule 15Ga-1 requires disclosure of all demands; it is not limited to only those demands made pursuant to a transaction agreement. In cases where the underlying contracts do not require a repurchase notice to be made or where an investor makes a demand upon a trustee, consistent with Rule 15Ga-1, disclosure is required. See the Rule 15Ga-1 Adopting Release at 4498.

²²⁷ See new Items 1(i)(1), 2(g)(1), 3(h)(1), 4(h)(1) and 5(f)(1) of Schedule AL.

was not required.²²⁸ To address this concern, we based the coded responses for this data point on the requirements of Rule 15Ga-1. To this end, the data point captures whether the asset is pending repurchase or replacement (within the cure period); whether the asset was repurchased or replaced during the reporting period;²²⁹ and whether the demand is in dispute, has been rejected or withdrawn. Finally, while not a requirement under Rule 15Ga-1, we are also adding “98=Other” to the list of coded responses. We believe adding “98=Other” accounts for dispositions of repurchase requests that may not fall into a category listed in the coded responses.

Two commenters suggested that we include a new data point to require issuers to provide the amount paid to repurchase the loan or lease from an Auto ABS transaction.²³⁰ One of these commenters recommended that this new item replace the proposed repurchase indicator data point²³¹ because in Auto ABS there is not a lengthy period of time between an event requiring a repurchase and the actual repurchase as there may be in RMBS.²³² This commenter believed the repurchase amount would give timely indication that the loan has been repurchased. We believe that investors across asset classes would benefit from this data point and, therefore, we have added a repurchase amount data point to the final requirements for each asset class that is required to provide asset-level disclosures. The proposed repurchase indicator data point has been subsumed into another data point we are adopting, based on a comment received, titled

²²⁸ See letter from SIFMA I.

²²⁹ If this response is provided it would indicate the asset is no longer in the pool.

²³⁰ See letters from VABSS IV and Vanguard.

²³¹ See proposed Item 1(i) of Schedule L-D.

²³² See letter from VABSS IV.

“zero balance code.”²³³ The zero balance code requires the selection, from a coded list, of the reason that the loan’s balance was reduced to zero. One option is to select, “repurchased or replaced,” which if selected would indicate the loan balance was reduced to zero because the loan was repurchased from the pool. In effect, this data point provides the same information as the repurchase indicator data point would have provided.

We also are adopting data points that capture the name of the repurchaser²³⁴ and the reason for the repurchase or replacement.²³⁵ Although the transaction documents will contain the identity of the party that is obligated to make repurchases based on breaches of representations and warranties, multiple parties could provide representations and warranties for a pool of assets and the party responsible for the repurchase of individual assets may differ.²³⁶ We believe this data point will clarify that responsibility.

Reporting Period Beginning and End Dates

We proposed that the asset-level disclosures in a preliminary prospectus be provided, unless the data point specified otherwise, as of a recent practicable date, which we defined as the

²³³ See letter from ASF I.

²³⁴ See new Items 1(i)(4), 2(g)(4), 3(h)(4), 4(h)(4) and 5(f)(4) of Schedule AL.

²³⁵ See new Items 1(i)(5), 2(g)(5), 3(h)(5), 4(h)(5) and 5(f)(5) of Schedule AL. We aligned the coded list to field 26 from the ASF Project RESTART RMBS Reporting Package. See letter from ASF I.

²³⁶ See letter from SIFMA I. The dealer and sponsor members represented by this commenter suggested that we not adopt this data point because the transaction agreements would contain the identity of the party that is obligated to make repurchases based on breaches of representations and warranties, but the investor members represented by the same commenter suggested that we adopt this data point because multiple parties could provide representations and warranties for a pool of assets and the party responsible for the repurchase of an individual asset may differ.

“measurement date.”²³⁷ We proposed that asset-level disclosures in a final prospectus be as of the “cut-off” date for the securitization, which would be the date specified in the instruments governing the transaction. This is the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders. On an ongoing basis, the asset-level disclosures would be as of the end of the reporting period the Form 10-D covered.

A commenter believed that the proposed measurement dates were appropriate²³⁸ and some commenters pointed out that the measurement date and cut-off date could be the same day.²³⁹ We also received comments suggesting that some data points in proposed Schedule L were seeking data as of a date that was different than when the information was normally captured. For instance, some commenters noted that certain data points seek information as of the measurement date, but that the information is usually obtained during the underwriting process or at origination.²⁴⁰ One of these commenters requested that we revise certain data points to clarify that the information was collected during the underwriting process or at origination.²⁴¹ Another commenter believed that the disclosure of data based on measurement

²³⁷ For example, proposed Item 1(a)(10) Original interest rate of Schedule L would require “the rate of interest at the time of origination of the asset.”

²³⁸ See letter from Prudential I.

²³⁹ See letters from ABA I (stating that for RMBS the measurement date used for the preliminary prospectus will be the same date as the cut-off date used for the final prospectus), MBA I (noting consistency with standard CMBS industry practice as well as CMBS investor expectations), and SIFMA I.

²⁴⁰ See letters from BoA I (noting that some disclosure items in proposed Schedule L relate to information obtained from borrowers and is verified to the extent provided by an originator’s underwriting policies and procedures for the underwriting process) and Wells Fargo I (noting that some data is collected and possibly captured on an origination system).

²⁴¹ See letter from Wells Fargo I.

dates and cut-off dates should be consistent with current industry practice regarding the frequency with which issuers can generate pool data.²⁴²

After considering comments received, we are adopting data points that require the disclosure of reporting period beginning and end dates in lieu of our proposal to require the measurement date and cut-off date.²⁴³ We believe the date the asset-level information is provided in the prospectus should align with how information is normally captured and how it will be reported under the ongoing reporting requirements that will arise after issuance. Therefore, for a preliminary or final prospectus, the Schedule AL data is required to be provided as of the end of the most recent reporting period, unless otherwise specified in Schedule AL.²⁴⁴ For periodic reports on Form 10-D, the Schedule AL data is required to be provided as of the end of the reporting period covered by the Form 10-D, unless otherwise specified in Schedule AL.

We recognize that this approach may reduce benefits to investors to the extent that some of the information disclosed may be stale. We believe, however, that this change should serve to address concerns that the proposal would require data to be captured at times different than when it is normally captured and thus result in undue issuer costs. To further address those concerns, we also revised some data points to clarify the “as of” date of the data required. If the data

²⁴² See letter from ABA I (suggesting that it would be burdensome or impossible to provide intra-month updates because of system limitations that would prevent more frequent data collection and that data is only comparable if consistently collected at the same point in time).

²⁴³ See e.g., new Items 1(b)(1) and 1(b)(2), 2(b)(1) and 2(b)(2), 3(b)(1) and 3(b)(2), 4(b)(1) and 4(b)(2), and 5(b)(1) and 5(b)(2) of Schedule AL.

²⁴⁴ Information should be provided through the close of business on the last day of the reporting period and not some earlier point in time on that day.

required is typically captured at a time other than the end of a reporting period, such as at origination, we revised the data point to clarify the “as of” date of the data required.²⁴⁵ When making these changes, we either clarified the title, definition or both. These changes also help clarify whether we expect the response to a particular data point to remain static or be updated as new information becomes available. For instance, some data points request “original” or “initial” data or data as of “origination.” These data points require disclosure of data about the underlying loan at origination before any modifications.²⁴⁶ The responses to these data points will be static and we do not expect updates to these responses over the life of the loan. The responses to these data points help to establish a baseline of the characteristics of each loan and will help investors monitor changes in the characteristics of an asset over the life of the loan. Therefore, unless the data point specifies a different “as of” date (e.g., asking for data created at origination or at some other time), the data should be as of the end of the reporting period.

Format of the Responses

We proposed that responses to the asset-level disclosure requirements be a date, number, text, or coded response. Consistent with the proposal, the final requirements we are adopting require responses as a date, a number, text, or a coded response. We received a number of comments that sought changes to the format of the information to be collected, the range of

²⁴⁵ See, e.g., new Items 1(c)(6) Original interest rate; 1(c)(29)(xxi) HELOC draw period; 1(c)(30)(iii) Prepayment penalty total term; 1(c)(31)(ii) Initial negative amortization recast period; 1(c)(31)(viii) Initial minimum payment reset period; and 1(d)(2) Occupancy status of Schedule AL.

²⁴⁶ If a loan has been modified either prior to securitization or after securitization, responses to data points titled “original” or that are requiring data as of origination or underwriting should consist of data about the original loan prior to any loan modification.

possible responses, or the data point's title or definition.²⁴⁷ As noted elsewhere, we considered each of these comments and are making changes to mitigate cost and burden concerns and to implement industry standards when we believe doing so would not materially diminish the value of the disclosures to investors.

In the 2010 ABS Proposing Release, we also noted that situations may arise where an appropriate code for disclosure may not be currently available in the technical specifications. To accommodate those situations, the proposals provided a coded response for "not applicable," "unknown" or "other" and many of the data points we are adopting include these potential responses. We noted in the proposing release that a response of "not applicable," "unknown" or "other" would not be appropriate responses to a significant number of data points and that registrants should be mindful of their responsibilities to provide all of the disclosures required in the prospectus and other reports.²⁴⁸ One commenter believed this language called into question the availability of Rule 409 under the Securities Act.²⁴⁹ This commenter and another commenter requested that we clarify the circumstances under which issuers may rely on Rule 409 to omit responses to asset-level data points in a registered offering.²⁵⁰ The rules we are adopting do not

²⁴⁷ For instance, a commenter suggested that for numbers, the format should indicate whether the number should be displayed as an integer or as a decimal; for dates, the date field should specify whether the date should be displayed as a month-year (MM/YYYY) or month-day-year (MM/DD/YYYY); and for data points requiring a "Yes" or "No," the response should be coded as "1=Yes, 0=No" rather than "1=Yes, 2=No." See letter from ASF I.

²⁴⁸ See Securities Act Rule 409 [17 CFR 230.409] and Exchange Act Rule 12b-21 [17 CFR 240.12b-21].

²⁴⁹ See letter from Citi.

²⁵⁰ See letters from Citi and SIFMA I (expressed views of dealer and sponsors only). See also letters from ABA I (suggesting that the final rules should recognize that some information may not be available to the sponsor and, therefore, cannot be provided) and BoA I (suggesting that due to the significant quantity and

affect the availability of Rule 409 or Exchange Act Rule 12b-21. We remind issuers of the requirements of Rule 409 and, in particular, that if any required information is unknown and not reasonably available to the issuer, the issuer is to include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person who has the information and stating the result of a request made to such person for the information. Also, in situations where an issuer selects "not applicable," "unknown," or "other," we encourage issuers to provide additional explanatory disclosure in an "Asset Related Document"²⁵¹ describing why such a response was appropriate along with any other relevant detail.²⁵²

b) Asset Specific Disclosure Requirements and Economic Analysis of These Requirements

Each section below discusses, for each asset type for which asset-level disclosure is required, the proposal, comments and final requirements applicable to each asset class and the anticipated economic effects arising from the final requirements applicable to each asset class, including the likely costs and benefits of the requirements and their effect on efficiency,

detail of the proposed asset level data requirements that we adopt, consistent with Securities Act Rule 409, a "comply-or-explain" regime in which data would either be disclosed, or if not disclosed, the basis for refraining from providing the disclosure would be provided).

²⁵¹ See Item 1111(h)(5) of Regulation AB.

²⁵² For example, Item 1(c)(29)(i) Original ARM Index of Schedule AL requires the issuer to "specify the code that describes the type and source of index to be used to determine the interest rate at each adjustment" and one possible response is "98=Other." If the issuer selects "Other" for this data point we encourage the issuer to provide detail about the index used to calculate the adjustable rate. The issuer could file the disclosure in an Asset Related Document filed as an exhibit to Form ABS-EE.

competition and capital formation. Each section also discusses changes made to each group of proposed data points, including the addition of data points to or deletion of data points from the proposed group of data points.

(1) Residential Mortgage-Backed Securities

The proposal for RMBS included a total of 362 total data points between the 74 proposed general item requirements and the 288 data points specific to RMBS in proposed Schedules L and L-D. Based on the changes described below, the final requirements for RMBS, which are set forth in Item 1 of Schedule AL, include 270 data points. As noted in the 2010 ABS Proposing Release, we took into consideration standards that have been developed for the collection and/or presentation of asset-level data about residential mortgages. For instance, ASF had published an investor disclosure and reporting package for residential mortgage-backed securities. The package is part of the group's Project RESTART. This disclosure and reporting package includes standardized definitions for loan or asset-level information and a format for the presentation of the data to investors.²⁵³ We also noted that another organization, the Mortgage Industry Standard Maintenance Organization ("MISMO"), has been developing a data dictionary of standardized definitions of mortgage related terms and an XML format for presenting such data.²⁵⁴ We also considered the data that Fannie Mae and Freddie Mac receive from sellers of

²⁵³ See American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009) available at <http://www.americansecuritization.com/search/issuesearch.aspx?q=disclosure%20and%20reporting%20package>.

²⁵⁴ MISMO is a not-for-profit subsidiary of the Mortgage Bankers Association. The MISMO data dictionary is available at <http://www.mismo.org/Specifications/ResidentialSpecifications.htm>. MISMO standards are

mortgage loans. In addition, we considered the data that the Office of the Comptroller of the Currency and the Office of Thrift Supervision receive from banks.²⁵⁵

As stated in the 2010 ABS Proposing Release, in developing the proposal, the staff surveyed the definitions used for data collected by the organizations mentioned above, as well as other industry sources. The scope of the proposed requirements was based mainly on information required to be provided to Fannie Mae and Freddie Mac for each loan sold to them or contained in the disclosure and reporting package for residential mortgage-backed securities developed by ASF's Project RESTART. We did not, however, include every requirement included in these packages. The presentation of the asset-level information was based, in part, on how information was presented under Project RESTART because that reporting template was designed specifically for reporting asset-level data about RMBS transactions to investors.

In response to the proposal, issuers, trade associations, investors and others generally supported the Commission's effort to increase transparency in the RMBS market.²⁵⁶

Commenters differed, however, on the approach to requiring standardized asset-level data.

Some commenters, mainly investors, expressed their support for the proposed data points. One investor group stated the granularity of the proposed data points was necessary because the

used to exchange standardized information about mortgages among mortgage lenders, investors in real estate and mortgages, servicers, industry vendors, borrowers and other parties.

²⁵⁵ See "OCC/OTS Mortgage Metrics Loan Level Data Collection: Field Definitions," Jan. 7, 2009, available at <http://www.occ.treas.gov/ftp/release/2009-9a.pdf>.

²⁵⁶ See, e.g., letters from the American Society of Appraisers dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("ASA"), Beached Consultancy, BoA I, Capital One I, Citi, Community Mortgage Banking Project dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release ("CMBP"), and MetLife I.

information is critical.²⁵⁷ They noted that, unlike a corporate security, investors in structured finance can only look to the assets in the pool for their return and possibly to external credit enhancement if provided. Another investor stated that the proposal will enhance the ability of investors to evaluate the ongoing credit quality of mortgage loan pools and increase market efficiency.²⁵⁸ This investor also noted that the disclosures will provide new transparency into loan servicing operations. Another commenter believed that granular asset-level data is essential to restoring investor confidence in the RMBS markets and a critical component in encouraging greater analysis by investors of RMBS transactions and reducing reliance on credit ratings.²⁵⁹

In addition to the concerns commenters raised with asset-level disclosure requirements that applied across asset classes, some commenters expressed concerns with certain proposed RMBS requirements. For instance, commenters were concerned with the granularity of some proposed data points,²⁶⁰ with the potential for certain disclosure to compromise individual

²⁵⁷ See letter from AMI.

²⁵⁸ See letter from MetLife I.

²⁵⁹ See letter from ASF I.

²⁶⁰ See letter from CMBP (suggesting that the following data points proposed in Schedule L fell into the category of requiring excessive detail and, without explaining why, suggesting they would not be useful to investors: Items 2(a)(18)(xv) ARM round indicator; 2(a)(18)(xvi) ARM round percentage; 2(b)(6) Original property valuation type; 2(b)(7) Original property valuation date; 2(b)(8) Original automated valuation model name; 2(b)(9) Original AVM confidence score; 2(b)(10) Most recent property value; 2(b)(11) Most recent property valuation type; 2(b)(12) Most recent property valuation date; 2(b)(13) Most recent AVM model name; 2(b)(14) Most recent AVM confidence score). We are adopting most of these data points as we believe they provide valuable information to investors with respect to property valuations and ARM loans. See new Items 1(c)(29)(xiv) ARM round indicator; 1(c)(29)(xvi) ARM round percentage; 1(d)(5) Most recent property value; 1(d)(6) Most recent property valuation type; 1(d)(7) Most recent property valuation date; 1(d)(8) Most recent AVM model name; and 1(d)(9) Most recent AVM confidence score. But see letter from AI (indicating support for the Commission's proposal to increase transparency and investor understanding of loan and property level information and the "tremendous amount of information contained in real estate appraisals today that is underutilized by investors").

privacy,²⁶¹ and whether some of the disclosures were necessary or material to an investment decision.²⁶² Several commenters suggested we follow the MISMO data standards²⁶³ and two commenters suggested we incorporate more of the reporting package developed under Project RESTART into the final requirements.²⁶⁴

After considering the comments received, we are adopting, as proposed, asset-level disclosures specific to RMBS, with some modification to individual data points, and the addition and deletion of some data points from the group of proposed data points, as described in more detail below. Under the final rules, issuers are required to disclose the information described in Item 1 of Schedule AL for each mortgage in the pool, as applicable.²⁶⁵ These requirements include information about the property, mortgage, obligor's creditworthiness, original and current mortgage terms,²⁶⁶ and loan performance information.²⁶⁷

²⁶¹ See, e.g., letters from ASF I, CU, and WPF I. See also Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

²⁶² See, e.g., letters from Citi (stating that many data points had "not been weighed for materiality or shown to affect the performance of the securities or the pricing of securities"), MBA I (suggesting that we limit the amount of ongoing information to only those items that are critical to investors) and SIFMA/FSR I-dealers and sponsors (requesting clarity on whether any of the asset-level data may be considered "material" under the securities laws and whether disclosure of asset-level data as proposed complies with privacy laws).

²⁶³ See, e.g., letters from eSign, MBA I, MERS, and MISMO.

²⁶⁴ See letters from ASF I and Wells Fargo I.

²⁶⁵ Our reference to "as applicable" means that if a particular data point enumerated in the requirements does not apply to the assets underlying the security, then a response to that data point is not required. For example, if the asset pool of residential mortgages consists only of fixed-rate mortgages, responses to all of the data points related to adjustable rate mortgages need not be included in the data file.

²⁶⁶ This includes, but is not limited to, information about loans with adjustable-rates, interest only, balloon payment and negative amortization features.

²⁶⁷ This includes, but is not limited to, information about payments scheduled and received, loan modifications and other loss mitigation activities.

We believe that the asset-level requirements we are adopting for RMBS will benefit investors and other market participants by providing them with a broader picture of the composition, characteristics and performance of pool assets, which we believe is critical to an investor's ability to make an informed investment decision about the securities. Further, while the requirements are granular, we believe the scope of the disclosures is consistent with the information that Fannie Mae and Freddie Mac require for each loan sold to them or that would likely be collected by participants in Project RESTART.²⁶⁸ We believe the disclosures will facilitate investor due diligence regarding RMBS, allow investors to better understand, analyze and track the performance of RMBS, and will, in turn, allow for better pricing, reduce the need to rely on credit ratings and increase market efficiency.

The format of the final asset-level requirements remains based, at least in part, on how information was presented under Project RESTART. In developing the final requirements, we considered, however, the different formats currently available for the presentation of asset-level data about residential mortgages. For instance, we note that since the 2010 ABS Proposing Release, Fannie Mae and Freddie Mac have begun receiving asset-level data prepared in accordance with MISMO data standards for each loan they

²⁶⁸ We are not adopting certain proposed requirements that are not required by Fannie Mae and Freddie Mac or would not likely be collected by participants in Project RESTART because some of the information is too granular and some of the same activity is captured by other data points. For example, proposed Items 2(b)(19)(i) through 2(b)(19)(xiii) related to manufactured housing and proposed Items 1(l)(2)(i) through 1(l)(2)(ii) related to pledged prepayment penalties are being omitted from the final requirements.

purchase.²⁶⁹ As a result, we understand that a number of market participants, including mortgage originators and servicers, likely capture, store and communicate data in a MISMO format. Therefore, we considered whether the asset-level disclosures should be provided following the MISMO format.²⁷⁰

We are not persuaded, however, that our reporting requirements should follow the MISMO format. We believe that the format for the presentation of the asset-level data we are adopting is more investor-friendly, standardizes how the information is to be provided to investors and is easier to review. Also, the reporting package developed under ASF's Project RESTART was designed with the involvement of RMBS investors and issuers, which we believe provides some indication that issuers and investors support the disclosure and reporting of asset-level data about RMBS transactions based on that format. Furthermore, we note that since the Project RESTART standards were released, the few registered offerings of RMBS that have occurred have provided data based on the standards set under Project RESTART as part of their offering materials. We also believe this provides some indication that issuers and investors support this disclosure format. We also note that investors did not submit comment letters

²⁶⁹ See Fannie Mae Loan Delivery Data requirements available at <https://www.fanniemae.com/singlefamily/uniform-loan-delivery-dataset-uldd>. See also Freddie Mac Product Delivery requirements available at http://www.freddiemac.com/singlefamily/secmktg/uniform_delivery.html.

²⁷⁰ In considering this alternative, we noted that MISMO had developed a data dictionary of standardized definitions of mortgage related terms and an XML format for presenting such data. We also recognized that the MISMO package does not define what data should be provided in any particular circumstance, but instead is a dictionary of defined loan or asset-level terms that could be used in the development of a reporting standard. We also recognized that the definitions used in MISMO's data dictionary are defined for a general purpose and are not structured for a particular purpose, such as investor reporting.

suggesting asset-level data for RMBS be presented in a MISMO format. Finally, we also considered that asset-level information being released by Fannie Mae and Freddie Mac does not appear to be presented in a MISMO format, although we note that the disclosures are likely compiled from asset-level information submitted to them that is in a MISMO format.²⁷¹

While some data points we are adopting have minor differences to comparable data definitions contained in MISMO's data dictionary, we believe that most data points we are adopting are consistent with the information included in the MISMO data dictionary.²⁷² We believe that systems could be programmed, albeit at some cost, to combine data provided in response to multiple MISMO data definitions to one of our required data points.²⁷³ Therefore,

²⁷¹ Currently, Fannie Mae and Freddie Mac provide on their Web sites a portion of the information they receive about the loans they purchase. At this time, Fannie Mae publicly discloses approximately 50 items of asset-level disclosure at issuance and on a monthly basis for their newly-issued single-family MBS. See Fannie Mae's Uniform Loan Delivery Dataset available at <https://www.fanniemae.com/singlefamily/uniform-loan-delivery-dataset-uldd>. Also, Freddie Mac currently publicly discloses approximately 85 items of asset-level disclosure at issuance and on a monthly basis for all newly issued fixed-rate and adjustable-rate mortgage participation certificate securities. See Freddie Mac's Loan-Level Delivery Dataset available at http://www.freddie-mac.com/singlefamily/sell/uniform_delivery.html.

²⁷² See footnote 254. See also letter from MISMO (indicating that for RMBS the data points proposed in Item 1 General Requirements of Schedule L approximately 80% of the proposed data requested is a direct match to the MISMO standards, with 14% a close match and 6% with no match and that other tables applicable to RMBS had a similar pattern).

²⁷³ For instance, we note that in many cases there is a direct match between a proposed data point and the MISMO data definition. Further, in many instances multiple fields in the MISMO data dictionary could be combined to respond to a data point. An example will best illustrate the differences between the asset-level requirements adopted today and how information would be reported under a MISMO format. For instance, we are adopting Item 1(c)(30)(iii) Prepayment penalty total term, which requires the total number of months after the origination of the loan that the prepayment penalty may be in effect. This single data point defines the information required (prepayment penalty period), how to report the information (in months) and the time frame the information represents (from origination). In contrast, we believe under MISMO, this data point would be provided through the responses to several MISMO data definitions. One MISMO data definition defines the form of count, such as the number of periods the prepayment penalty applies. A second MISMO data definition would define what constitutes a period (e.g., day, week, month, and year). A third MISMO data

we believe that data originating in the MISMO data format could be compiled to comply with the new rules for reporting to RMBS investors so the costs of implementing the requirements may be limited to the extent that some MISMO data definitions overlap with data points we require.

We understand, however, that requiring data points that deviate from how issuers capture and store data may raise costs for both issuers and investors because issuers will need to create new systems or adjust their current systems to provide the data to satisfy our rules. In addition, investors will need to adjust their existing tools to read and analyze the newly required data. To further minimize the need to revise systems to provide the required data, we are revising data points to better align with MISMO data definitions. If a proposed data point and a MISMO data definition require the same or similar data and aligning to the MISMO data definition would not affect the value of the information or deviate from how information is reported under the requirements, we revised the proposed data point to better align with the MISMO data definition.²⁷⁴ We believe these changes will help to minimize any burden or costs that may arise from the reporting of similar information under different standards.

We also acknowledge that some disclosures we are requiring are not part of the MISMO data dictionary or provided to Fannie Mae and Freddie Mac. Many of these disclosures relate to the ongoing performance of pool assets. We are requiring these disclosures so that an investor

definition indicates, for a group of responses, whether the information was as of closing, the current reporting period, at modification or at some other time frame. This approach allows the entity reporting the information to define prepayment penalty period by day, week, month or year.

²⁷⁴ See, e.g., letters from eSign, MBA I, MERS, and MISMO (all suggesting that the final requirements follow the MISMO standards).

may conduct his or her own evaluation of the risk and return profile of the pool assets at issuance and throughout the life of the investment.

We also considered the alternative of requiring asset-level data generally and allowing the industry to develop the reporting requirement. While issuers in recent RMBS offerings have been providing asset-level disclosure in line with the disclosure templates developed by Project RESTART, providing such data to investors in this format is not mandatory. As noted above, we believe that, unless asset-level disclosures are standardized across all issuers, the benefits of asset-level data is generally limited. We believe that, without requiring and standardizing the asset-level requirements, issuers may choose to not provide asset-level data to investors, provide it inconsistently, or provide it under differing standards. These alternatives would limit the ability for investors and market participants to cost-effectively compare and analyze offerings of RMBS.

Finally, we also received many comments directed at individual data points, many of which were seeking changes to the format of the information, the range of possible responses for a particular data point, or the data point's title or definition. Other commenters made suggestions on how we could make the data points better align with an industry standard. We also received comments suggesting that certain data points should not be required if the data is derivable from other required data points.²⁷⁵ We considered each of these comments, and we

²⁷⁵ See letters from ASF I and Wells Fargo I.

made changes that we believe improve or clarify the disclosure,²⁷⁶ mitigate cost and burden concerns and/or implement industry standards when doing so would not materially diminish the value of the disclosures to investors.

In addition to revising the data points to align with industry standards or to address comments received,²⁷⁷ we omitted some data points that were proposed for other reasons, such as to address concerns about disclosure of sensitive information or reduce repetition. As discussed below, certain proposed data points would have required disclosure of sensitive information and could have increased the re-identification risk.²⁷⁸ While the changes we are making should reduce the risk of re-identification and the related privacy concerns, we do not believe that the changes will limit investors' ability to conduct due diligence and make informed investment decisions.

As noted below, proposed Schedules L and L-D contained identical or substantially identical data points, so by aggregating the schedules we are able to omit one of the identical or

²⁷⁶ For example, we proposed a data point that would require issuers to indicate the percentage of mortgage insurance coverage obtained. In response to comments, we revised the data point to confirm that the percentage disclosed should represent the total percentage of the original loan balance that is covered by insurance (e.g., 40% for an insurance policy that covers payment default only from 60% of the loan balance to 100% of the balance). See new Item 1(f)(2) of Schedule AL.

²⁷⁷ As noted elsewhere, we made revisions to the title, definition or required response of some data points, in part, based on comments received. As noted in Section III.A.2.a) Disclosure Requirements for All Asset Classes and Economic Analysis of These Requirements, these changes include changes to the definition or title to clarify when the data should be captured. Other changes include, based on comments received, technical changes to clarify how the information should be reported. For instance, data points capturing "Date" were changed to "YYYY/MM" and data points requiring a "%" were changed to "number." We also made revisions to make the terminology used throughout the template consistent. For example, in some instances, certain data points used the term "note rate" and others used "interest rate." For consistency, we use "interest rate" throughout.

²⁷⁸ See Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

nearly identical data points.²⁷⁹ We also proposed data points that would have required information about ARM loans that were modified during a reporting period. This information would have included pre-modification and post-modification characteristics of the ARM loans. We are not adopting the pre-modification data points since investors will have access to pre-modification information through other asset-level data.²⁸⁰ We also aggregated several data points into either one data point or fewer data points based on comments received.²⁸¹ We are omitting some proposed data points in favor of other data points that we are adding to the requirements to address comments received. For instance, as discussed further below, we replaced some data points that capture advances with data points that disclose different categories of advances and how those advances were reimbursed.²⁸² We are also omitting, based on comments received, data points that relate to the Home Affordable Modification Program, a temporary government program, over concerns about the value of these data points over other

²⁷⁹ See Section III.B.2 The Scope of New Schedule AL.

²⁸⁰ The following proposed data points were omitted from Schedule AL: Items 2(e)(4) Pre-modification interest (note) rate; 2(e)(7) Pre-modification P&I payment; 2(e)(10) Pre-modification initial interest rate decrease; 2(e)(12) Pre-modification subsequent interest rate increase; 2(e)(14) Pre-modification payment cap; 2(e)(17) Pre-modification maturity date; 2(e)(19) Pre-modification interest reset period (if changed); 2(e)(21) Pre-modification next interest rate change date; and 2(e)(26) Pre-modification interest only term.

²⁸¹ For instance, a data point was added to the final requirements to capture why a loan balance was reduced to zero. See new Item 1(32)(g)(ii) of Schedule AL. This data point includes a coded list of reasons why the loan balance was reduced to zero, such as the loan was liquidated, repurchased, or paid off. As a result, the following proposed data points contained in Schedule L-D were omitted from the final requirements: Items 1(i) Repurchase indicator; 1(l)(1) Paid-in-full indicator; 1(j) Liquidated indicator; 1(k) Charge-off indicator; 2(h) Deed-in-lieu date; and 2(l)(7) Actual REO sale closing date.

²⁸² See the discussion further below in this section titled Advances: Principal, Interest, Taxes and Insurance, and Corporate.

modification data points and about adopting data points for a temporary government program.²⁸³

We also are not adopting a proposed data point that commenters suggested would provide limited value to investors.²⁸⁴

Some commenters, however, suggested we expand the asset-level disclosures to include more data points than proposed.²⁸⁵ For instance, commenters suggested adding data points that would correlate to information captured in ASF's Project RESTART disclosure and reporting template,²⁸⁶ that would capture information about government sponsored loan modification programs,²⁸⁷ and debt-to-income ("DTI") ratios or property valuations.²⁸⁸ Another commenter suggested that we add data points that increase the granularity of certain obligor-related data.²⁸⁹ A commenter also suggested adding data points that captured more information about the characteristics of modified loans.²⁹⁰ We added those data points to the extent we believe the data

²⁸³ See proposed Items 2(e)(47) through 2(e)(47)(x) of Schedule L-D.

²⁸⁴ We proposed a data point that would have required issuers to provide the date on which the original LTV ratio was calculated. See proposed Item 2(b)(17) of Schedule L. Some commenters suggested we not adopt this data point as this date is immaterial because the date on which the value used in the calculation was determined is more important. See letters from ASF I and SIFMA I. We are not adopting this data point as we agree with commenters that this date is not necessary given that the date on which the value used in the calculation was determined is required to be provided.

²⁸⁵ See, e.g., letters from ASF I, CU, MSCL, Wells Fargo I and SFIG I.

²⁸⁶ See letters from ASF I and Wells Fargo I. For example, ASF I suggested that, like in Project RESTART, we include a 4506-T indicator data point, a paid-in-full amount data point and master servicer, special servicer and subservicer data points. Because these data points are consistent with our other requirements and capture information that should be readily available to issuers, we have added them. See new Items 1(e)(8), 1(g)(30), 1(h)(3), 1(h)(4) and 1(h)(5) of Schedule AL.

²⁸⁷ See letter from Wells Fargo I.

²⁸⁸ See letter from Mass. Atty. Gen.

²⁸⁹ See letter from SFIG II (also suggesting changes to clarify certain asset-level data points).

²⁹⁰ See letter from Wells Fargo I.

point improves or clarifies the proposed requirements or aids an investor's ability to make an informed investment decision, monitor loan performance for ongoing investment decisions, or understand loss mitigation efforts without significantly increasing re-identification risk.²⁹¹ We also took into consideration whether issuers have ready access to the information and whether requiring the information in the format requested would place an undue burden on issuers or market participants. The final requirements do not include every data point that commenters recommended we add because we are concerned they could impose an undue burden and we are not persuaded that the data would aid an investor's ability to analyze or price the security or monitor its ongoing performance. We believe that, to the extent issuers want to provide additional asset-level disclosures in order to capture the unique attributes of a particular pool, issuers can provide the additional asset-level disclosures in an Asset Related Document.²⁹²

We discuss below the significant comments we received about individual data points along with the revisions we have made in response to those comments.

Information about Payment Status and Payment History

The proposal included a group of data points that would require disclosure of information about the status of required payments. These data points would capture, both at the time of the offering and on an ongoing basis, current delinquency status,²⁹³ the number of days a payment is

²⁹¹ See Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

²⁹² See Section III.B.4 Asset Related Documents.

²⁹³ See proposed Items 1(b)(5) of Schedule L and 1(f)(12) of Schedule L-D.

past due,²⁹⁴ and current payment status.²⁹⁵ In addition, on an ongoing basis, a data point would capture the payment history over the past twelve months.²⁹⁶

One commenter suggested that we add, revise or delete data points in this group in order to align with servicing practices or to increase transparency.²⁹⁷ In lieu of the proposed data points capturing current delinquency status, current payment status and the number of days a payment is past due, we are adopting, based on comments received, the following data points: most recent 12-month pay history,²⁹⁸ number of payments past due²⁹⁹ and paid through date.³⁰⁰ We discuss below the group of data points we are adopting. Taken together, we believe this group of data points should provide insight into the payment performance of each pool asset and allow investors to track delinquencies.

Paid Through Date

The proposed data point titled “Number of days payment is past due” would have required disclosure, at the time of the offering, of the number of days between the scheduled payment date and the cut-off date if the obligor did not make the full scheduled payment. The proposed ongoing disclosure requirements included a similar data point, but required the number of days between the scheduled payment date and the reporting period end date, instead of the

²⁹⁴ See proposed Items 1(b)(6) of Schedule L and 1(f)(13) of Schedule L-D.

²⁹⁵ See proposed Items 1(b)(7) of Schedule L and 1(f)(14) of Schedule L-D.

²⁹⁶ See proposed Item 1(f)(15) of Schedule L-D.

²⁹⁷ See letter from ASF I.

²⁹⁸ See new Item 1(g)(33) of Schedule AL.

²⁹⁹ See new Item 1(g)(34) of Schedule AL.

³⁰⁰ See new Item 1(g)(28) of Schedule AL.

cut-off date. A commenter indicated the final requirements should omit the proposed data point because servicers currently track delinquencies in 30-day intervals, measured on a monthly basis, rather than number of days past due at any given date, including the reporting date, and because the cost to capture the proposed information is not justifiable.³⁰¹ As an alternative, the commenter suggested the number of days past due could be derived from the interest paid through date reported in proposed Item 2(a)(14) of Schedule L and the measurement date.

We are not adopting, as a commenter suggested, the data point titled "Number of days payment is past due" because the proposed data point may have required data that differs from how data is captured.³⁰² We believe an alternative approach may provide investors similar information with lower costs to issuers. We believe investors can derive information about the number of days payment is past due from the date through which the loan is paid. Therefore, to address the commenter's concern and provide information in each report to derive the number of days a payment is past due, we are adopting a data point titled "Paid through date" which requires disclosure of the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.³⁰³ For each reporting period the response to this data point will disclose, regardless of when the last payment was made, the date the loan is paid through. The

³⁰¹ See letter from ASF I.

³⁰² We do not agree, however, with the alternative the commenter suggested, that the number of days a payment is past due could be derived from the interest paid through date reported in proposed Item 2(a)(14) of Schedule L and the measurement date, because the interest paid through date is calculated on the payment due for that period. Therefore, in future periods where a payment is missed, the response to this data point would not provide the paid through date since no payment was made.

³⁰³ See new Item 1(g)(28) of Schedule AL.

response to this data point will also indicate when a loan is paid several months in advance. We believe this approach addresses the commenter's cost concerns because the required information should be readily available.³⁰⁴

Most Recent 12-Month Pay History

The proposed data point titled "Current delinquency status" would have required that issuers disclose the number of days the obligor is delinquent at the time of the offering³⁰⁵ and on an ongoing basis.³⁰⁶ One commenter suggested that for RMBS we replace this data point with a data point contained in the Project RESTART disclosure package that required a string indicating the payment status per month over the most recent 12 months.³⁰⁷ The commenter stated this string, with the addition of foreclosure and REO disclosures, would provide considerably more useful information than the proposed data point and would subsume the proposed data point instead of requiring the number of days an obligor is past due. We are persuaded that a payment history data point indicating the payment status per month over the most recent 12 months would provide more useful information than the number of days an obligor is past due. In addition, we believe, as a commenter suggested, that the payment history

³⁰⁴ We also note that this data has been provided in some RMBS offerings.

³⁰⁵ See proposed Item 1(b)(5) of Schedule L.

³⁰⁶ See proposed Item 1(f)(12) of Schedule L-D.

³⁰⁷ See letter from ASF I (suggesting the adoption of field 97 of the ASF RMBS Disclosure Package – Most Recent 12-month Pay History). ASF provided this comment with respect to proposed Item 1(b)(5) Current Delinquency Status of Schedule L. They did not provide a similar comment with respect to proposed Item 1(f)(12) of Schedule L-D. We believe under the one schedule format that we are adopting the payment history string subsumes the data captured by this data point. Therefore, we are not adopting the proposed Current delinquency status data point.

data point subsumes the proposed data point. Therefore, we are adopting a payment history data point and omitting the proposed current payment status data point.³⁰⁸ Because this information should be readily available to issuers for the entire history of the loan, we believe any additional costs incurred from providing the disclosures in the format requested, to the extent that such format differs from how such information is collected and stored, will be limited.

Number of Payments Past Due

We also proposed a data point titled "Current payment status" that would capture the number of payments the obligor is past due.³⁰⁹ We are revising the title to "Number of payments past due" to more accurately convey the information the data point requires.³¹⁰ A commenter requested we omit the proposed data point because it would be redundant with the proposed the "Current delinquency status" data point, which would have captured the number of days the obligor is delinquent.³¹¹ There are many ways to present the status of payments, and the data point we are adopting will require disclosure of the number of payments an obligor is behind at any point in time. Therefore, we are not adopting the "Current delinquency status" data point which should eliminate any potential redundancy.

³⁰⁸ See new Item 1(g)(33) of Schedule AL. This data point requires an issuer to provide a string that indicates the payment status per month listed from oldest to most recent. The possible responses based on field 97 of ASF's RMBS Disclosure Package are: 0=Current; 1=30-59 days delinquent; 2=60-89 days delinquent; 3=90-119 days delinquent; 4=120+ days delinquent; 5=Foreclosure; 6=REO; 7=Loan did not exist in period; 99=Unknown. The value furthest to the left in the string would be the most recent month and the value furthest to the right would be the 12th month. For example, for a loan that was current in the most recent month, 30-59 days delinquent from months two to five and current from months six to twelve the string would be as follows: 011110000000.

³⁰⁹ See proposed Items 1(b)(7) of Schedule L and 1(f)(14) of Schedule L-D.

³¹⁰ See new Item 1(g)(34) of Schedule AL.

³¹¹ See proposed Items 1(b)(5) of Schedule L and 1(f)(12) of Schedule L-D.

Information about Junior Liens and Senior Liens

We proposed data points that would require disclosure, at the time of the offering, about the junior liens and senior liens that existed at origination. For loans with subordinate liens at origination, the combined balances of all subordinate loans would be required.³¹² For junior loans being securitized, the combined balances of all senior mortgages at the time the junior loan was originated would be required.³¹³ Where the associated most senior lien is a hybrid, the hybrid period of the most senior lien would be required.³¹⁴ Where the associated most senior lien features negative amortization, the negative amortization limit of the senior mortgage as a percentage of the senior lien's original unpaid principal balance would be required.³¹⁵ We did not propose a data point to capture the effort an originator or sponsor made to discover if the same property secures other loans, but we asked if this type of disclosure should be required.³¹⁶

Comments on this group of data points varied. A few commenters requested that the data points capturing junior lien balances include an "if known" or similar qualifier to address concerns that originators may not always have knowledge of, or access to, balance information on loans not originated by them.³¹⁷ A few commenters also suggested that the combined senior

³¹² See proposed Item 2(a)(16) of Schedule L.

³¹³ See proposed Item 2(a)(17)(i) of Schedule L.

³¹⁴ See proposed Item 2(a)(17)(iii) of Schedule L.

³¹⁵ See proposed Item 2(a)(17)(iv) of Schedule L.

³¹⁶ See the 2010 ABS Proposing Release at 23363.

³¹⁷ See letters from ASF I and SIFMA I.

loan and combined junior loan balances, if known, be captured on an ongoing basis.³¹⁸ Two commenters supported a data point capturing what effort an originator or sponsor made to discover if the same property secures other loans.³¹⁹ One of these commenters noted, however, that there may be difficulties providing this disclosure because the existence of a debt obligation may not be discovered before the required asset-level disclosures are provided.³²⁰ The other commenter noted that the disclosure should be required because the failure to account for an additional loan will result in an inaccurately reported combined LTV ratio and, therefore, investors would want to know if the verification was made.³²¹

We are adopting the group of data points described above, but with revisions to address comments received.³²² In response to comments that expressed concern that originators may not always have knowledge of, or access to, balance information on loans not originated by them, we revised this group of data points to require that the information be provided if the information was obtained or available to them. Regardless of whether the loan being securitized was originated by parties affiliated or unaffiliated to the issuer, we expect, however, that an issuer would make efforts to discern whether junior loans were originated concurrently to or

³¹⁸ See letters from ASF I and Wells Fargo I.

³¹⁹ See letters from Epicurus and Mass. Atty. Gen.

³²⁰ See letter from Epicurus (suggesting that, to address the problem, the attorney or title company at closing should be required to certify that a title search was completed and whether that title search identified the existence of other debts, if any, held against the property).

³²¹ See letter from Mass. Atty. Gen.

³²² See new Items 1(c)(12)(i) Most recent junior loan balance; Item 1 (c)(12)(ii) Date of most recent junior loan balance; 1 (c)(13)(i) Most recent senior loan amount; 1 (c)(13)(ii) Date of most recent senior loan amount; 1 (c)(13)(iii) Original loan type of most senior lien; 1 (c)(13)(iv) Hybrid period of most senior lien; and 1 (c)(13)(v) Negative amortization limit of most senior lien of Schedule AL.

immediately following the origination of the loan being securitized and the balances of those loans. We believe the review required under existing Rule 193 of the Securities Act, which requires a review of the pool assets underlying the asset-backed security may address concerns about verification. The review required under Rule 193 must be designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the prospectus, which includes the asset-level disclosures, is accurate in all material respects. We believe a Rule 193 review would necessarily include consideration of whether the disclosures about junior or senior liens are accurate in all material respects. We are not adopting a separate data point that would require disclosure of the effort an originator or sponsor made to discover if the same property secures other loans.³²³ This data would be difficult to capture in a standardized way, and we are uncertain, at this time, whether this information is best captured within these particular asset-level requirements.

We believe investors will benefit from ongoing disclosure about the aggregate balances of all known senior and junior lien(s) and, therefore, we are revising the data points to capture the most recent senior lien(s) and junior lien(s) balances.³²⁴ We understand, however, that obtaining updated balances on an ongoing basis may involve some burden and cost, particularly if the junior liens are originated by parties unaffiliated with the issuer. Therefore, to address

³²³ See the 2010 ABS Proposing Release at 23363.

³²⁴ See new Items 1 (c)(12)(i) Most recent junior loan balance and 1 (c)(13)(i) Most recent senior loan amount of Schedule AL. We are also adopting data points that capture the dates of the most recent loan balances. See new Items 1(c)(12)(ii) Date of most recent junior loan balance and 1(c)(13)(ii) Date of most recent senior loan amount.

burden concerns, these data points do not require that issuers obtain updated information each month. Instead, the definitions of these data points indicate that a response is required if the most recent junior or senior mortgage balances are obtained or available.³²⁵

Information about the Property

We proposed a group of data points that would capture information related to the property, such as the property type, occupancy status, geographic locations and valuations.³²⁶ Taken together, these data points would provide insight into the physical asset underlying the mortgage. The response to this group of data points varied with some commenters suggesting the group of data points was too granular³²⁷ and others suggesting we expand the information captured about valuations.³²⁸ We discuss below the significant comments we received about this group of data points and the revisions we have made to data points within this group.

Property Location

We proposed to require that the location of the property by Metropolitan Statistical Area, Micropolitan Statistical Area or Metropolitan Division (collectively, "MSA") be provided in lieu of zip code due to privacy concerns arising from providing the property's zip code.³²⁹ The

³²⁵ For example, if the asset in an RMBS is a senior lien, and subsequent to the securitization, a junior lien is originated by an affiliate of the depositor, the information about the junior lien would be available to the issuer and should be reported to the investors in the RMBS in an ongoing report.

³²⁶ See proposed Items 2(b)(2) through 2(b)(19) of Schedule L.

³²⁷ See, e.g., letter from CMBP.

³²⁸ See, e.g., letter from Mass. Atty. Gen.

³²⁹ MSAs are geographic areas designated by a 5-digit number defined by the U.S. Office of Management and Budget (OMB) for use by Federal statistical agencies in collecting, tabulating and publishing Federal Statistics. A Metropolitan Statistical Area contains a core urban area of at least 10,000 (but less than

response to this approach varied. On the one hand, we received some comments suggesting we not require zip code because it would make the ability to identify an obligor within a loan pool easier.³³⁰ On the other hand, some commenters indicated that 5-digit zip codes or 3-digit zip codes should be provided instead of MSA because zip codes provide more information about the property.³³¹ For instance, one commenter was concerned that disclosing only the MSA would result in less information than is currently available.³³² As another commenter noted, the zip code provides information such as whether the property is in a flood plain or earthquake zone.³³³ One commenter indicated that using MSA rather than zip codes would restrict the information available to investors and, as such, issuers expect to receive substantially lower pricing for new RMBS offerings resulting in substantially higher costs for consumers of residential mortgage loans.³³⁴ Another commenter echoed this concern.³³⁵ Another commenter suggested that the

50,000) population. Each Metro or Micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core. The OMB also further subdivides and designates New England City and Town Areas. The OMB may also combine two or more of the above designations and identify it as a Combined Statistical Area.

³³⁰ See letters from CU and WPF.

³³¹ See letter from ASF I (expressed views of investors only). See also letter from Beached Consultancy (suggesting use of 3-digit zip codes).

³³² See letter from ASF I (expressed views of investors only).

³³³ See letter from Epicurus.

³³⁴ See letter from Wells Fargo I.

³³⁵ See letter from ASF I (noting that not disclosing zip codes for the property would be a step backwards in disclosure practice).

“County Code,” which is a federal information processing standard code, is an appropriate alternative to other geographic location identifiers.³³⁶

As discussed below in response to the 2014 Re-Opening Release, several commenters stressed the importance of geography in assessing re-identification risk and recommended requiring issuers to identify assets by a broader geographic area to reduce the ability to re-identify.³³⁷ One commenter recommended that, instead of requiring MSA as proposed, we require geography by 2-digit zip code.³³⁸ Based on the reasons discussed in Section III.A.3 Asset-Level Data and Individual Privacy Concerns, we are requiring disclosure of the 2-digit zip code, which will allow investors to assess market risk associated with a particular geographic location without resulting in unnecessary re-identification risk.

Property Valuations

We proposed a group of data points that would capture information about original property valuations.³³⁹ The comments we received on this group of data points varied with some commenters seeking more granularity and others seeking less granularity. Commenters seeking more granularity suggested expanding this group of data points to require data about recent property sales, more detail about the characteristics of the property, such as the gross living area,

³³⁶ See letter from MERS.

³³⁷ See letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, the Treasurers of Royal Bank of Canada, Canadian Imperial Bank of Commerce, The Bank of Nova Scotia, The Toronto-Dominion Bank, Bank of Montreal and National Bank of Canada dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (“Treasurer Group”), and Wells Fargo III.

³³⁸ See letter from ABA III.

³³⁹ See proposed Items 2(b)(5), 2(b)(6), 2(b)(7), 2(b)(8), and 2(b)(9) of Schedule L.

room count, and construction style,³⁴⁰ and the disclosure of appraiser credentials and prior complaints against them.³⁴¹ A commenter also recommended including valuations captured as part of a “valuation diligence” process, including recalculated loan-to-value ratios and combined loan-to-value ratios based on these valuations.³⁴² Another commenter said there is no uniformity in how values are determined because the proposal would allow issuers to select from a long menu of valuation methods, approaches and sources for establishing property values.³⁴³ This flexibility would allow issuers to pick-and-choose which valuation method best serves their purposes, and the proposed rule would not establish any qualification requirements or standards of care and/or competency for valuations performed in connection with mortgage-backed securities.

One commenter stated that the data captured about property valuations was too granular and not relevant to an investor.³⁴⁴ With respect to the data point capturing the valuation date, a commenter suggested the purpose of disclosing the valuation date is to ensure that the loan-to-value ratio used in the underwriting process was current enough to not overstate the collateral

³⁴⁰ See letter from AI.

³⁴¹ See letter from Epicurus. See also letter from ASA (suggesting issuers of mortgage-backed securities (and those with ongoing Exchange Act reporting requirements relative to those securities) be required to use state certified and licensed professional real property appraisers and require adherence to the Uniform Standards of Professional Appraisal Practice to value loan-level real estate and real property collateral assets).

³⁴² See letter from the Mass. Atty. Gen.

³⁴³ See letter from the ASA.

³⁴⁴ See letter from CMBP.

value of the mortgaged property; particularly during periods of declining home prices.³⁴⁵ The commenter stated that the precise date of the valuation may be difficult for some originators to track. As an alternative, the commenter suggested that we permit issuers to either provide the valuation date or represent in the relevant transaction agreement that the valuation was conducted not more than a specified number of days prior to the original closing of the loan. According to the commenter, such a representation would ensure that the issuer or originator is allocated the risk of stale valuation. Further, to address any concern about the effectiveness of a representation in lieu of disclosure, the commenter's suggested alternative would only apply in a transaction in which the transaction agreements provide for a robust third-party mechanism for evaluating and resolving breaches of representations.

As discussed in Section III.A.3 Asset-Level Data and Individual Privacy Concerns below, we are concerned that providing data about original property valuations may increase re-identification risk; therefore, we are not adopting any of the proposed data points related to original property valuations. In particular, we are concerned that data about original property valuations could provide a close approximation of sales price, and thus raise the same re-identification concern as sales price. Although we are not adopting the proposed data points related to original property valuations, we are adopting other data points, such as Original loan amount and Original loan-to-value, which will provide investors with key information that they need to perform due diligence and make an informed investment decision.

³⁴⁵ See letter from ASF I.

We also proposed data points requiring disclosure about the most recent property value, if an additional property valuation was obtained after the original appraised property value.³⁴⁶ One commenter indicated that these data points appeared to relate only to valuations obtained by the originator.³⁴⁷ The commenter suggested that we require any sponsor who obtains an alternative property valuation as part of due diligence to disclose that value to the extent it is the most recent property value. The commenter also suggested that we consider disclosure of the lowest alternative property value in the last six months (in addition to the most recent property value) to prevent the sponsor from evading the requirements by getting alternate values only when the most recent value is lower than the sponsor would like. Another commenter also suggested that the "Most recent property value" data point should only require property values obtained by the securitization sponsor, although the investor members of this commenter recommended that this include affiliates of the securitization sponsor.³⁴⁸

We are adopting these data points, as proposed, with revisions to address comments received.³⁴⁹ In particular, we revised the definitions to require disclosure of any valuation obtained by or for any transaction party or their affiliates.³⁵⁰ This revision addresses comments that these data points appear to relate to valuations obtained only by the originator. The

³⁴⁶ See proposed Items 2(b)(10), 2(b)(11), 2(b)(12), 2(b)(13), and 2(b)(14) of Schedule L.

³⁴⁷ See letter from Mass. Atty. Gen.

³⁴⁸ See letter from SIFMA I.

³⁴⁹ See new Items 1(d)(5) Most recent property value; 1(d)(6) Most recent property valuation type; 1(d)(7) Most recent property valuation date; 1(d)(8) Most recent AVM model name; and 1(d)(9) Most recent AVM confidence score of Schedule AL.

³⁵⁰ The final rules also require disclosure of the date on which the most recent property value was reported.

reference to “obtained by or for any transaction party or its affiliates” contained in each definition should be construed broadly and should include, but not be limited to, valuations obtained as part of any due diligence conducted by credit rating agencies, underwriters or other parties to the transaction. We also made conforming changes to the titles and definitions “Most recent AVM model name” and “Most recent AVM confidence score” because these disclosures are providing information about the most recent property value.

We also considered, as a commenter suggested, adopting data points to capture the lowest alternative property valuation obtained in the last six months by, in addition to the originator, the sponsor or its affiliates. We did not adopt these data points because we are not persuaded, at this time, that the potential benefits investors may receive from such information would justify the potential costs and burdens that may be associated with providing the data. If, however, alternative property valuations are obtained that reflect substantially lower valuations, an issuer should consider whether these valuations need to be disclosed or whether additional narrative disclosure is necessary so that the disclosure about property valuations is not misleading.³⁵¹

Originators, sponsors or other transaction parties are not required to obtain updated valuations in order to respond to the data points capturing information about recent valuations. Instead, this requirement is meant to capture valuations conducted subsequent to the original valuation for whatever reason, such as updated valuations obtained in the normal course of their business or because other facts or circumstances required an updated valuation.

³⁵¹ See footnote 186 and accompanying text.

Information about the Obligor(s)

We proposed a group of asset-level data points that would provide data about an obligor's credit quality.³⁵² This group of data points was intended to capture information about the obligor(s) income, debt, employment, credit score and DTI ratio. In light of privacy concerns, the proposal included ranges, or categories of coded responses, instead of requiring disclosure of an exact credit score, income or debt amount in order to prevent the identification of specific information about an individual. We discuss below the significant comments we received about this group of data points and the revisions we have made in response to those comments.

Use of Coded Ranges, Updated Information and Information about Co-obligors

The comments we received on this group of data points varied. As discussed below, several commenters noted that some data points related to obligors may cause individual privacy concerns if linked to the obligor even if that information, like obligor credit score, was provided in ranges.³⁵³ On the other hand, some commenters generally opposed coded ranges because they believe exact credit scores are necessary to evaluate risk, appropriately price the securities or verify issuer disclosures.³⁵⁴

With respect to whether updated obligor information should be required, one commenter

³⁵² See proposed Items 2(c)(1) through 2(c)(31) of Schedule L.

³⁵³ See, e.g., letters from ABA I, AFSA I, CDIA, CU, Epicurus, SIFMA I, TYI LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("TYI"), and WPF I. See also Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

³⁵⁴ See letters from ASF I (expressed views of investors only), Interactive Data Corporation dated August 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Interactive"), Prudential I, and Wells Fargo I.

believed that servicers should provide updated borrower information whenever such information is obtained by the servicer.³⁵⁵ Other commenters, without providing a reason, also suggested updated credit score information should be provided.³⁵⁶ Another commenter, however, suggested that updated credit scores are obtained infrequently, if at all, and the benefit investors may receive from updated monthly credit scores across all securitized loans would not justify the costs to provide such disclosures.³⁵⁷ The commenter recommended requiring this information only if the servicer obtains the information. We also received a few comments suggesting that we eliminate the co-obligor categories for various reasons,³⁵⁸ and received a comment suggesting that we provide obligor information for up to four different obligors.³⁵⁹

We are eliminating certain data about obligor income based on comments received and in light of the recent adoption by the CFPB of the ability-to-repay requirements under the Truth in Lending Act or Regulation Z, which includes minimum standards for creditors to consider in making an ability-to-pay determination when underwriting a mortgage loan.³⁶⁰ We note that all

³⁵⁵ See letter from MetLife I (suggesting that certain obligor information be disclosed whenever a servicer obtains updated information).

³⁵⁶ See letters from ASF I and Wells Fargo I.

³⁵⁷ See letter from MBA I.

³⁵⁸ See letters from BoA I (suggesting that for proposed Items 2(c)(1) - 2(c)(12), 2(c)(23) and 2(c)(26) - 2(c)(31), if there are multiple borrowers the data should be aggregated (e.g., income or assets) and if the data cannot be aggregated (e.g., DTI) the most conservative value should be used) and CMBP (suggesting that separate obligor and co-obligor categories are unnecessary because total obligor income to service the debt and the nature of that income is sufficient).

³⁵⁹ See letter from SFIG I.

³⁶⁰ 12 CFR 1026. See also Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z) (Jan. 30, 2013) [78 FR 6407], as amended by Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z) (June 12, 2013) [78 FR 35429] and Amendments

originators will need to adhere to these requirements and, therefore, it is appropriate to align our disclosure requirements with how originators will be required to assess the obligor's income when considering their ability to repay a loan while not requiring the disclosure of a significant amount of potentially sensitive obligor information that could increase re-identification risk.³⁶¹ To achieve this, we omitted the data points capturing obligor and co-obligor wage income,³⁶² obligor and co-obligor other income,³⁶³ all obligor wage income,³⁶⁴ all obligor total income,³⁶⁵ and monthly debt.³⁶⁶ A commenter suggested that we require monthly income used to calculate the DTI ratio.³⁶⁷ However, as discussed below in Section III.A.3 Asset-Level Data and Individual Privacy Concerns, to help reduce re-identification risk, we are not adopting a number of data points that disclose potentially sensitive obligor information, such as debt or income.

We are also adopting data points capturing the obligor credit score, modified from the proposal.³⁶⁸ The proposal would have required issuers to indicate the credit score type and score. If the score used was FICO, issuers would have been required to indicate the code that

to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (July 24, 2013) [78 FR 44686].

³⁶¹ Accordingly, we are not requiring that obligor information such as credit score, credit score type, income verification, employment verification, asset verification and length of employment be provided for more than one obligor.

³⁶² See proposed Items 2(c)(26) and 2(c)(27) of Schedule L.

³⁶³ See proposed Item 2(c)(28) and 2(c)(29) of Schedule L.

³⁶⁴ See proposed Items 2(c)(30) of Schedule L.

³⁶⁵ See proposed Item 2(c)(31) of Schedule L.

³⁶⁶ See proposed Item 2(c)(15) of Schedule L.

³⁶⁷ See letter from Mass. Atty. Gen.

³⁶⁸ See new Items 1(e)(2) Original obligor credit score and 1(e)(3) Original obligor credit score type of Schedule AL.

represented a range of FICO credit scores within which the score fell. The rules we are adopting require disclosure of the exact credit score used to evaluate the obligor during the origination process.³⁶⁹ We are persuaded by commenters that exact credit scores are necessary to evaluate risk and to appropriately price securities.³⁷⁰ We also added, in response to comments received, data points that capture the most recent credit score, credit score type and credit score date.³⁷¹ We are persuaded that updated scores should be provided, if obtained, since such information will provide investors with a picture of the obligor's ongoing ability to repay the loan. These

³⁶⁹ The 2010 ABS Proposal required a coded response representing ranges of FICO score, if FICO was used. If another type of credit score was used, an exact score would have been required.

³⁷⁰ See letters from ASF I (requesting exact credit score be required because it has historically been provided on a loan-level basis and stating that investor members were concerned that moving from disclosing precise scores to score ranges "would represent a significant step backwards in loan-level transparency"), ASF II (noting that actual FICO score has been provided for some time in the RMBS industry and that loan-level investors "believe that it would be extremely useful in the auto space as well") Capital One I (stating that current FICO scores would be very useful for an investor's credit analysis), Interactive (stating that providing FICO score ranges would reduce precision by assuming that all loans within a certain band will behave the same), MetLife I (requesting specific FICO score for each loan), Prudential I (stating that ranges of FICO scores or grouped data disclosure are not sufficient to appreciate the linkages between collateral characteristics), Prudential III (discussing the importance of certain data points, such as credit score, to an investor's credit risk analysis and asserting that predictive risk factors, such as FICO score must be evaluated in conjunction with other factors, as the combination of individual loan characteristics and economic environment can add or diminish the risk of a given loan), Vanguard (stating that providing investors with specific data, such as FICO scores, that is updated periodically should foster independent analysis in the ABS market and improve pricing), and Wells Fargo I (expressing its concern that by providing investors with ranges of credit scores, issuers would receive substantially lower pricing for new offerings, which would lead to substantially higher costs for consumers). In addition, Ginnie Mae, Fannie Mae and Freddie Mac all disclose exact credit scores. We understand that certain asset-level information about an obligor, including credit score, may be considered a "consumer report" subject to regulation under FCRA. As discussed below, the CFPB has provided guidance to the Commission stating that FCRA will not apply to asset-level disclosures where the Commission determines that disclosure of certain asset-level information is "necessary for investors to independently perform due diligence," in accordance with the mandate of Securities Act Section 7(c). For a discussion of the importance of credit scores to predicting delinquency, see Section III.A.3 below.

³⁷¹ See new Items 1(e)(4) Most recent obligor credit score, 1(e)(5) Most recent obligor credit score type and 1(e)(6) Date of most recent obligor credit score of Schedule AL. See letters from ASF I, MetLife I, and Wells Fargo I.

data points do not require originators, sponsors or transaction parties to obtain updated information. Instead, this requirement is meant to capture credit scores obtained, for whatever reason, after the original score was obtained.

Length of Employment

We proposed data points requiring information about the length of time the obligor and co-obligor have been employed.³⁷² We received a comment that this level of detail about the obligor's length of employment is unnecessary.³⁷³ As an alternative, the commenter stated that it would be sufficient to know if the obligor has been employed by his or her current employer for 24 months or less or more than 24 months because this is the standard demarcation in industry underwriting standards. In line with the commenter's suggestion, we revised the data point to require the issuer to indicate whether the obligor has been employed by his or her current employer for greater than 24 months as of the origination date. We believe this approach will mitigate the burden on issuers, but still provide investors with valuable information about the obligor's length of employment.

Months Bankruptcy and Months Foreclosure

We proposed a data point that would require disclosure of the number of months since any obligor was discharged from bankruptcy.³⁷⁴ We also proposed a data point that would require disclosure, if the obligor has directly or indirectly been obligated on any loan that

³⁷² See proposed Items 2(c)(22) and 2(c)(23) of Schedule L.

³⁷³ See letter from CMBP.

³⁷⁴ See proposed Item 2(c)(24) of Schedule L.

resulted in foreclosure, of the number of months since the foreclosure date.³⁷⁵ We received a comment suggesting this information may be difficult or costly for many lenders to capture, and that a suitable substitute would consist of a representation designed to ensure that the obligor has not recently been discharged from bankruptcy and a representation designed to ensure that the obligor has not recently been obligated on a loan that resulted in a foreclosure sale.³⁷⁶ The commenter suggested requiring representations in the relevant transaction agreements, in lieu of the disclosure of the number of months since the obligor was discharged from bankruptcy or the number of months since the foreclosure date, to the effect that at least a specified number of years have passed since any obligor was discharged from bankruptcy or was a direct or indirect obligor on a loan that resulted in a foreclosure sale.

Another commenter stated, with respect to the data point capturing the number of months since an obligor has directly or indirectly been obligated on any loan that resulted in foreclosure, that its dealer and sponsor members believe that this data point should be limited to direct obligations, whereas its investor members believed that guaranteed or co-signed obligations should be included.³⁷⁷ Both groups agreed that this disclosure should be limited to obligations on residential property that resulted in foreclosure within the last seven years (so that such foreclosure would appear on a credit report).

In response to privacy concerns, we are not adopting either proposed data point. Section

³⁷⁵ See proposed Item 2(c)(25) of Schedule L.

³⁷⁶ See letter from ASF I.

³⁷⁷ See letter from SIFMA I.

III.A.3 Asset-Level Data and Individual Privacy Concerns below provides a discussion of these and other related data points that we are not adopting due to the potential re-identification risk. As noted below, if an obligor had experienced a past bankruptcy or foreclosure, we would expect that those events would have been considered in generating a credit score. Because we are requiring disclosure of an exact credit score, investors will receive information they need about past payment behavior to perform due diligence.

Debt-to-Income

We proposed data points that would require at the time of securitization disclosure about the total DTI ratio used by the originator to qualify the loan.³⁷⁸ In addition, at the time of securitization and on an ongoing basis the front-end and back-end DTI³⁷⁹ ratios would be required for any modified loans.³⁸⁰

One commenter suggested DTI ratio disclosure provided at origination include both front-end and back-end DTI ratios.³⁸¹ The commenter also suggested we require the DTI ratio

³⁷⁸ See proposed Item 2(c)(16) of Schedule L.

³⁷⁹ The front-end DTI is calculated by dividing the obligor's total monthly housing expense by the obligor's total monthly income. The back-end DTI is calculated by dividing the obligor's total monthly debt expense, which includes expenses such as mortgage payments, car loan payments, child support and alimony payments, credit card payments, student loans payments and condominium fees, by the obligor's total monthly income.

³⁸⁰ See proposed Items 2(a)(21)(iv)-(v) of Schedule L and Items 2(e)(23) and 2(e)(25) of Schedule L-D.

³⁸¹ See letter from Mass. Atty. Gen.

for an ARM loan to be recalculated using the fully indexed interest rate and that we require disclosure of any subsequent calculations.³⁸²

The data points we are adopting today require, as proposed and consistent with the comment received, front-end and back-end DTI ratios calculated during the loan origination process and at the time of any loan modification.³⁸³ We believe both front-end and back-end DTI ratios provide important data about the total debt load of the obligor, which provides insight into the obligor's ability to repay the loan. We are not adopting, as one commenter recommended, data points capturing information about the DTI ratio recalculated using the fully indexed interest rate. We believe the DTI figures provided in response to this data point will be adequate for investors to use, in part, to assess a borrower's ability to repay. We also note that our approach is generally consistent with Regulation Z, which requires all loans covered by Regulation Z to consider DTI ratios calculated using the fully indexed interest rate.

Information about Servicer Advances

Servicer Advances

We made various changes to the group of data points capturing information about servicer advances. The proposal included information about the servicer's responsibility, if any, to advance principal or interest on a delinquent loan, the method of those advances, the

³⁸² Id. (also requesting other updated information be provided, for instance, any values that have been corrected as a result of due diligence process, such as monthly income and DTI, as well as any post-modification DTI ratios).

³⁸³ See new Items 1(e)(9) Originator front-end DTI, 1(e)(10) Originator back-end DTI, 1(m)(12) Modification front-end DTI, and 1(m)(13) Modification back-end DTI of Schedule AL.

outstanding cumulative balance advanced and how those advances were subsequently reimbursed. The requirements we are adopting today include the information proposed and described above, but also include the addition and deletion of some data points capturing advances to address comments received. We discuss immediately below the various changes to the group of data points capturing information about servicer advances.

Advancing Method

The final rule includes a data point suggested by a commenter titled "Advancing method."³⁸⁴ The data point includes a coded list that indicates the servicer's responsibility for advancing principal or interest on delinquent loans. We believe that the response to this data point will help investors understand the servicer's responsibility with respect to advances for each particular loan and the pool as a whole.

Advances: Principal, Interest, Taxes and Insurance, and Corporate

We proposed a general disclosure data point that would require, if amounts were advanced by the servicer during the reporting period, the disclosure of the amount advanced.³⁸⁵ One commenter³⁸⁶ suggested that for RMBS, we split this information into three categories that would capture principal and interest advances,³⁸⁷ tax and insurance advances,³⁸⁸ and corporate

³⁸⁴ See new Item 1(g)(5) Advancing method of Schedule AL. See letter from ASF I.

³⁸⁵ See proposed Item 1(g)(4) of Schedule L-D.

³⁸⁶ See letter from ASF I.

³⁸⁷ Id. (noting that principal and interest advances consist of due but unpaid principal and/or interest on the loan for the period, as required by the methodology specified in the transaction agreements).

³⁸⁸ Id. (stating that tax and insurance advances consist of due but unpaid escrow amounts for payment of property taxes and insurance payments with respect to the mortgaged property).

advances because these categories of information are more useful.³⁸⁹ In addition, the investor membership of another commenter requested disclosure about the servicer's methodologies regarding advances of interest and principal on delinquent loans, the reimbursement of those advances,³⁹⁰ and, for modified loans, disclosure about non-capitalized and capitalized advances.³⁹¹ The commenter also suggested aggregating the data points capturing, for liquidated loans, the various advances the servicer had made to cover expenses incurred due to concerns that the information was too granular and the information is immaterial to investors.³⁹²

In light of these comments, we have split the final data points into the following four categories: principal advances, interest advances, taxes and insurance advances, and corporate advances. While one commenter recommended aggregating the principal advances and interest advances into one data point, the final rule includes data points capturing interest and principal advances separately since that is consistent with how other information that relates to principal and interest is captured in Schedule AL.

We agree with commenters that requiring disclosures about advances made by the servicer, the outstanding cumulative balance advanced and how those advances were

³⁸⁹ Id. (defining corporate advances as consisting of property inspection and preservation expenses with respect to defaulted loans).

³⁹⁰ See letter from SIFMA I (suggesting that we amend current pool-level disclosure requirements so that more disclosure is provided about a servicer's methodologies for advancement of principal and interest and the reimbursement of advances).

³⁹¹ Id. (referring to the disclosures required under proposed Items 2(e)(45) Reimbursable modification escrow and corporate advances (capitalized) and 2(e)(46) Reimbursable modification servicing fee advances (capitalized) of Schedule L-D).

³⁹² See proposed Items 2(m)(1)(iv) through 2(m)(1)(xii) of Schedule L-D.

subsequently reimbursed or addressed will provide investors insight into the payment status of a particular asset within the pool and the potential losses that may pass on to the trust. Therefore, in order to capture how these advances were reimbursed, the final rule includes additional data points that capture for these same categories of advances, the cumulative outstanding advanced amount or, if these advances were subsequently reimbursed, how they were reimbursed or resolved, such as through the obligor becoming current on payments, or being reimbursed at the time the loan was liquidated. Since this information is likely readily available to issuers, we believe the cost to provide this data should be low.

We have omitted from the final requirements, as a commenter recommended, proposed data points that would have required the disclosure of the amount of various expenses advanced and reimbursed, such as property inspection expenses, insurance premiums, attorney fees and property taxes paid for liquidated loans. Since the asset-level reporting requirements do not require that advances be reported in this fashion at each reporting period, we are uncertain at this time whether this level of granularity about outstanding advances at loan liquidation would be beneficial to investors. In general, we believe these expenses are captured by other data points that detail reimbursements at loan liquidation for advances of taxes and insurance and corporate expenses.³⁹³

³⁹³ See new Items 1(t)(1)(iii) Servicer advanced amounts reimbursed – principal; 1(t)(1)(iv) Servicer advanced amounts reimbursed – interest; 1(t)(1)(v) Servicer advanced amount reimbursed – taxes and insurance; and 1(t)(1)(vi) Servicer advanced amount reimbursed – corporate of Schedule AL.

Information about Modified Loans

We proposed a group of data points that would capture information about modified loans. The responses to this group of data points would provide data about whether a loan has been modified, the modification terms and the loan characteristics that were modified. We received comments suggesting we add³⁹⁴ or delete³⁹⁵ data points from this group of data points, and comments suggesting we revise certain data points within this group.³⁹⁶ A commenter suggested adding a requirement for data that details the number of modification requests that are granted and denied and the average time that elapses between a borrower's request for a loan modification and a determination of that application.³⁹⁷ The commenter also requested disclosure of the number and percentage of modified loans which have re-defaulted.

We are adopting most of this group of proposed data points,³⁹⁸ as well as additional data points, mainly based on comments received to provide further transparency around modifications, including any change in loan characteristics or other loan features.³⁹⁹ For instance, the final requirements include, in addition to the proposed data points, data points that

³⁹⁴ See letters from ASF I and Wells Fargo I.

³⁹⁵ See letter from ASF I.

³⁹⁶ See letter from SIFMA I.

³⁹⁷ See letter from CU.

³⁹⁸ We are not adopting certain items related to a modification that would be captured elsewhere in the requirements, such as information on servicer advances. See, e.g., proposed Items 2(e)(44) through 2(e)(46) of Schedule L-D.

³⁹⁹ See letters from ASF I and Wells Fargo I.

capture information about step provisions,⁴⁰⁰ the actual and scheduled-ending balances of the total debt owed,⁴⁰¹ the date a trial modification was violated,⁴⁰² and the interest rate and amortization type after modification.⁴⁰³ For loans that remain an adjustable rate mortgage after a modification, additional data points capture information, such as the index look-back, the post-modification initial interest rate, the maximum amount a rate can increase or decrease and information about negative amortization caps.⁴⁰⁴ We did not add, as a commenter suggested, requirements about the number of modification requests received, the average time that elapses between a borrower's request for a loan modification and when a determination is made, or the number and percentage of modified loans which have re-defaulted.⁴⁰⁵ We are not persuaded these disclosures would provide a clear benefit to investors, especially in light of the costs issuers

⁴⁰⁰ See new Items 1(m)(24)(i) Post-modification interest rate step indicator; 1(m)(24)(ii) Post-modification step interest rate; 1(m)(24)(iii) Post-modification step date; 1(m)(24)(iv) Post-modification – step principal and interest; and 1(m)(24)(v) Post-modification – number of steps of Schedule AL.

⁴⁰¹ See new Items 1(m)(19) Actual ending balance – total debt owed and 1(m)(20) Scheduled ending balance – total debt owed of Schedule AL.

⁴⁰² See new Item 1(n)(3) Most recent trial modification violated date of Schedule AL.

⁴⁰³ See new Items 1(m)(4) Post-modification interest rate type and 1(m)(5) Post-modification amortization type of Schedule AL.

⁴⁰⁴ See, e.g., new Items 1(m)(21)(vi) Post-modification index look-back; 1(m)(21)(vii) Post-modification ARM round indicator; 1(m)(21)(viii) Post-modification ARM round percentage; 1(m)(21)(xi) Post-modification ARM payment recast frequency; 1(m)(21)(xx) Post-modification ARM interest rate teaser period; 1(m)(21)(xxiii) Post-modification ARM negative amortization cap; 1(m)(22)(ii) Post-modification interest only last payment date; 1(m)(24)(ii) Post-modification step interest rate and 1(m)(24)(iv) Post-modification – step principal and interest. The group of data points capturing data about modifications include some data points beyond those proposed or those that commenters suggested be added. These additional data points were added to make the required disclosure about modified ARM loans consistent with the required disclosure about original ARM loans. See new Items 1(m)(21)(ii) Post-modification ARM Index; 1(m)(21)(ix) Post-Modification initial minimum payment; 1(m)(21)(xiv) Post-modification initial interest rate increase; 1(m)(21)(xvii) Post-modification subsequent interest rate decrease; and 1(m)(21)(xix) Post-modification payment method after recast of Schedule AL.

⁴⁰⁵ See letter from CU.

would incur to provide such information.

Most Recent Loan Modification Event Type

We also proposed a data point as part of the ongoing disclosure requirements that would require the issuer to specify, if the loan has been modified, the code that describes the type of action that has modified the loan terms.⁴⁰⁶ The proposed codes were: 1=capitalization-fees or interest have been capitalized into the unpaid principal balance; 2=change of payment frequency; 3=construction to permanent; and 4=other. One commenter requested we delete this data point because the coded list only describes a subset of possible loan modifications and the type of modification can be determined based on a comparison of pre-modification and post-modification characteristics.⁴⁰⁷ Another commenter recommended we expand the coded list to add forgiveness of principal, rate reductions, maturity extensions and forgiveness of interest to the list of possible responses.⁴⁰⁸

We are adopting this data point because we believe this disclosure will allow investors to focus on what terms may have changed due to a modification, which should allow investors to quickly assess whether changes in the terms of an asset will affect future cash flows or the risk profile of the asset pool.⁴⁰⁹ We added, as a commenter recommended, additional codes to the

⁴⁰⁶ See proposed Item 2(a)(21)(ii) of Schedule L.

⁴⁰⁷ See letter from ASF I.

⁴⁰⁸ See letter from SIFMA I.

⁴⁰⁹ See new Item 1(m)(1) Most recent loan modification event type of Schedule AL.

coded list.⁴¹⁰ We also note that a loan may go through several loan modifications. Therefore, we revised the data point to clarify that information about the most recent loan modification is required each time the disclosure is filed.⁴¹¹

Effective Date of the Most Recent Loan Modification

We proposed a data point titled “Loan modification effective date,” which is the date on which the most recent modification of the loan has gone into effect. A commenter suggested omitting this data point from the RMBS requirements because loan modifications are effective on the mortgage loan’s next due date after entry.⁴¹² While we acknowledge that may be current practice, we are adopting this data point as we are mindful that other practices regarding loan modifications may develop. Further, since responses to this data point will be provided on an ongoing basis after a loan is modified, we believe this date will provide a clear indication about the length of time that has passed since the loan was last modified. We are adopting this data point with a revision to clarify that only information about the most recent loan modification is required because, as noted above, a loan may go through several modifications.⁴¹³

⁴¹⁰ The coded list was revised to also include the following possible responses: 4=forgiveness of principal, 5=rate reductions, 6=maturity extensions and 7=forgiveness of interest. If, however, the type of action that has modified the loan terms is not identified in the list of possible responses, the issuer should select the code “other” and we encourage the issuer to provide explanatory language in an Asset Related Document. See Section III.B.4 Asset Related Documents for a discussion on providing additional explanatory disclosure about the asset-level disclosures.

⁴¹¹ Because asset-level data will be provided monthly, investors will be able to track previous loan modifications.

⁴¹² See letter from ASF I.

⁴¹³ See new Item 1(m)(2) Effective date of the most recent loan modification of Schedule AL.

(2) Commercial Mortgage-Backed Securities

Between Schedule L and Schedule L-D, we proposed 108 data points that relate specifically to CMBS. The data points we proposed to require in Schedule L and Schedule L-D were primarily based on the data template included in the CREFC Investor Reporting Package (“CREFC IRP”), current Regulation AB requirements, and staff review of current disclosure. We did not propose, however, to include every piece of information exactly as specified in the CREFC IRP for two reasons. First, some of the disclosures required by the CREFC IRP would have already been captured by proposed data points in the Item 1 General Requirements, and we believed that those data points would apply to all types of ABS. Second, we did not believe the level of detail in the CREFC IRP was necessary for investor analysis because we believed that the most important data for CMBS is data that relates to the loan term and the property.

The response to the proposal indicated a general preference for CREFC IRP in lieu of the proposed requirements.⁴¹⁴ The preference applied to both information in the prospectus and

⁴¹⁴ See, e.g., letters from ABA I (suggesting that we conform Schedule L data points to IRP standards and the Schedules L and L-D standards should be a “guideline” and that the “traditional standards of materiality” should be the overriding factor in determining the appropriateness of the disclosure in the offering document), BoA I (suggesting that we require asset-level disclosure generally, but allow the industry to set the requirements for disclosure in the prospectus because requiring a separate Schedule L would be repetitive of the relevant information already provided in CREFC’s Annex A), CREFC I (suggesting that we conform proposed Schedule L asset-level data disclosure to the then-current “Annex A” data points formulated by the CREFC “Annex A” Committee and/or consider that the Schedule L filing requirement be satisfied if the issuer files a Schedule L with the data points identical to the then-current form of “Annex A” adopted by CREFC), CREFC III, MBA I (suggesting that to the extent we believe more standardized terminology and a defined core of shared data points for Schedule L would be benefit investors, that we adopt the core disclosures in the current industry Annex A schedules and leverage the definitions already provided in CREFC’s IRP), MBA IV, and Wells Fargo I (suggesting that proposed Schedule L asset-level data disclosure conform to the then-current “Annex A” data points contained in CREFC’s IRP).

ongoing reporting.⁴¹⁵ For asset-level reporting at the time of securitization, commenters seemed to favor initial reporting schedules commonly attached by issuers to the prospectus (typically referred to as Annex A) that frequently contain asset-level data based on the specific types of commercial mortgages in the transaction. Some of these commenters suggested that the proposed requirements would duplicate the data provided in the Annex A schedules provided with the prospectus⁴¹⁶ and the existence of duplicative data may confuse investors.⁴¹⁷ One commenter, who supported requiring Annex A in lieu of the proposed Schedule L disclosures, suggested that Schedule L does not reflect the practices that CMBS market participants have developed to provide “CMBS investors with clear, timely and useful disclosure specifically tailored for use by those investors.”⁴¹⁸ Finally, one investor believed it is reasonable to require the disclosures because much of the same information is currently provided in Annex A of the offering documents.⁴¹⁹ The investor suggested, however, that additional disclosure items to improve current industry disclosure practices, such as requiring disclosure of actual versus underwritten property performance metrics, including disclosure of the same performance metrics for the preceding three years, complete tenant information versus top three tenant

⁴¹⁵ See letters from ABA I, BoA I, CMBS.com I (suggesting that we establish rules consistent with existing standards where possible to limit disruptions and costs), CoStar, CREFC I, CREFC III, MBA I, MBA IV, MetLife I, and Wells Fargo I.

⁴¹⁶ See letters from BoA I, MBA I, and MBA IV.

⁴¹⁷ See letter from MBA I (urging that we consider any increase in cost to be incurred by the issuer to provide the additional data and cautioning against including duplicative or extraneous data points at securitization that may hinder rather than enhance investor review of the loans in the pool).

⁴¹⁸ See letter from Wells Fargo I.

⁴¹⁹ See letter from MetLife I.

information, rent rolls, full indebtedness information for each property and standardized tenant and borrower information.

For ongoing reporting, commenters indicated a preference for previously established industry standards in lieu of the proposal for several reasons.⁴²⁰ For instance, one commenter was concerned that requiring data points unrelated to CMBS, such as those found in the general requirements, would cause undue programming burdens without a material benefit to investors.⁴²¹ Another commenter stated that “IRP guidelines identify which data points are restricted (i.e., only available to certain users), while the SEC data filings to be contained in Schedule L-D would be public information.”⁴²² The commenter then stated that publicly disclosing certain sensitive information could put the underlying properties at a competitive disadvantage, which could negatively influence the securities. Other commenters also believed that proprietary information should be considered sensitive information, and therefore CMBS issuers should not be required to publicly disclose such information on EDGAR.⁴²³ Commenters also noted that based on current requirements, investors would receive CREFC IRP disclosures

⁴²⁰ See letters from CREFC I (suggesting that we tailor Schedule L-D to take into consideration the data already captured by the IRP), CREFC III, CoStar, MBA I, MBA IV, MetLife I, and Wells Fargo I (suggesting that all of the data captured by Schedule L-D is either captured by the IRP or is not applicable to CMBS with the exception of only two data points, which they indicated would be added to what is captured by the IRP).

⁴²¹ See letter from CREFC I.

⁴²² See letter from Wells Fargo I.

⁴²³ See letters from CREFC III (stating that “the CRE Finance Council’s member constituencies, including investment-grade investors, believe that most – if not all – of the information on Schedule L and Schedule L-D should be considered sensitive, and therefore should continue to be hosted on the issuer’s (or trustee’s or third-party’s) website”), MBA IV, and SFIG II.

15 days prior to the required filing date of the Schedule L-D disclosure.⁴²⁴ One of these commenters also stated that CMBS transactions often involve multiple loans with different financial reporting dates, and the information has to be reviewed by the appropriate parties, and therefore, any particular reporting date may not reflect information for the current reporting period.⁴²⁵ One investor suggested, in lieu of adopting our ongoing disclosure proposal, that we require disclosure of complete rent rolls at least once per year, the alternatives evaluated with respect to modifications, all terms related to a modification or assumption and that we require the format of the industry reporting standard to be in XML.⁴²⁶

After considering the comments we received, we are adopting a requirement that issuers of CMBS provide the disclosures contained under Item 2 of Schedule AL. We believe that investors and market participants should have access to information to assess the credit quality of the assets underlying a securitization transaction at inception and over the life of a security. While we recognize the current market practice is to include provisions in CMBS transactions that provide investors with asset-level data for each pool asset, we note that this market practice is not a mandatory requirement and is subject to change. As such, we believe the asset-level disclosure requirements that we are adopting will require a minimum level of standardized asset-level disclosures in the prospectus and over the life of a security regardless of market practices. We acknowledge commenters' concerns that requiring asset-level disclosures that deviate from

⁴²⁴ See letters from CREFC I, MetLife I, MBA IV, and Wells Fargo I.

⁴²⁵ See letter from Wells Fargo I.

⁴²⁶ See letter from MetLife I.

the data template in the CREFC IRP may raise costs for both issuers and investors because users are accustomed to working with the CREFC IRP data templates. We also understand that investors are involved in the ongoing development of the CREFC IRP. For these reasons, we made efforts to align our requirements, as much as possible, with pre-established industry codes, titles and definitions to allow for the comparability of future offerings with past offerings and to minimize the burden and cost of reporting similar information in different formats.

The requirements that we are adopting contain several revisions from the proposal aimed at aligning our standards with the CREFC IRP. We reconsidered and are not adopting some data points that do not correspond to the CREFC IRP or are typically disclosed in Annex A because they are no longer necessary due to other changes we made, such as aggregating Schedules L and L-D, or because we are adding data points based on the CREFC IRP to capture the same or similar information.⁴²⁷ Some data points that we are adopting, however, do not correspond exactly to data captured by the CREFC IRP, but we believe the responses to these data points will improve or clarify the requirements, or aid an investor's ability to make an investment decision.⁴²⁸ We are also adding some data points that correspond to data captured by the CREFC

⁴²⁷ See, e.g., proposed Items 1(a)(17) Servicing fee – flat dollar; 1(b)(5) Current delinquency status; 1(b)(6) Number of days payment is past due; 3(a)(9) Current hyper-amortizing date of Schedule L and 1(f)(3) Actual principal paid; 1(f)(4) Actual other amounts paid; 1(f)(14) Current payment status; 1(g)(5) Cumulative outstanding advanced amount; 1(g)(8) Other loan level servicing fee(s) retained by servicer; 1(g)(9) Other assess but uncollected servicer fees; 1(l)(2)(ii) Pledged prepayment penalty waived; 1(l)(2)(iii) Reason for not collecting pledged prepayment penalty; 3(a)(4)(i) Rate at next reset; and 3(a)(4)(iii) Payment at next reset of Schedule L-D.

⁴²⁸ See new Items 2(a)(1) Asset number type; 2(b)(1) Reporting period begin date; 2(b)(2) Reporting period end date; 2(c)(1) Originator; 2(c)(2) Origination date; 2(c)(11) Original interest-only term; 2(c)(13) Underwriting indicator; 2(c)(25) Prepayment premium indicator; 2(d)(15) Valuation source at securitization; 2(e)(16)(i) Servicing advance methodology; 2(f)(1) Primary servicer; 2(g) Asset subject to

IRP based on comments received, because the responses to these data points clarify other data points or they add more granularity to the data captured by other data points.⁴²⁹ In total, the proposal for CMBS included a total of 182 data points between the proposed general item requirements of Schedules L and L-D and the data points specific to CMBS in proposed Schedules L and L-D. Based on the changes described above, the final requirements include 152 data points.

Finally, we are adjusting the codes, titles, and definitions of many of the data points to make them largely comparable to the data definitions set in the CREFC IRP.⁴³⁰ We believe that through these changes and by making the asset-level data requirements for CMBS largely align with the CREFC IRP many of the disclosures provided under the CREFC IRP can be used to provide the required disclosures. As a result, we believe we have mitigated, to a great extent,

demand; 2(g)(3) Demand resolution date; 2(g)(4) Repurchaser; 2(g)(5) Repurchase or replacement reason; 2(k)(5) Post-modification maturity date and 2(k)(6) Post-modification amortization period of Schedule AL.

⁴²⁹ See, e.g., new Items 2(c)(18) Scheduled principal balance at securitization; 2(d)(2) Property address; 2(d)(3) Property city; 2(d)(4) Property state; 2(d)(5) Property zip code; 2(d)(6) Property county; 2(d)(13) Year last renovated; 2(d)(28)(i) Date of financials as of securitization; 2(d)(28)(xiv) Most recent debt service amount; 2(d)(28)(xxi) Date of the most recent annual lease rollover review; 2(e)(3) Reporting period beginning scheduled loan balance; 2(e)(10) Unscheduled principal collections; 2(e)(14) Paid through date; 2(e)(16)(iv) Total taxes and insurance advances outstanding; 2(e)(16)(v) Other expenses advance outstanding; 2(e)(17) Payment status of loan; 2(e)(18)(i) ARM index rate; 2(f)(2) Most recent special servicer transfer date; 2(f)(3) Most recent master servicer return date; 2(h) Realized loss to trust; 2(i)(1) Liquidation/Prepayment code; 2(i)(2) Liquidation/Prepayment date; 2(k)(2) Modification code of Schedule AL. We are also adopting a few data points that do not correspond to data captured by the CREFC IRP because our data points clarify the requirements or we received comments requesting the data points be added and we believe the data points aid an investor's ability to make an informed investment decision. See, e.g., new Items 2(d)(19) Most recent valuation source; 2(e)(1) Asset added indicator; 2(g)(1) Status of asset subject to demand; and 2(g)(2) Repurchase amount of Schedule AL.

⁴³⁰ See, e.g., new Items 2(c)(28)(xi) Rate of reset frequency; 2(d)(7) Property type; 2(d)(11) Number of units/beds/rooms at securitization; 2(d)(15) Valuation source at securitization; 2(d)(24) Defeasance status; 2(d)(28)(vii) Operating expenses; and 2(d)(28)(xii) Net operating income/net cash flow indicator at securitization.

cost and burden concerns expressed by commenters and the concern that CMBS investors will not be able to compare the data with the data from past deals.

We also considered concerns raised by commenters as well as alternatives to the final rules. For instance, one commenter suggested that the proposed ongoing reporting requirement would add no value to investors since the industry standard is to make ongoing asset-level disclosures available earlier than when the proposal would require them.⁴³¹ We are not persuaded by this comment. We believe that many transaction agreements, while they provide investors with access to asset-level disclosures on an ongoing basis, they do not guarantee that these disclosures will remain available or continue. We believe that requiring asset-level disclosures, which to a large extent aligns with how data is currently provided to investors, to be filed on EDGAR will preserve the information and result in greater transparency in the CMBS market.

We also considered the concerns raised by some commenters about requiring disclosure of proprietary information due to the sensitive nature of the entire data set.⁴³² While we acknowledge this concern, we believe that information about the underlying properties, including information about the borrowers, will provide CMBS investors and potential investors with information they need to perform due diligence and make informed investment decisions and

⁴³¹ See letter from Wells Fargo I.

⁴³² See letters from CREFC III, MBA IV, SFIG II, and Wells Fargo I. Commenters did not identify specific data points that should be revised or eliminated to help address potential competitive harm.

therefore should be disclosed. We also note that some of the asset-level data that we are adopting is available to the public, for a fee, through third-party data providers.⁴³³

We considered, as an alternative to the final rules, that issuers provide standardized asset-level disclosures based solely on an industry standard, such as the CREFC IRP. We are not persuaded that this alternative is appropriate because as market practices evolve the consistency of the data provided by each transaction may differ since there is no mandatory requirement that all transactions provide the same type of data. Therefore, we believe adopting a standardized set of asset-level disclosures helps ensure that investors and other market participants will always have access to a minimum set of asset-level disclosures, both at the time of the offering and on an ongoing basis. While we have tailored the asset-level disclosure requirements for each asset class, we also understand from comments received that certain commercial mortgages in a pool may have unique features and that the standardized set of requirements may not capture all of the unique attributes of a particular asset or pool due to the various types of commercial properties.⁴³⁴ Although we are not adopting all of the data points in the CREFC IRP, CMBS issuers may provide those data points as additional asset-level disclosures in an Asset Related Document, as appropriate.⁴³⁵

With respect to ongoing reporting, we are not adopting a commenter's suggestion that disclosures about alternatives evaluated related to a modification or disclosure of all terms

⁴³³ See, e.g., Trepp (providing CMBS data and analytics services), <https://www.trepp.com/cmbs/>.

⁴³⁴ See letter from CREFC I.

⁴³⁵ See Section III.B.4 Asset Related Documents for further discussion on how to provide such additional disclosures.

related to a modification or assumption be provided. We believe this information would be difficult to capture in a standardized way, and we are uncertain, at this time, whether this information is best captured within these particular asset-level requirements. We are adopting as proposed, with revisions to address comments received, expanded disclosures about tenants. We discuss the comments received on tenant disclosures below. We are also requiring that asset-level disclosures be provided in XML. We discuss the requirement that asset-level disclosures be provided in XML in Section III.B.3 XML and the Asset Data File.

Tenant Disclosures

We proposed data points about the three largest tenants (based on square feet), including square feet leased by the tenant and lease expiration dates of the tenant. Several commenters suggested that we expand the scope of these disclosures.⁴³⁶ For instance, one commenter, an investor, suggested the initial reporting requirements include a requirement to capture rent roll information (i.e., detailed schedules of lease payments for each tenant over time) and additional tenant and operating performance information, full indebtedness information and a way to identify borrowers and tenants.⁴³⁷ This commenter also suggested that we require full rent rolls

⁴³⁶ See letters from CMBS.com I, CoStar, MetLife I, and Realpoint LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Realpoint").

⁴³⁷ See letter from MetLife I (suggesting that we also require: (1) a minimum 3-year history of operating performance for each underwriting performance metric such as NOI, NCF, etc.; (2) complete tenant information versus providing information on just the top three tenants; (3) rent rolls for every property detailing lease terms for every tenant; (4) full indebtedness information for each property and terms for any other debt that is serviced with the cash flows from the property regardless of the ranking of such other debt in relation to the securitized debt and the conditions under which borrowers are permitted under the transactions documents to place additional debt on the same property in the future; and (5) a practical way to quickly identify borrowers and tenants, perhaps through a standardized convention to allow investors to

for every property in a transaction at least once per year. Other commenters also supported requiring full rent roll and tenant information.⁴³⁸

We are adopting as proposed data points about the three largest tenants (based on square feet), including square feet leased by the tenant and lease expiration dates of the tenant.⁴³⁹ While some commenters requested several changes to the tenant disclosures for CMBS, the consensus among commenters was that rent roll information for each property supporting the mortgages underlying the CMBS was needed. We are not adopting a requirement within the asset-level requirements to require rent roll information at this time because it is not clear how to standardize detailed schedules of lease payments for each tenant over time on an asset-level basis, and we did not receive comment suggesting how this could be done.

more easily be able to identify their portfolio level exposures). See also letters from CMBS.com I and Realpoint (suggesting that we require similar information).

⁴³⁸ See letters from CoStar (suggesting that we require disclosures of the full rent roll rather than just the largest three tenants and that these disclosures should include: (1) tenant name (unless a residential property); (2) tenant business line; (3) lease start date; (4) lease amount including any concessions or associated expenses such as tenant improvements; (5) expense sharing arrangements; (6) co-tenancy clauses; and (7) lease renewal options), CMBS.com I, and Realpoint (suggesting that we require disclosure of either the entire rent roll, or at least the largest tenants and all other tenants with lease expiration dates that occur within five years of the cut-off date, and that these disclosures should include: (1) base rent; (2) pass-through expense reimbursements (taxes, insurance, repairs, maintenance, utilities and other operating expenses); and (3) capital improvement reimbursements because these disclosures would permit them to conduct testing of gross rents, net operating income, net cash flow, debt service coverage ratio and other financial metrics).

⁴³⁹ See new Items 2(d)(25)(i) Largest tenant; 2(d)(25)(ii) Square feet of largest tenant; 2(d)(25)(iii) Date of lease expiration of largest tenant; 2(d)(26)(i) Second largest tenant; 2(d)(26)(ii) Square feet of second largest tenant; 2(d)(26)(iii) Date of lease expiration of second largest tenant; 2(d)(27)(i) Third largest tenant; 2(d)(27)(ii) Square feet of third largest tenant and 2(d)(27)(iii) Date of lease expiration of third largest tenant of Schedule AL.

Valuations

Proposed Schedule L and Schedule L-D both included data points aimed at capturing valuation information on the properties underlying the commercial mortgages.⁴⁴⁰ The valuation data points contained in Schedule L would provide disclosure of the most recent property valuation as of the measurement date in the prospectus. The valuation data points contained in Schedule L-D would require the most recent property valuation available as of the reporting period that the Schedule L-D covered. One commenter suggested that the final rule should capture data on periodic updating and monitoring of commercial real estate assets because periodic (annual) appraisal and evaluation “updates” of commercial real estate are commonly performed.⁴⁴¹

We are adopting, with some revisions, data points that capture the most recent appraisals or valuations available at the time of the securitization and on an ongoing basis.⁴⁴² While the information required by these data points is substantially similar to information captured by the CREFC IRP, the data points that we are adopting specifically require, in line with revisions made to RMBS property valuation data points, disclosure of any valuation “obtained by or for any transaction party or its affiliates.” The reference to “obtained by or for any transaction party or its affiliates” contained in each definition should be construed broadly to include, but not be limited to, valuations obtained as part of any due diligence conducted by credit rating agencies,

⁴⁴⁰ See proposed Items 3(b)(7), 3(b)(8) and 3(b)(9) of Schedule L.

⁴⁴¹ See letter from AI.

⁴⁴² See Items 2(d)(14) Valuation amount at securitization and 2(d)(17) Most recent value of Schedule AL.

underwriters or others parties to the transaction. We are also adopting data points that identify the source of the property valuation and the date of the valuation.⁴⁴³ These data points do not require that originators, sponsors or transaction parties obtain updated valuations. Instead, this requirement is meant to capture valuations conducted subsequent to the original valuation for whatever reason, such as updated valuations obtained in the normal course of their business or because other circumstances require an updated valuation. We believe providing investors updated valuation information will allow them to understand changes in the value of collateral that is meant to protect against losses. Furthermore, since we are requiring issuers to disclose the information only if it is already available to them, we believe that the disclosures will not be unduly burdensome.

(3) Automobile Loan or Lease ABS

Between Schedule L and Schedule L-D, we proposed 110 data points that relate to ABS backed by auto loans and 116 data points that relate to ABS backed by auto leases. These proposed data points were comprised of a combination of data points, some of which were proposed to apply to all asset types and others which were proposed to apply only to auto loans or auto leases. The proposed data points were derived from the aggregate pool-level disclosure that has been commonly provided in Auto ABS prospectuses. The proposal also included data points related to obligor and co-obligor income, assets, employment and credit scores.

⁴⁴³ See Items 2(d)(15) Valuation source at securitization, 2(d)(16) Valuation date at securitization, 2(d)(18) Most recent valuation date, and 2(d)(19) Most recent valuation source of Schedule AL.

For Auto ABS, support for the proposal varied between issuers and investors. Many investors supported the asset-level model with certain modifications from the proposal.⁴⁴⁴ Investor commenters stated that “the provision of loan-level data will strengthen the Auto ABS market and make it more resilient over the long term.”⁴⁴⁵ We note, however, that even the investors that support asset-level disclosure have suggested various modifications and limitations to address issues such as privacy and competitive concerns. One investor commenter acknowledged that the incremental benefit of some proposed fields may be difficult to justify as compared to the costs of providing such information.⁴⁴⁶ In light of standard industry practices and issuer concerns about costs and the disclosure of proprietary information, investor commenters recommended adopting fewer data points than were originally proposed.⁴⁴⁷

Issuers typically commented that asset-level reporting was not necessary for Auto ABS because they claimed that the Auto ABS market continues to be robust and active despite no material changes to disclosure practices.⁴⁴⁸ One group of issuers also raised concerns that asset-level data requirements would push certain investors⁴⁴⁹ and issuers⁴⁵⁰ out of the Auto ABS

⁴⁴⁴ See letters from ASF II (expressed views of loan-level investors only), MetLife I, and Vanguard. There were, however, other investors who did not support the asset-level model. See letters from ASF II (expressed views of grouped-account investors only) (supporting a grouped account approach for Auto ABS) and Capital One II (noting that they invest in more senior tranches of Auto ABS and recommending that no additional asset-level disclosure be adopted for Auto ABS).

⁴⁴⁵ See letter from ASF II (expressed views of loan-level investors only).

⁴⁴⁶ See letter from MetLife I.

⁴⁴⁷ See letters from ASF II (expressed views of loan-level investors only), MetLife I, and Vanguard.

⁴⁴⁸ See letter from VABSS IV.

⁴⁴⁹ See letter from VABSS IV (stating that they “understand that some investors who do not have the internal resources to analyze data at the loan-level may choose not to invest in Auto ABS because they perceive that

market. They were also concerned that the auto industry could be affected if Auto ABS sponsors have to pass increased costs to automobile purchasers because Auto ABS sponsors are unable to access more cost-effective financing through the Auto ABS market.⁴⁵¹ These issuer commenters noted that several Auto ABS sponsors estimated the costs and employee hours necessary to reprogram systems and business procedures to capture, track and report all of the items for auto loans currently set forth in the proposal. The average cost estimated by those sponsors was approximately \$2 million, and the average number of employee hours was approximately 12,000.⁴⁵² This group of issuer commenters also argued that Congress never intended to require asset-level data for Auto ABS by pointing to a Senate report published three months prior to the adoption of the Dodd-Frank Act.⁴⁵³ One trade association commented that such requirements were not necessary for Auto ABS because “most investors have been able to adequately

they would be at an informational and analytic disadvantage to other investors or because they believe they have a potential risk of liability to their own investors for not being able to utilize all the available data in their analysis”).

⁴⁵⁰ See letter from VABSS IV (stating that they “believe that loan-level disclosure requirements could act as a barrier to entry for smaller finance companies that may not have the necessary systems, personnel or resources to capture, track and report loan-level data, thus discouraging the entry of new issuers into the Auto ABS market...[and] that these sponsors that are unable to access the Auto ABS markets due to concerns about loan-level disclosure could be placed at a competitive disadvantage to banks and more highly-rated sponsors that are able to either comply with loan-level disclosure or access other less burdensome sources of funding (e.g., bank deposits)”).

⁴⁵¹ See letter from VABSS IV.

⁴⁵² Id.

⁴⁵³ See letter from VABSS III (quoting a portion of the Committee on Banking, Housing, and Urban Affairs’ discussion of Section 942 of the Dodd-Frank Act in Senate Report No. 111-176: “The Committee does not expect that disclosure of data about individual borrowers would be required in cases such as securitizations of credit card or automobile loans or leases, where asset pools typically include many thousands of credit agreements, where individual loan data would not be useful to investors, and where disclosure might raise privacy concerns”).

underwrite auto loan transactions – including during the economic downturn – on the basis of current disclosure, due to the conservative nature of the structure, the deleveraging and granularity of the underlying assets, and their understanding of the issuer's servicing capabilities.⁴⁵⁴ One group of issuer commenters noted possible re-identification risks.⁴⁵⁵ These same commenters also expressed concern about the potential release of proprietary information.⁴⁵⁶

Issuer commenters generally noted that, if any data reporting was to be required, alternative models such as grouped account data, more robust pool-level reporting or some combination of the two would be sufficient.⁴⁵⁷ Several commenters argued that alternatives such as grouped account data or expanded pool stratification would provide additional meaningful information to investors while at the same time addressing individual privacy concerns and proprietary concerns.⁴⁵⁸ One group of issuer commenters suggested we consider conditioning the provision of asset-level reporting to compliance with potential risk retention

⁴⁵⁴ See letter from ASF II (expressed views of issuer members and grouped account investors only).

⁴⁵⁵ See letter from VABSS IV.

⁴⁵⁶ See letter from VABSS IV (noting that Auto ABS sponsors make “considerable investments in technology and human capital to capture, maintain and analyze [the asset-level] data, and to build proprietary credit scoring models and models that predict residual value of leased vehicles” and stating that making such data publicly available could harm them in the marketplace).

⁴⁵⁷ See, e.g., letters from ABA I, AmeriCredit, ASF II (expressed views of dealers and sponsors only), BoA I, Capital One I, VABSS I, and Wells Fargo I.

⁴⁵⁸ See letters from ABA I and VABSS IV (in which the commenters also conceded that “presenting grouped data is in many ways more difficult, as it required more time and resources to gather the loan-level data and then compile it for presentation as grouped data).

rules.⁴⁵⁹ These commenters also stated that certain data points are often the same for all assets in an Auto ABS.⁴⁶⁰ They suggested that, if we adopt asset-level reporting for Auto ABS such data points should not be required if (1) the responses would be identical for each asset in the pool⁴⁶¹ and (2) adequate pool-level disclosure is given in the prospectus. In response to the 2014 Re-Opening Release, some commenters expressed opposition to asset-level requirements for Auto ABS.⁴⁶²

As we developed the standards we are adopting today, we took into consideration how the proposed data points relate to how information is collected, tracked and reported in the Auto ABS marketplace, as well as how auto loans and leases differ from RMBS and CMBS, and how those differences impact the type of information available for collection and the utility of such information to investors. We also considered potential impacts on the automobile industry if Auto ABS sponsors pass down higher financing costs to consumers. After considering the

⁴⁵⁹ See letter from VABSS IV (suggesting that we consider “an outright exemption from all loan-level data requirements for any Auto ABS sponsor that satisfies the final risk retention requirements adopted by the Commission” or, at the very least, “an exemption for Auto ABS sponsors who retain a horizontal or first-loss position as required by the final risk retention requirements given the direct alignment of interests of sponsors, servicers and investors in Auto ABS and the absorption of all possible losses on these structures by the horizontal ‘slice’ retained by the sponsor”).

⁴⁶⁰ See letter from VABSS IV.

⁴⁶¹ These commenters also suggested that a response to a data point may be omitted if no more than 1% of the securitized pool would have a different response. See letter from VABSS IV.

⁴⁶² See, e.g., letters from AFSA II (opposing requirements for Auto ABS for several reasons including its belief that the Auto ABS market is liquid, many proposed data points would not apply to Auto ABS and for proprietary concerns), Capital One II (opposing requirements for Auto ABS by suggesting that asset-level data is not necessary for investor due diligence, and also noting that the benefits for Auto ABS do not outweigh the costs), SFIG II (noting auto loan ABS has not traditionally included asset-level disclosures), and Wells Fargo III (suggesting that asset-level data for Auto ABS would provide little to no incremental value to investors).

comments received, we are adopting, as proposed, with some modification to individual data points and some reduction in the amount of data required to be provided, asset-level disclosures specific to Auto ABS. We did consider, as an alternative, whether asset-level reporting should be required in Auto ABS at all. We considered the legislative history of Section 942 of the Dodd-Frank Act, which was cited by commenters.⁴⁶³ We also considered whether an alternative reporting model, such as grouped account data, pool stratifications or some combination of the two, would provide adequate information to investors. In the end, we concluded that none of these alternatives provide the benefits that we believe investors should receive. We agreed with investors that “[g]rouped data is preset, which prohibits a customizable analysis of pool information by an investor and presupposes that critical credit metrics and indicators do not change over time...[while] the transparency afforded by loan-level data will allow all investors to evaluate, in any market and on an independent basis, whether the pools and structures are robust and the ratings assigned are appropriate.”⁴⁶⁴ We also do not agree that Auto ABS sponsors should be exempt from providing asset-level data if that sponsor has retained a certain amount of risk. As stated in Section II.A Economic Motivations, while we expect risk retention rules will result in better underwriting practices, we believe that more is needed to fully restore incentive alignment and credit screening in the securitization market. If sponsors are exempt

⁴⁶³ We note that we first proposed asset-level disclosure requirements for Auto ABS prior to the enactment of the Dodd-Frank Act. While we believe the asset-level disclosure requirements being adopted today are consistent with the mandate in Section 7(c) of the Securities Act, as added by Section 942 of the Dodd-Frank Act, we do not view that mandate as limiting our long standing authority to prescribe disclosure standards, as necessary and appropriate, for purposes of federal securities laws.

⁴⁶⁴ See letter from ASF II (expressed views of loan-level investors only).

from asset-level disclosure based on compliance with risk retention requirements, investors and market participants would have fewer Auto ABS pools available for asset-level comparisons. Finally, we are not making any data points optional on the basis that such data point may be the same across an Auto ABS pool. While we understand that commenters intended to consolidate repetitive data points, we believe that the asset-level presentation of data in a standardized format is an important tool to investors who want to make asset-to-asset comparisons across different Auto ABS pools. If responses to certain data points are omitted, an investor wanting to make pool-to-pool comparisons would first have to locate the omitted information in one or more prospectuses and then recreate portions of the asset-level data files before accurate comparisons could be made.

We believe that the requirements we are adopting for Auto ABS will provide a better picture of the composition and characteristics of the pool assets, which is critical to an investor's ability to make an informed investment decision about the securities. We have considered commenters' concerns that Auto ABS is, in many ways, different from RMBS and CMBS, including that Auto ABS generally fared better during the recent financial crisis. We do not believe, however, that the grouped account data model proposed by commenters would provide information in sufficient detail for investors to compare and evaluate various Auto ABS pools and structures. With asset-level data, users would not have to rely on pre-determined groupings

of information, and instead would be able to compare and evaluate the underlying assets using the individual pieces of information they consider to be material.⁴⁶⁵

While we are requiring that Auto ABS issuers provide asset-level data, we have significantly reduced the scope of the asset-level data required from the amount proposed. In doing so, we considered an estimate provided by several Auto ABS sponsors that, if we only adopted the data points proposed in their comment letter,⁴⁶⁶ the average costs and employee hours necessary to reprogram systems and otherwise comply with the asset-level disclosures would be approximately \$750,000 and 3,500, respectively.⁴⁶⁷ In line with this suggestion, we have attempted to reduce burden and cost concerns by reducing the scope of the asset-level data required to align with the smaller scope of information that commenters, including investors, believed should be required for Auto ABS. While the final rules do not exactly mirror the scope of information the group of Auto ABS sponsors suggested be required, we believe that the significantly smaller scope of information we are requiring, coupled with revisions to align the data points with current industry standards should lead to substantially lower costs versus what was originally proposed. These substantially lower costs should also reduce any potential impact on the automobile industry. We also believe that the smaller scope of information and the

⁴⁶⁵ Id. See also letter from Prudential I.

⁴⁶⁶ See letter from VABSS IV. For ABS backed by auto loans, these commenters proposed that 29 data points should be adopted unconditionally (i.e., for each asset regardless of the response or the structure of the transaction) and 28 data points be adopted conditionally (i.e., they may be omitted if certain conditions are met, such as homogenous responses). For ABS backed by auto leases, these commenters proposed that 30 data points should be adopted unconditionally and 26 data points be adopted conditionally.

⁴⁶⁷ The estimate of \$750,000 and 3,500 hours is in contrast to this commenter's estimate of \$2 million and 12,000 hours for all of the Auto ABS data points as originally proposed.

revisions we made to the data points still provide investors with sufficient information to evaluate the security. Under the final requirements we are adopting, issuers are required to disclose the information described in Item 3, with respect to auto loans, and Item 4, with respect to auto leases, of Schedule AL for each auto loan or lease in the pool, as applicable. As noted above, we proposed 110 data points that relate to ABS backed by auto loans and 116 data points that relate to ABS backed by auto leases. In addition to the data points that were eliminated when Schedules L and L-D were condensed,⁴⁶⁸ 40 of the proposed data points for auto loans are not being adopted and 57 of the proposed data points for auto leases are not being adopted. We are adopting 12 new data points for auto loans and 15 new data points for auto leases.⁴⁶⁹ Accordingly, the final rules will require issuers to provide 72 data points for ABS backed by auto loans and 66 data points for ABS backed by auto leases. Fewer data points should reduce the cost of providing asset-level data for Auto ABS issuers and also should help to address individual privacy concerns.⁴⁷⁰ We also believe that this reduction in scope should help address competitive concerns that were raised by issuers. While we acknowledge that some competitive concerns may still exist, we believe that the information we are requiring about the underlying assets will provide Auto ABS investors and potential investors with information they need to perform due diligence and make informed investment decisions and therefore should be

⁴⁶⁸ When the Schedules L and L-D were condensed (as discussed in Section III.B.2 The Scope of New Schedule AL), we eliminated 10 repetitive data points for ABS backed by auto loans and 8 repetitive data points for ABS backed by auto leases.

⁴⁶⁹ Data points that have been added since the proposing release were either based on comments or added for purposes of clarity or consistency.

⁴⁷⁰ See Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

disclosed. We also note that some of the asset-level data that we are adopting is available to the public, for a fee, through third-party data providers.⁴⁷¹

We are not adopting a significant number of data points where we agreed with commenters that the data point was not applicable to Auto ABS or where we are concerned that the benefits investors may receive from the disclosures may not justify the potential costs and burdens to issuers to provide the disclosures.⁴⁷² Solely with respect to ABS backed by auto leases, we are also not adopting several data points that were part of the general schedule of data points proposed for all asset classes because the information required to be provided in the items is not something that is relevant for auto leases (for example, items that require issuers to provide interest, principal or amortization information would not be relevant because auto leases do not have amortization, interest, interest rates or principal balances).⁴⁷³

⁴⁷¹ See letter from VABSS II (stating that there are relatively inexpensive databases containing car owner information linked to vehicle make, model, year, and more). New and used vehicle values can also be obtained for free via publicly available sources. See, e.g., www.kbb.com.

⁴⁷² For all Auto ABS, these include the following Schedule L data points: Item 1(a)(3) Asset group number; Item 1(a)(9) Original amortization term; Item 1(b)(6) Number of days payment is past due; Item 1(b)(7) Current payment status; Items 4(b)(1) and 5(b)(1) Geographic location of dealer; Items 4(c)(13) and 5(c)(13) – Length of employment: obligor; and Items 4(c)(11) and 5(c)(11) Obligor asset verification. And the following Schedule L-D data points: Item 1(c) Asset group number; Item 1(f)(8) Current scheduled asset balance; Item 1(f)(13) – Number of days payment is past due; Item 1(f)(14) Current payment status; Item 1(f)(15) Pay history; Item 1(f)(16) Next due date; Item 1(g)(5) Cumulative outstanding advance amount; Item 1(g)(7) Stop principal and interest advance date; Item 1(j) Liquidated indicator; Item 1(k) Charge-off indicator; Item 1(k)(2) Charged-off interest amount; Item 1(l)(1) Paid-in-full indicator; Item 1(l)(2)(i) Pledged prepayment penalty paid; Item 1(l)(2)(ii) Pledged prepayment penalty waived; and Item 1(l)(2)(iii) Reason for not collecting pledge prepayment penalty.

⁴⁷³ For ABS backed by auto leases, these include the following additional Schedule L data points: Item 1(a)(11) Interest type; Item 1(a)(12) Amortization type; Item 1(a)(13) Original interest only term; and Item 1(b)(3) Current interest rate. And the following Schedule L-D data points: Item 1(f)(2) Actual interest paid; Item 1(f)(3) Actual principal paid; Item 1(f)(4) Actual other amounts paid; Item 1(f)(17) Next interest rate; and Item 1(k)(1) Charged-off principal.

As with RMBS and CMBS, we believe that, unless the individual data points are standardized across all issuers of Auto ABS, the utility of asset-level data is generally limited. While commenters have pointed out several areas where there is a difference between how we have proposed that data be presented and how information is generally collected in Auto ABS,⁴⁷⁴ we are unaware of any publicly available investor reporting data standards for Auto ABS. We also received many comments directed at individual data points, many of which were seeking changes to the format of the information, the range of possible responses for a particular data point, or the data point's title or definition. Some commenters also made suggestions on how we could make the data point better align with common business practices. Accordingly, we considered each of these comments, and we made changes that we believe improve or clarify the disclosure, mitigate cost concerns, and/or implement industry standards when doing so would not materially diminish the value of the disclosures to investors. We discuss below the significant comments we received about individual data points along with the revisions we have made in response to those comments.

Information About the Obligors

We proposed a group of asset-level data points that would provide data about an obligor's credit quality.⁴⁷⁵ This group of data points was intended to capture information about the obligor(s) income, debt, employment, credit score and assets. In light of privacy concerns, the proposal proposed ranges, or categories of coded responses instead of requiring disclosure of an

⁴⁷⁴ See letter from VABSS IV.

⁴⁷⁵ See proposed Items 4(c)(1) through 4(c)(21) and Items 5(c)(1) through 5(c)(21) of Schedule L.

exact credit score, income or amount of assets in order to prevent the identification of specific information about an individual. We discuss below the significant comments we received about this group of data points and the revisions we have made in response to those comments.

Obligor Income and Payment-to-Income Ratio

We proposed ten obligor income data points (five for auto loans and five for auto leases) that would require issuers to provide responses to various data points that relate to the obligor's income.⁴⁷⁶ Several commenters suggested that these proposed obligor income data points be replaced with a new payment-to-income ratio data point, where the issuer would specify the code indicating the scheduled monthly payment amount as a percentage of the total monthly income of all obligors at the origination date while providing its methodology for determining monthly income in the prospectus.⁴⁷⁷ We agree that the new payment-to-income ratio data point provides investors with sufficient information about the obligor's income, and accordingly, we are not adopting any of the ten proposed obligor income data points and instead are adopting the new payment-to-income ratio data point proposed by commenters.⁴⁷⁸

⁴⁷⁶ See proposed Items 4(c)(6), 4(c)(15), 4(c)(17), 4(c)(19) and 4(c)(20) of Schedule L-D for auto loans and proposed Items 5(c)(6), 5(c)(15), 5(c)(17), 5(c)(19) and 5(c)(20) of Schedule L-D for auto leases.

⁴⁷⁷ See letters from ASF II (expressed views of loan-level investors only) and VABSS IV.

⁴⁷⁸ See new Items 3 (e)(6) and 4 (e)(6) of Schedule AL.

Obligor Income and Employment Verification

We proposed data points that would require issuers to indicate the codes describing the extent to which the obligor's income and employment have been verified.⁴⁷⁹ One group of issuer commenters stated that it is standard industry practice for obligors to self-report income and employment on the credit application and this information is only verified for the riskiest customers, but then went on to say that Auto ABS sponsors do not systematically capture this information in their origination files, and if they do, they do not keep it for more than 90 days.⁴⁸⁰ We cannot reconcile these two comments. If most income and employment information is self-reported on the credit application, then that information should be captured in the loan file. Furthermore, if it is standard industry practice to not verify the self-reported information except for the riskiest customers, we assume that such verification is part of the loan or lease approval process that goes to the creditworthiness of the obligor or lessee. These same commenters also argued that obligor income and employment verification data points would only provide marginal additional value if other data points, such as obligor FICO score, payment-to-income ratio and LTV ratio, were provided. Investor commenters stated that obligor income and

⁴⁷⁹ See proposed Items 4(c)(7) and 4(c)(9) of Schedule L-D for auto loans and proposed Items 5(c)(7) and 5(c)(9) of Schedule L-D for auto leases.

⁴⁸⁰ See letter from VABSS IV.

employment verification data points would provide valuable information.⁴⁸¹ Accordingly, we are adopting these data points substantially as proposed.⁴⁸²

Co-Obligor Items

We proposed a total of eighteen co-obligor data points (nine for auto loans and nine for auto leases) that would require issuers to provide information about co-obligors such as credit score data⁴⁸³ and data about income, employment and assets used for qualification purposes.⁴⁸⁴ Several commenters suggested that all eighteen of the proposed co-obligor data points be deleted as they are not particularly relevant to the analysis of Auto ABS⁴⁸⁵ and that providing all of these co-obligor data points is not warranted given the additional time and expense associated with gathering the information.⁴⁸⁶ These commenters suggested that the proposed co-obligor data points be replaced with a data point that would indicate whether the loan or lease has a co-obligor.⁴⁸⁷ A group of commenters representing Auto ABS investors commented that it is sufficient to note the presence of a co-obligor, which would indicate that the primary obligor was

⁴⁸¹ See letter from ASF II (expressed views of loan-level investors only) ("Verifying a borrower's income and employment can offset not having a top credit score. Conversely, not verifying these items can exacerbate an average or below average credit score.").

⁴⁸² See new Items 3(e)(3), 3(e)(4), 4(e)(3), and 4(e)(4) of Schedule AL.

⁴⁸³ See proposed Items 4(c)(4), 4(c)(5) and 4(c)(6) of Schedule L-D for auto loans and proposed Items 5(c)(4), 5(c)(5) and 5(c)(6) of Schedule L-D for auto leases.

⁴⁸⁴ See proposed Item 4(c)(8), 4(c)(10), 4(c)(12), 4(c)(14), 4(c)(16) and 4(c)(18) of Schedule L-D for auto loans and proposed Item 5(c)(8), 5(c)(10), 5(c)(12), 5(c)(14), 5(c)(16) and 5(c)(18) of Schedule L-D for auto leases.

⁴⁸⁵ See letter from VABSS IV.

⁴⁸⁶ See letter from ASF II (expressed views of loan-level investors only).

⁴⁸⁷ See letters from ASF II (expressed views of loan-level investors only) and VABSS IV.

not creditworthy enough to sustain the loan or lease on its own.⁴⁸⁸ We agree, and we are not adopting any of the eighteen proposed co-obligor data points and instead are adopting only the co-obligor (or co-lessee, as applicable) present indicator data point suggested by commenters.⁴⁸⁹

Information About Terms of the Loan or Lease and Payment Activity

We proposed a group of data points that would capture information related to the terms of the loan or lease and payment activity, such as original and current loan or lease terms, interest rates, prepayments, interest paid-through dates and servicer advances. Taken together, the responses to these data points would provide insight into how the loan or lease has performed versus how it was intended to perform when originated. Commenters' response to this group of data points varied, with some commenters suggesting that some data points in this group were unnecessary or redundant and others advising that these data points provide valuable information about the loan or lease. We discuss below the significant comments we received about this group of data points and the revisions we have made to data points within this group.

Original and Current Terms and Initial Grace Periods

We proposed data points that would require issuers to indicate original and current loan terms in months.⁴⁹⁰ One group of issuer commenters noted that, for marketing reasons, auto loans and leases are occasionally offered with first payment dates that are deferred for up to 90

⁴⁸⁸ See letter from ASF II (expressed views of loan-level investors only).

⁴⁸⁹ See new Items 3 (e)(5) and 4 (e)(5) of Schedule AL.

⁴⁹⁰ See proposed Items 1(a)(7) and 1(a)(8) of Schedule L and Item 1(f)(18) of Schedule L-D.

days, during which time interest or financing fees accrue but no payments are due.⁴⁹¹ These commenters proposed that these items should be reported to reflect the number of scheduled payments due or remaining (converting non-monthly pay loans to monthly pay) to clearly indicate the payments on the loan in order to avoid odd month terms.⁴⁹² We believe it is important for investors to be provided the actual number of months in the term, even if such number includes a grace period where no payments are being made. We agree with commenters, however, that any grace period should be accounted for. Therefore, in addition to adopting the original and current term data points (with minor revisions for timing clarifications, as detailed in other sections of this release), we are also adopting a new initial grace period data point, which requires the issuer to indicate the number of months during which interest accrues but no payments are due from the obligor (or, for auto leases, the number of months during the term of the lease for which financing fees are calculated but no payments are due from the lessee).⁴⁹³ If there is no initial grace period for an auto loan or lease, the response to this new data point would be zero.

Original Interest Rate

We proposed a data point that would require issuers to provide the rate of interest at the time of origination.⁴⁹⁴ One group of issuer commenters believed that this item is generally not

⁴⁹¹ See letter from VABSS IV.

⁴⁹² Id.

⁴⁹³ See new Items 3(c)(12) and 4(c)(8) of Schedule AL.

⁴⁹⁴ See proposed Item 1(a)(10) of Schedule L.

readily available or easily trackable by Auto ABS sponsors because it is industry practice to track only the current interest rate on auto loans.⁴⁹⁵ Although we understand that there may be some costs to the sponsor or issuer associated with tracking the original interest rate, we believe it is important for investors to be able to compare the current interest rate to the original interest rate and we note that any costs associated with tracking the original interest rate would be one-time costs, as the response to this data point would be static. Therefore, we are adopting the original interest rate data point for ABS backed by auto loans substantially as proposed, with minor clarifying modifications as described elsewhere in this release.⁴⁹⁶ Because auto leases do not have interest rates in the same manner as auto loans, we are not adopting this data point for ABS backed by auto leases.

Scheduled Payments and Actual Amounts Collected

We proposed data points that would require issuers to provide the principal and interest payments that were scheduled to be collected for the reporting period⁴⁹⁷ and provide any unscheduled principal or interest adjustments during the reporting period.⁴⁹⁸ We also proposed data points that would require issuers to indicate actual amounts collected during the reporting period.⁴⁹⁹ As suggested by commenters, we are not adopting data points that separate interest

⁴⁹⁵ See letter from VABSS IV.

⁴⁹⁶ See new Item 3(c)(5) of Schedule AL.

⁴⁹⁷ See proposed Items 1(f)(10) and 1(f)(11) of Schedule L-D.

⁴⁹⁸ See proposed Items 1(f)(5) and 1(f)(6) of Schedule L-D.

⁴⁹⁹ See proposed Items 1(f)(2), 1(f)(3) and 1(f)(4) of Schedule L-D.

and principal payment streams for ABS backed by auto leases.⁵⁰⁰ Instead, for ABS backed by auto leases, we are adopting one data point that will capture the payment amount that was scheduled to be collected for the reporting period and another requiring issuers to provide the total of any other amounts collected during the reporting period.⁵⁰¹ With respect to ABS backed by auto loans, a group of issuer commenters stated that the scheduled payment data points are not relevant because auto loans are simple interest loans which have no scheduled principal or interest payment amounts and are not subject to principal or interest adjustments.⁵⁰² These same commenters stated that data points relating to actual amounts collected should only be required to be disclosed if a transaction is structured with separate interest and principal waterfalls or separate allocations of other amounts paid to the investors.⁵⁰³ One investor commenter asked that both the scheduled payment and actual amounts collected data points be included for ABS backed by auto loans.⁵⁰⁴ We believe that the scheduled interest amount, scheduled principal amount and other principal adjustments data points provide valuable information about payments that are expected to be received, and we are adopting these data points as proposed. The scheduled interest amount and scheduled principal amount data points will require the issuer to provide the amount of interest and principal, respectively, that were due to be paid during the reporting period, which will show quantitatively how far in advance a loan was paid or how far

⁵⁰⁰ See letter from VABSS IV.

⁵⁰¹ See new Items 4(f)(13) and 4(f)(15) of Schedule AL.

⁵⁰² See letter from VABSS IV.

⁵⁰³ Id.

⁵⁰⁴ See letter from Vanguard.

behind the obligor is in making payments.⁵⁰⁵ The other principal adjustments data point would show the amount of any adjustments that are made to the principal balance of the loan, including but not limited to prepayments.⁵⁰⁶ We agree with the issuer commenters that the other interest adjustment data point is unnecessary as interest adjustments would be reflected between responses to the original interest rate data point and the current interest rate data point. Accordingly, we are not adopting the other interest adjustment data point. We also believe that the actual payments collected data points provide relevant information about how each asset is performing, regardless of whether the transaction is structured with separate principal and interest waterfalls or a single waterfall. Furthermore, only requiring that responses to these data points be provided for transactions that have separate principal and interest waterfalls runs counter to the goal of facilitating investors' ability to compare the underlying asset-level data of a particular asset pool with other pools. Therefore, we are adopting each of these proposed data points for ABS backed by auto loans.

Prepayment and Interest Paid Through Date

One commenter suggested we add a new "voluntary prepayment" data point.⁵⁰⁷ We agree that an asset-level prepayment data point will provide valuable information to investors about how prepayments will alter the timing of expected cash flows. Accordingly, we have slightly modified this commenter's suggestion for clarification purposes and to better coordinate

⁵⁰⁵ See new Items 3(f)(13) and 3(f)(14) of Schedule AL.

⁵⁰⁶ See new Item 3(f)(15) of Schedule AL.

⁵⁰⁷ See letter from Vanguard.

with other asset-level requirements. For ABS backed by auto loans, we are adopting an interest paid through date data point that requires issuers to provide the date through which interest is paid with the current payment, which is the effective date from which interest will be calculated for the application of the next payment.⁵⁰⁸ For ABS backed by auto leases, we are adopting a similar data point which requires issuers to provide the date through which scheduled payments have been made, which is the effective date from which amounts due will be calculated for the application of the next payment.⁵⁰⁹

Servicer Advanced Amount

We proposed a data point that would require issuers to specify the amount advanced by the servicer during the reporting period (if any such amounts were advanced).⁵¹⁰ One group of issuer commenters stated that this information was already provided under the proposed current delinquency status data point.⁵¹¹ We do not agree that the responses to these two data points provide the same information, as servicing advances can be made if payment on a loan or lease is less than 30 days late (depending on when payments to investors are due in relation to the due date of the loan or lease payment). The current delinquency status data point only provides information to investors after the loan or lease becomes more than 30 days delinquent. Therefore, we are adopting the servicer advanced amount data point as proposed.⁵¹²

⁵⁰⁸ See new Item 3(f)(23) of Schedule AL.

⁵⁰⁹ See new Item 4(f)(18) of Schedule AL.

⁵¹⁰ See proposed Item 1(g)(4) of Schedule L-D.

⁵¹¹ See letter from VABSS IV.

⁵¹² See new Items 3(f)(22) and 4(f)(17) of Schedule AL.

Modifications and Extensions

We proposed a data point that would require issuers to indicate whether an asset was modified from its original terms during the reporting period.⁵¹³ A group of investor commenters suggested that this data point be replaced with a new modification type data point.⁵¹⁴ As suggested by commenters, the modification type data point would require issuers to indicate the code that describes the reason for the modification and would only be required if the asset was modified.⁵¹⁵ A group of issuer commenters suggested that the modification indicator data point be replaced with a new payment extension data point.⁵¹⁶ The payment extension data point would require issuers to indicate the number of months the loan was extended during the reporting period and would only be required if the loan or lease was extended beyond its original terms during the applicable reporting period.⁵¹⁷ Investor commenters also suggested that we replace the proposed lease term extension indicator data point⁵¹⁸ with a lease extension data point that would require the issuer to indicate whether the lease has been extended and would capture any incremental lease payments to the trust.⁵¹⁹ We agree with the commenters that these new

⁵¹³ See proposed Item 1(h) of Schedule L-D.

⁵¹⁴ See letter from ASF II (expressed view of loan-level investors only).

⁵¹⁵ Id.

⁵¹⁶ See letter from VABSS IV. This commenter opposed including the modification type data point suggested by loan-level investors, stating that “[o]ther than payment extensions and term extensions, there simply are not a material number of credit-related modifications to auto loans [and leases] where the auto loan [or lease] is not required to be repurchased by the servicer and therefore remains in the Auto ABS transaction.”

⁵¹⁷ Id.

⁵¹⁸ See proposed Item 5(h) of Schedule L-D.

⁵¹⁹ See letter from ASF II (expressed views of loan-level investors only).

and modified items are both useful and applicable to Auto ABS. We believe that it is important to include the proposed modification indicator data point so that investors can easily confirm whether the loan was modified during the reporting period. We also believe that the suggested modification type data point provides valuable information to investors based on the concerns that were raised by issuer commenters. If, in fact, modifications other than payment and term extensions are rare and usually lead to a repurchase, investors should be alerted to loans or leases that have these rare modifications. Accordingly, we are adopting the proposed modification indicator data point for all Auto ABS, as well as the modification type data point and the payment extension data point for ABS backed by auto loans and the lease extension data point for ABS backed by auto leases (rather than adopting the lease term extension indicator data point as proposed).⁵²⁰

Lease-Specific Data Points

We proposed several data points that only apply to ABS backed by auto leases that relate to information such as residual values, termination, wear and tear, mileage, sale proceeds, and extensions.⁵²¹ Commenters also pointed out several proposed data points in the general item requirements that were not applicable to ABS backed by auto leases. For instance, a group of issuer commenters noted that the securitization value, which is widely used in the lease securitization industry, is the correct valuation of the size of the lease.⁵²² The same group of

⁵²⁰ See new Items 3(f)(3), 3(j)(1), 3(j)(2), 4(f)(3), and 4(j)(2) of Schedule AL.

⁵²¹ See proposed Items 5(b)(9) through 5(b)(10) of Schedule L and Items 5(b) through 5(h) of Schedule L-D.

⁵²² See letter from VABSS IV.

commenters also suggested that the proposed original asset amount data point⁵²³ be revised to an acquisition cost data point that requires the issuer to provide the original acquisition cost of the lease.⁵²⁴ We agree with both comments, so we are adopting the securitization value and securitization value discount rate data points,⁵²⁵ rather than the asset balance data points,⁵²⁶ and are adopting the acquisition cost data point⁵²⁷ rather than the proposed original asset amount data point.

With respect to the residual value of the lease, we proposed several data points that require the issuer to provide the base and updated residual values of the vehicle and provide the source of such residual values.⁵²⁸ Both issuer and investor commenters agreed that the base residual value data point should be adopted (although one group of issuer commenters suggested that the data point be amended to capture “the securitized residual value of the leased vehicle, as determined by the sponsor and described in the prospectus”).⁵²⁹ Investor commenters also stated that it is important for the issuer to disclose how the base residual value is calculated.⁵³⁰ One group of issuer commenters stated that neither the updated residual value nor the source of the updated residual value data points should be adopted because the Auto ABS structure for leases

⁵²³ See proposed Item 1(a)(6) of Schedule L.

⁵²⁴ See letter from VABSS IV.

⁵²⁵ See new Items 4(f)(5) and 4(f)(6) of Schedule AL.

⁵²⁶ See proposed Items 1(f)(7) and 1(f)(8).

⁵²⁷ See new Item 4(c)(3) of Schedule AL.

⁵²⁸ See proposed Items 5(b)(9) and 5(b)(10) of Schedule L and Items 5(b) and 5(c) of Schedule L-D.

⁵²⁹ See letters from ASF II (expressed views of loan-level investors only) and VABSS IV.

⁵³⁰ See letter from ASF II (expressed views of loan-level investors only).

is set up based on an original residual value that does not change, that it is enhanced to withstand residual losses and any gains just benefit investors while the costs and burdens to provide this information would be high.⁵³¹ While investor commenters did not specifically comment on either the updated residual value or the source of the updated residual value data points, they did request that we adopt a contractual residual value data point, as it would be valuable in determining the likelihood that the lessee will purchase the vehicle at the end of the lease or turn it back in.⁵³² Issuer commenters noted that the contractual residual value data point suggested by investor commenters is not as relevant as the base residual value or securitization residual value.⁵³³ We agree with investors that the base residual value data point, the source of the base residual value data point and the contractual residual value data point each provide different and valuable information about a lease. Therefore, we are adopting the base residual value and source of base residual value data points as proposed as well as the new contractual residual value data point as suggested by investor commenters.⁵³⁴ We are not adopting the proposed updated residual value data point or the source of updated residual value data point as these data points do not provide enough additional beneficial information to investors to justify the additional costs that would be imposed upon issuers.

⁵³¹ See letter from VABSS IV.

⁵³² See letter from ASF II (expressed views of loan-level investors only) (suggesting that under this contractual residual value data point, issuers would provide the stated amount that a lessee needs to pay to purchase the vehicle at the end of the lease term).

⁵³³ See letter from VABSS IV.

⁵³⁴ See new Items 4(d)(8), 4(d)(9), and 4 (d)(10) of Schedule AL.

(4) Debt Security ABS

We proposed that issuers of debt security ABS provide responses to the general data points enumerated in Item 1 of Schedule L and the nine data points specific to debt security ABS.⁵³⁵ The comment we received on the proposal suggested that we require the disclosure of the CUSIP number, ISIN number, or other industry standard identifier of the debt security.⁵³⁶

As noted above, under the final rule we are integrating the general item requirements into the requirements for each asset type. Therefore, under the final rule, issuers of debt security ABS are only required to provide the asset-level disclosures required under new Item 5 Debt Securities. After integrating the proposed general data points, the final requirements for debt security ABS have been reduced from 83 possible proposed data points to 60 data points.

Also, in response to comments received, we have revised the asset number data point to require a standard industry identifier assigned to the security be provided for each security, if such number is available. Public access to the responses to these data points and to the responses to other data points that require disclosure of the SEC file number and Central Index Key (“CIK”) number for the debt security will provide investors, including secondary market

⁵³⁵ The asset-level requirements for debt security ABS were proposed under the title “corporate debt.” ABS backed by corporate debt securities are typically issued in smaller denominations than the underlying security and the ABS are typically registered under Section 12(b) of the Exchange Act for trading on an exchange. Additionally, a pool and servicing agreement may also permit a servicer or trustee to invest cash collection in corporate debt instruments which may be securities under the Securities Act. An asset pool of an issuing entity includes all other instruments provided as credit enhancement or which support the underlying assets of the pool. If those instruments are securities under the Securities Act, the offering must be registered or exempt from registration if the instruments are included in the asset pool as provided in Securities Act Rule 190, regardless of their concentration in the pool. See Securities Act Rule 190(a) and (b). See also Section III.A.6.a of the 2004 ABS Adopting Release.

⁵³⁶ See letter from SIFMA I.

investors, access to more information about each debt security in the pool. As proposed, the final rules will require that issuers provide more standardized information to investors about the debt securities underlying the ABS. The disclosures we are adopting today require the title of the underlying security, origination date, the minimum denomination of the underlying security, the currency of the underlying security, the trustee, whether the security is callable, the frequency of payments that will be made on the security and whether an underlying security or agreement is interest bearing along with other basic characteristics of the debt securities. At a minimum, these asset-level disclosures will provide investors with the basic characteristics of the underlying debt securities in a standardized format.

Public availability of all of the asset-level information we are requiring to be disclosed regarding debt security ABS should reduce the burden on investors, including secondary market investors, to obtain this information, which should reduce investors' costs of conducting their own independent analysis and, thereby, reduce their need to rely on credit ratings. In addition, we believe that having an issuer collect and report asset-level information will improve efficiency, since a single entity, as opposed to multiple investors, will incur the information gathering costs.

We recognize that although investors will benefit from receiving these asset-level disclosures, issuers will face an increase in information gathering and reporting costs, including costs related to system re-programming and technological investment. We recognize that the costs registrants may face will depend on the extent to which the information required to be disclosed is already available to issuers or will have to be newly collected, as well as the extent to which the information is already being disclosed to investors in some transactions. Although

we are unable to estimate the magnitude of these costs with any precision; we believe the costs registrants will incur to provide the data should be nominal since the data that is required should already be readily available to registrants, especially since the asset-level disclosures required primarily relate to the performance of the security and the basic characteristics of the security, such as the title of the security, payment frequency, or whether it is callable. A description of each data point required for debt security ABS is provided in Item 5 of Schedule AL.

(5) Resecuritizations

In a resecuritization, the asset pool is comprised of one or more ABS. We proposed that issuers of a resecuritization provide, at the time of the offering and on an ongoing basis, asset-level data for each ABS in the pool and for each asset underlying each ABS in the pool. Under the proposal, resecuritizations would provide the same data as required for debt security ABS for each ABS in the asset pool. In addition, issuers would provide asset-level data for the assets underlying each ABS in the asset pool in accordance with the asset-level disclosure applicable to that particular asset class.

We received several comments that expressed concern about the proposal. Some commenters expressed concern over the cost and burden to provide the asset-level disclosures for the assets underlying the securities in comparison to what they believed to be a limited benefit.⁵³⁷

⁵³⁷

See, e.g., letters from MBA I (stating that asset-level data about the underlying ABS would not be useful because only certain classes of an ABS are resecuritized, and the loans backing a particular class are typically supported by the underlying loan pool and do not correlate to specific classes of ABS) and Wells Fargo I (suggesting that the asset-level data required for a resecuritization would be of little benefit to investors in cases where a resecuritization involved a mixture of bonds because investors would have to understand the payment structure of each underlying ABS and the effort involved in doing this would likely

One of these commenters was concerned about securities law liability for the asset-level disclosures of the assets underlying the securities.⁵³⁸ Other commenters were concerned that asset-level data may not be available for the assets underlying an ABS that was originated prior to the compliance date of the rule.⁵³⁹ Finally, to address some of these concerns, some commenters suggested exemptions from the asset-level disclosure requirements for some resecuritizations.⁵⁴⁰

After considering the comments received, we are adopting the proposal with revisions. For each registered resecuritization, issuers must provide, at the time of the offering and on an ongoing basis for each ABS in the asset pool, the same disclosures that are required for debt security ABS. Therefore, information about the security, such as the title of the security, payment frequency, whether it is callable, the name of the trustee and the underlying SEC file

be prohibitive for most investors in such cases). See also SIFMA I (expressing concerns about the cost to provide the information without providing their own cost estimate).

⁵³⁸ See letter from Wells Fargo I (suggesting that with respect to the proposed ongoing disclosure requirements that subjecting the issuer, underwriter or any other resecuritization transaction party to securities law liability for such information is not appropriate because (i) such information has already been filed, subject to securities law liability, with respect to the underlying transactions, and (ii) there is no practical way for the resecuritization parties to do the due diligence with respect to the underlying filings that would need to be done to accept securities law liability for them).

⁵³⁹ See, e.g., letters from ABA I, ASF I, BoA I, J.P. Morgan I, MBA I (with respect to RMBS); and SIFMA I. See also letter from Citi (indicating that issuers will often be unable to meet the disclosure requirements because they generally do not have access to the underlying asset-level files).

⁵⁴⁰ See letters from SIFMA I (suggesting an exemption from the proposed asset-level disclosures requirements for (1) resecuritizations with “seasoned” pool assets or (2) resecuritizations where the underlying securities fall below some percentage of the asset pool (e.g., 10 percent as supported by the dealers and sponsor members or “a substantially lower percentage” as supported by the investor members)) and Wells Fargo I (suggesting an exemption from the proposed asset-level disclosures requirements for “all bonds that are re-securitized that are from transactions which closed prior to the effective date of Regulation AB” because a failure to do so “would eliminate the availability of re-securitizations as an important tool for investors to prudently restructure or de-risk legacy positions” and it “could impair the value of such positions due to the resultant illiquidity”).

number and CIK number is required.⁵⁴¹ If a resecuritization consists of securities where we have adopted asset-level disclosure requirements (i.e., RMBS, CMBS, or Auto ABS), then a second tier of asset-level information is required. The second tier of asset-level disclosure is about the assets (such as each mortgage, loan or lease) underlying the ABS being resecuritized. For instance, in an offering where the asset pool includes RMBS, then the data points in Item 5 of Schedule AL would be required for every RMBS security in the asset pool, as well as the data points in Item 1 for each loan underlying each RMBS security. Accordingly, if asset-level disclosures are not required for a particular asset type, then an issuer is only required to provide the debt security ABS disclosures for each ABS in the underlying asset pool.

We are adopting an exemption from the new requirement to provide asset-level disclosure about the underlying ABS if the underlying ABS was issued prior to the compliance date for the asset-level disclosure requirements. We noted concerns about the cost to provide the disclosures, whether the information would be available, securities law liability for information provided by third parties and the other concerns raised by commenters. We acknowledge that investors will not have access to asset-level data for the resecuritized ABS for some period of time. We do not believe that providing this exemption would negatively affect investors because the resecuritization will still be subject to existing disclosure requirements, including pool-level disclosure requirements and the exemption will be limited over time by the underlying ABS becoming subject to the asset-level disclosure requirements. We also note that there have been

⁵⁴¹ See Section III.A.2.b)(4) Debt Security ABS.

no registered resecuritization offerings in the last few years. Further, as noted above, existing Securities Act Rule 190 requires that all information about the underlying ABS be disclosed in accordance with our registration rules and forms.⁵⁴² Therefore, if the underlying ABS was issued prior to the compliance date for the asset-level disclosure requirements, investors in a resecuritization will receive updated and current information about pool data, static pool, risk factors, performance information, how the underlying securities were acquired, and whether and when the underlying securities experienced any trigger events or rating downgrades.

The final requirement to provide asset-level data in the prospectus and in periodic reports will require that issuers provide more information to investors about resecuritizations than previously required. The asset-level disclosures about the ABS in the asset pool will provide investors, at a minimum, with the basic characteristics of a resecuritization. Further, by requiring disclosure of the SEC file number and CIK number for ABS being resecuritized, it will be easier for investors to locate more information about each resecuritized ABS. Public access to such information, including, when applicable, access to information about the assets underlying the ABS being resecuritized, should reduce investors' burden to obtain this information, and reduce their need to rely on credit ratings because investors will have access to the information in order to conduct their own independent analysis. In turn, this will allow for a more effective and efficient analysis of the offering and should help foster more efficient capital formation.

⁵⁴²

See Securities Act Rule 190. See also Section III.A.6.a of the 2004 ABS Adopting Release.

We do not agree with a commenter's view that there is a limited correlation between loan performance and bond performance and, as a result, there is little benefit from investors receiving asset-level data about the assets underlying the ABS being resecuritized. Specifically, the commenter believed that the asset-level data about the underlying ABS would not be useful because only certain classes of an ABS are resecuritized, and the loans backing a particular class are typically supported by the entire underlying loan pool, and therefore do not correlate to any specific classes of ABS. We disagree and believe that to determine the performance of any particular resecuritization, an understanding of each loan in the underlying loan pool is necessary in order to analyze how the underlying loans impact the cash flows to the resecuritization.

In addition, with respect to the availability of information, Section 942(a) of the Dodd-Frank Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Exchange Act for ABS issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty.⁵⁴³ As a result, ABS issuers with Exchange Act Section 15(d) reporting obligations will be required to report asset-level information, thereby easing concerns that the asset-level information for residential mortgages, commercial mortgages, auto loans, auto leases, or debt securities underlying the ABS in the resecuritization would not be available on an ongoing basis.

With respect to the cost and burden to provide the disclosures and concerns about securities law liability for information obtained from third parties, we believe the existing ability

⁵⁴³ See Suspension of the Duty to File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934, Release No. 34-65148 (Aug. 17, 2011) [76 FR 52549].

to reference third party information, in part, addresses these concerns. As is the case today, issuers may satisfy their disclosure requirements by referencing third-party reports if certain conditions are met.⁵⁴⁴ New Forms SF-1 and SF-3 require that the asset-level information be filed on Form ABS-EE and incorporated into the prospectus.⁵⁴⁵ Similarly, revised Form 10-D requires incorporation by reference to Form ABS-EE.⁵⁴⁶ If the underlying ABS is of a third-party, we will permit issuers to reference the third-party's filings of asset-level data provided that they otherwise meet the existing third-party referencing conditions. Consequently, reports of all third parties, not only those that are significant obligors, may be referenced. Because issuers are not incorporating third-party filings by reference, but instead merely referencing these filings, we believe we have addressed concerns about issuers' filing burdens and securities law liability for asset-level information filed by third parties.

While some commenters raised concerns about the cost to implement such requirements, commenters did not provide any quantitative cost estimates to comply with this requirement. Implementation of this requirement, even if a registrant can reference third-party filings, will require system re-programming and technological investment. In addition, registrants will incur a nominal cost to provide data about the securities being resecuritized. In general, the data about

⁵⁴⁴ See Item 1100(c)(2) of Regulation AB [17 CFR 229.1100(c)(2)]. In many instances, the issuer of the ABS being resecuritized would be considered a significant obligor as defined in Item 1101(k) of Regulation AB. If so, issuers may reference information about the significant obligors located in third-party reports as set forth in Item 1100(c)(2).

⁵⁴⁵ See Section III.B.5 New Form ABS-EE, General Instruction IV and Item 10 of Form SF-1 and General Instruction IV and Item 10 of Form SF-3.

⁵⁴⁶ See Item 1A of Form 10-D.

the securities, which track the debt security ABS requirements, should include data already readily available to issuers, especially since the requirements primarily include basic characteristics of the security, such as the title of the security, payment frequency, and whether it is callable. Registrants will incur a nominal cost to provide this data in the format requested. If asset-level data is required for the assets underlying the securities being res securitized, registrants will, to the extent they cannot otherwise incorporate by reference or reference third-party filings, incur costs to obtain the data required about the assets underlying the securities being res securitized or to convert data available to them into the required format. These costs were discussed earlier in the release in the context of complying with asset-level disclosure for RMBS, CMBS and Auto ABS. We believe such costs are appropriate because investors should receive information about the securities that will allow them to conduct their own independent analysis. In addition to the items noted above that mitigate cost concerns, we also believe the extended timeframe for compliance of 24 months lowers the overall burden placed on registrants and market participants and should provide ample time for registrants and market participants to assess the availability of the asset-level information required for res securitizations and to put the information in the format required.

3. Asset-Level Data and Individual Privacy Concerns

a) Proposed Rule

As we noted in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release and as the staff noted in the 2014 Staff Memorandum, we are sensitive to the possibility that certain asset-level disclosures may raise concerns about the underlying obligor's personal privacy. In particular, we noted that asset-level data points requiring disclosures about the

geographic location of the obligor or the collateralized property, credit scores, income and debt may raise privacy concerns. We also noted, however, that information about credit scores, employment status and income would permit investors to perform better risk and return analysis of the underlying assets and therefore of the ABS.

In light of privacy concerns, we did not propose to require issuers to disclose an obligor's name, address or other identifying information, such as the zip code of the property.⁵⁴⁷ We also proposed ranges, or categories of coded responses, instead of requiring disclosure of an exact credit score⁵⁴⁸ or income or debt amounts in order to prevent the identification of specific information about an individual.⁵⁴⁹

The 2014 Staff Memorandum summarized the comments received related to potential privacy concerns and outlined an approach to address these concerns that would require issuers to make asset-level information available to investors and potential investors through an issuer-sponsored Web site rather than having issuers file on EDGAR and make all of the information, including potentially sensitive information, publicly available. Under the Web site approach, issuers could take steps to address potential privacy concerns associated with asset-level disclosures, including through restricting Web site access to potentially sensitive information.

⁵⁴⁷ We proposed to require the broader geographic delineations of MSAs in lieu of the narrower geographic delineation of zip codes.

⁵⁴⁸ For asset-level data points that require disclosure of obligor credit scores, we proposed coded responses that represent ranges of credit scores (e.g., 500-549, 550-599, etc.). The ranges were based on the ranges that some issuers used in pool-level disclosure.

⁵⁴⁹ For monthly income and debt ranges, we developed the ranges based on a review of statistical reporting by other governmental agencies (e.g., \$1,000-\$1,499, \$1,500-\$1,999, etc.). See the 2010 ABS Proposing Release at 23357.

The Web site approach also would require issuers to file a copy of the information disclosed on a Web site with the Commission in a non-public filing to preserve the information and to enable the Commission to have a record of all asset-level information provided to investors. The prospectus would need to disclose the Web site address for the information, and the issuer would have to incorporate the Web site information by reference into the prospectus. In addition, issuers would be required to file asset-level information that does not raise potential privacy concerns on EDGAR in order to provide the public with access to some asset-level information.

b) Comments on Proposed Rule

In response to the 2010 ABS Proposal, several commenters noted that the asset-level requirements would raise privacy concerns.⁵⁵⁰ These commenters suggested that, while the proposed asset-level disclosures would not include direct identifiers, if the responses to certain asset-level data requirements are combined with other publicly available sources of information about consumers it could permit the identity of obligors in ABS pools to be uncovered or “re-identified.”⁵⁵¹ A number of commenters noted that, if an obligor was identified through this

⁵⁵⁰ See, e.g., letters from ABA I, CU, MBA I (suggesting that the use of Metropolitan Statistical Areas or Divisions in lieu of zip code would not mask the location of particular properties), VABSS I, and WPF I (also suggesting that the proposed asset-level disclosures would not mask the location of particular properties and additionally that they may provide information useful in the re-identification process). In general, these commenters were concerned that it may be possible to identify an individual obligor by matching asset-level data about the underlying property or asset with data available through other public or private sources about assets and their owners.

⁵⁵¹ See, e.g., letter from WPF I (suggesting that attempts to mask the location of particular properties and the identity of borrowers are not workable because there is too much information about mortgages available that would allow the location of a particular property to be found).

process, then the obligor's personal financial status could be determined.⁵⁵² The commenters noted that if obligors are re-identified, then information about an obligor's credit score, monthly income and monthly debt would be available to the general public through the EDGAR filing. Commenters also noted that if personal information was linked to an individual through the asset-level disclosures this may conflict with⁵⁵³ or undermine⁵⁵⁴ the consumer privacy protections provided by federal and foreign laws restricting the release of individual information and increase the potential for identity theft and fraud.⁵⁵⁵

Most commenters did not support the use of coded ranges, noting it would not address privacy concerns⁵⁵⁶ and would not further the Commission's objective of improving disclosure for ABS investors. Two commenters noted that using coded ranges would not mitigate privacy

⁵⁵² See, e.g., letters from ABA I, AFSA I, American Resort Development Association dated July 22, 2010 submitted in response to the 2010 ABS Proposing Release, ASF II, CDIA, CNH I, CU, Anita B. Carr dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release, Daniel Edstrom dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release, Epicurus, ELFA I, FSR, MBA I, National Association of Federal Credit Unions dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, Navistar, SIFMA I, SLISA, TYI, VABSS I, Vantage Score Solutions LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Vantage I"), and WPF I.

⁵⁵³ See, e.g., letters from ABA I (stating that the asset-level disclosures would potentially result in release to the public of detailed non-public personal financial information (as defined in Title V of the Gramm-Leach-Bliley Act ("GLBA")) as well as consumer report information (as defined in FCRA), CDIA (suggesting that certain data may fall under the protections of FCRA, GLBA, or both), Epicurus, TYI (suggesting that if the disclosures could be used to identify a borrower in a European-based ABS, this may violate European privacy laws), and WPF I.

⁵⁵⁴ See letter from WPF I (suggesting that if data that may fall under the scope of FCRA is posted on EDGAR and subsequently linked to an individual, the data may become public and, therefore, the transfer of this information to others may contravene FCRA restrictions).

⁵⁵⁵ See letters from CDIA, VABSS II, and WPF I (suggesting that the cost of identity theft would not only fall on borrowers, but also on asset holders and, therefore, investors would demand higher returns to protect against those losses).

⁵⁵⁶ But see letters from CDIA (noting that the proposed ranges or categories may provide some privacy protection) and ASF II (expressed views of loan-level investors only) (suggesting the use of range-based reporting for certain credit sensitive fields may also provide a solution to privacy concerns).

concerns because the ranges are so narrowly defined they would identify the actual score or dollar amount of income.⁵⁵⁷ Other commenters believed that the use of ranges for disclosures, such as credit scores and income, or requiring a broader geographic identifier for the property, such as MSAs, would greatly reduce the utility of the information.⁵⁵⁸ Commenters also noted that disclosure of data that relates to the credit risk of the obligor, such as an obligor's exact credit score, income, or employment history, would strengthen investors' risk analysis of ABS involving consumer assets.⁵⁵⁹ Commenters also suggested that exact income and credit scores are necessary to appropriately price the securities⁵⁶⁰ and verify issuer disclosures.⁵⁶¹

We received few suggestions for alternative approaches to balancing individual privacy concerns and the needs of investors to have access to detailed financial information about obligors. Commenters suggested we work with other federal agencies to evaluate whether the proposed asset-level information was in fact anonymized⁵⁶² and to assess whether the required

⁵⁵⁷ See letters from CDIA and MBA I.

⁵⁵⁸ See letters from ASF I (expressed views of investors only), Beached Consultancy (suggesting that the metropolitan area is too broad to be useful, and, therefore, a "3-digit zip code" should be permitted), and Wells Fargo I.

⁵⁵⁹ See letters from ASF I (requesting disclosure of exact credit score and noting that requiring ranges would be a step back in terms of transparency), Interactive (noting that asset-level granularity is essential for robust evaluation of loss, default and prepayment risk associated with RMBS), Prudential I (suggesting that ranges of FICO score bands are not sufficient to appreciate the linkages between collateral characteristics), and Wells Fargo I (expressing concern that restricting information available to investors could result in substantially lower pricing for new residential mortgage backed securities offerings). See also SIFMA I (expressed views of investors only) (recommending 25-point buckets for credit scores rather than the 50-point buckets as proposed).

⁵⁶⁰ See, e.g., letters from ASF I, Prudential I, and Wells Fargo I.

⁵⁶¹ See letter from ASF I (expressed views of investors only) (suggesting that exact income allows them to double check the issuer's DTI calculations).

⁵⁶² See letters from ABA I and ASF I.

asset-level disclosures would subject issuers to liability under the federal privacy laws.⁵⁶³ Many commenters that supported grouped-account disclosures rather than asset-level disclosures indicated that grouped disclosures also could address privacy concerns with asset-level disclosures.⁵⁶⁴ Other commenters suggested addressing privacy concerns by changing the disclosure format, such as by requiring that disclosure be presented in ratios rather than dollar amounts,⁵⁶⁵ requiring a default propensity percentage in lieu of a credit score,⁵⁶⁶ or only requiring narrative disclosure.⁵⁶⁷

We also received suggestions that we should restrict access to or impose conditions on the use of sensitive data. For instance, a commenter suggested that we establish a central "registration system" where access to sensitive data is only made to persons who have independently established their identities as investors, rating agencies, data providers, investment banks or other categories of users while forbidding others to use the data or include the data in commercially distributed databases.⁵⁶⁸ Another commenter suggested that the Commission consider restricting access to registered users who acknowledge the potentially sensitive nature

⁵⁶³ See letter from ABA I.

⁵⁶⁴ See, e.g., letters from ASF II (expressed views of issuers and a portion of investors only) and VABSS II.

⁵⁶⁵ See letter from CU (suggesting that liquid cash reserves be expressed as a ratio relative to the borrower's debt).

⁵⁶⁶ See letter from Vantage I (describing default propensity as the chance that a consumer will become 90 or more days late on a debt that he or she owes expressed as a percentage).

⁵⁶⁷ See letter from ABAASA I.

⁵⁶⁸ See letter from VABSS II.

of the data and agree to maintain its confidentiality.⁵⁶⁹ This commenter suggested that requiring users to identify themselves and accept appropriate terms of use would provide a deterrent to those who might attempt to abuse personal financial data and permit identification of such users should any abuse occur. Another commenter suggested establishing rules applicable to the posting, use and dissemination of potentially sensitive data disclosed on EDGAR, including penalties for violation of the rules.⁵⁷⁰

In light of the comments received raising individual privacy concerns and the requirements of new Section 7(c) of the Securities Act, we requested additional comment on privacy generally in the 2011 ABS Re-Proposing Release.⁵⁷¹ We received limited additional feedback on how to address the potential privacy issues surrounding the proposed asset-level disclosures. Commenters again stated that the asset-level requirements, as proposed, would raise privacy concerns.⁵⁷² One commenter suggested that the Commission could address privacy concerns by not requiring the disclosure of social security numbers, only requiring MSA

⁵⁶⁹ See letter from CDIA.

⁵⁷⁰ See letter from Epicurus.

⁵⁷¹ For instance, we asked how asset-level data could be required, both initially and on an ongoing basis, to implement Section 7(c) effectively, while also addressing privacy concerns. We asked which particular data elements could be revised or eliminated for each particular asset class in a manner that would address privacy concerns, while still enabling an investor to independently perform due diligence. We also requested comment on whether it would be appropriate to require issuers to provide an obligor's credit score and income on a grouped basis in a format similar to the proposal for credit cards in the 2010 ABS Proposing Release.

⁵⁷² See, e.g., letter from Mortgage Bankers Association dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("MBA III") (reiterating that several of the data points proposed could allow someone to identify the obligor and that "the income and credit score ranges do not mitigate privacy issues because the suggested ranges are so narrowly defined that they virtually identify the actual score or dollar amount of income").

information about the property instead of a property's full address, and replacing borrower name with an ID number.⁵⁷³ Other commenters stated or reiterated that for some asset classes a grouped-account or pool-level disclosure format may mitigate privacy concerns.⁵⁷⁴ One commenter repeated the suggestions that it provided in previous comment letters that the Commission could establish and manage (or have a third-party manage) a central "registration system" that could provide restricted access.⁵⁷⁵

On February 25, 2014, we re-opened the comment period to permit interested persons to comment on the Web site approach described in the 2014 Staff Memorandum. Only a few commenters indicated support for the Web site approach.⁵⁷⁶ Most commenters generally

⁵⁷³ See letter from MetLife II.

⁵⁷⁴ See letters from Sallie Mae, Inc. (SLM Corporation) dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("Sallie Mae II") (suggesting that "data presented on a grouped basis should address all privacy concerns"), VABSS III (again suggesting that a grouped data approach minimizes, but does not eliminate, privacy concerns), and VABSS IV (stating that they believe a grouped data approach is the best way to provide additional information to investors while addressing obligor privacy and competitive concerns).

⁵⁷⁵ See letters from VABSS III (suggesting that it would not be an "overwhelming process to establish and maintain a restricted-access system" and that Section 7(c) does not require that data that raises privacy concerns be made publicly available) and VABSS IV.

⁵⁷⁶ See letters from AFR (noting the advantages of the Web site approach include the disclosure of more granular data and the ability to restrict the data to those who agree to accept legal liability for privacy violations), CII (stating, however, that the restrictions placed on accessing the Web site should not be any more restrictive than user accounts and confidentiality agreements and that issuers should provide, instead of coded ranges, specific credit scores, income, and debt), A. Schwartz (stating that the Web site approach places the liability for errors in the asset-level data on issuers and preserves the privacy interests of borrowers), and World Privacy Forum dated Apr. 18, 2014 submitted in response to the 2014 Re-Opening Release ("WPF II") (suggesting, however, that the Commission rather than issuers be responsible for maintaining the data).

opposed the Web site approach as a means to address privacy concerns,⁵⁷⁷ and some commenters also noted that the Web site approach creates or shifts legal and reputational risks to issuers.⁵⁷⁸ Commenters expressed concern about whether the Web site approach could result in issuer liability under applicable privacy laws.⁵⁷⁹ Several commenters were specifically concerned that the Web site approach might create a risk that the issuer could be considered a “consumer reporting agency” under the FCRA and thus subject to its rules and regulations.⁵⁸⁰ One commenter noted that the FCRA would not be relevant most of the time because the type of information contemplated by the Web site approach would be beyond the reach of the FCRA while also noting that privacy laws do not protect most consumer data, including the proposed asset-level data, regardless of how it may be disseminated.⁵⁸¹ A number of commenters requested that the Commission obtain an authoritative interpretation or some other form of

⁵⁷⁷ See, e.g., letters from ABA III, AFSA II, Capital One II, Deutsche Bank dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (“Deutsche Bank”), MBA IV (with respect to RMBS), SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

⁵⁷⁸ See, e.g., letters from AFSA II (also suggesting that the Web site approach did not conform to the White House’s Consumer Privacy Bill of Rights because the Web site approach does not specify requirements to provide control or choice to consumers on the sharing of their data with others), Deutsche Bank, MBA IV (also stating that the Web site approach shifts operational risks to issuers), and SFIG II.

⁵⁷⁹ See, e.g., letters from AFSA II, CCMR, Deutsche Bank, Lewtan (suggesting that there is uncertainty surrounding FCRA liability for issuers, investors, and all deal parties who touch data originally obtained in the process of underwriting a loan to the consumer), MBA IV, SFIG II (also noting that issuers may be subject to restrictions under state laws), SIFMA/FSR I-dealers and sponsors, and Wells Fargo III. See also letters from ELFA II (noting that the dissemination of asset-level data under the Web site approach or through EDGAR would create legal and reputational risks), and Treasurer Group (noting the requirements of Canada’s privacy laws).

⁵⁸⁰ See letters from ABA III, CCMR, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, and Wells Fargo III (noting, for example, that if an issuer is considered a consumer reporting agency, among other things, it will have a duty to update and correct information about the consumer and failure to comply with these duties could subject the issuer to consumer actions and CFPB enforcement).

⁵⁸¹ See letter from WPF II.

guidance from the CFPB to clarify issuer liability under the privacy laws when an issuer provides asset-level data before moving forward.⁵⁸² A few commenters suggested that under the Web site approach data could still be widely distributed,⁵⁸³ and two commenters stated that taking steps to reduce the ability to re-identify a person would be more appropriate than limiting access to sensitive data.⁵⁸⁴ Some other general concerns about the Web site approach included: the costs and burdens of the Web site approach;⁵⁸⁵ the possibility of data breaches and the impacts from data breaches;⁵⁸⁶ potential negative market impacts;⁵⁸⁷ and the possibility that

⁵⁸² See, e.g., letters from SIFMA/FSR II-dealers and sponsors, Wells Fargo III, MBA IV (with respect to RMBS), and SFIG II (noting concerns that the CFPB has not affirmed past FTC guidance on the transfer of information incident to the transfer of an asset in a securitization and stating that while it strongly believed that an issuer would not become a consumer reporting agency under FCRA by disclosing asset-level information, the CFPB needs to provide a rule or authoritative interpretation that the data posted in accordance with the Web site approach would not be a consumer report and that the issuer would not become a consumer reporting agency). See also letter from CCMR (requesting that the Commission, CFPB and Federal Trade Commission (FTC) provide assurance that misuse of disclosures made under the Web site approach would not render the issuer liable for privacy law violations).

⁵⁸³ See, e.g., letters from ABA III (stating that in the case of registered offerings ABS may be sold to any person, including individuals, without restriction, resulting in a potentially unlimited pool of investors and potential investors), Capital One II, and SFIG II.

⁵⁸⁴ See letters from ABA III and Treasurer Group. These comments are discussed in more detail below.

⁵⁸⁵ See letters from AFSA II, ELFA II, Lewtan, MBA IV (with respect to RMBS) (suggesting that the costs would include improving security protocols and designing controls to minimize sharing of the information once a party accesses the Web site), SFIG II, SIFMA/FSR I-dealers and sponsors (objecting to a requirement that issuers file non-sensitive data on EDGAR because it is redundant, imposes unnecessary costs and is incomplete since certain fields would be omitted), and Wells Fargo III.

⁵⁸⁶ See, e.g., letters from ABA III, AFSA II, ELFA II, Lewtan, MBA IV (with respect to RMBS), and Wells Fargo III.

⁵⁸⁷ See, e.g., letters from ELFA II (expressing concern that issuers may leave the ABS capital markets due to cost and liability concerns) and Lewtan (noting that issuers and investors may leave the market or move to the Rule 144A market because they cannot get comfortable with the risks associated with FCRA, while acknowledging that similar risks exist in the Rule 144A market).

inconsistencies in technical standards between Web sites may make the Web sites difficult to use.⁵⁸⁸

Some commenters disagreed with the description in the 2014 Staff Memorandum of how issuer Web sites were being used at the time the 2014 Staff Memorandum was released.⁵⁸⁹ For instance, one commenter noted that while Web sites were being used at that time to provide information to investors, the information is not the same as what the Commission had proposed to require and does not raise the same privacy concerns.⁵⁹⁰ Another commenter noted that current disclosure of asset-level information through Web sites is available only to a limited number of known institutional investors.⁵⁹¹

Several commenters stated that additional information was necessary to fully assess the potential implications of the Web site approach. For instance, commenters requested clarity on the scope of asset-level disclosures that the Commission is considering adopting, what data would be disclosed on EDGAR and on the Web site, what type of restrictions on access would be reasonable and what information is “necessary” for investor due diligence.⁵⁹² Another

⁵⁸⁸ See letter from AFR.

⁵⁸⁹ See letters from ABA III, AFSA II, and SFIG II.

⁵⁹⁰ See letter from AFSA II. See also letter from ABA III (noting that the amount of information proposed for release under the Web site approach exceeds the amount of information typically made available through Web sites).

⁵⁹¹ See letter from SFIG II.

⁵⁹² See, e.g., letters from ABA III, Deutsche Bank, Lewtan (noting that they did not comment on data point requirements due to the brief comment period and uncertainty about which aspects of the 2010 ABS Proposals remain under consideration), SIFMA/FSR I-dealers and sponsors (requesting clarity on whether any of the asset-level data may be considered “material” under the securities laws and whether disclosure of asset-level data as proposed complies with privacy laws), and Wells Fargo III (requesting clarification of which data points would require specific values in order to evaluate privacy issues).

commenter sought information about whether the Commission is still considering asset-level disclosures for certain non-RMBS asset classes.⁵⁹³ Five commenters urged the Commission to re-open the 2010 ABS Proposal and the 2011 ABS Re-Proposal, in general, to permit further consideration of the concerns surrounding asset-level disclosures.⁵⁹⁴

A number of commenters responded to the 2014 Re-Opening Release by commenting generally on privacy concerns. Several commenters reiterated the re-identification concerns that were raised in response to the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release.⁵⁹⁵ Commenters again suggested that obligors may suffer harm if personal data is used to re-identify them.⁵⁹⁶ Several commenters noted that the asset-level requirements, as proposed in 2010, contain a variety of highly sensitive personal information that consumers would not expect to be available to the general public, such as information about debt, income, bankruptcies, foreclosures, job losses, and even whether the consumer has experienced marital difficulties.⁵⁹⁷ One commenter raised particular concern with disclosure of actual income as

⁵⁹³ See letter from SIFMA/FSR I-dealers and sponsors.

⁵⁹⁴ See letters from Capital One II, ELFA II (asking the Commission to reconsider requirements for equipment ABS), SFIG II (noting uncertainty as to whether ranges or specific values will be required for sensitive data points and whether the rules will apply to the Rule 144A market), SIFMA/FSR I-dealers and sponsors (suggesting that any re-proposal should include definitive, coordinated federal guidance about compliance with privacy laws, whether the disclosure requirements will apply to the Rule 144A market, which asset classes will be subject to the disclosure requirements and assurances about whether the data can be re-identified), and Wells Fargo III.

⁵⁹⁵ See, e.g., letters from ABA III, Capital One II, Deutsche Bank, SFIG II (noting that whether an obligor underlying a foreign loan can be re-identified through the proposed asset-level data will depend on the jurisdiction), SIFMA/FSR I-dealers and sponsors, Treasurer Group (suggesting that the final requirements not include geographic identifiers or other individual identifiers that can identify a borrower), and WPF II.

⁵⁹⁶ See, e.g., letters from ABA III, SFIG II, and SIFMA I (expressed view of issuers and sponsors only).

⁵⁹⁷ See, e.g., letters from Deutsche Bank, SIFMA/FSR I-dealers and sponsors, and Wells Fargo III.

such data is highly desirable to the consumer data industry but hard to obtain.⁵⁹⁸ One commenter requested that the Commission provide assurance that the data required to be filed on EDGAR could not be reasonably linked to an individual consumer.⁵⁹⁹ Some commenters expressed concern that the proposed requirements could result in the disclosure of "Personally Identifiable Information" or "PII," which could result in legal liability or reputational damage.⁶⁰⁰ In addition, a few commenters identified various laws that may apply to the asset-level disclosures, including non-privacy related laws.⁶⁰¹ Another commenter noted, however, that the availability of potentially sensitive obligor data is not new to the market.⁶⁰² Another commenter believed criminal actors would prefer to obtain access to other databases containing information more conducive to identity theft, such as social security numbers and date of birth, neither of which would be required by the Commission.⁶⁰³

⁵⁹⁸ See letter from WPF II.

⁵⁹⁹ See letter from SIFMA/FSR I-dealers and sponsors.

⁶⁰⁰ See letter from SIFMA/FSR I-dealers and sponsors (questioning whether some or all of the asset-level information could be considered PII under federal and state laws). See also letters from ABA III and MBA IV (with respect to RMBS).

⁶⁰¹ See letters from ABA III (noting questions about the application of the GLBA, FCRA and Freedom of Information Act ("FOIA")), and SIFMA/FSR-dealers and sponsors (noting questions about the application of GLBA and the Fair Debt Collections Practices Act, and whether the information would be subject to FOIA).

⁶⁰² See letter from Lewtan (noting that they collect and disseminate ABS-related data, including asset-level data).

⁶⁰³ See letter from AFR. Despite its belief that the Web site approach would not create a new target for criminal actors, AFR recommended that the Commission not adopt such an approach because: (i) issuers could inappropriately discriminate in providing access to the restricted Web site; (ii) there is a potential that not all issuers would have the technical capacity to implement appropriate privacy controls; and (iii) if the design of the data is left to issuers, standardization of the data format would not be possible, making it more difficult to use.

Many commenters expressed particular concern with the disclosure of a property's geographic location because it, along with other data points, can be used with other public databases to match a property with a specific borrower.⁶⁰⁴ Commenters' recommendations to revise the geographic data point varied. One commenter recommended that the Commission limit disclosure of the zip code to only the first two digits.⁶⁰⁵ Another commenter, without providing a specific recommendation, believed that any geographic data point must be sufficiently broad to ensure that there is no risk of re-identification.⁶⁰⁶ One commenter reiterated its support for aggregation of geographic location.⁶⁰⁷ In contrast, another commenter noted its opposition to the 2010 ABS Proposal to require only MSA because it would compromise the utility of the data for investors.⁶⁰⁸

Several commenters suggested various alternatives and modifications to the Web site approach. Three commenters suggested aggregating the asset-level data.⁶⁰⁹ These commenters,

⁶⁰⁴ See letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, Treasurer Group, and Wells Fargo III.

⁶⁰⁵ See letter from ABA III (noting that the Department of Health and Human Services, as part of its efforts to keep consumers' health information anonymous, has limited disclosure of zip codes to the first three digits, and also noting that the European Securities and Market Authority has created draft templates for asset-level disclosure, including for RMBS, in which it requires only the first two or three digits of the postal code).

⁶⁰⁶ See letter from Treasurer Group.

⁶⁰⁷ See letter from CFA Institute dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release.

⁶⁰⁸ See letter from AFR.

⁶⁰⁹ See letters from ABA III, Lewtan (noting that aggregation would significantly reduce the risk of re-identification and data security breaches, but data security concerns related to internal operations would remain), and MBA IV (with respect to RMBS).

however, did not specify what they meant by “aggregated.”⁶¹⁰ Another commenter suggested development of a system that permits investors to conduct analysis and produce models without providing access to asset-level information.⁶¹¹ One commenter said the requirements should mirror the disclosures that the GSEs make with respect to RMBS and that issuers should have the discretion not to disclose sensitive information.⁶¹² Others suggested that issuers should have the flexibility to modify the disclosures and decide the method of delivery to address privacy concerns.⁶¹³ Another commenter agreed that the better approach would be to modify the disclosure requirements such that the data increases transparency while still respecting the privacy of borrowers’ information, but did not specify how those disclosures should be made available to investors.⁶¹⁴ Several commenters suggested that we adopt mechanisms or controls to restrict access to asset-level information filed with the Commission to investors and potential investors.⁶¹⁵

⁶¹⁰ For example, they did not specify whether they were referring to pool-level data, grouped-account data similar to the disclosures proposed for credit card ABS in the 2010 ABS Proposal, less granular loan-level information or some other form of data aggregation.

⁶¹¹ See letter from Treasurer Group.

⁶¹² See letter from MBA IV (with respect to RMBS).

⁶¹³ See, e.g., letters from ABA III (suggesting that if the Commission adopts the Web site approach, then issuers should be able to aggregate, group or anonymize the data, as needed, to comply with the privacy laws or be allowed to omit data under Securities Act Rule 409, and also suggesting that issuers should have the flexibility to determine the method of delivery of the disclosure) and SIFMA/FSR II-dealers and sponsors (suggesting that issuers be allowed to withhold, aggregate, or otherwise modify the asset level disclosures in order to comply with legal and regulatory obligations, reduce re-identification risk or otherwise protect consumer privacy, or to limit disclosure of information that is not material to an investment decision).

⁶¹⁴ See letter from Capital One II.

⁶¹⁵ See letters from CDIA (suggesting that the Commission require parties that want to access the data on EDGAR register to use the data, acknowledge the sensitive nature of the data, and agree to maintain its

Another commenter suggested a central repository or "aggregated data warehouse" to house the asset-level data because such an approach would simplify enforcement of access policies, ensure consistent data formats and lower incentives to exclude certain users.⁶¹⁶

Similarly, another commenter suggested that issuers disclose all asset-level data to a consumer reporting agency administered repository, along with a unique identification number for each asset, which would allow investors to access all the asset-level data for these assets.⁶¹⁷ Another commenter also suggested that credit bureaus, instead of issuers, should provide credit related information.⁶¹⁸ One commenter outlined revisions to the Web site approach that it believed are necessary if such an approach is adopted, including a data chain of custody, privacy and security rules and public disclosure of each issuer's privacy and security policies.⁶¹⁹

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confidentiality), Epicurus (suggesting that the Commission establish rules applicable to the posting, use and dissemination of potentially sensitive data disclosed on EDGAR, including penalties for violation of the rules), WPF I, and WPF II.

⁶¹⁶ See letter from AFR (suggesting either a single data warehouse managed by a federal agency (e.g., the Commission, the Federal Reserve (similar to the Bank of England model), or the Office of Financial Research) or a non-profit data warehouse owned and managed by private sector entities under Commission oversight (similar to the European Data Warehouse).

⁶¹⁷ See letter from SIFMA/FSR II-dealers and sponsors (noting that this approach would apply to all ABS asset classes and also noting certain developmental challenges, such as identifying a consumer reporting agency willing to act as a repository and application of FCRA); See also SFIG II (stating that issuers should have the option to use third party agents (which may be a consumer reporting agency or a central Web site data aggregator) to make the data available and control access, but also noting that such an approach still raises privacy law concerns and concerns about who pays for the third-party service).

⁶¹⁸ See letter from ABA III.

⁶¹⁹ See letter from WPF II. The commenter also outlined the elements of an appropriate data use agreement, such as disclosure restrictions, standards to qualify recipients, and providing consumers a private right of action for those who misuse the data.

After considering the comments received related to privacy concerns and on the Web site approach, and our obligations under Section 7(c) of the Securities Act,⁶²⁰ we are adopting new rules to require that issuers file asset-level disclosures on EDGAR both at the time of the offering and on an ongoing basis in periodic reports. We are revising the required disclosures contained in the proposal to address the risk of parties being able to re-identify obligors and the associated privacy concerns. Specifically, as discussed below, we are modifying or omitting certain asset-level disclosures relating to RMBS and Auto ABS to reduce both the amount of potentially sensitive data about the underlying obligors and the potential risk that the obligors could be re-identified. In addition, in response to commenters' suggestions, we have sought and obtained guidance from the CFPB on the application of the FCRA to the required disclosures. As discussed below, the CFPB has issued a letter⁶²¹ to the Commission stating that the FCRA will not apply to asset-level disclosures where the Commission determines that disclosure of certain asset-level information is "necessary for investors to independently perform due diligence," in accordance with Section 7(c). We believe these steps implement the statutory mandate of Section 7(c) and will provide investors with the asset-level information they need while reducing concerns about potential re-identification risk associated with disclosing consumers' personal and financial information.

⁶²⁰ As noted above, Section 7(c) of the Securities Act requires that we adopt rules to require ABS issuers to disclose asset-level information if the data is necessary for investors to independently perform due diligence.

⁶²¹ See letter from the Consumer Financial Protection Bureau dated August 26, 2014.

While we have considered the Web site approach described in the 2014 Staff Memorandum, as discussed below, we are not adopting this approach due to concerns about the practical difficulties and unintended consequences of limiting access to only investors and potential investors.⁶²² Commenters also indicated that the Web site approach could negatively affect the ability of investors and the broader ABS market to have adequate access to the data.⁶²³

We continue to believe that the disclosure of data that relates to the credit risk of the obligor, such as an obligor's credit score, income, or employment history, would strengthen investors' risk analysis of ABS involving consumer assets.⁶²⁴ We believe these disclosures, combined with other asset-level disclosures, such as the terms and performance of the underlying loan and information about the property, will enable investors to conduct their own due diligence for ABS involving consumer assets, and thus facilitate capital formation in the ABS market. Consequently, it is critically important that the manner in which such information is disseminated enables all investors to receive access to the required asset-level disclosures. The ability of other market participants, such as analysts and academics, to access this information

⁶²² See, e.g., letters from ABA III (noting concern that without guidance as to who is a potential investor issuers may apply their own bias filters to public offerings, such as limiting public offerings to only institutional investors), AFR (expressing concern that if issuers are given the ability to limit access to asset-level data they may use this ability to discriminate between investors by, for example, giving investors with more market power preferential access to the data), CCMR, MBA IV, and SFIG II.

⁶²³ See, e.g., letters from ABA III, Moody's II, and R&R.

⁶²⁴ See footnotes 559, 560 and 561 (discussing commenters' views on the importance of receiving granular data about obligors, such as exact income and credit scores).

may also benefit the market by encouraging a broader range of commentary and analysis with respect to ABS.⁶²⁵

Although we did not propose to require that an obligor's name, address, or other identifying information be disclosed, we are sensitive to the possibility that an obligor in an asset pool could be identified (now or in the future) due to the availability of the required disclosures (coupled with the XML requirement), the amount of data about obligors that is publicly available through other sources, and information about real estate transactions and other types of transactions that is available or that may become available in the future. In the event the obligor was re-identified, the information that would have been required by the proposal, even in ranges, might reveal information about the obligor's financial condition.

This issue is especially pronounced for securitizations backed by residential mortgages, as an obligor could potentially be re-identified using a combination of asset-level disclosures and real estate transaction data that is routinely disclosed by certain local governments.⁶²⁶

Commenters noted that property address, sales price, and closing date are typically disclosed by local governments and could be used to link the asset-level disclosures to an individual.⁶²⁷ If a

⁶²⁵ See letters from ABA III, Moody's I, Moody's II, M. Joffe, and R&R.

⁶²⁶ These issues potentially exist but are less pronounced for Auto ABS. We are not aware of any public databases of auto loan and lease records made available by local governments. It is possible that these types of databases could be available from other sources for a fee. After the time of purchase, an obligor may move and register the automobile in a different state. In contrast, the property that is collateral for a mortgage is connected to a permanent address and therefore could be matched more easily with publicly available information from land records.

⁶²⁷ See, e.g., letters from ABA III, CU, SIFMA/FSR I-dealers and sponsors, SFIG II, and Treasurer Group.

specific mortgage is re-identified, sensitive financial data about an obligor (e.g., credit score, DTI, and payment history) could potentially be connected to the obligor.

In light of this concern, we are revising the proposed data set for RMBS as follows.⁶²⁸ First, we are modifying the required geographic identifier from MSA, as proposed, to a 2-digit zip code.⁶²⁹ Several commenters emphasized the importance of geography in assessing the re-identification risk for RMBS asset-level disclosure.⁶³⁰ We believe that, because publicly available information like property records is typically sorted and searchable by geography, requiring issuers to identify assets by a broader geographic area should decrease the ability to re-identify individual obligors. In considering how to broaden the geographic area, we considered both the specific recommendations of commenters as well as current disclosure practices, including those of the GSEs and Ginnie Mae.⁶³¹ As noted above, one commenter specifically recommended that we require disclosure of either a 2-digit or 3-digit zip code.⁶³² There are currently less than 99 distinct 2-digit zip codes and approximately 900 distinct 3-digit zip

⁶²⁸ Although the changes discussed relate to RMBS data points, we also indicate, where relevant, corresponding changes we have made to the data points for Auto ABS that address privacy concerns.

⁶²⁹ See new Item 1(d)(1) of Schedule AL. For Auto ABS, at the suggestion of commenters, we are modifying the geographic identifier of the obligor to state. See new Items 3(e)(7) and 4(e)(7). See also letters from ASF II (expressed views of loan-level investors only) and VABSS IV. We are not adopting proposed data points that would have disclosed the geographic location of the dealership. See proposed Items 4(b)(1) and 5(b)(1) of Schedule L.

⁶³⁰ See letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, Treasurer Group, and Wells Fargo III.

⁶³¹ See letter from MBA IV (with respect to RMBS).

⁶³² See letter from ABA III.

codes.⁶³³ By contrast, our proposal would have required disclosure of MSA, which represents approximately 960 unique geographic areas. We understand that Ginnie Mae currently discloses state (60 distinct areas, including Washington, D.C. and U.S. territories and associated states).⁶³⁴ Depending on the data set, Fannie Mae and Freddie Mac disclose MSA, 3-digit zip code or state.⁶³⁵ After considering the various alternatives, we are adopting a 2-digit zip code. In reaching this conclusion, we considered that a 3-digit zip code would not significantly reduce the re-identification risk relative to the proposal's use of MSA and that use of state may be too broad of an area to be useful to RMBS investors.⁶³⁶

To further reduce the risk of re-identification, we are also omitting several data points that, while potentially useful to investors, could increase the ability to identify underlying obligors. Specifically, we are omitting the unique broker identifier data point⁶³⁷ as well as the

⁶³³ See the U.S. Postal Service Web site for a list of 3-digit zip codes, <http://pe.usps.com/text/LabelingLists/L002.htm>.

⁶³⁴ See Ginnie Mae's MBS Loan-Level Disclosure File available at http://www.ginniemae.gov/doing_business_with_ginniemae/investor_resources/mbs_disclosure_data/Lists/LayoutsAndSamples/Attachments/105/mbsloanlevel_layout.pdf.

⁶³⁵ See Fannie Mae's Loan-Level Disclosure File available at <http://www.fanniemae.com/resources/file/mbs/pdf/filelayout-llld.pdf> and Loan Performance Data Disclosure File available at https://loanperformancedata.fanniemae.com/lppub-docs/lppub_file_layout.pdf. See also Freddie Mac's Loan-Level Disclosure requirements available at http://www.freddie.mac.com/mbs/docs/fs_llld.pdf and Single Family Loan-Level Dataset General User Guide available at http://www.freddie.mac.com/news/finance/pdf/user_guide.pdf.

⁶³⁶ See also footnote 670 and accompanying text.

⁶³⁷ See proposed Item 2(a)(11) of Schedule L. For RMBS, we are adopting a data point that indicates whether or not a broker originated or was involved in the origination of the loan as well as a data point that discloses the National Mortgage License System registration number for the company that originated the loan. These data points will allow investors to compare loans by particular originators and across originators. Investors will also be able to compare loans where a broker was used. Together, these data points will provide investors with information they need to perform due diligence and make informed investment decisions.

sales price,⁶³⁸ origination date, and first payment date⁶³⁹ data points. In addition, we are omitting some information about an obligor's bankruptcy and foreclosure history,⁶⁴⁰ although, if an obligor had experienced a past bankruptcy or foreclosure, we would expect that those events would have been considered in generating a credit score. As noted above, the final rules require disclosure of an exact credit score.

Another step that we are taking to address commenters' concerns about re-identification risk is to omit the proposed income and debt data points. While we believe that income and debt

See new Items 1(c)(24) and 1(c)(26) of Schedule AL. These data points were not proposed and are not relevant for Auto ABS.

⁶³⁸ See proposed Item 2(b)(3) of Schedule L. We are also omitting the original property valuation data points because we believe they could provide a close approximation of sales price, and thus could have raised the same re-identification concern as sales price. See also proposed Items 2(b)(5), 2(b)(6), 2(b)(7), 2(b)(8), and 2(b)(9) of Schedule L. For RMBS, we believe that certain other data points we are adopting, such as Original loan amount and Original loan-to-value, will provide investors with information they need to perform due diligence and make informed investment decisions. See new Items 1(c)(3) and 1(d)(11) of Schedule AL. For Auto ABS, we are adopting data points that capture the vehicle value, as these values are already made publicly available from sources such as the Kelly Blue Book. See new Items 3(d)(7), 3(d)(8), 4(d)(6) and 4(d)(7) of Schedule AL.

⁶³⁹ See proposed Items 1(a)(5) and 1(a)(14) of Schedule L. See also letters from ABA III, Lewtan, MBA I, and SFIG II. We believe that certain other data points we are adopting, such as Original loan maturity date, Original amortization term and Remaining term to maturity, will provide investors with information they need to perform due diligence and make informed investment decisions. See new Items 1(c)(4), 1(c)(5) and 1(g)(2) of Schedule AL. Because the same publicly available property records are not available for auto loans and leases, we are adopting data points that capture the month and year of origination and the original first payment date for Auto ABS. See new Items 3(c)(2), 3(c)(10), 4(c)(2), and 4(c)(10) of Schedule AL.

⁶⁴⁰ See proposed Items 2(c)(24) and 2(c)(25) of Schedule L and proposed Items 2(c)(1), 2(c)(2), 2(c)(3), 2(c)(4), 2(c)(5), 2(c)(6), 2(c)(7), 2(c)(8), 2(h), 2(k)(2), 2(k)(3), 2(k)(4), 2(k)(5), 2(k)(7), 2(k)(8), 2(k)(11), 2(k)(12), 2(k)(13), and 2(m)(3) of Schedule L-D. While commenters did not specifically note that these data points would pose re-identification risk, we received letters about the sensitivity of the data. See, e.g., letters from Deutsche Bank, MBA IV, and SIFMA/FSR I-dealers and sponsors. RMBS issuers will, however, be required to provide information about an asset in the pool that is subject to a foreclosure, or if the reason for non-payment by an obligor is due to bankruptcy. See new Items 1(g)(33), 1(r)(1), 1(r)(2), 1(r)(3), 1(r)(4), 1(r)(5), 1(v)(1) and 1(v)(2) of Schedule AL. These data points were not proposed and are not relevant for Auto ABS.

information would strengthen an investor's risk analysis of ABS involving consumer assets,⁶⁴¹ we are not requiring them based on concerns about the sensitive nature of this information and increased re-identification risk posed by this information.⁶⁴² As discussed in Section III.A.2.b)(1) Residential Mortgage-Backed Securities, however, we are requiring DTI ratios.⁶⁴³ These are key calculations used to assess an obligor's ability to repay the loan that, we believe, will permit investors to perform due diligence in the absence of specific debt and income data points.

We also are revising⁶⁴⁴ or removing⁶⁴⁵ certain other proposed data points to further mitigate re-identification risk concerns since the responses to these items will be made available to the public through EDGAR.⁶⁴⁶ We do not believe these proposed requirements necessarily would have increased re-identification risk alone, but we have concluded that these data points, if

⁶⁴¹ Investor members of one commenter noted that this information is useful for verifying DTI calculations. See letter from ASF I.

⁶⁴² See letters from VABSS IV, Wells Fargo III, and WPF II.

⁶⁴³ See Section III.A.2.b)(3) Automobile Loan or Lease ABS above for a discussion of the payment-to-income ratio data points that are being adopted in lieu of proposed data points that would have collected obligor or lessee income information. There were no data points proposed for Auto ABS that would have collected obligor or lessee debt information.

⁶⁴⁴ See, e.g., proposed Item 2(l)(13) Eviction start date of Schedule L-D (revised to new Item 1(s)(8) Eviction indicator of Schedule AL). Similar data points were not proposed for Auto ABS.

⁶⁴⁵ See, e.g., proposed Items 2(c)(13) Liquid/cash reserves, 2(c)(14) Number of mortgages properties, 2(c)(18) Percentage of down payment from obligor own funds, 2(c)(20) Self-employment flag, 2(c)(21) Current other monthly payment, 2(d)(6) Mortgage insurance certificate number, 2(a)(1) Non-pay reason, and 2(l)(14) Eviction end date of Schedule L-D. Similar data points were not proposed for Auto ABS.

⁶⁴⁶ These changes involved modifying the possible responses, such as removing certain responses from the coded list of possible responses. For example, in new Item 1(c)(1) Original loan purpose of Schedule AL, which was proposed as Item 2(a)(1) of Schedule L, we are removing certain possible responses from the enumerated list of codes due to privacy concerns.

adopted as proposed; could disclose sensitive obligor data without providing additional information necessary for investor due diligence.

Finally, in response to commenters' suggestions, we have obtained guidance from the CFPB on the application of the FCRA to the proposed disclosure requirements.⁶⁴⁷ In a letter issued to the Commission dated August 26, 2014, the CFPB stated that the FCRA will not apply to asset-level disclosures that exclude direct identifiers where the Commission determines that disclosure of such information is "necessary for investors to independently perform due diligence."⁶⁴⁸ Specifically, the CFPB letter confirms that (i) issuers and the Commission would not become consumer reporting agencies by obtaining and disseminating asset level information, and (ii) no violation of Section 604(f) of the FCRA⁶⁴⁹ would occur if issuers or the Commission obtain or disseminate any information that is a consumer report (such as a credit score), in each case if the Commission determines that disclosure of the information is necessary for investors to independently perform due diligence and that the information should be filed with the Commission and disclosed on EDGAR to best fulfill a Congressional mandate. As noted above, we have revised or eliminated certain asset-level data points that implicate consumer privacy concerns where we determined that doing so would not compromise investors' ability to perform

⁶⁴⁷ Commenters also raised concerns about the applicability of other federal and state privacy laws and analogous foreign laws. We do not believe the final rules are likely to implicate these other laws for a variety of reasons, including that they do not require disclosure of direct identifiers (PII) and because certain of these laws provide an exemption for the disclosure of information in order to comply with federal, state or local laws and other applicable legal requirements. More generally, we believe the changes we are adopting to help address privacy concerns should help to mitigate concerns about the applicability of other privacy laws.

⁶⁴⁸ See Section 7(c) of the Securities Act [15 U.S.C. 77g(c)].

⁶⁴⁹ 15 U.S.C. 1681b(f).

due diligence on the underlying assets. We believe the asset-level data points that we are requiring about underlying obligors for ABS involving consumers assets are necessary for investors to perform due diligence, as required by Section 7(c). After taking these steps and after careful consideration of alternative means of disseminating such information, we have determined that having the information filed with the Commission and disclosed on EDGAR is the most effective means of ensuring that investors have access to asset-level data.

As discussed above, we have taken significant steps to reduce the re-identification risk associated with providing certain asset-level data while adhering to the statutory mandate in Section 7(c) to require disclosure of such information to the extent necessary for investors to independently perform due diligence. We do recognize, however, that the final rules do not completely eliminate the risk of obligor re-identification⁶⁵⁰ and there may be costs associated with providing certain sensitive information required by the final rules. These costs may include costs to issuers of consulting with privacy experts to understand the impact of providing these disclosures. We also recognize that some issuers and investors may move to unregistered

⁶⁵⁰ In this regard we note that there is continuing debate about the ability to fully anonymize or “de-identify” a data set and whether it is possible to have any confidence that re-identification risk can be totally mitigated. See, e.g., Paul Ohm, “Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization,” 57 UCLA L. REV. 1701 (2010); Arvind Narayana and Vitaly Shmatikov, “Myths and Fallacies of ‘Personally Identifiable Information,’” 53 COMM. ACM 24, 26 n.7 (2010) (“The emergence of powerful reidentification algorithms demonstrates not just a flaw in a specific anonymization technique(s), but the fundamental inadequacy of the entire privacy protection paradigm based on ‘de-identifying’ the data.”). But see Jane Yakowitz, “Tragedy of the Data Commons,” 25 HARV. J.L. & TECH., 1 (2011) (expressing concern about the impact of reducing the availability of de-identified data for medical research purposes).

offerings, which may affect capital formation.⁶⁵¹ Alternatively, the increased costs may be passed on to the underlying obligors in the form of a higher cost to borrowers (e.g., interest rates or fees).

Re-identification risk can also increase the cost of capital due to obligor preferences. If an obligor is particularly sensitive to the possibility of re-identification, the obligor may prefer to transact with originators that offer additional methods for preserving anonymity, which could increase that obligor's cost of or access to capital. For example, if a loan agreement gives an obligor the ability to opt out of disclosure, thereby prohibiting the ability to securitize the loan where asset-level information would be disclosed, originators may pass costs on to the obligor. Originators could also bear some increased costs if, as a result of being unable to securitize the loan or sell it to the GSEs, the originator would hold the asset on its balance sheet, thus limiting its ability to redeploy capital to more productive or efficient uses. In addition, the risk of re-identification could limit an obligor's access to capital if the obligor is unable to obtain assurances, even at a higher cost, that his or her loan would not be securitized in a way that gives rise to a potential risk of re-identification. Ultimately, an obligor's sensitivity to re-identification risk could lead to a reduction in the number of loans available for securitization. This could, in turn, lead to a reduction in liquidity of ABS markets and a corresponding increase in cost of

⁶⁵¹ But see letter from Lewtan (noting that this course is less likely, because although unregistered offerings may provide for more customized data delivery where an issuer has more direct control, the issues surrounding FCRA exposure are the same as if the securitization were made through a registered offering).

capital even for those loans that are otherwise securitized through registered offerings.⁶⁵² In general, for these reasons, we believe that reducing the likelihood of obligor re-identification will reduce the impact of these potential costs of asset-level disclosure for the ABS market.

As discussed above, in considering how to modify the proposed disclosures to reduce the risk of re-identification, we considered the specific recommendations of commenters and current disclosure practices. Although we received various suggestions for reducing re-identification risk, commenters did not provide any data or analysis that quantified the likelihood of re-identification based on the proposed disclosures or their suggested approaches to addressing re-identification risk. Some commenters indicated that using less precise geographic identifiers would reduce the risk that an obligor could be re-identified.⁶⁵³ Using less precise data points for sales price and origination date would also reduce the risk of re-identification.

To help confirm the effect of requiring less precise information, we performed an analysis of various modifications to the required data points. In particular, we have estimated the likelihood of isolating a unique mortgage in a sample pool of mortgage loans by considering different levels and combinations of precision for the geographic location of the property, sales price, and origination date. Our analysis examined mortgages collected from mortgage loan servicer providers and reported in the MBSData, LLC, dataset, which includes asset-level data for most of the mortgages securitized in the private-label RMBS market during the period from

⁶⁵² See letter from SIFMA/FSR I-dealers and sponsors (noting that increased costs would ultimately be passed on to consumers, including an increase in financing costs and a decrease in credit availability).

⁶⁵³ See, e.g., letters from ABA III (recommending 2-digit zip code), CFA II (suggesting aggregation of geographic location), and Treasurer Group.

2000 to 2012.⁶⁵⁴ Categorizing loans according to their uniqueness is the first step someone could take to re-identify an obligor. Each of the 19.3 million mortgages reported during this period were sorted according to uniqueness of three loan characteristics – geographic location, sales price, and origination date – which could potentially link the mortgage to another publicly available dataset that contains obligors' identities.⁶⁵⁵ We assume that loans that have unique values for these three variables, when compared to all other loans in the MBSData dataset, have an elevated potential for obligor re-identification. We note, however, that our analysis is not an actual measure of re-identification risk. Importantly, in order to actually re-identify an obligor, a unique mortgage must also be matched with publicly available data sources, such as from local government real estate transaction ledgers and tax records that contain information on property addresses, sales prices, and origination dates.⁶⁵⁶ We have not attempted to quantify the likelihood that a unique mortgage, once isolated, can be matched with publicly available data

⁶⁵⁴ Loan-level data is available on Fannie Mae and Freddie Mac Web sites; however, we did not incorporate this data into our analysis because we believe that historically the characteristics of loans purchased and securitized by GSEs have been somewhat different from the characteristics of loans securitized through private-label RMBS. We do not expect that incorporating the GSE data would significantly reduce the likelihood of finding records with unique characteristics among properties bought with mortgages securitized through private-label RMBS.

⁶⁵⁵ Because the required asset-level disclosures do not include sales price, in our analysis, we have imputed it from the reported loan amount and LTV ratio and rounded to the nearest \$100. Although the origination date is not required to be disclosed, it can be approximated in many cases using other required data points, such as Original loan maturity date, Original amortization term and Remaining term to maturity. See new Items 1(c)(4), 1(c)(5) and 1(g)(2).

⁶⁵⁶ We have not analyzed re-identification techniques using commercially available datasets (e.g., datasets from consumer reporting agencies) because even though using such data may be more effective in re-identification, providers of such datasets usually charge a fee and impose restrictions on their usage, such as, access controls and user identity verification.

sources. Instead, we have focused our analysis on this first step of the re-identification process, which is to isolate a unique mortgage.

To provide a basis for comparison, we first considered the likelihood of identifying a unique loan using a 5-digit zip code for the property location, the exact sales price and the exact origination date. Approximately 76% of the 19.3 million loans analyzed are unique when these three characteristics are compared across all mortgages in the database. That is, these loans could be distinguished from all other loans with respect to geography, imputed sales price, and origination date, and they were originated in states for which there is no prohibition on public disclosure of the property sales price.⁶⁵⁷

We next considered the likelihood of identifying a unique loan using the required disclosures in the final rules. As discussed above, we are modifying the required geographic identifier from MSA, as proposed, to a 2-digit zip code and are requiring securitizers to report only the original amortization term, and remaining term to maturity, from which year and month of origination can be approximated, but not the precise origination or sales date.⁶⁵⁸ Based on the historical data and the same method described above of determining uniqueness, we estimate that by requiring 2-digit zip code, imputed sales price, and the month and year of origination, less than 20% of mortgages in the sample pool could be unique in their characteristics. This is also

⁶⁵⁷ Some states (or counties within states) consider the property sales value to be private and confidential information and therefore do not release these numbers publicly. These states include: Alaska, Idaho, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Montana, New Mexico, North Dakota, Texas, Utah and Wyoming. The analysis does not account for non-disclosure counties that lie within a state that allows for disclosure.

⁶⁵⁸ As discussed below, this change should not materially impact an investor's ability to price RMBS tranches, but will significantly lower the probability that a mortgage is unique in its characteristics.

significantly lower than the almost 30% likelihood of isolating a unique loan determined based on the required disclosure items in the 2010 ABS Proposal.⁶⁵⁹

These estimates, however, do not fully reflect the difficulty of actually re-identifying an underlying obligor.⁶⁶⁰ As noted above, the loan would have to be matched to a record in the relevant public database of real estate transactions. As noted, some counties within states do not release property sale values. Even in those jurisdictions that do make property sale information publicly available, matching the loans to a particular property record might be challenging to do because the jurisdiction providing the information might not offer access in a way that would make the information easily accessible or in convenient format. For example, knowing the 5-digit zip code of the unique property would not necessarily be helpful in a jurisdiction that requires a street name in order to search and view records. Hence, in some cases it may be too burdensome to find the matching loan even if that information is publicly available, particularly if such search is part of a large scale matching effort (i.e., for commercial purposes). We also note that public property databases contain, in addition to property transactions with mortgages securitized through private-label RMBS, property transactions without using borrowed funds, property transactions with mortgages that are never securitized, or property transactions with

⁶⁵⁹ As noted above, the proposal would have required a geographic identifier of MSA, exact sales price and the month and year of origination.

⁶⁶⁰ This technique is based on historical data and may not necessarily reflect future re-identification likelihoods. Also, in the future, securitizers that are conscious of privacy implications may avoid securitizing loans that have high risk of being identified (i.e., loans that are unique in their characteristics).

mortgages that are securitized through GSEs. The addition of these other transactions only compounds the burden of matching a particular loan with a particular property record.

Although the approach that we are adopting does not eliminate the possibility of obligor re-identification, we believe it strikes the appropriate balance between privacy and transparency. Some obligors may still be particularly sensitive to the possibility of re-identification and may seek originators that offer additional methods of preserving their anonymity. We do not, however, anticipate that this will have an adverse effect on the functioning of the private-label RMBS market or the cost of capital to the originators of mortgages and their obligors because of the relatively low likelihood of re-identification associated with the revised data points. Moreover, as noted above, asset-level information has been provided by issuers and third-party data providers for private-label RMBS (although not standardized), as well as by the GSEs and Ginnie Mae,⁶⁶¹ and this availability has not led to market disruption or adverse effects on cost of capital for obligors. We believe that there will be significant benefits to RMBS investors by having access to obligor-specific financial information in their evaluation of the potential default risk of the securitized assets, thus improving their ability to price registered RMBS tranches. This information also will allow investors to better understand, analyze and track the performance of RMBS, and, in turn, will allow for more accurate ongoing pricing and increase market efficiency.⁶⁶²

⁶⁶¹ See Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement.

⁶⁶² This would also apply to other asset classes where obligor-specific financial information may be disclosed, such as Auto ABS.

We acknowledge that further modification of certain data points could further reduce the risk of obligor re-identification. For example, several commenters emphasized the importance of geographic location in potentially re-identifying an underlying obligor.⁶⁶³ Based on our analysis, eliminating a geographic identifier reduces the likelihood of isolating a unique mortgage in the sample pool to less than 2%. We considered whether further modification to certain data points will reduce transparency of critical data points for ABS investors. As we discuss below, we believe that a geographic location identifier is critical to pricing RMBS and is therefore necessary for investors to perform due diligence.

To confirm our view, and the views of commenters,⁶⁶⁴ that certain data points are critical for ABS investment decisions, we analyzed the potential pricing impact of various data points on RMBS transactions. Our analysis indicates that, for RMBS, certain characteristics and loan term features, such as geographic location, are key determinants of expected performance of underlying mortgage loans as measured by the historical rate of serious delinquency (“SDQ”).⁶⁶⁵ We used a model to predict the presence or absence of SDQ within a historical dataset of private-label securitized loans.⁶⁶⁶ We found that, by a wide margin, the following four data points make

⁶⁶³ See, e.g., letters from ABA III, SIFMA/FSR 2014 I-dealers and sponsors, SFIG II, and Treasurer Group.

⁶⁶⁴ See, e.g., letters from ABA III (recommending that the Commission consider using 2-digit zip code), ASF I (supporting exact credit score), and Mass. Atty. Gen. (noting that the DTI ratio and LTV are important metrics in an investor’s assessment of risk of loss).

⁶⁶⁵ SDQ is defined as a loan having ever been 90 days late, foreclosed, or real estate owned.

⁶⁶⁶ We used a binomial logistic predictive model that is also referred to as a logit regression. Binomial logistic regression deals with situations in which the observed outcome for a dependent variable can have only two possible types (for purposes of this analysis – presence or absence of a serious delinquency). Logistic regression is used to predict the odds of being a case based on the value of the independent variables (i.e.,

the largest contribution to explaining SDQ:⁶⁶⁷ the year of origination, the LTV ratio, the geographic location of the property as measured by 2-digit zip code, and the obligor's credit score (FICO score was reported in the dataset). Our analysis shows that the year of origination provides the greatest contribution to the measure of how well these factors explain the likelihood of serious delinquency.⁶⁶⁸ LTV, geographic location of the property and FICO score provide the next greatest contribution to explaining the likelihood of serious delinquency and have a similar magnitude in overall contribution.⁶⁶⁹ Eliminating any of these three variables from the final disclosure requirements significantly and negatively affects the predictive ability of the model.

the predictors). We estimate the regression model with commonly used predictive factors identified by the industry and the academic literature, such as combined LTV ratio, credit score, and DTI ratio and analyze the effects of various loan characteristics observable at origination on the ability of a researcher to forecast serious delinquency. For more details and references, see footnote 82, the White-Bauguess Study, Section V. Logit Regression Analysis (for the description of the model) and Appendix B (for variable definitions and references to studies supporting the variables choice). The analysis is based on a sample of 2,456,548 mortgages from 2000-2009 included in the MBSData dataset that have complete information for all variables of interest, in particular, DTI information.

⁶⁶⁷ The model uses a goodness-of-fit measure (pseudo- R^2) to describe how well an SDQ can be modeled with given predictive variables. Higher R^2 represents higher predictive ability of a model in forecasting SDQ of mortgages. We consequently eliminate each individual factor from predictive regression and record its impact on the reduction in the goodness-of-fit measure. Higher reduction represents higher contribution of a factor to predictive ability of the full model. The R^2 that we find here is in line with R^2 found in academic studies that perform similar analyses. See id.

⁶⁶⁸ We believe this primarily is due to the fact that the year of loan origination served as a proxy for unobservable factors like the quality of underwriting standards during the years immediately preceding the financial crisis when serious delinquency rate was higher, and a large portion of the loans in the sample were originated during that time. The importance of the origination year is smaller for sub-samples that do not include loans originated in 2006-2007.

⁶⁶⁹ Origination year contributed 5% to the goodness-of-fit measure. LTV, 2-digit zip code, and the obligor's credit score contributed about 1.5% each. All other 12 data points we considered made a comparatively smaller contribution to the predictive ability of the model (1.5% combined), but are still important in predicting SDQ. These 12 data points include: interest rate on the loan, DTI, indicators whether a loan had full documentation, had prepayment penalty provisions, was interest-only, had a balloon payment, had negative amortization, was a first lien, was long term, had a teaser rate, had private mortgage insurance, and whether the property was owner-occupied.

On the other hand, in the instances we studied, providing a geographic location that represents a smaller area or the exact origination date only marginally improves the model's predictive ability,⁶⁷⁰ but it could significantly increase the possibility of obligor re-identification.

Another approach we considered, although not specifically suggested by commenters, was an approach that rounds the loan amount, other loan balance-related data points, and monthly performance data points to further hinder potential obligor re-identification.⁶⁷¹ The rounding of loan amount would result in an imputed sales price that may be sufficiently different from the true sales price so as to lessen the possibility of a match to other publicly accessible real estate datasets. Rounding the loan balance to the nearest \$1,000 results in the reduction of the likelihood of isolating a unique mortgage in the MBSData dataset to 11%. It would, however, come at a loss of precision in the cash flow variables that we believe is necessary for investors.⁶⁷²

As noted above, such precision is key to investors' ability to analyze and track the performance of various parties involved in RMBS transactions.

⁶⁷⁰ The analysis indicated that the goodness-of-fit of the complete model (i.e., the model that includes all predictive variables considered in this study) would increase from 15.5% to 15.7% if an MSA is used instead of a 2-digit zip code, and to 16.0% if a 3-digit zip code is used instead of a 2-digit zip code.

⁶⁷¹ To be effective in reducing the probability of isolating a loan that is unique with respect to location, imputed sales price, and origination date, rounding loan amount (and other loan balance related variables like most recent appraised value, sales price, paid-in-full amount, etc.) to the nearest \$1,000 (\$10,000) must be accompanied by rounding monthly payment performance related variables approximately to the nearest \$10 (\$100).

⁶⁷² See letter from Prudential III (noting that loan-level data (e.g., current asset balance, next interest rate, current delinquency status, remaining term to maturity) will allow investors to better estimate the timing of the principal and interest cash flows of the collateral pool, which will in turn allow investors to better estimate the cash flow of the securitization and be more confident in their risk/reward consideration of the security).

We considered several alternative approaches to disseminating asset-level data as potential means to address privacy concerns, including the Web site approach.⁶⁷³ Most commenters were generally opposed to the Web site approach as the appropriate means to address privacy concerns.⁶⁷⁴ For example, commenters raised concerns about the difficulty in determining who would be a potential investor and thus should have access to asset-level data;⁶⁷⁵ the liability for failing to disclose all material information to investors in the event a potential investor was denied access to asset-level data;⁶⁷⁶ the need for guidance on what controls are necessary to address privacy;⁶⁷⁷ and access to the data by other market participants.⁶⁷⁸ Given these concerns and our belief that it is critically important that investors receive access to asset-level information, we are not adopting the Web site approach. We believe the final asset-level requirements, which have been modified from the proposal to address privacy concerns, provide

⁶⁷³ See the 2014 Re-Opening Release and the 2014 Staff Memorandum.

⁶⁷⁴ See letters from ABA III, AFSA II, Capital One II, Deutsche Bank, MBA IV (with respect to RMBS), SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

⁶⁷⁵ See, e.g., letters from ABA III (noting concern that without guidance as to who is a potential investor, issuers may apply their own bias filters to public offerings, such as limiting public offerings to only institutional investors), CCMR, MBA IV, and SFIG II.

⁶⁷⁶ For example, issuers have expressed concern about possible claims for failure to disclose material information by a potential investor who is denied access to the Web site or refuses to agree to the terms of access but nonetheless purchases the security. See, e.g., letters from ABA III, CCMR, ELFA II, SIFMA/FSR II-dealers and sponsors, and SFIG II.

⁶⁷⁷ Some commenters noted that in order to determine whether a user should be granted access it would need to screen parties, conduct reviews of these parties' data protection controls, and obtain appropriate disclosure agreements, among other controls. See letters from MBA IV (noting, for example, that issuers would be faced with the burden of determining how to control the spread of the information once a credentialed entity accesses the Web site), SIFMA/FSR I-dealers and sponsors (noting that issuers would generally not be equipped to verify any prospective user's identity or credentials or be able to enforce compliance with the terms of access), SFIG II (noting that investors do not want the liability risk that may be imposed with the access restrictions), and Wells Fargo III.

⁶⁷⁸ See, e.g., letters from ABA III, Moody's II, and R&R.

investors with information they need to perform due diligence and make informed investment decisions, and therefore, we are requiring the asset-level information to be filed on EDGAR where it will be readily available to and accessible by investors. For similar reasons, we do not think it would be appropriate to restrict access to such information on EDGAR.

Commenters suggested a central repository or “aggregated data warehouse” to house the asset-level data because such an approach would simplify enforcement of access policies, ensure consistent data formats and lower incentives to exclude certain users.⁶⁷⁹ Similarly, another commenter suggested that issuers disclose all asset-level data to a consumer reporting agency administered repository, along with a unique identification number for each asset, which would allow investors to access all the asset-level data for these assets.⁶⁸⁰ Another commenter also suggested that credit bureaus, instead of issuers, should provide credit-related information.⁶⁸¹

While these suggestions have the potential to address privacy concerns, as noted by one commenter, they are not currently in use, would require further development, and would depend

⁶⁷⁹ See letters from AFR (suggesting either a single data warehouse managed by a federal agency (e.g., the Commission, the Federal Reserve (similar to the Bank of England model), or the Office of Financial Research) or a non-profit data warehouse owned and managed by private sector entities under Commission oversight (similar to the European Data Warehouse) and VABSS II (recommending, as one option to address privacy concerns, to establish a central “registration system” managed by the Commission or a third party that would permit access to sensitive asset-level data only to persons who had established their identities as investors, rating agencies, data providers, investment banks or other permitted categories of users).

⁶⁸⁰ See letter from SIFMA/FSR II-dealers and sponsors (noting that this approach would apply to all ABS asset classes and also noting certain developmental challenges, such as identifying a consumer reporting agency willing to act as a repository, and application of FCRA). See also SFIG II (stating that issuers should have the option to use third party agents (which may be a consumer reporting agency or a central Web site data aggregator) to make the data available and control access, but also noting that such an approach still raises privacy law concerns and concerns about who pays for the third-party service).

⁶⁸¹ See letter from ABA III.

upon the willing participation of certain third parties in order to function as a viable means of disseminating asset-level data.⁶⁸²

4. Requirements under Section 7(c) of the Securities Act

As we note elsewhere, subsequent to the 2010 ABS Proposing Release, Congress adopted the Dodd-Frank Act. Section 942(b) of the Dodd-Frank Act added Section 7(c) to the Securities Act which requires the Commission to adopt regulations requiring an issuer of ABS to disclose, for each tranche or class of security, information regarding the assets backing that security. It specifies, in part, that in adopting regulations, the Commission shall require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence including – data having unique identifiers relating to loan brokers or originators; the nature and extent of the compensation of the broker or originator of the assets backing the security; and the amount of risk retention by the originator and the securitizer of such assets.⁶⁸³

In the 2011 ABS Re-Proposing Release, we requested comment as to whether our 2010 ABS Proposals implemented Section 7(c) effectively and whether any changes or additions to the proposals would better implement Section 7(c). We discuss below the comments we received in response to the requests for comment regarding the requirements of Section 7(c).

⁶⁸² See letter from SIFMA/FSR II-dealers and sponsors.

⁶⁸³ See Section 7(c)(2) of the Securities Act, as added by Section 942(b) of the Dodd-Frank Act.

a) Section 7(c)(2)(B) -- Data Necessary for Investor Due Diligence

Section 7(c)(2)(B) states, in part, that we require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary to independently perform due diligence. We requested comment in the 2011 ABS Re-Proposing Release whether the 2010 ABS Proposal implements Section 7(c) effectively. In response, two investors supported requiring asset-level disclosures for all asset types, except for credit cards.⁶⁸⁴ The investor membership of one trade association suggested that the disclosure of relevant asset-level data is necessary for well-functioning markets⁶⁸⁵ and another commenter suggested that the 2010 ABS proposals would successfully implement Section 7(c) of the Securities Act.⁶⁸⁶ Two other commenters, however, questioned whether borrower data proposed in the 2010 ABS proposals was “necessary” for investors to perform their own due-diligence.⁶⁸⁷ These commenters, however, did not specifically identify the asset-level disclosures that are necessary for investors to independently perform due diligence.

We are adopting asset-level requirements for RMBS, CMBS, Auto ABS, debt security ABS, and resecuritizations. We prioritized these asset classes for various reasons that we discuss above.⁶⁸⁸ Our decision to adopt these requirements is based on our belief that investors should

⁶⁸⁴ See letters from MetLife II and Prudential II.

⁶⁸⁵ See letter from SIFMA II-investors (stating that well-functioning markets require the disclosure of as much relevant asset-level data as is reasonably available).

⁶⁸⁶ See letter from Chris Barnard dated Aug. 22, 2011 submitted in response to the 2011 ABS Re-Proposing Release (“C. Barnard”).

⁶⁸⁷ See letters from ABA III and MBA IV.

⁶⁸⁸ See Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement.

have access to robust information concerning the pool assets that provides them the ability to independently perform due diligence. We continue to consider the appropriate disclosures for other asset classes. We believe the data points we are adopting fulfill, for those asset types, the Section 7(c) requirement that we adopt asset-level disclosures that are necessary for investors to independently perform due diligence. To the extent issuers believe additional data is needed, we encourage them to provide such additional disclosures in an Asset Related Document.⁶⁸⁹

b) Section 7(c)(2)(B)(i) – Unique Identifiers Relating to Loan Brokers and Originators

Section 7(c)(2)(B)(i) requires the Commission to require disclosure of asset-level or loan-level data, including, but not limited to, data having unique identifiers relating to loan brokers or originators if such data are necessary for investors to independently perform due diligence. In the 2010 ABS Proposing Release, we proposed to require issuers to provide the originator's name for all asset types and, if the asset is a residential mortgage, the MERS number⁶⁹⁰ for the originator, if available. We also proposed requiring RMBS issuers to provide the National Mortgage License System registration number required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, otherwise known as the NMLS number, for the loan originators and company that originated the loan.⁶⁹¹

⁶⁸⁹ See Section III.B.4 Asset Related Documents for further discussion on how to provide such additional disclosures.

⁶⁹⁰ MERS has developed a unique numbering system and reporting packages to capture and report data at different times during the life of the underlying residential or commercial loan.

⁶⁹¹ The NMLS numbers for the originator and the company refer to the individual and company taking the loan application, which would include loan brokers and the company that the broker works for. We noted in the

In the 2011 ABS Re-proposing Release, we stated our belief that the proposal to require NMLS numbers would implement the requirements of Section 7(c) with respect to mortgages by requiring a numerical identifier for a loan broker.⁶⁹² We requested comment on whether unique identifiers for loan brokers and/or originators were necessary to permit investors to independently perform due diligence for asset classes other than RMBS or CMBS and, if so, whether there is a unique system of identifiers for brokers and originators for other asset classes.⁶⁹³ We did not receive any comments suggesting this requirement would not satisfy the requirements of Section 7(c), although one commenter opposed requiring an NMLS identifier (for RMBS) because disclosure should focus on the collateral and its performance and an NMLS identifier does not provide investors with information they can use to value the assets.⁶⁹⁴

For RMBS, we are adopting the requirement that issuers provide for ABS backed by residential mortgages the NMLS number of the loan originator company. As noted above, we are not adopting the requirement that issuers provide a unique broker identifier, (i.e., the NMLS number of the specific loan originator) because we are concerned this disclosure may increase re-identification risk.⁶⁹⁵ Even though we are not requiring disclosure of the NMLS loan originator number, we believe disclosure of the NMLS number of the loan originator company satisfies

2011 ABS Re-Proposing Release that we were unaware of any other unique identifying systems used for the purpose of identifying brokers or originators of other asset types, across all asset types or within an asset type.

⁶⁹² See the 2011 ABS Re-Proposing Release at 47965-66.

⁶⁹³ See the 2011 ABS Re-Proposing Release at 47966.

⁶⁹⁴ See letter from MBA III.

⁶⁹⁵ See Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

Section 7(c)(2)(B)(i) regarding the asset-level disclosure of unique identifiers for loan brokers or originators. We believe this disclosure should, over time, allow investors to compare loans originated by particular loan originator companies and determine whether there is any correlation to the performance of the loan. This should facilitate independent investor due diligence with respect to the loan pools underlying RMBS.

We are unaware of unique identifiers for loan originators and, if applicable, brokers within the commercial mortgage, auto loan and lease, and debt security markets. We note the ongoing development of certain identifiers, but we are uncertain, at this time, especially due to the lack of response to our request for comment, whether a unique identifier for loan originators for these asset classes is necessary for investor due diligence. Therefore, at this time, we are not adopting unique identifiers for loan originators or brokers within the CMBS, Auto ABS or debt security markets.

c) Section 7(c)(2)(B)(ii) – Broker Compensations and Section 7(c)(2)(B)(iii) – Risk Retention by Originator and the Securitizer of the Assets

In the 2010 ABS Proposing Release, we did not propose requiring asset-level disclosures of broker compensation or risk retention held by loan originators or securitizers. Section 942(b) of the Dodd-Frank Act, however, amended Section 7(c) of the Securities Act to require disclosure on an asset-level or loan-level basis with respect to the nature and extent of the compensation of the broker or originator of the assets backing the security and the amount of risk retention by the originator and the sponsor of such assets if these disclosures are necessary for investor due diligence. In the 2011 ABS Re-Proposing Release, we requested comment on whether these disclosures were necessary for investor due diligence.

We received few comments on these portions of Section 7(c) in response to our requests for comments. One commenter stated that disclosure of broker compensation was appropriate to require because it “is necessary for evaluating how the compensation structure associated with an asset – including possible conflicts of interest – might affect its quality.”⁶⁹⁶ The same commenter believed that asset-level or loan-level disclosure of risk retention held by an originator or sponsor “would undoubtedly be of value to investors as they perform due diligence and assess the quality of the offering.”⁶⁹⁷ This commenter stated that we must require asset-level risk retention disclosure because of the “many forms of risk retention that have been proposed in accordance with Section 941(b) of the Dodd-Frank Act, including vertical, horizontal, and other configurations” and because “[e]ach of those forms of risk retention presents a different risk profile, depending on the specific underlying assets that are subject to the risk retention.”⁶⁹⁸

A CMBS issuer and a trade association did not believe that broker compensation disclosure in the prospectus would be useful to investors in performing due diligence on the assets in the pool.⁶⁹⁹ The CMBS issuer stated that the general due diligence focus for CMBS was whether the income-producing potential of the underlying commercial property was sufficient to service the debt that it secures and broker compensation does not assist that

⁶⁹⁶ See letter from Better Markets.

⁶⁹⁷ Id.

⁶⁹⁸ Id.

⁶⁹⁹ See letters from MBA III and Wells Fargo & Co. dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (“Wells Fargo II”).

analysis.⁷⁰⁰ Another trade association stated that it did not support disclosure of asset-level risk retention disclosures because its “members do not believe this would add any value in the CMBS industry.”⁷⁰¹

We did not receive any comments from investors suggesting that disclosure of broker compensation is necessary for their due diligence. While the disclosure of broker compensation on an asset-level basis may provide some value to investors in assessing possible conflicts of interest, we are not persuaded at this time that such information is necessary for investors to independently conduct due diligence.

With respect to asset-level risk retention, we are not persuaded at this time that additional requirements relating to risk retention, on an asset-level basis, are needed for investors to independently conduct due diligence. A sponsor, however, will be required to provide information, on an aggregate basis, about its retained interest in a securitization transaction. As explained below, we are adopting amendments to Items 1104, 1108, and 1110 of Regulation AB that will require disclosure regarding the sponsor’s, a servicer’s, or a 20% originator’s interest retained in the transaction, including the amount and nature of that interest.⁷⁰² The disclosure would be required for both shelf and other offerings. We note the recent re-proposal of the credit risk retention rules, issued jointly by the Commission and other agencies, implementing Section

⁷⁰⁰ See letter from Wells Fargo II.

⁷⁰¹ See letter from CRE Finance Council dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (“CREFC II”).

⁷⁰² See Items 1104, 1108 and 1110 of Regulation AB [17 CFR 229.1104, 17 CFR 229.1108 and 17 CFR 229.1110].

941 of the Dodd-Frank Act.⁷⁰³ When adopted, we will review the final credit risk retention rules to determine whether additional asset-level or other disclosure requirements, if any, are appropriate. The asset-level requirements we are adopting should provide investors with transparency about the quality of the assets in a securitization.

B. Asset-Level Filing Requirements

1. The Timing of the Asset-Level Disclosure Requirements

This section, Section III.B.1, is divided into two parts covering when asset-level information must be provided. Section III.B.1.a discusses when asset-level disclosures are required at the time of the offering. Section III.B.1.b discusses the frequency with which the asset-level disclosures are required on an ongoing basis. Section III.B.2 discusses the scope of asset-level data required at the time of the offering and on an ongoing basis.

a) Timing of Offering Disclosures

(1) Proposed Rule

In the 2010 ABS Proposing Release, we proposed to require asset-level information of asset pool characteristics at the following times during the offering process:

- At the time the preliminary prospectus is filed.
- At the time the final prospectus is filed.
- With an Item 6.05 Form 8-K if the requirements of Item 6.05 were triggered.⁷⁰⁴

⁷⁰³ See the 2013 Risk Retention Re-Proposing Release.

⁷⁰⁴ Under the existing Item 6.05 requirement, if any material pool characteristic of the actual asset pool at the time of issuance of the securities differs by five percent or more (other than as a result of the pool assets converting to cash in accordance with their terms) from the description of the asset pool in the prospectus

(2) Comments on Proposed Rule

Only one commenter responded to our proposal that the asset-level disclosures be required at the time of the offering. This commenter stated the proposal seemed to cover the period of offering sufficiently.⁷⁰⁵

(3) Final Rule and Economic Analysis of the Final Rule

Under the final rule, as proposed, those issuers that are required to provide asset-level data must provide all of the required asset-level disclosures in a preliminary prospectus and the final prospectus. Requiring that asset-level disclosures be filed by the same time a preliminary prospectus is filed will provide investors more time to analyze the asset-level data in advance of an investment decision. We acknowledge that every time asset-level disclosures are filed issuers likely will incur filings costs and costs to verify the data. We believe the costs incurred to provide this information are justified in order to provide investors access to relevant data about the assets underlying the particular ABS offering in advance of their investment decision. In addition, we believe providing investors time to analyze the asset-level data may result in better pricing and therefore may improve allocative efficiency and facilitate capital formation. Compliance costs are minimized, to some extent, because if there has been no change to the

filed for the offering pursuant to Securities Act Rule 424, the issuer must provide certain disclosures regarding the actual asset pool, such as that required by Items 1111 and 1112 of Regulation AB. Under a proposed revision to Item 6.05 of Form 8-K, we proposed that a new Schedule L be filed if assets are added to the pool during the reporting period, either through prefunding periods, revolving periods or substitution, and the triggers of Item 6.05 are met. See footnote 235 of the 2010 ABS Proposing Release.

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See letter from MBA I (stating that if the Commission requires a Schedule L for CMBS, then they do not recommend the inclusion of Schedule L data at other times as the proposal seems to cover the period of offering sufficiently).

asset-level information provided with the preliminary prospectus, then under current requirements, this information can be incorporated by reference into the final prospectus. This eliminates the costs associated with re-filing the information.

Under the proposal, an issuer would have been required to provide updated asset-level disclosures about the pool composition, including characteristics of new assets added to the pool, if an Item 6.05 Form 8-K was triggered.⁷⁰⁶ Under the final rules, asset-level information about the actual pool composition is required with each Form 10-D. Therefore, we do not believe that issuers should also incur the cost to provide asset-level information if an Item 6.05 is triggered.

b) Timing of Periodic Disclosures

(1) Proposed Rule

We also proposed in the 2010 ABS Proposing Release to require ongoing asset-level disclosures. Under the proposal, asset-level disclosures would be required at the time of each Form 10-D, which under current requirements is within 15 days after each required distribution date on the ABS.

(2) Comments on Proposed Rule

With respect to when and how frequently the ongoing asset-level disclosures should be provided, comments varied. One commenter recommended that the required disclosures be provided on the distribution date rather than 15 days thereafter.⁷⁰⁷ Some commenters noted that

⁷⁰⁶ See footnote 235 of the 2010 ABS Proposing Release.

⁷⁰⁷ See letter from MetLife I.

industry standards for CMBS make ongoing disclosures available earlier than when the proposal would require them.⁷⁰⁸

With respect to how frequently the ongoing asset-level disclosures should be provided, comments varied. For instance, a few commenters suggested we require disclosure on the day of an “observable event,” or promptly thereafter.⁷⁰⁹ Alternatively, one commenter suggested requiring less asset-level data each month or allowing issuers to provide the data annually or quarterly.⁷¹⁰ Other commenters stated that the asset-level disclosures should not be required on a daily basis or on a timeframe that occurs less than monthly.⁷¹¹ Relatedly, one commenter stated that the final rule should include an instruction clarifying that the ongoing asset-level information reported for any particular reporting period may be reporting information from a prior reporting period due to delays that can occur between the time when asset-level information is received and such information is ready to be reported.⁷¹²

⁷⁰⁸ See letters from BoA I, MBA I, MBA IV, and Wells Fargo I (referring to the CREFC IRP making disclosures available 15 days earlier than what the proposal would require).

⁷⁰⁹ See letters from TYI and CoStar (both defining “observable events” as any of the following: 1) payment (and the amount thereof) by the obligor on such loan or receivable; 2) failure by the obligor to make payment in full on such loan or receivable on the due date for such payment; 3) amendment or other modification with respect to such loan or receivable; or 4) the billing and collecting party becomes aware that such obligor has become subject to a bankruptcy or insolvency proceeding).

⁷¹⁰ See letter from AFSA I (suggesting that monthly reports are cumbersome and the data does not change that often).

⁷¹¹ See letters from ABA I (suggesting that it would be burdensome or impossible to provide intra-month updates because of system limitations that would prevent more frequent data collection and that data is only comparable if consistently collected at the same point in time) and Wells Fargo I (suggesting that, for RMBS and CMBS, requiring ongoing disclosures on a daily basis or less than monthly is inappropriate because the marginal benefit to investors would not justify the costs).

⁷¹² See letter from Wells Fargo I (stating that CMBS transactions often involve multiple loans with different financial reporting dates, and the information has to be reviewed by the appropriate parties, including the

(3) Final Rule and Economic Analysis of the Final Rule

The final rule requires, as proposed, that issuers provide the asset-level disclosures at the time of each Form 10-D. As discussed, however, in Section III.B.2 the scope of information required with each Form 10-D has changed to also include the same set of data points that were required in the prospectus. We are not persuaded by commenters' suggestions that the ongoing asset-level disclosures be provided quarterly, annually or monthly, because reporting at these times may be outside the time when such disclosures are normally collected. The requirement to file a Form 10-D is tied to the distribution date on the ABS, as specified in the governing documents for the securities. In effect, tying the asset-level disclosures to each Form 10-D filing aligns the frequency of the disclosures to the payment cycle (when data about the collections and distributions is captured) which should minimize the burdens and costs to issuers of collecting such information. For investors, receiving asset-level data tied to the payment cycle should allow them to conduct their own valuation and risk analysis of each asset in the pool at periods close in time to when the data is captured and other distribution information is already being reported. This should allow investors to understand, on an ongoing basis for the life of the investment, how the performance of any particular asset is affecting pool performance.

We also believe that only requiring asset-level disclosures on a quarterly or monthly basis may not provide investors with timely access to data about the performance of pool assets because it ties the reporting of asset-level disclosures to a timeframe that may be outside the

servicer, and normalized before it is provided to the filer, which can result in substantial delays between the time information is received and is reported on Form 10-D).

payment cycle when the data is normally captured, which may increase costs or inhibit investors' ability to make timely and informed ongoing investment decisions. For instance, if asset-level reporting was required monthly, but the payment cycle occurred every six months, then requiring a filing on a monthly basis may unnecessarily increase costs without a corresponding benefit. If reporting was required on a quarterly basis, but the payment cycle was monthly, then in instances where the performance of pool assets deteriorates or the pool assets change, investors would not receive timely updates about such events. This may impact their ability to spot developing trends, thus limiting their ability to make informed ongoing investment decisions with respect to the ABS.

We are also not persuaded that we should require reporting any time an "observable event" occurs with respect to a single asset because we do not believe that the benefits to investors of such a requirement would justify the costs to issuers of capturing and reporting data in a timeframe that falls outside when data is typically captured and reported. Reporting on an observable event basis could result in the issuer constantly updating the data. As noted above, we believe providing investors access to timely and relevant asset-level disclosures and minimizing costs to issuers is best achieved by requiring asset-level disclosures be provided with each Form 10-D, which means the disclosures will be provided in a timeframe that is in line with the payment cycle and when the data is typically captured.

The final rule also requires that the asset-level disclosures be provided for each asset that is in the pool at any point in time during the reporting period. Therefore, if a substitution occurred during the reporting period, then asset-level disclosures are required for both the loan added and the loan removed during the reporting period in which the change occurred.

Providing investors with disclosure about assets that are added and removed will allow investors to understand the actual composition of the asset pool over the life of a security. This will benefit investors by allowing them to assess on an ongoing basis the current risk of the collateral pool and to compare the characteristics of the assets involved in a substitution. We recognize that this benefit to investors will result in increased reporting costs to sponsors and ABS issuers.

A commenter suggested the final rule include an instruction clarifying that the information reported for any particular reporting period may be information from a prior reporting period due to delays that can occur between the time when asset-level information is received and such information is ready to be reported.⁷¹³ We are not persuaded that this is a significant problem for issuers; therefore the final rule does not include such an instruction. The transaction agreements specify a distribution date to investors that is generally sometime after the end of a reporting period so that the amounts of a distribution may be calculated so that reports may be prepared. Consistent with current requirements, the Form 10-D is required to be filed 15 days after each required distribution date on the ABS and accordingly, because the asset-level disclosures are included in the Form 10-D disclosure requirements, they are due at the same time. Based on current market practice, the amount of time between the end of a reporting period and filing of a Form 10-D may be four weeks or more. Therefore, we believe aligning the timing of filing the asset-level disclosure with current Form 10-D reporting requirements will not

⁷¹³ See letter from Wells Fargo I.

be costly and will provide a sufficient period of time for the appropriate parties to review the information before filing.

2. The Scope of New Schedule AL

Section III.B.1 discussed when asset-level disclosures are required at the time of offering and on an ongoing basis. This section discusses the scope of those required asset-level disclosures required at the time of the offering and on an ongoing basis.

a) Proposed Rule

(1) Offering Disclosures

As noted above, in the 2010 ABS Proposing Release, we proposed to add the prospectus disclosure requirements in new Item 1111(h) and new Schedule L to Regulation AB. We also proposed data points related to each asset. Proposed Schedule L focused, in general, on providing investors asset-level data about the credit quality of the obligor, the collateral related to each asset and the cash flows related to a particular asset, such as the terms, expected payment amounts, indices and whether and how payment terms change over time. Schedule L contained some data points capturing some loan performance data.⁷¹⁴ As noted above, proposed Schedule L would have been provided at the time of the preliminary prospectus. We also proposed that an updated Schedule L be provided with the final prospectus.⁷¹⁵ Finally, we proposed that, if issuers are required to report changes to the pool under Item 6.05 of Form 8-K, then an updated

⁷¹⁴ See, e.g., proposed Items 1(b)(5) and 1(b)(6) of Schedule L.

⁷¹⁵ See proposed Item 1125 of Regulation AB and the 2010 ABS Proposing Release at 23356.

Schedule L would be required.⁷¹⁶ We also requested comment on whether Schedule L data should be required at any other time.⁷¹⁷

Under our proposed revisions to Item 6.05 of Form 8-K, we proposed that a new Schedule L be filed if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities differs by 1% or more from the description of the asset pool in the prospectus.⁷¹⁸ Based on comments received, it seemed that it may not be clear that an Item 6.05 Form 8-K would be required when prefunding or revolving assets increased or changed the pool by 1% or more, although that was the intent of the proposal. Therefore, in the 2011 ABS Re-Proposing Release, we requested additional comment about whether we should clarify that a new Schedule L would be required with an Item 6.05 Form 8-K when assets are added to the pool after the issuance of the securities either through prefunding periods, revolving periods or substitution and the triggers in Item 6.05 are met.⁷¹⁹ The Schedule L provided with an Item 6.05 Form 8-K would provide investors with the current pool composition including data

⁷¹⁶ In footnote 235 of the 2010 ABS Proposing Release we stated that if a new asset is added to the pool during the reporting period, an issuer would be required to provide the asset-level information for each additional asset pursuant to proposed revisions to both Item 1111 of Regulation AB and Item 6.05 of Form 8-K. See the 2010 ABS Proposing Release at 23356.

⁷¹⁷ See the 2010 ABS Proposing Release at 23356.

⁷¹⁸ See the 2010 ABS Proposing Release at 23392. As proposed, if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities differs by 1% or more than the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424, an issuer would be required to file an Item 6.05 Form 8-K and provide the disclosures required under Item 1111 and Item 1112 of Regulation AB. Under proposed Item 1111(h) of Regulation AB issuers would be required to provide a Schedule L. In addition, the item, as proposed to be revised, also would require a description of the changes that were made to the asset pool, including the number of assets substituted or added to the asset pool.

⁷¹⁹ See the 2011 ABS Re-Proposing Release at 47970.

related to the cash flows related to a particular asset, data that allows for better prepayment analysis or credit analysis and data about the property. We also requested comment on whether the updated Schedule L should include all assets in the pool and whether the Schedule L should be an exhibit to a Form 8-K or to a Form 10-D.⁷²⁰

(2) Periodic Disclosures

In the 2010 ABS Proposing Release, we also proposed ongoing disclosure requirements in Item 1121(d) and Schedule L-D. Proposed Schedule L-D would require, in general, disclosures corresponding to payments received during the payment cycle, as well as amounts past due and the servicer's efforts during the payment cycle to collect past due amounts. Proposed Item 1121(d) and Schedule L-D disclosure would be provided at the time of each Form 10-D. We also requested comment in the 2010 ABS Proposing Release about whether Schedule L-D data should be provided at other times.⁷²¹

b) Comments on Proposed Rule

We received limited response to the request for comment on whether Schedule L and Schedule L-D data should be provided at any other time. Commenters generally indicated that the disclosures enumerated in Schedule L and Schedule L-D may be appropriate at other times than proposed. For instance, one investor stated that the same disclosures for all ABS sectors

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Id.

⁷²¹

See the 2010 ABS Proposing Release at 23368.

(other than CMBS) should be required for offering documents and ongoing reports.⁷²² The investor recognized that certain data will be static, while other data will change from month to month. Another investor stated that for transactions involving a prefunding period or revolving period, a new Schedule L should be filed monthly when new collateral is added.⁷²³

In response to the questions asked in the 2011 ABS Re-Proposing Release about clarifying that a new Schedule L would be required with an Item 6.05 Form 8-K, an investor reiterated its earlier position that issuers should file a Schedule L at issuance and each month new assets are added to the collateral pool.⁷²⁴ The investor added that this would allow investors to evaluate the changing nature of the risk layering introduced by the new assets and it would allow investors to confirm that the quality of the newly added collateral meets the expected origination practices of the issuer.⁷²⁵

One commenter noted that current rules require that updated information about the characteristics of the collateral in the pool be provided with the Form 10-D, rather than in a Form 8-K.⁷²⁶ The commenter, however, also believed requiring an updated Schedule L for assets

⁷²² See letter from MetLife I (suggesting that the same disclosure be required for offering documents and ongoing reports, but that for CMBS the loan originator and the loan servicer are not affiliated and therefore, the same requirement may be impractical for CMBS).

⁷²³ See letter from Prudential I (opposing additions to the collateral pool after the filing of the final prospectus except for substitutions for defaulted assets after closing).

⁷²⁴ See letter from Prudential II.

⁷²⁵ See letter from Prudential II (also suggesting that the newly originated collateral should also appear on Schedule L-D, "so investors can efficiently assess how the new assets influence the risk profile of the overall collateral pool").

⁷²⁶ See letter from VABSS II (noting that existing Item 1121(b) of Regulation AB requires disclosure for changes in pool composition during revolving periods and prefunding periods, and Item 1121(b) states that the information is to be provided in distribution reports on Form 10-D, rather than in a Form 8-K).

added after the measurement date for revolving asset master trusts is inappropriate because the asset composition of these trusts changes on a daily basis during its revolving period and, therefore, an issuer would be filing both a Schedule L and Schedule L-D each month.⁷²⁷ Another commenter suggested that a new Schedule L should not be required when assets are added to the pool after issuance, either through prefunding periods, revolving periods or substitution unless the triggers under Item 6.05 of Form 8-K are met. If the 5% threshold under Item 6.05 was met, then the commenter asserted filing the Schedule L with the Form 10-D would be more efficient.⁷²⁸

c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting a rule, based on a commenter's suggestion that the same asset-level disclosures be provided, if applicable, at the time of the offering and on an ongoing basis. Therefore, we have condensed information previously proposed to be provided in either Schedule L or Schedule L-D into a single schedule, titled Schedule AL. Schedule AL in new Item 1125 of Regulation AB enumerates all of the asset-level disclosures to be provided, if applicable, about the assets in the pool at securitization and on an ongoing basis. The asset-level disclosures apply to each asset in the pool during the reporting period covered by Schedule AL.⁷²⁹

⁷²⁷ See letter from VABSS III.

⁷²⁸ See letter from Sallie Mae II.

⁷²⁹ See Item 1111(h)(7) of Regulation AB [17 CFR 229.1111].

We believe aggregating Schedule L and Schedule L-D into one unified schedule simplifies the new rules to the benefit of both issuers and investors. For investors, we believe a unified schedule will make it easier to understand the actual pool composition and the performance of the asset pool both at issuance and on an ongoing basis. We recognize that, in certain circumstances, the pool composition may continue to change even after the final prospectus is filed. As a result, the asset-level information provided with the final prospectus may not reflect the pool composition at closing.⁷³⁰ On an ongoing basis, the composition of the asset pool may change due to prefunding or revolving periods, or substitution. Under the proposal, if the assets in the pool changed after the filing of the final prospectus, then investors would have only received updated disclosures about the characteristics of the current asset pool, if an Item 6.05 of Form 8-K was triggered. Some assets could be added or removed from the pool without investors receiving updated disclosures about the changes to the composition and characteristics of the asset pool. As a result, the assets identified in the most recent Schedule L-D would not exactly match the assets identified in the last Schedule L that was filed.

Requiring that the asset-level information provided with the Form 10-D include information about the characteristics of each asset will make it easier to understand the actual pool composition at any point in time and, in particular, when the asset composition has changed

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The requirement to file Schedule AL data with the final prospectus does not impact the analysis regarding the timing and adequacy of information conveyed to the investor at the time the investment decision is made. Under Securities Act Rule 159, information conveyed after the time of the contract of sale (e.g., a final prospectus) is not taken into account in evaluating the adequacy of information conveyed to the investor at the time the investment decision was made. Therefore, registrants should be mindful of their obligations under Securities Act Rule 159.

through additions, substitutions or removal of assets.⁷³¹ This requirement will also make it easier to compare the characteristics of the current asset pool with the pool characteristics for a prior period or date. As a result, we believe investors will be able to better assess any potential risk layering introduced by changes to the composition of the asset pool and confirm that the quality of the newly added collateral meets expected origination practices.

Another benefit is that investors at the time of the offering will receive a more complete picture of any seasoned assets in the ABS pool, including the current performance of these assets. As we noted in the 2010 ABS Proposing Release, proposed Schedule L-D focused on whether an obligor is making payments as scheduled, the efforts by the servicer to collect amounts past due, and the losses that may pass on to investors.⁷³² We believe these disclosures, if made at the time of the offering, will also assist an investor in its investment analysis, especially with respect to asset pools involving seasoned assets.

We recognize that the one schedule format may benefit issuers, but it may also result in some increased compliance costs. We believe that it may be easier to revise, amend and file one schedule than two separate schedules. Also, as discussed above, because we are not adopting the proposed requirement that an updated Schedule L be provided if an Item 6.05 is triggered,

⁷³¹ For instance, if a loan was added to an RMBS pool during a reporting period, the next Schedule AL that is filed will include all relevant disclosures about the asset, including all disclosures that would have been included if the loan was part of the pool at the time of securitization and all required ongoing asset-level disclosures about the asset. The final rules include a data point that captures whether an asset was added to the pool during the reporting period.

⁷³² See the 2010 ABS Proposing Release at 23367.

issuers will not need to bear the burden or cost of assessing whether an updated Schedule L is required if the requirements of Item 6.05 were triggered.⁷³³

We also recognize that aggregating the data points proposed in Schedules L and L-D into one schedule may increase the number of data points that an issuer will need to respond to at the time of the offering and on an ongoing basis. We do not believe that this change increases the data issuers must collect about the assets beyond what was proposed as the unified schedule primarily consists of information proposed to be provided under Schedule L and Schedule L-D. Under the rule we are adopting, the issuer will be required, at the time of the offering, to provide all the information relating to the underwriting of the asset (e.g., terms of the asset, obligor characteristics determined at origination) and any applicable performance related information for the most recent reporting period. On an ongoing basis, the issuer will be required to provide the relevant ongoing performance information for the most recent reporting period and the underwriting information previously provided about the asset. Issuers may incur some increased filing costs compared to what they would have incurred under the proposal because they will be verifying and filing more data at each filing. Although we cannot quantify the increase in filing

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The current disclosures required under existing Item 6.05 of Form 8-K are still required if the triggers of Item 6.05 are met. Item 6.05 is not limited to the reporting of differences in material pool characteristics that result only from changes in the pool composition and, in fact, it excludes only changes that occur as a result of the pool assets converting into cash in accordance with their terms. For example, absent a change in pool composition, if payment activity after the cut-off date would result in a change to the delinquency or payment statistics that were presented in the prospectus by more than 5% after the cut-off date, but prior to closing, then disclosure would be required under Item 6.05.

costs that issuers may incur, our qualitative assessment is that the increase will not be significant over what was proposed.⁷³⁴

We considered, as an alternative, requiring information to be provided only about assets added to the pool during a reporting period. We believe asset-level information is most useful when it reflects all the assets actually in the pool. Therefore, we believe that current investors and potential secondary market investors should have access through the current Form 10-D to the asset-level information reflecting the assets in the pool at that time. Otherwise those parties may have to piece together various tables of information to construct the current pool. Piecing together various tables may lead to confusion and errors and, as a result, market participants may base their analysis on data that does not provide an accurate picture of the asset pool. Further, investors rather than issuers would bear the cost of piecing together the disclosures and having each investor doing so would create duplicative costs.

One investor commenter who supported the same asset-level disclosure in offering documents and in ongoing reports for most asset classes did not support this format for

⁷³⁴ By aggregating the schedules we are able to omit any duplicate data points found on both schedules. For instance, the following data points were in proposed Schedule L-D and were omitted from Schedule AL since they were similar or identical to other data points: Items 1(a) Asset number type; 1(b) Asset number; 1(c) Asset group number; 1(f)(7) Current asset balance; 1(f)(12) Current delinquency status; 1(f)(13) Number of days payment is past due; 1(f)(14) Current payment status; 1(f)(15) Pay history; 1(f)(18) Remaining term to maturity; 1(g)(6) Servicing advance methodology; 2(b)(2) Next interest rate change date; 2(b)(5) Option ARM indicator; 2(e)(1) Modification effective payment date; 2(e)(3) Total capitalized amount; 2(e)(29) Forgiven principal amount (cumulative); and 2(e)(30) Forgiven interest amount (cumulative). The following data points were in proposed Schedule L and were omitted from Schedule AL since they were similar or identical to other data points: Items 1(a)(15) Primary servicer; 2(a)(21)(iv) Updated DTI (front-end) and 2(a)(21)(iv) Updated DTI (back-end).

CMBS.⁷³⁵ For CMBS, this commenter stated the loan originator and the loan servicer are not affiliated and, therefore, unifying items in Schedule L and Schedule L-D may be impractical for the CMBS sector. We considered this concern, but we believe the information is available to issuers, albeit perhaps at some cost. Thus, Schedule AL enumerates for issuances of CMBS all of the asset-level disclosures to be provided, if applicable, about the assets in the pool at securitization and on an ongoing basis.

In the end, we believe this approach is reasonable despite the increased compliance costs, because this approach provides investors with access, both at the time of the offering and on an ongoing basis, to more data about the characteristics and performance of the pool assets. As a result, investors can evaluate the characteristics of the pool with the benefit of a more complete picture of the pool assets' characteristics and performance.

3. XML and the Asset Data File

a) Proposed Rule

In the 2010 ABS Proposing Release, we proposed requiring that asset-level information be provided in XML. We believed that requiring the asset-level data file in XML, a machine-readable language, would allow users to download the data directly into spreadsheets and databases, analyze it using commercial off-the-shelf software, or use it within their own models in other software formats.

⁷³⁵ See letter from MetLife I.

b) Comments on Proposed Rule

In response to the 2010 ABS Proposing Release, several commenters supported the use of XML to report loan-level data⁷³⁶ and some commenters noted that the residential mortgage industry already uses XML to transmit data about loans.⁷³⁷ For CMBS, some commenters suggested not requiring XML at this time.⁷³⁸ A few commenters suggested that we not adopt the XML requirement for RMBS, but instead require the information in comma separated values (“CSV”).⁷³⁹ Other commenters also suggested the use of another standard, such as XBRL.⁷⁴⁰

As we note above, subsequent to the 2010 ABS Proposing Release, Congress adopted the Dodd-Frank Act. Section 942(b) of the Dodd-Frank Act added Section 7(c) to the Securities Act, which requires the Commission to set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate the comparison

⁷³⁶ See, e.g., letters from ActiveState Software Inc. dated July 29, 2010 submitted in response to the 2010 ABS Proposing Release, Beached Consultancy, CMBS.Com I, CREFC I (recognizing the importance of XML format, but requesting we not adopt the requirement for CMBS until such time that CREFC IRP adopts a version of the CREFC IRP in XML), Interactive, MetLife I, Risk Management Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (“RMA”), and Alberto Zonca dated July 26, 2010 submitted in response to the 2010 ABS Proposing Release (“A. Zonca”).

⁷³⁷ See letters from eSign, MBA I, MERS, and MISMO (each supporting the use of XML, but suggesting the use of MISMO XML standards).

⁷³⁸ See letters from CREFC I (indicating that requiring XML would be a significant burden on those institutions who largely work under an alternative platform to convert to XML and the conversion could create data quality issues), MBA I, and Wells Fargo I (each suggesting that the Commission wait until the CMBS industry develops the XML format).

⁷³⁹ See letters from ASF I (suggesting requiring RMBS files be in text format with each value in the file separated by a comma because market participants should focus staff and information technology resources on efforts to standardize the data) and Wells Fargo I (suggesting the format of the data be in CSV format).

⁷⁴⁰ See letters from RMA (supporting the use of XML schemas specified either with the XSD language or the more specialized XBRL), UBMatrix, Inc. dated July 31, 2010 submitted in response to the 2010 ABS Proposing Release (recommending requiring XBRL), and XBRL.US dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (suggesting the use of XBRL because it is consistent with their recommended waterfall output format).

of such data across securities in similar types of asset classes. We requested comment in the 2011 ABS Re-Proposing Release as to whether the proposed XML format was an adequate standard for the format of data that facilitated the comparison. We did not receive any comments suggesting that requiring that asset-level data be provided in XML did not, as it relates to data standardization, implement Section 7(c) effectively.

Instead, comments on the 2011 Re-Proposing Release reiterated concerns raised in prior comment letters. For instance, some commenters reiterated their belief that XML should not be required for CMBS at this time⁷⁴¹ and one of these commenters said requiring XML should be tied to investor demand.⁷⁴² These commenters were concerned with the cost to implement the standard,⁷⁴³ the cost of providing the data in duplicate formats,⁷⁴⁴ data quality risks,⁷⁴⁵ and the time needed to implement the standard.⁷⁴⁶ On the other hand, one commenter believed that the current format of CMBS reports (CSV, Excel and even PDF) “greatly limits the transparency of CMBS.”⁷⁴⁷

⁷⁴¹ See letters from CREFC II, MBA III, and Wells Fargo II.

⁷⁴² See letter from MBA III.

⁷⁴³ See letter from CREFC II. This commenter did not provide a specific cost to implement XML.

⁷⁴⁴ See letter from MBA III (stating that CMBS investors generally do not currently utilize XML formatting for reporting and even if XML is required, issuers will likely continue to provide investors the disclosures in the format they currently provide them and use XML format “solely for filings with the Commission.”).

⁷⁴⁵ See letters from CREFC II and Wells Fargo I.

⁷⁴⁶ See letter from Wells Fargo I.

⁷⁴⁷ See letter from CMBS.com and Commercial Mortgage Industry Standards Maintenance Organization dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release.

c) **Final Rule and Economic Analysis of the Final Rule**

After considering the comments received, we are adopting the proposed XML requirement. We believe requiring asset-level information in a standardized machine-readable format should lower the cost for investors of collecting data about ABS offerings and should allow data to be analyzed by investors and other end-users more quickly than if the data was provided in a non-machine readable format. For instance, if the asset-level data is made available to investors in a format that is not machine-readable, it would require the manual key-entry of the data into a format that allows statistical analysis and aggregation. Thus, investors seeking to gain a broad understanding of ABS offerings would either need to spend considerable time manually collecting the data and manually entering the data into a format that allows for analysis, thus increasing the time needed to analyze the data, or incur the cost of subscribing to a financial service provider that specializes in this data aggregation and comparison process. Further, manual entering of data can lead to errors, thereby reducing data accuracy and usefulness. Requiring companies to report asset-level data in a standardized machine-readable format, such as XML, should lower both the time and expense for each investor to access this data. Since asset-level disclosures will be tagged and can be immediately downloaded into a larger, more comprehensive database that may include data about other ABS offerings, investors will not need to manually enter the data or subscribe to a third-party data aggregator. With more information readily available in a usable format, investors may be able to better distinguish the merits of various investment choices, thereby allowing investors to better match their risk and return preferences with ABS issuances having the same risk and return profile. Thus, we expect that this reduction in the costs of accessing, collecting and analyzing information about the value

of ABS will lead to better allocation of capital. We believe that the requirements we are adopting to require standardized asset-level disclosures in XML fulfill, for the asset types subject to these requirements, the requirement under the Dodd-Frank Act that we set a standard for the format of data that facilitates comparison across securities in similar types of assets.

We understand that some commenters expressed concerns regarding the burden and cost to implement the standard. We recognize that requiring asset-level disclosures in XML will result in substantial initial set-up costs to filers.⁷⁴⁸ In a further attempt to mitigate costs to issuers, as we discuss below in Section IX.B, we are requiring that issuers comply with the asset-level disclosures no later than [insert date 60 days plus two years after publication in the Federal Register], which we believe reduces the burden of implementation by providing time for market participants to reprogram their systems. With respect to the costs of implementation, we believe that the costs are justified because we believe investors need the asset-level disclosures in a standardized machine-readable format that makes the data transparent and comparable. We

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We estimate the direct costs of converting data from internal formats to rule-compliant XML format the following way: We assume that a sponsor would work with all asset types and would need to convert the total of 680 distinct data columns, with 80% of them having direct mapping from internal data types (i.e., no additional conversion or modification would be necessary) and 20% being coded (i.e., column value be a combination or modification of existing data values) and requiring 3 times the effort for direct columns. One simple column would require 6 hours of work, with a total of 5,712 hours. The deployment (documentation, internal "roll out" with the first filing, etc.) would add another 10% to the costs, leading to the total 6,283 hours, or 3.5 full-time equivalents (Senior Database Administrator, Senior Business Analyst and one and a half Junior Business Analysts). Using salary data from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, we estimate the initial costs would be about \$1,445,000 per sponsor. The hardware cost increment would be de minimis and the maintenance in subsequent periods would be only 5% of build cost. For some sponsors that specialize on a limited number of asset types the costs could be significantly lower because they would need to transform fewer data points from their internal format to the rule-compliant XML format. After necessary adjustments have been made, we expect that the ongoing costs for providing the data in XML will be minimal.

continue to believe that having the asset-level data in a standardized machine-readable format will enable investors to use commercial off-the-shelf software for analysis of underlying asset-level data, which will allow them to aggregate, compare and analyze the information.

We also considered, as several commenters suggested, alternative formats to XML, such as PDF, CSV and XBRL. We do not believe PDF format is a suitable alternative because it is not a convenient medium for tabular structured data and it is not designed to convey machine-readable data. As explained above, the ability of investors to easily utilize the asset-level data required of issuers is crucial to its usefulness. We believe that the CSV format is not suitable either, since any given dataset reported will require more than a single set of uniformly structured rows and CSV format will not support the disclosure of such datasets easily. Finally, while XBRL allows issuers to capture the rich complexity of financial information presented in accordance with U.S. Generally Accepted Accounting Principles, we do not believe that it is appropriate for the asset-level disclosure requirements we are adopting.⁷⁴⁹ The Asset Data File will present relatively simpler characteristics of the underlying loan, obligor, underwriting criteria, and collateral, among other items, that is better suited for XML. Further, the data extensions available in XBRL are not appropriate for this dataset where comparability of data is critical and the nature of the repetitive data lends itself to an XML format. In addition, the XML schema can be easily updated.⁷⁵⁰

⁷⁴⁹ XBRL was derived from the XML standard. See Interactive Data to Improve Financial Reporting Adopting, Release No. 34-59324 (Jan. 30, 2009) [74 FR 6776].

⁷⁵⁰ A schema is a set of custom tags and attributes that defines the tagging structure for an XML document. Extension data is not permitted in the asset-level data file because we believe it would defeat the purpose of

4. Asset Related Documents

a) Proposed Rule

We understand that a situation may arise where an issuer would need to disclose other asset-level data not already defined in Schedule AL. To address this situation, we proposed to include a limited number of “blank” data tags in our XML schema to provide issuers with the ability to present additional asset-level data not required under the proposal.⁷⁵¹ We also proposed an “Asset Related Document” that would allow registrants to disclose the definitions or formulas of any additional asset-level data or provide further explanatory disclosure regarding the Asset Data File.⁷⁵²

b) Comments on Proposed Rule

We received some comments, which were mixed, on the blank tag proposal, but we did not receive any comments regarding the use of an Asset Related Document. With regard to the blank tag proposal, one commenter suggested that as long as the information in the blank data tag is clearly described, neither the number of blank data tags nor the information would add complexity to the requirements.⁷⁵³ One commenter, however, did not see the benefit of the proposed blank tags because new data points can be added as business and reporting needs

standardizing data elements. Extension data allows issuers to add their own data elements to our defined data elements.

⁷⁵¹ See the 2010 ABS Proposing Release at 23375.

⁷⁵² Id.

⁷⁵³ See letter from Prudential I.

evolve.⁷⁵⁴ Another commenter did not believe a blank tag was appropriate or consistent with “good XML syntax.”⁷⁵⁵

c) Final Rule and Economic Analysis of the Final Rule

We continue to believe, given the possible variety of assets and structures for securitization and that business and reporting needs may evolve faster than changes can be made to the asset-level requirements, issuers should have the flexibility to provide asset-level data in addition to what is required by Schedule AL. For instance, we note that some commenters suggested we adopt data points that we had not proposed.⁷⁵⁶ While we are adopting some of the data points commenters suggested, we are not adopting all the additional data points recommended for various reasons that we describe above. We encourage issuers to provide any additional asset-level data that may be appropriate. We believe the flexibility to provide additional data in a machine-readable format will provide benefits to investors and issuers at no significant cost.

Under the final requirements, issuers can provide additional asset-level disclosures in an Asset Related Document and such Asset Related Document(s) must then disclose the tags, definitions, and formulas for each additional asset-level disclosure.⁷⁵⁷ As we stated in the 2004 ABS Adopting Release and 2010 ABS Proposing Release, issuers and underwriters should be

⁷⁵⁴ See letter from MISMO.

⁷⁵⁵ See letter from MBA I.

⁷⁵⁶ See, e.g., letters from ASF I (suggesting additional RMBS data points), CU, and Wells Fargo I (suggesting additional RMBS data points as well as additional RMBS data points regarding government-sponsored assets).

⁷⁵⁷ See Item 1111(h)(5) of Regulation AB.

mindful of any privacy, consumer protection or other regulatory requirements when providing additional loan-level information, especially given that the information would be publicly filed on EDGAR.⁷⁵⁸ Finally, issuers may also provide other explanatory disclosure regarding the asset-level data in an Asset Related Document.⁷⁵⁹ As with any information that is part of the prospectus or ongoing reports, all Asset Related Documents must be filed concurrently with the Schedule AL it supplements. We are not adopting the blank tag proposal as we are persuaded by comments that the blank tags are not appropriate, may provide limited benefits and may not be consistent with “good XML syntax.”

5. New Form ABS-EE

a) Proposed Rule

We proposed that the new Asset Data File be filed as an exhibit to certain filings. Therefore, we proposed changes to Item 601 of Regulation S-K, Rule 11 and 101 of Regulation S-T, and Form 8-K to accommodate the filing of Asset Data Files. We proposed to define the XML file required by Schedules L and L-D as an Asset Data File in Rule 11 to Regulation S-T and proposed corresponding changes to Rule 101 of Regulation S-T mandating electronic submission. For asset-level disclosures required at the time of the offering, we proposed, regardless of whether the issuer was registering the offering on Form SF-1 or SF-3, that the Asset Data File be filed as an exhibit to the appropriate Form 8-K (in the case of an offering)

⁷⁵⁸ See Section III.C.1.c. of the 2004 ABS Adopting Release and Section III.A.(b)(i) of the 2010 ABS Proposing Release.

⁷⁵⁹ See Item 1111(h)(4) of Regulation AB.

under proposed Item 6.06 of Form 8-K. Proposed Item 6.06 would have required that issuers file the Asset Data File as an exhibit to a Form 8-K on the same date a preliminary or final prospectus is filed or an Item 6.05 of Form 8-K is filed. The proposed requirement would have also required that any Asset Related Document be filed at the same time the Asset Data File is filed on EDGAR.

For ongoing reporting of asset-level disclosure, we proposed to require the Asset Data File and any Asset Related Document be filed with the appropriate Form 10-D. As noted above, we also proposed an additional exhibit, an Asset Related Document, for registrants to disclose the definitions or formulas of any additional asset-level data or to provide further explanatory disclosure regarding the Asset Data File.

b) Comments on Proposed Rule

We did not receive any comments with respect to the requirement of filing the Asset Data Files or Asset Related Documents with the Form 8-K (in the case of an offering) or with the Form 10-D (in the case of a periodic distribution report).

c) Final Rule and Economic Analysis of the Final Rule

We are adopting new Form ABS-EE to facilitate the filing of the new Asset Data Files⁷⁶⁰ and Asset Related Documents.⁷⁶¹ The Asset Data Files and the Asset Related Documents are required to be filed as exhibits to new Form ABS-EE.⁷⁶²

⁷⁶⁰ See new Item 601(b)(102) of Regulation S-K [17 CFR 229.601(b)(102)].

⁷⁶¹ See new Item 601(b)(103) of Regulation S-K [17 CFR 229.601(b)(103)].

⁷⁶² See Item 1111(h)(3) of Regulation AB [17 CFR 229.1111(h)(3)].

We had proposed that the Asset Data Files and Asset Related Documents be filed with the Form 8-K because, in the case of a shelf offering, a Form 8-K is typically used to file other documents related to a registration statement. We had proposed filing the documents with Form 10-D to keep periodic disclosures on the same form. We believe, however, that requiring the information on a single Form ABS-EE will facilitate the filing of the Asset Data Files and Asset Related Documents because EDGAR programming for XML files can be specifically tailored for these types of documents, therefore simplifying filing obligations for issuers. Form ABS-EE will benefit investors by making it easier for users to run queries on EDGAR to locate these documents for download.

The fact that the disclosures are filed as exhibits does not impact the fact that the data contained in the Asset Data Files and the Asset Related Documents are disclosures that are part of a prospectus or a periodic report, as applicable.⁷⁶³ As noted earlier, they are required to be incorporated by reference into the prospectus or the Form 10-D, as applicable. Accordingly, there is no change to the timing and frequency requirements for filing information to meet our offering and periodic disclosure rules and the corresponding Form ABS-EE, with the proper attachments, must be on file and be incorporated by reference into those filings by the time those filings are made or are required to be made.

⁷⁶³ Forms SF-1, SF-3, and 10-D each include an instruction requiring that any disclosures provided pursuant to Item 1111(h) of Regulation AB [17 CFR 229.1111(h)] filed as exhibits to Form ABS-EE in accordance with Items 601(b)(102) or 601(b)(103) [17 CFR 229.601(b)(102) and (b)(103)].

6. Temporary Hardship Exemption

a) Proposed Rule

We proposed to revise Rule 201 of Regulation S-T to include a self-executing temporary hardship exemption for filing the Asset Data File.⁷⁶⁴ We also proposed to exclude Asset Data Files from the continuing hardship exemption under Rule 202 of Regulation S-T. Rule 202 generally allows an issuer to apply for a continuing hardship if it cannot file all or part of a filing without undue burden or expense. Under the proposed temporary hardship exemption, if the registrant experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File, a registrant would still be considered timely if: the Asset Data File(s) containing the asset-level data is posted on a Web site on the same day it was due to be filed on EDGAR; an Asset Data File is filed on EDGAR that contains the Web site address, a legend is provided in the Asset Data File filed on EDGAR claiming the hardship exemption; and the Asset Data File(s) are filed on EDGAR within six business days.

b) Comments on Proposed Rule

We did not receive any comments regarding our proposed self-executing temporary hardship exemption. We also did not receive any comments on the proposal to exclude Asset Data Files from the continuing hardship exemption under Rule 202 of Regulation S-T.

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[17 CFR 232.201]. Rule 201 of Regulation S-T generally provides for a temporary hardship exemption from the electronic submission of information, without staff or Commission action, when a filer experiences unanticipated technical difficulties that prevent timely preparation and submission of an electronic filing. The temporary hardship exemption permits the filer to initially submit the information in paper format but requires the filer to submit a confirming electronic copy of the information within six business days of filing the information in paper format.

c) **Final Rule and Economic Analysis of the Final Rule**

We are adopting, as proposed, a temporary hardship exemption. Under the requirement, if an issuer experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File required to be filed on EDGAR, it may still be considered timely. For the Asset Data File, an issuer will still be considered timely if: the Asset Data File is posted on a Web site accessible to the public on the same day it was due to be filed on EDGAR; a Form ABS-EE is filed that identifies the Web site address where the file can be located; a legend is provided claiming the hardship exemption; and the Asset Data File is filed on EDGAR within six business days.⁷⁶⁵ We believe that the hardship exemption will benefit both issuers and investors, because it will allow issuers to maintain compliance with our rules while providing investors with access to the information required to be disclosed without further delay.

We are also excluding the Asset Data File, as proposed, from the continuing hardship exemption under Rule 202 of Regulation S-T. We continue to believe that a continuing hardship exemption is not appropriate with respect to the Asset Data File because the Asset Data File is an integral part of the prospectus and periodic reports. We also believe that for ABS issuers the information in machine-readable format is generally already collected and stored on a servicer's systems. Therefore, we do not believe it would be appropriate for issuers to receive a continuing hardship exemption for the Asset Data File. We believe all investors will benefit from receiving

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See Rule 201(d) and (e) of Regulation S-T [17 CFR 232.201].

the disclosures specified in Schedule AL in a format that will allow them to effectively utilize the information.

C. Foreign ABS

We requested comment on whether there are other privacy issues that arise for issuers of ABS backed by foreign assets.⁷⁶⁶ The responses we received indicated concerns regarding foreign privacy laws,⁷⁶⁷ as well as concerns related to variations in the characteristics of consumer receivables originated in different jurisdictions,⁷⁶⁸ the inconsistencies between our proposal and other countries' disclosure and reporting standards,⁷⁶⁹ and certain terms or structures used in the proposed rule that lack a direct European equivalent.⁷⁷⁰ As an alternative to our proposal, some commenters requested that the disclosure standards for transactions involving assets located outside the United States be based on local requirements.⁷⁷¹ In response

⁷⁶⁶ See Section III.A(b)(i) of the 2010 ABS Proposing Release. We asked: (1) Are there other privacy issues that arise for issuers of ABS backed by foreign assets? (2) How do the privacy laws of foreign jurisdictions differ from U.S. privacy laws? (3) If the privacy laws of foreign jurisdictions are more restrictive regarding the disclosure of information how should we accommodate issuers of ABS backed by foreign assets? (4) Is there substitute information that could be provided to investors?

⁷⁶⁷ See letters from ABA I, Association for Financial Markets in Europe/European Securitisation Forum dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("AFME/ESF"), and Association for Financial Markets in Europe dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("AFME").

⁷⁶⁸ See letter from Australian Securitisation Forum dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("AusSF").

⁷⁶⁹ See letter from AFME/ESF.

⁷⁷⁰ Id.

⁷⁷¹ See letters from AusSF (requesting that Australian issuers need only satisfy the Australian Securities and Investments Commission requirements and that differences between U.S. and Australian standards be disclosed in the offering documents), AFME/ESF (suggesting that the Commission permit the satisfaction of certain requirements by European issuers if they provide relevant information in compliance with any local or other relevant requirements and allow the adjustment of the requirements to reflect the information

to the 2014 Re-Opening Release, a few commenters raised cost and burden concerns about foreign ABS issuers' compliance with overlapping regulatory regimes.⁷⁷² A few commenters suggested flexible requirements for foreign ABS issuers to account for differences in the applicability and availability of information or a substitute compliance regime to account for differences between jurisdictions, including differences between the privacy laws of foreign jurisdictions.⁷⁷³

We have reviewed the requirements we are adopting against the requirements adopted by the European Central Bank⁷⁷⁴ and the Bank of England.⁷⁷⁵ We note several similarities and differences between our requirements and theirs, and we believe that perfect agreement between the Commission's requirements and the requirements of all foreign jurisdictions may not be achievable. We believe U.S. investors may expect data in a certain format and/or a certain level of disclosure that is not required under the requirements of other jurisdictions, some of which require the information for supervisory purposes and not specifically for the benefit of

available outside of a U.S. context) and AFME (suggesting a similar regime, but stating that if compliance with local requirements was not appropriate, then a "provide-or-explain" regime would be a helpful alternative).

⁷⁷² See letters from ABA III, GFMA/AusSF, SFIG-II, SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

⁷⁷³ See, e.g., letters from ABA III, GFMA/AusSF, and Treasurer Group (stating that substitute compliance is allowing the issuer to provide the disclosure required under a foreign jurisdiction).

⁷⁷⁴ See Data Templates, EUROPEAN CENTRAL BANK (2013), <http://www.ecb.eu/mopo/assets/loanlevel/transmission/html/index.en.html>.

⁷⁷⁵ See Bank of England Loan Level Data: Reporting Template for Residential Mortgage Pools, BANK OF ENGLAND (Nov. 2010), <http://www.bankofengland.co.uk/markets/Documents/money/documentation/RMloanleveldata-template.pdf>.

investors.⁷⁷⁶ In addition, the underlying assets, the form of issuance, parties to the structures, terms and definitions and the structures themselves vary across jurisdictions. We also note that the privacy laws vary across jurisdictions, resulting in disclosure requirements of one jurisdiction that may conflict with the privacy laws in another jurisdiction.

We are not persuaded, however, that the Commission should implement a regime that would recognize the asset-level data requirements developed by foreign authorities, for example the European Central Bank and the Bank of England, that are tailored to assets originated outside of the U.S. or a “provide-or-explain” type regime that would permit selective disclosure based upon foreign laws. We continue to believe, as for U.S. originated assets, the usefulness of asset-level data is generally limited unless the data is standardized. We believe adopting another disclosure regime for foreign asset ABS would reduce standardization and, thereby, the comparability of ABS backed by assets originated outside of the U.S. and ABS backed by assets originated within the U.S. Further, a provide-or-explain regime lowers the comparability of ABS pools comprised of assets originated outside the U.S. against each other as the scope of disclosures provided by each issuer for each ABS may differ depending on the privacy laws of

⁷⁷⁶ See, e.g., details about the European Central Bank’s loan-level requirements for ABS accepted as collateral in Eurosystem credit operations available at <http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html>. See also the market notices from the Bank of England discussing their eligibility requirements for RMBS and covered bonds backed by residential mortgages; CMBS, small-medium enterprise loan backed securities and ABS backed by commercial paper; and ABS backed by consumer loans, auto loans, and leases that are delivered as collateral against transactions in the Bank’s operations at <http://www.bankofengland.co.uk/markets/Documents/marketnotice121002abs.pdf>, <http://www.bankofengland.co.uk/markets/Documents/marketnotice111220.pdf>, <http://www.bankofengland.co.uk/markets/Documents/marketnotice121217.pdf>.

the home jurisdiction of the issuer. We acknowledge that compliance challenges and increased costs for foreign market participants may arise; however, we believe U.S. investors should receive the same data about ABS backed by assets originated outside the U.S. as ABS backed by assets originated within the U.S. This approach is consistent with our approach for corporate issuers, under which foreign private issuers generally provide comparable information to U.S. issuers.

IV. Other Prospectus Disclosure

A. Transaction Parties

1. Identification of the Originator

a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that Item 1110(a) of Regulation AB, prior to the adoption of today's amendments, required identification of originators apart from the sponsor or its affiliates only if the originator has originated, or expects to originate, 10% or more of the pool assets. We noted that in situations where many of the pool assets have been purchased from originators other than the sponsor and each of these originators originated less than 10% of the pool assets that the requirement requires very little, if any, information about the originators. Therefore, we proposed to amend the item to require that an originator originating less than 10% of the pool assets would be required to be identified if the cumulative amount of originated assets by parties other than the sponsor or its affiliates comprises more than 10% of the total pool assets.

b) Comments on Proposed Rule

Comments on the proposal were focused on the scope of the requirement. Commenters argued that the rule should require disclosure identifying the originator of each asset without exception.⁷⁷⁷ Another commenter recommended that the requirement be modified to include a low threshold (e.g., 2% of the original pool assets) under which identification of the non-affiliated originators would not be required.⁷⁷⁸ In contrast, one commenter believed that the proposal was excessive with the costs outweighing the benefits and recommended keeping the current requirement and supplementing it with disclosure of "additional originators to the extent necessary so that information about the originators of at least 85% of the pool assets has been included in the prospectus."⁷⁷⁹ Another commenter stated that disclosure of only third parties who originated more than 10% of the pool and all originators who provided 5% or more of the pool by dollar value would be more valuable to investors.⁷⁸⁰

c) Final Rule

After considering the comments received, we are adopting the amendment to Item 1110(a) of Regulation AB, as proposed, with a slight modification to clarify the change that we are making to the existing requirement. Under the final rule that we are adopting, if the

⁷⁷⁷ See, e.g., letters from Prudential I (suggesting that Schedule L should specify the originator of each asset, which will allow investors to identify and differentiate originators that are providing riskier collateral to structured product transactions) and Realpoint (recommending that for CMBS transactions every originator be identified).

⁷⁷⁸ See letter from BoA I.

⁷⁷⁹ See letter from VABSS I (without providing a cost estimate).

⁷⁸⁰ See letter from CFA I (without describing why this disclosure would be more valuable to investors).

cumulative amount of originated assets by parties, other than the sponsor or its affiliates, comprises more than 10% of the total pool assets, then those originator(s) originating less than 10% of the pool assets will also be required to be identified in the prospectus. We continue to believe that where the sponsor securitizes assets of a group of originators that are not affiliated with the sponsor, more disclosure regarding the originators of the assets is needed. We believe investors will benefit from these disclosures because they will be better able to assess pools comprising assets from these originators. We acknowledge that the revised rule will likely result in more originators having to be identified in the prospectus than is currently required; however, we do not think that it will result in significant costs to issuers since the information is readily available and the disclosure is limited only to identification of the originator. In addition, while we note that some commenters requested that we impose an additional minimum threshold before issuers would be required to identify unaffiliated originators,⁷⁸¹ we do not believe that such a distinction would be appropriate for the same reasons.

2. Financial Information Regarding a Party Obligated to Repurchase Assets

a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that in the events arising out of the financial crisis, the financial condition of the party obligated to repurchase assets pursuant to the transaction agreement governing an asset securitization became increasingly important as to

⁷⁸¹ See letters from BoA I, CFA I, and VABSS I.

whether repayments on asset-backed securities would be made.⁷⁸² We proposed to require disclosure of the financial condition of certain parties required to repurchase assets when there is a breach, pursuant to the transaction agreements, of a representation and warranty related to pool assets. Under the proposal, information regarding the financial condition of a 20% originator would be required if there is a material risk that the financial condition could have a material impact on the origination of the originator's assets in the pool or on its ability to comply with provisions relating to the repurchase obligations for those assets. Information about the sponsor's financial condition similarly would be required to the extent that there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for those assets or otherwise materially impact the pool.

b) Comments on Proposed Rule

The response to the proposal was mixed with some commenters supporting the proposal,⁷⁸³ some commenters opposing the proposal,⁷⁸⁴ and other commenters who did not

⁷⁸² See the 2010 ABS Proposing Release at 23382. In the 2010 ABS Proposing Release, we also proposed to amend Item 1104 and Item 1110 of Regulation AB to require disclosure of the amount, if material, of publicly securitized assets originated or sold by the sponsor or an identified originator that were the subject of a demand to repurchase or replace any of the assets for breach of the representations and warranties concerning the pool assets in the last three years pursuant to the transaction agreements. This proposal and the comments on this proposal were considered in connection with the rules implementing Section 943 of the Dodd-Frank Act. See the Section 943 Adopting Release. Therefore, the proposal and related comments are not addressed in this release.

⁷⁸³ See letters from ASF I (supporting the proposal, but suggesting that we revise the standard for when such disclosure is required to mirror the requirement regarding financial information of certain servicers included in Item 1108(b)(4) of Regulation AB, with a focus on whether the sponsor's or originator's financial condition would have an effect on origination of the pool assets or on its ability to comply with any repurchase obligations in a manner that could have a material impact on pool performance or

express whether they supported or opposed the proposal, but suggested certain revisions.⁷⁸⁵ One concern, raised by some commenters who opposed the proposal, was that investors may perceive the disclosure and the existence of representations and warranties as suggesting that the obligated parties are providing credit or liquidity support to the transaction.⁷⁸⁶ Some commenters stated that the disclosure requirement may act as a barrier to entry for participation in the securitization markets, may potentially be misleading because it would likely be provided long before repurchase demands would be made, and in most instances disclosure would be required because

performance of the asset-backed securities) and CFA I (stating that benefits to investors in the form of better knowledge about the source of pool assets outweighs the costs of compliance).

⁷⁸⁴ See letters from BoA I, CMBP (disagreeing with the proposed disclosure requirement as it relates to a 20% originator) CREFC I, IPFS Corporation dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("IPFS I") (responding with respect to private offerings of insurance premium finance loans), and MBA I.

⁷⁸⁵ See letters from AusSF (stating that if we require financial statements that we should allow the submission of IFRS-compliant financial statements to satisfy the requirement) and KPMG LLP dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("KPMG") (noting that the impact of the proposal will vary depending, in part, on whether the financial information must be audited and urging the Commission to weigh the cost of requiring audited financials against such benefit). See also letters from Center for Audit Quality dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release and Ernst & Young dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("E&Y") (requesting other revisions). These commenters contended that the proposed amendments to Item 1104 and Item 1110(b) would require a subjective evaluation of the materiality of the risk and recommended, instead, to expand the scope of the definition of significant obligor in Item 1112 (i.e., to incorporate the obligated party that is required to repurchase assets for breach of a warranty or representation) or to expand the scope of Item 1114, the requirement relating to disclosure of significant credit enhancements, to include repurchase and replacement obligations – thereby providing an objective standard for determining when and how the requisite financial disclosure should be provided. Under this standard, the required financial information would be (1) the selected financial data specified by Item 301 of Regulation S-K when the obligation exceeds 10% of the asset pool, and (2) audited financial statements that comply with Regulation S-X when the obligation exceeds 20% of the asset pool.

⁷⁸⁶ See letters from BoA I, CREFC I, and MBA I.

an obligated party's financial condition would likely always impact a party's ability to perform its repurchase-related obligations.⁷⁸⁷

c) Final Rule

After considering the comments received, we are adopting the amendments to Item 1104 and Item 1110, with some modification. We have revised the amendments so that the standard for when disclosure of financial information is required mirrors the existing standard for disclosures required about certain servicers.⁷⁸⁸ Under the revised rules, the standard focuses on whether the sponsor or 20% originator's financial condition would have an effect on its ability to comply with any repurchase obligations in a manner that could have a material impact on pool performance or performance of the asset-backed securities.

We are adopting these amendments because we believe an investor's ABS investment decision includes consideration of obligations from certain parties to repurchase assets if there is a breach of the representations and warranties relating to those assets and the capacity of those parties to repurchase those assets. As evident from the crisis, the mere existence of a repurchase provision provides investors with little comfort as to the ability of the party obligated to

⁷⁸⁷ See letters from CREFC I and MBA I. See also letter from CMBP (recommending instead to require sponsors to certify that: all the originators that have sold assets to the pool backing the ABS meet the sponsor's standards of creditworthiness, the sponsor's standards are customary and commercially reasonable, and based on the sponsor's assessment that each originator has the financial means to discharge their obligations under the representations and warranties regarding the pool assets).

⁷⁸⁸ See Item 1108(b)(4) of Regulation AB (requiring information regarding the servicer's financial condition to the extent that there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities).

repurchase assets for a breach of a representation or warranty.⁷⁸⁹ The expanded disclosure that we are requiring will provide investors insight into the capacity of the obligated parties to repurchase assets. We acknowledge that the financial condition of these parties may change between the time of the transaction, when the disclosure is provided, and when a repurchase is required. We believe that investors will nonetheless benefit from the required information because it will allow investors to assess, at the time of their investment decision, whether the representations and warranties provided regarding the pool assets are made by entities financially capable of fulfilling their obligations.

We also note the concerns that some of these parties are private companies who may choose to exit the securitization market rather than provide financial disclosures. While we acknowledge this possibility, we believe that this information is material for investors in order to make an informed investment decision. Furthermore, we believe this concern is minimized, to some extent, because the requirement does not necessarily require financial statements, but only information about their financial condition similar to the type of disclosure required under current rules regarding financial information of certain servicers, some of which may be private companies. Where disclosure is required, the type and extent of information regarding certain originators' and sponsors' financial condition would depend upon the particular facts. We note

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See Transparency in Accounting: Proposed Changes to Accounting for Off-Balance Sheet Entities Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs, 110th Cong. 3 (2008) (statement of Joseph Mason, Professor at Louisiana State University) (stating that “‘representations and warranties’ have become a mechanism for subsidizing pool performance, so that no asset- or mortgage-backed security investor experiences losses – until the seller, itself, fails and is no longer able to support the pool”).

that sponsors will typically conduct due diligence regarding the pool assets when purchasing assets to include in the ABS pool, including assessing the financial condition of originators that are obligated to repurchase or replace any asset for breach of a representation and warranty pursuant to the transaction agreements. We believe that when the trigger for disclosure of the financial information of sponsors and 20% originators is met, as outlined in the rule, investors should have the same information. We are mindful, however, of the costs that originators and sponsors would incur if we required audited financial information, especially for those originators and sponsors that have not previously been subject to an audit; therefore, we are not requiring that financial information included be audited.

3. Economic Interest in the Transaction

a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that existing Item 1103(a)(3)(i) of Regulation AB required disclosure of the classes of securities offered by the prospectus and any class of securities issued in the same transaction or residual or equity interests in the transaction that are not being offered by the prospectus.⁷⁹⁰ We also noted our belief that information regarding the sponsor's, a servicer's, or a 20% originator's continuing interest in the pool assets is important to an ABS investor and, therefore, we proposed to revise Items 1104, 1108, and 1110 to require disclosure regarding the sponsor's, a servicer's, or a 20% originator's interest

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17 CFR 229.1103(a)(3)(i).

retained in the transaction, including the amount and nature of that interest.⁷⁹¹ The disclosure would be required for both shelf and other offerings.⁷⁹²

b) Comments on Proposed Rule

Several commenters supported the proposed rule but recommended certain revisions.⁷⁹³ Some of these commenters suggested that the required disclosures include the effect of hedging.⁷⁹⁴ For instance, one commenter stated that the rule should state that the disclosure should be net of hedging,⁷⁹⁵ and the other commenter recommended requiring the sponsor to disclose "any hedge (security specific or portfolio) that was entered into by the sponsor or, to the extent it has actual knowledge of such a hedge, an affiliate in an effort to offset any risk retention position held by the sponsor or an affiliate."⁷⁹⁶

Another commenter requested that we limit the retention disclosure requirements "to those required in any risk retention construct that may be included in the final rules."⁷⁹⁷ The commenter acknowledged that it "is difficult for investors to ascertain how many securities

⁷⁹¹ For example, if the originator has retained a portion of each tranche of the securitization, then disclosure regarding each amount retained for each tranche would be required.

⁷⁹² We also proposed that if the offering was being registered on Form SF-1, the issuer would be required to provide clear disclosure that the sponsor is not required by law to retain any interest in the securities and may sell any interest initially retained at any time.

⁷⁹³ See letters from ABA I (supporting this requirement in lieu of the proposed risk retention shelf eligibility requirement because this disclosure will ensure that investors are fully aware of the alignment of interests in each offering), ASF I (expressed views of investors only) (believing that if the sponsor of the securitization retains exposure to the risks of the assets, the sponsor will likely have greater incentives to include higher quality assets), Mass. Atty. Gen., and Prudential I.

⁷⁹⁴ See letters from Mass. Atty. Gen. and Prudential I.

⁷⁹⁵ See letter from Mass. Atty. Gen.

⁷⁹⁶ See letter from Prudential I.

⁷⁹⁷ See letter from CREFC I.

cleared the market and how many were taken down by the issuer or sponsor," but that disclosure of any retention held above a required amount would be impractical and misleading because accurate information about retention interests may not be known until closing, which is after investors make their investment decision, and the retention interests often change during the period between the time of sale and closing.

c) Final Rule

After considering the comments received, we are adopting the proposed revisions to Items 1104, 1108, and 1110 with some modifications.⁷⁹⁸ As noted below, the requirements that we are adopting for shelf eligibility do not contain a requirement for risk retention in light of the risk retention proposals currently being considered by regulators under the Dodd-Frank Act.⁷⁹⁹ Because commenters noted that disclosure about a sponsor's, a servicer's, or a 20% originator's continuing interest in the pool assets is an important factor that investors consider when analyzing the alignment of interests among various parties in the securitization chain, we are adopting this rule.⁸⁰⁰ We are also persuaded by commenters that this disclosure should describe the effect of hedging because a hedge could effectively reduce the actual exposure that the party

⁷⁹⁸ For purposes of describing any interest that the sponsor, servicer, or 20% originator, retained in the transaction, such disclosure must also include any interest held by an affiliate of such entity, except as described below for certain hedges entered into by affiliates, disclosure is required to the extent known. We have made conforming changes to the final rule to clarify the treatment of affiliates. As discussed later in Section VIII.A.3 Changes in Sponsor's Interest in the Securities, we are also adopting a requirement that any material change in the sponsor's interest in the securities must be disclosed on Form 10-D.

⁷⁹⁹ See the 2011 Risk Retention Proposing Release and the 2013 Risk Retention Re-Proposing Release.

⁸⁰⁰ See also footnote 1320 (describing one commenter's views on the importance of requiring disclosure of any material change in the sponsor's interest in the transaction).

may face from its continuing interest in the pool assets.⁸⁰¹ We do not believe that providing disclosure of the interests retained by the sponsor, servicer, or 20% originator net of hedging alone, as suggested by one commenter, provides investors with sufficient insight into the hedging activities used by these entities to minimize exposure to their interests. Therefore, we are adopting the rule that each of these parties disclose their continuing interest in the pool assets, including the amount and nature of that interest, and disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by these parties or, if known, by any affiliate of these parties to offset any risk position held.⁸⁰² We believe this approach provides investors with appropriate information about these entities' continuing interest in the pool assets and how these parties may be managing those exposures.

We also acknowledge the concerns that the exact amount retained by these parties may not be known until closing and that these retention interests may and do often change during the period between the time of sale and closing.⁸⁰³ To address these concerns, the parties will only need to describe in the preliminary prospectus the amount and nature of the interest that they intend to retain. The parties must, however, also disclose in the preliminary prospectus the amount and nature of risk retention that they have retained in order to comply with law (for

⁸⁰¹ We also note that Section 15G of the Exchange Act, as added by Section 941 of the Dodd-Frank Act, requires that the risk retention rules, to be finalized by regulators, must prohibit a securitizer from directly or indirectly hedging the credit risk required to be retained under the rules.

⁸⁰² Because we believe that a security-specific hedge is more likely to be material to investors, we anticipate that issuers will need to provide more detailed disclosure about such hedge in order for investors to understand the impact such hedge may have on the ABS.

⁸⁰³ See letter from CREFC I.

example, to comply with the final risk retention rules once they are adopted).⁸⁰⁴ In order to clarify the requirement, we have included an instruction specifying that the amount and nature of the interest or asset retained in compliance with law must be separately stated in the preliminary prospectus.⁸⁰⁵ For purposes of the final prospectus, the parties must also disclose the actual amount and nature of the interest to be retained.

4. Economic Analysis Related to the Rules Regarding Transaction Parties

The rules discussed in this section seek to provide ABS investors with greater information about the transaction parties to a securitization, thereby allowing them to make more informed investment decisions. First, investors will now be able to identify a potentially larger number of the originators of pool assets, which will improve their ability to compare the loan performance across originators and assess the relative stringency of these originators' underwriting standards as well as their historical performance. Second, at the time of an ABS offering, investors will now be able to better assess the ability of parties obligated to repurchase assets to actually fulfill those obligations. This will allow investors to more accurately assess the representations and warranties in the transaction agreements, since the enforceability of these depends on the ability of the obligated party to repurchase breached assets. Third, investors will now have information about the sponsor's, servicer's, or a 20% originator's interest retained in the transaction net of hedging. Investors have indicated that this information will be beneficial to

⁸⁰⁴ See the 2013 Risk Retention Re-Proposing Release.

⁸⁰⁵ See letter from CREFC I (noting that the nature and amount of retained interests held to fulfill risk retention requirements could be disclosed in the prospectus).

them because the information will allow them to consider the incentives of the various parties involved in the securitization chain.

The costs of the revised rule will be borne primarily by issuers, who will be required to provide additional disclosure about the transaction parties to a securitization. The magnitude of the costs will depend on the extent to which issuers already gather the required information. For instance, on the one hand, issuers likely already obtain the identities of originators; therefore, providing that information should not impose significant additional costs. On the other hand, issuers may need to gather some additional information from third parties regarding the financial condition of an originator who originated 20% or more of the pool assets and is obligated to repurchase assets under the transaction agreements. As a result, issuers may incur costs to gather the financial data and then prepare and provide the required disclosure. However, we believe that the revised rule strikes the appropriate balance between the benefit of providing investors with useful information about the originators and the burden of requiring the identification of all originators, regardless of the amount they contributed to the pool.

Some commenters were concerned that disclosing the financial condition of a party obligated to repurchase assets may impose an indirect cost on investors, if investors misinterpret this disclosure and the existence of representations and warranties as the obligated parties providing credit or liquidity support to the transaction. In light of our other rules on disclosure of credit and liquidity support, we believe investors will see a clear distinction between the representations and warranties and any credit or liquidity support provided. Similarly, some commenters were concerned that the disclosure may be misleading to investors because the financial condition of the party may have changed between the time of the transaction when the

disclosure was provided and the repurchase demand. We believe that investors will still benefit from the required information since it will allow investors to assess at the time of making their investment decision whether the entities that provided representations and warranties regarding the pool assets are, at least as an initial matter, financially capable of fulfilling their obligations.

B. Prospectus Summary

1. Proposed Rule

In the 2010 ABS Proposing Release, we noted that a prospectus summary should briefly highlight the material terms of the transaction, including an overview of the material characteristics of the asset pool. We also noted our belief that the prospectus summaries provided in ABS prospectuses may not adequately highlight the material characteristics, including material risks, particular to the ABS being offered. Instead, these prospectus summaries often summarize types of information that are common to all securitizations of a particular asset class.⁸⁰⁶ Accordingly, we proposed a new instruction to clarify the prospectus summary disclosure requirements.⁸⁰⁷ Specifically, the proposed instruction noted that the prospectus summary disclosure may include, among other things, statistical information of: the types of underwriting or origination programs, exceptions to underwriting or origination criteria, and, if applicable, modifications made to the pool assets after origination.

⁸⁰⁶ See the 2010 ABS Proposing Release at 23383.

⁸⁰⁷ 17 CFR 229.1103(a)(2).

2. Comments on Proposed Rule

Comments on the proposal were mixed.⁸⁰⁸ One commenter, who was supportive of the proposal, stated that the instruction would help “highlight potential risks relating to the underwriting of the underlying pool assets.”⁸⁰⁹ Another commenter, who opposed the proposed instruction, requested an exception for CMBS transactions stating that each commercial mortgage is unique and, as a result, the proposed disclosures would not enhance an investor’s understanding of the risks and characteristics of a particular CMBS loan pool.⁸¹⁰ One commenter stated that the instruction runs counter to the Commission’s plain English rules because it requires the repeating of disclosure in different sections of the document without enhancing the quality of the information.⁸¹¹ This commenter also contended that the proposed instruction seems to encourage reliance on a summary of information that should be considered in the fuller context of the narrative in the body of the prospectus. The commenter suggested that we reconsider the proposal or, in the alternative, require only a cross-reference in the summary to the location of this information in the body of the prospectus.⁸¹²

⁸⁰⁸ See letters from BoA I, CFA I, Prudential I, and Realpoint (all supporting the proposal). But see letters from ASF I (expressed views of dealers and sponsors only) and CREFC I (opposing the proposed rule).

⁸⁰⁹ See letter from CFA I.

⁸¹⁰ See letter from CREFC I.

⁸¹¹ See letter from ASF I (expressed views of dealers and sponsors only) (“find[ing] it unusual that the Commission is proposing such a specific disclosure requirement as an instruction to an Item requirement that is otherwise by design very general”).

⁸¹² See letter from ASF I (expressed views of dealers and sponsors only).

3. Final Rule and Economic Analysis of the Final Rule

After considering comments received, we are adopting the proposed instruction with revisions. From our experience, the prospectus summaries often summarize types of information that are common to all securitizations of a particular asset class rather than the material characteristics of the particular ABS, such as statistics regarding whether the loans in the asset pool were originated under various underwriting or origination programs, whether loans were underwritten as exceptions to the underwriting or originations programs, or whether the loans in the pool have been modified.⁸¹³ We believe that investors would benefit from a prospectus summary that summarizes the disclosures in the prospectus regarding this type of information because presenting this information in a summarized format may aid investors' understanding of material characteristics. In that regard, we also believe that the final instruction is less prescriptive than one commenter suggested since it does not require specific disclosure but rather indicates the types of information that may be summarized. We acknowledge that the prospectus summary should be brief and should not contain, and is not required to contain, all of the detailed information in the prospectus and, therefore, issuers should not simply repeat the disclosure found elsewhere in the prospectus in the prospectus summary. We also acknowledge that more fulsome narrative disclosures discussing these summary statistics may provide greater context

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For example, the prospectus summary should include summarized information about the disclosure required as part of the issuer review performed under Securities Act Rule 193. In particular, Item 1111 of Regulation AB requires an ABS issuer to disclose the nature of its review of the assets and the findings and conclusions of the issuer's review of the assets, which includes its conclusion that the review was designed and effected to provide reasonable assurance that the disclosure in the prospectus regarding the assets is accurate in all material respects.

about these disclosures; therefore, we added as part of the final instruction a requirement to include a cross-reference in the prospectus summary to the location of corresponding disclosure in the body of the prospectus.

The costs associated with this disclosure should be minimal as the issuer should already have this information, or be able to easily generate the information, in light of the more detailed disclosure required by other item requirements in Regulation AB. Furthermore, this is not a new requirement, but rather a clarification of our position on what should be provided in the prospectus summary. Finally, if this disclosure is not appropriate for a particular asset class, then existing Item 1103(a) addresses this concern by indicating that the disclosure is only required where applicable.⁸¹⁴

C. Modification of Underlying Assets

1. Proposed Rule and Comments on Proposed Rule

In the 2010 ABS Proposing Release, we proposed to replace Item 1108(c)(6) of Regulation AB with a more detailed and specific disclosure requirement in Item 1111.⁸¹⁵ Item 1108(c)(6) requires disclosure to the extent material of any ability of the servicer to waive or modify any terms, fees, penalties, or payments on the assets and the effect of exercising such

⁸¹⁴ See Item 1103(a) of Regulation AB [17 CFR 229.1103(a)] (stating in providing the information required by Item 503(a) of Regulation S-K, provide the following information in the prospectus summary, as applicable).

⁸¹⁵ 17 CFR 229.1111. In the 2010 ABS Proposing Release, we proposed to amend Item 1111 to require disclosure regarding deviations to disclosed underwriting standards. The proposal would have also required disclosure of the steps taken by the originator to verify information received during the underwriting process. These proposals and the comments on the proposals were later considered and acted upon in connection with the rules implementing Section 945 of the Dodd-Frank Act. See Issuer Review of Assets in Offerings of Asset-Backed Securities, Release No. 33-9176 (Jan. 20, 2011).

ability, if material, on the potential cash flows from the assets. The proposed requirement in Item 1111 would require a description of the provisions in the transaction agreements governing modification of the assets and disclosure regarding how modifications may affect cash flows from the assets or to the securities. We received only one comment on the proposal, which supported the proposed amendments.⁸¹⁶

2. Final Rule and Economic Analysis of the Final Rule

We are adopting the final rule, as proposed. We continue to believe that the ability of the servicer to modify any terms, fees, and penalties and the effect of this ability on potential cash flows remains an important factor to investors. We believe that more granular data about this ability will enable investors to better assess the possibility of a potential change in the cash flows, which should, in turn, promote more efficient allocation of capital. To the extent issuers will be providing more detail than they previously provided, issuers' costs to provide the required disclosure will likely increase.

D. Disclosure of Fraud Representations

We also proposed to revise Item 1111(e) to require disclosure of whether a representation was included among the representations and warranties that no fraud has taken place in connection with the origination of the assets on the part of the originator or any party involved in the origination of the assets. In proposing this requirement, we believed that it was important that any fraud representation be highlighted to investors.

⁸¹⁶ See letter from MBA I.

Several commenters were opposed to the proposed requirement.⁸¹⁷ One commenter noted that both its investor and issuer members agreed that the absence of fraud in the origination is an element of several representations and warranties concerning the pool assets, such as the representation and warranty stating that the pool assets were originated in compliance with the requirements of law and applicable underwriting standards, and that the pool assets are legal, valid, and binding payment obligations of the related obligors.⁸¹⁸ This commenter further noted that singling out a fraud representation in the disclosure was unnecessary and duplicative in light of our other proposal that would require issuers to provide disclosure on representations and warranties. Another commenter stated that the proposed requirement did not pass a reasonable cost-benefit test and, without clarifying why, stated that the disclosure would not benefit investors.⁸¹⁹ This commenter suggested that we not adopt the proposed requirement and instead require a restatement or identification of the specific fraud representation, if any, included in the transaction “rather than including a binary response to whether or not there is a fraud representation.”⁸²⁰

After considering the comments we received, we are not adopting the proposed revisions to Item 1111(e). As one commenter noted, the absence of fraud may be an element of several

⁸¹⁷ See letters from ASF I, ELFA I, and MBA I.

⁸¹⁸ See letter from ASF I.

⁸¹⁹ See letter from ELFA I (noting that a general “fraud representation” is difficult to make due to the potential chain of parties involved in a single lease/loan including the lessee, manufacturer, dealer, broker, lessor/lender and servicer).

⁸²⁰ See letter from ELFA I.

representations and warranties concerning the pool assets and therefore is already adequately disclosed under the current requirements of Item 1111(e).

E. Static Pool Disclosure

1. Disclosure Required

a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that since the adoption of Regulation AB we have observed that static pool information provided by asset-backed issuers may vary greatly within the same asset class. Variations exist not only with the type or category of information disclosed but also with the manner in which it is disclosed. As a result, static pool information between different sponsors has not necessarily been comparable, which reduces its value to investors.

To address this problem, we proposed revisions to Item 1105 of Regulation AB⁸²¹ to increase the clarity, transparency, and comparability of static pool information. Some of the proposed rules would apply to all issuers, and other proposed rules would apply only to amortizing asset pools and not to revolving asset master trusts. For all issuers, we proposed the following five requirements.⁸²² First, we proposed to require appropriate introductory and explanatory information to introduce the characteristics. Second, we proposed to require that issuers describe the methodology used in determining or calculating the characteristics and describe any terms or abbreviations used. Third, we proposed to require a description of how the

⁸²¹ 17 CFR 229.1105.

⁸²² See the 2010 ABS Proposing Release at 23385.

assets in the static pool differ from the pool assets underlying the securities being offered.

Fourth, we proposed to require additional disclosure if an issuer does not include static pool information or includes disclosure that is intended to serve as alternative static pool information. Finally, we proposed to require graphical presentation of the static pool information, if doing so would aid in understanding.

b) Comments on Proposed Rule

Commenters were generally supportive of these proposed rules⁸²³ and mostly requested that the Commission clarify certain aspects.⁸²⁴ Some commenters were supportive of the proposal to provide narrative disclosure.⁸²⁵ One commenter stated that the inclusion of explanatory information introducing the characteristics of the static pool would increase the clarity of the required static pool disclosure.⁸²⁶ Other commenters requested greater clarification about the narrative disclosure requirements. For instance, one commenter believed that it was unclear whether “narrative disclosure” would permit presentation in tabular format.⁸²⁷ Another commenter expressed concern with the RMBS example provided in the 2010 ABS Proposing Release and noted that one of the aspects we listed – the number of loans that were exceptions to

⁸²³ See letters from AMI, ASF I, BoA I, CFA I, MSCI, Prudential I, and Realpoint.

⁸²⁴ See letters from ASF I and VABSS I.

⁸²⁵ See letters from AMI and ASF I.

⁸²⁶ See letter from ASF I.

⁸²⁷ See letter from VABSS I.

standardized underwriting – is qualitatively different and more granular and detailed than the other aspects listed (i.e., number of assets and types of mortgages).⁸²⁸

One commenter, supportive of the proposal to require a description of the methodology used in determining or calculating the characteristics, urged the Commission to require that the methodologies used by issuers be standardized to facilitate comparison of securities within the same asset class.⁸²⁹ This commenter also emphasized that key defined terms, such as “delinquency” and “default” must be standardized.

Several commenters provided differing views on whether the proposal to require a description of how the assets in the static pool differ from the pool assets underlying the securities being offered was necessary or helpful to investors. One commenter indicated that this disclosure is helpful in understanding “pool construction risk.”⁸³⁰ Another commenter, however, argued that it did not understand how this requirement adds anything to the proposed narrative disclosure.⁸³¹

⁸²⁸ See letter from ASF I. See also the 2010 ABS Proposing Release at 23385. In the 2010 ABS Proposing Release, we illustrated the narrative disclosure that would be required using RMBS as an example. We noted that for a pool of RMBS the disclosure would include the number of assets, the types of mortgages, and the number of loans that were exceptions to the standardized underwriting criteria.

⁸²⁹ See letter from AML.

⁸³⁰ See letter from Prudential I (recommending that “[t]he prospectus should highlight the extent to which the current collateral pool was originated with the same or differing underwriting criteria, loan terms, and/or risk tolerances than the static pool data”).

⁸³¹ See letter from VABSS I (stating its hope that the Commission is not suggesting that, for each offering, registrants should include a description of how the securitized pool differs from each of the 3 to 25 static pools, as the commenter believes that such disclosure would simply compare the disclosed metrics for each pool and therefore would provide no incremental value to investors).

With respect to requiring an issuer to explain why it did not provide static pool information or provided alternative information, one commenter interpreted this proposal as capable of being satisfied through summary disclosure stating that either the data are not available or that static pool disclosure is immaterial.⁸³²

One commenter opposed requiring the graphical presentation of static pool information in addition to the proposed narrative description.⁸³³ This commenter asserted its belief that graphical presentation is not market practice, has “highly questionable utility” and is possibly misleading. This commenter supported, however, graphical presentation of delinquency, loss, and prepayment information for amortizing pools.

c) Final Rule and Economic Analysis of the Final Rule

After considering the comments provided, we are adopting the requirements as proposed.⁸³⁴ First, we are amending Item 1105 to require narrative disclosure that provides introductory and explanatory information to introduce the static pool information presented. We continue to believe that a brief snapshot of the static pool information presented will benefit investors by providing them with context in which to evaluate the information, especially for those investors who lack sophisticated analytical tools.⁸³⁵ We do not intend for the requirement to cause issuers to repeat the underlying static pool disclosure in the narrative; rather we intend

⁸³² See letter from BoA I (urging reconsideration of any standard that would require disclosure of a “detailed analysis of materiality” and stating that “[a]n analysis of an issuer’s methodology for making materiality determinations is not a proper subject of prospectus disclosure”).

⁸³³ See letter from BoA I.

⁸³⁴ See Item 1105 of Regulation AB [17 CFR 229.1105].

⁸³⁵ See the 2010 ABS Proposing Release at 23385.

for the requirement to serve as a clear and brief introduction of the static pool disclosure in order to provide context to investors. We do believe, however, that the type of narrative disclosure that we are requiring is best presented in paragraph format, and not in tabular format as one commenter recommended, in order for the narrative description to clearly convey to investors the differences in the assets being securitized in the deal and the assets comprising the static pools.⁸³⁶

To aid issuers in understanding what the narrative disclosure would typically include, and as commenters noted, we provided an example in the 2010 ABS Proposing Release, as we have done in other releases, to illustrate the disclosure principle.⁸³⁷ In our example, for a pool of RMBS, the disclosure would typically include, among other things, the number of loans that were exceptions to the standardized underwriting criteria. As noted above, one commenter expressed concern and noted that the number of loans that were exceptions to the standardized underwriting criteria was qualitatively different and granular than the other two characteristics in the example and raised questions for issuers as how to apply the disclosure standard in a principled way to distinguish among various credit characteristics of the pool.⁸³⁸ We believe that for RMBS, the number of exceptions to the standardized underwriting criteria is an important credit characteristic for issuers to highlight in the narrative disclosure. Inclusion of a significant number of mortgages that deviate from the underwriting standards could pose a risk to the

⁸³⁶ See letter from VABSS I. Issuers can supplement the narrative disclosure that is required to be provided in paragraph format with graphical presentation if doing so would aid in understanding.

⁸³⁷ See the 2010 ABS Proposing Release at 23385.

⁸³⁸ See letter from ASF I. We discuss amendments to Item 1111 requiring specific data about the amount and characteristics of assets that deviate from the disclosed origination standards in Section III.A.2.a) Disclosure Requirements for All Asset Classes and Economic Analysis of These Requirements.

performance of the RMBS. We believe disclosure of the number of loans that were exceptions to standardized underwriting criteria is likely to be important to highlight for other asset classes as well. Issuers should highlight those characteristics that would be most important for investors to be aware of before analyzing the actual static pool disclosure, which for some asset classes can be extensive.

Second, we are adopting, as proposed, an amendment to require issuers to describe the methodology used in determining or calculating the characteristics and also to describe any terms or abbreviations used.⁸³⁹ We believe that this requirement will provide clarity and transparency to investors and assist them in determining whether the calculations or terms are comparable across issuers. This will benefit investors because it will facilitate their ability to make better informed investment decisions. One commenter urged the Commission to direct that the methodologies and key terms used by issuers be converged and standardized over time so that investors can compare securities within the same asset class.⁸⁴⁰ Although we are not adopting standardized methodologies and terms for static pool disclosure, the proposal we are adopting requires asset-level disclosures for ABS backed by certain asset types.⁸⁴¹ As a result of the new asset-level requirements, the data used to produce the static pool information for these asset classes will be standardized.

⁸³⁹ See Item 1105 of Regulation AB [17 CFR 229.1105].

⁸⁴⁰ See letter from AMI.

⁸⁴¹ See also Section III.A Asset-Level Disclosure Requirement.

Third, we are requiring a description of how the assets in the static pool differ from the pool assets underlying the securities being offered.⁸⁴² We continue to believe that this requirement benefits investors by providing them with context in which to evaluate the information without sophisticated data analysis tools and, as one commenter noted, to evaluate pool construction risk. If the pool in the offering is materially different from prior pools, then the issuer should describe the difference so that investors can factor in that difference when examining the static pool information. We agree with one commenter's statement that "[t]he prospectus should highlight the extent to which the current collateral pool was originated with the same or differing underwriting criteria, loan terms and/or risk tolerances than the static pool data."⁸⁴³ We also believe that in cases where the assets of the pool being securitized were underwritten through different origination channels (e.g., loans originated directly through an originator's retail channel or through unaffiliated mortgage brokers) compared to prior securitized pools, disclosure of the proportion of assets originated through each channel should be provided. To address commenters' concerns, we are clarifying that we are requiring "a clear and concise description" of the material differences, if any, from the pool being securitized, but not a detailed comparison.⁸⁴⁴

⁸⁴² See Item 1105 of Regulation AB [17 CFR 229.1105].

⁸⁴³ See letter from Prudential I.

⁸⁴⁴ See letter from VABSS I.

Fourth, as proposed, the final rule states that the static pool information should be presented graphically if doing so would aid in understanding.⁸⁴⁵ As with the other requirements discussed above, we believe graphical presentations help investors to more easily evaluate material information, without the use of sophisticated analytical tools. One commenter stated that the graphical presentation has “highly questionable utility” and also may be misleading under many circumstances.⁸⁴⁶ We are requiring the issuer to provide a graphical illustration only if it would be helpful; therefore, if an issuer believes that providing graphical presentation of the static pool information would not be useful for understanding the data or misleading, then the issuer would not be required to provide it. However, we generally believe that graphical presentation of information can be beneficial to investors by helping them to quickly spot trends, which may not be evident by looking at the numbers alone.

Finally, in addition to providing investors with a clear and brief introduction of the static pool data, we are also requiring issuers to provide disclosure in cases where an issuer does not include static pool information or includes disclosure that is intended to serve as alternative static pool information.⁸⁴⁷ It is not always apparent why one issuer does not provide static pool information or provides alternative disclosure in lieu of such information, when other issuers within the same asset class provide the information. Therefore, we are requiring that issuers explain why they have not included static pool disclosure or why they have provided alternative

⁸⁴⁵ See Item 1105 of Regulation AB [17 CFR 229.1105].

⁸⁴⁶ See letter from BoA I.

⁸⁴⁷ See Item 1105 of Regulation AB [17 CFR 229.1105].

information. One commenter interpreted this requirement as capable of being satisfied through summary disclosure, such as stating that the data is not available or not material.⁸⁴⁸ While we are not requiring that the issuer provide an extensive explanation, the issuer should provide some explanation beyond a conclusory statement that the information is not available or not material. If the information is not included because it is not material, an issuer should explain why the data is immaterial, such as if the assets differ so significantly from the assets in the pool being offered.

We believe that taken together the static pool disclosure requirements adopted will benefit investors by providing them with more clearly explained and more consistently presented information about static pools, thereby facilitating their understanding of how the performance of the static pools may or may not be indicative of how the current pool may perform. This will help investors make better informed investment decisions and lead to more efficient allocation of capital. The requirements will be costly to issuers to the extent that they require reformatting information such as in graphical format. We expect that these costs will be minimal because issuers can use off-the-shelf software to create the graphs. Issuers will also incur costs for analyzing prior pools as compared to the current offering, but these costs should not be significant since they will have all the necessary information.

⁸⁴⁸

See letter from BoA I.

2. Amortizing Asset Pools

a) Proposed Rule

We proposed to add an instruction to Item 1105(a)(3)(ii) of Regulation AB to require the static pool information related to delinquencies, losses, and prepayments be presented in accordance with the existing guidelines outlined in Item 1100(b)⁸⁴⁹ for amortizing asset pools. Additionally, we proposed to amend Item 1105(a)(3)(iv) to require graphical presentation of delinquency, losses, and prepayments for amortizing asset pools.

b) Comments on Proposed Rule

Comments received on the proposed changes for amortizing asset pools were mixed. With respect to requiring that delinquencies, losses, and prepayments be presented in accordance with Item 1100(b), several commenters supported the proposal,⁸⁵⁰ and several other commenters opposed.⁸⁵¹ Those commenters opposing the requirement were most concerned about the one-size-fits-all approach to Item 1100(b)(1). They stated, for example, that reporting delinquencies, losses, and prepayments in 30- or 31-day increments through charge-off would be for a longer period of time than required under general principles of materiality.⁸⁵² In regard to the graphical

⁸⁴⁹ 17 CFR 229.1100(b). Item 1100(b) requires that information be presented in a certain manner. For example, it requires that information regarding delinquency be presented in 30-day increments through the point that assets are written off or charged off as uncollectable.

⁸⁵⁰ See letters from BoA I and Realpoint.

⁸⁵¹ See letters from ASF I and VABSS I.

⁸⁵² Id. These commenters requested that the Commission tailor Item 1100(b) according to asset class. For instance, ASF requested that the Commission modify Item 1100(b)(1) for RMBS and CMBS as follows: present delinquency information in 30- or 31-day increments through the point that the loans are 179 or 180 days delinquent, followed by an additional 180-day increment (i.e., through the point that the loans are 359 or 360 days delinquent), and a final increment of 359 or 360 days or more. For ABS supported, directly or

presentation requirement, one commenter noted that graphical presentations provide immediate recognition of changes in asset performance.⁸⁵³ Commenters that opposed the requirement argued that not all graphical presentations are useful or meaningful, especially for asset classes with extensive data.⁸⁵⁴

c) Final Rule and Economic Analysis of the Final Rule

We are adopting the proposed rules for amortizing asset pools with modification in response to comments. We remain concerned that the inconsistent presentation of delinquencies, losses, and prepayments across issuers within the same asset class has resulted in a lack of clarity and comparability.⁸⁵⁵ To address this concern, we are adding an instruction to Item 1105(a)(3)(ii) of Regulation AB to require for amortizing asset pools that the static pool information related to delinquencies, losses, and prepayments be presented in accordance with Item 1100(b) with respect to presenting such information in 30- or 31-day increments. In response to commenters' concerns with requiring such presentation through charge-off, the final instruction requires that delinquencies, losses, and prepayments be presented in 30- or 31-day increments through no less than 120 days.⁸⁵⁶ We believe that this revised time period balances

indirectly, by motor vehicles, equipment and other similar physical assets with finite lives over which their value depreciates, ASF and VABSS requested that Item 1100(b)(1) be modified so that delinquency information is presented in 30- or 31-day increments through the point that the loans are 119 or 120 days delinquent, followed by a final increment of 119 or 120 days or more.

⁸⁵³ See letter from CFA I. See also letters from AMI and BoA I (supporting the graphical requirement for amortizing asset pools).

⁸⁵⁴ See letters from ASF I and VABSS I.

⁸⁵⁵ See the 2010 ABS Proposing Release at 23385.

⁸⁵⁶ See letters from ASF I and VABSS I.

commenters' concerns with the cost and burden of having to track and report this information in a more granular manner for a longer period of time while still providing investors with a more comprehensive picture of the delinquencies, losses, and prepayments in a uniform manner across asset classes. We also note that this revised time period is consistent with the new asset-level data requirement for presentation of delinquencies and losses in RMBS.⁸⁵⁷ While investors will not receive as granular a presentation as proposed (through charge-off), investors investing in asset classes required to provide asset-level disclosures will be receiving more detailed information about the payment status of each individual asset, such as the paid through date.⁸⁵⁸ We recognize that to the extent that issuers will now be required to present delinquencies and losses for a longer period of time than previously provided in the distribution reports, such issuers will incur some costs. We believe, however, the benefits gained from standardized and comparable delinquency and loss disclosure justify the costs issuers may incur to provide the information.

In addition to requiring that delinquencies, losses, and prepayments be presented in accordance with Item 1100(b) through no less than 120 days, we are amending Item 1105(a)(3)(iv) to require the graphical presentation of this information for amortizing asset pools. We acknowledge commenters' concern that the substantial quantitative data associated

⁸⁵⁷ See new Item 1(g)(33) of Schedule AL.

⁸⁵⁸ See new Item 1(g)(28) of Schedule AL. See Section III.A.2.b Asset Specific Disclosure Requirements and Economic Analysis of These Requirements. Due to the transition period for implementing the loan-level requirements, there will be a period of time during which investors will not have access to this more granular data about assets in prior securitized pools. See Section IX.B Transition Period for Asset-Level Disclosure Requirements.

with some prior securitized pools could make graphical presentation of the data “unintelligible” and that investors may prefer actual data over graphs because they cannot ascertain the data from the graphs and they can take the tabular data and create their own graphs.⁸⁵⁹ We believe, however, that static pool data alone, depending on the volume and type of data, can be difficult to analyze without the use of sophisticated analytical tools. Requiring graphical presentation of this information will benefit investors by enabling them to analyze the information without such tools.⁸⁶⁰ In addition, graphical presentation of the information highlights possible data segments that warrant further analysis and may therefore facilitate a more tailored and efficient in-depth analysis. We also note that the inherent function of static pool information (i.e., analyzing trends within a sponsor’s program by comparing originations at similar points in the assets’ lives) is well-suited for graphical presentation as it allows for better detection of patterns that may not necessarily be evident from overall portfolio numbers.

3. Filing Static Pool Data

a) Proposed Rule

We proposed to permit issuers to file their static pool information required under Item 1105 of Regulation AB on EDGAR in Portable Document Format (“PDF”) as an official filing in

⁸⁵⁹ See letter from VABSS I.

⁸⁶⁰ See letters from AMI, BoA I, and CFA I (noting that graphical representation of this information provides investors with an immediate recognition of changes in asset performance in successive pools and thus an indication of the underwriting standards of the issuers).

lieu of, as currently required, including the information directly in the prospectus (or incorporating by reference) in ASCII or HTML format.⁸⁶¹

As is the case today, however, issuers can incorporate static pool information filed on a Form 8-K or as an exhibit to a Form 8-K by reference into a prospectus.⁸⁶² We proposed that all static pool disclosure, if filed on a Form 8-K, be filed under a new item number so that investors could easily locate the information that is incorporated by reference into the prospectus. We also proposed to create a new exhibit number to Item 601 of Regulation S-K for static pool information filed as an exhibit to a Form 8-K or prospectus.

b) Comments on Proposed Rule

Commenters were generally opposed to our PDF proposal, favoring data formats other than PDF for static pool information. One commenter stated that PDF makes detailed analysis “difficult” and “time-consuming.”⁸⁶³ Another commenter preferred a format that is readily importable to Excel or a comparable database program.⁸⁶⁴ One commenter stated its belief that EDGAR in its current form will not facilitate the usability of static pool information, such as

⁸⁶¹ Rule 312 of Regulation S-T permitted issuers for ABS filed on or before June 30, 2012, to post their static pool information on an Internet Web site under certain conditions in lieu of filing the static pool information on EDGAR. We are not removing Rule 312 of Regulation S-T in connection with this rulemaking since issuers that previously provided static pool information via a Web site are required to retain all versions of the information provided through the Web site for a period of not less than five years. Issuers are no longer able to use Rule 312 as a means to provide their static pool information. We are, however, removing Item 512(l) of Regulation S-K, the undertaking previously required for providing static pool information on a Web site under Rule 312 of Regulation S-T because this undertaking is no longer applicable. We are also removing paragraph (d)(6)(iii) of Securities Rule 433 which had permitted issuers to include a Web site address for static pool information in a free writing prospectus.

⁸⁶² See the 2004 Adopting Release at 1541.

⁸⁶³ See letter from CFA I.

⁸⁶⁴ See letter from Prudential I.

allowing investors to download the data in a format that investors can use with their own analytical tools and applications.⁸⁶⁵ With respect to our proposal to house all static pool information filed on Form 8-K under a new item number, commenters were supportive of the proposal.⁸⁶⁶

c) Final Rule and the Economic Analysis of the Final Rule

Given commenters' concerns regarding the usability of static pool information in PDF, we are not adopting our proposal to permit issuers to file their static pool information in PDF as an official filing. This decision benefits investors because they will continue to receive static pool information in a more usable format compared to PDF. Issuers, however, will be precluded from taking advantage of any cost savings that could be achieved by filing the static pool information in PDF.

We are adopting the proposed rules to amend Form 8-K and Item 601 of Regulation S-K. We believe that these amendments will benefit investors in searching and locating the static pool information filed on EDGAR. Therefore, if the issuer wishes to incorporate static pool information by reference to a Form 8-K filing rather than to include it in the prospectus, then an

⁸⁶⁵ See letter from ASF I. See also letter from American Securitization Forum regarding the filing of static pool information dated May 4, 2012 submitted in response to the 2010 ABS Proposing Release ("ASF V") (noting that its investor members supported upgrading EDGAR to allow for a number of file types, including PDF and Excel, but did not specify whether PDF would in fact facilitate the usability of the static pool data).

⁸⁶⁶ See letters from MBA I and Prudential I. Prudential suggested requiring the issuer to include a link in the prospectus to the relevant information in order to assist investors in locating the information. As is the case today, filers may reference a previously submitted filing in the prospectus; however, filers are generally not permitted to include external references. See EDGAR Manual (Volume II), Section 5, for additional information and instruction about acceptable external references.

issuer must file it under new Item 6.06 of Form 8-K. If the issuer files the static pool information as an exhibit to a Form 8-K to be incorporated into a prospectus, the issuer must file the static pool information as Exhibit 106. Under the final rule, issuers will be required to include a statement in the prospectus that the static pool information incorporated by reference is deemed to be a part of the prospectus and also identify the Form 8-K on which the static pool information was filed by including the CIK number, file number, exhibit number (if applicable) and the date on which the static pool information was filed. Investors will benefit by being able to more easily search and locate static pool information incorporated by reference into the prospectus, and the only cost issuers are likely to incur is to update their information systems to reflect the new Form 8-K item requirement and exhibit number, which we believe should be minimal.

We also proposed that the information should be filed with the Form 8-K on the same date that the preliminary prospectus is required to be filed.⁸⁶⁷ We are adopting that proposal with one clarification. Consistent with current practices under existing requirements, issuers may incorporate by reference the same static pool information into the prospectus of one or more offerings of the same asset class as long as the information meets the requirements of Item 1105 of Regulation AB,⁸⁶⁸ which states that the most recent periodic increment for the static pool data

⁸⁶⁷ In the 2010 ABS Proposing Release, we proposed that “[t]he static pool disclosure must be filed as an exhibit with this report by the time of effectiveness of a registration statement on Form SF-1, on the same date of the filing of a form of prospectus, as required by Rule 424(h) (17 CFR 230.424(h)) and a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).”

⁸⁶⁸ 17 CFR 229.1105(a)(3)(ii).

must be of a date no later than 135 days after the first use of the prospectus.⁸⁶⁹ The amended requirement clarifies that issuers are required to provide information by the date that the prospectus is required to be filed rather than on the same date the prospectus is filed (i.e., permitting incorporation of a previously-filed Form 8-K), and thereby allows issuers to continue to have the flexibility to incorporate the static pool information by reference into prospectuses of multiple deals.

F. Other Disclosure Requirements That Rely on Credit Ratings

Items 1112 and 1114 of Regulation AB require the disclosure of certain financial information regarding significant obligors of an asset pool and significant credit enhancement providers relating to a class of asset-backed securities. An instruction to Item 1112(b) provides that no financial information regarding a significant obligor is required if the obligations of the significant obligor, as they relate to the pool assets, are backed by the full faith and credit of a foreign government and the pool assets are securities that are rated investment grade by an NRSRO.⁸⁷⁰ Item 1114 of Regulation AB contains a similar instruction that relieves an issuer of the obligation to provide financial information when the obligations of the credit enhancement provider are backed by a foreign government and the credit enhancement provider has an

⁸⁶⁹ We established a requirement regarding the age of the most recent periodic increment to ensure the currency of the data. See the 2004 Adopting Release at 1540.

⁸⁷⁰ Instruction 2 to Item 1112(b) of Regulation AB [17 CFR 229.1112(b)].

investment-grade rating.⁸⁷¹ We proposed to revise Item 1112 and Item 1114 to eliminate the exceptions based on investment-grade ratings.

We received only one comment on this proposal, which supported the proposal.⁸⁷² We are adopting the amendments to Items 1112 and 1114 as proposed. We continue to believe that these changes are consistent with the requirements of Section 939A of the Dodd-Frank Act, which requires us to reduce regulatory reliance on credit ratings, and our revisions to eliminate ratings from the shelf eligibility criteria for asset-backed issuers. We believe that this will allow investors to directly consider the financial condition of significant obligors and credit enhancement providers rather than rely solely on the implication of these parties' credit ratings. Because the information now required to be disclosed is likely available to the issuer, the revisions to Item 1112 and Item 1114 will not impose substantial costs or burdens on an asset-backed issuer.

V. Securities Act Registration

A. Background and Economic Discussion

Securities Act shelf registration provides important timing and flexibility benefits to issuers. An issuer with an effective shelf registration statement can conduct delayed offerings

⁸⁷¹ Instruction 3 to Item 1114 [17 CFR 229.1114]. Under both Items 1112 and 1114, to the extent that pool assets are not investment-grade securities, information required by paragraph (5) of Schedule B of the Securities Act may be provided in lieu of the required financial information. Paragraph 5 of Schedule B requires disclosure of three years of the issuer's receipts and expenditures classified by purpose in such detail and form as the Commission prescribes.

⁸⁷² See letter from BoA I.

“off the shelf” under Securities Act Rule 415 without staff action.⁸⁷³ Asset-backed securities are often registered on a Form S-3 registration statement and later offered “off the shelf” if, in addition to meeting other specified criteria,⁸⁷⁴ the securities are rated investment grade by an NRSRO. We continue to recognize that ABS issuers have expressed the desire to use shelf

⁸⁷³ As discussed in the 2010 ABS Proposing Release, contemporaneous with the enactment of the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA), which added the definition of “mortgage related security” to the Exchange Act, we amended Securities Act Rule 415 to permit mortgage related securities to be offered on a delayed basis, regardless of which form is utilized for registration of the offering (Pub. L. No. 98-440, 98 Stat. 1689). SMMEA was enacted by Congress to increase the flow of funds to the housing market by removing regulatory impediments to the creation and sale of private mortgage-backed securities. An early version of the legislation contained a provision that specifically would have required the Commission to create a permanent procedure for shelf registration of mortgage related securities. The provision was removed from the final version of the legislation, however, as a result of the Commission’s decision to adopt Rule 415, implementing a shelf registration procedure for mortgage related securities. See H.R. Rep. No. 994, 98th Cong., 2d Sess. 14, reprinted in 1984 U.S. Code Cong. & Admin. News 2827. See also Shelf Registration, Release No. 33-6499 (Nov. 17, 1983) [48 FR 52889] at footnote 30 (noting that mortgage related securities were the subject of pending legislation). In 1992, in order to facilitate registered offerings of asset-backed securities and eliminate differences in treatment under our registration rules between mortgage related asset-backed securities (which could be registered on a delayed basis) and other asset-backed securities of comparable character and quality (which could not), we expanded the ability to use “shelf offerings” to other asset-backed securities. See Simplification of Registration Procedures for Primary Securities Offerings, Release No. 33-6964 (Oct. 22, 1992) [57 FR 32461]. Under the 1992 amendments, offerings of asset-backed securities rated investment grade by an NRSRO (typically one of the four highest categories) could be shelf eligible and registered on Form S-3. The eligibility requirement’s definition of “investment grade” was largely based on the definition in the existing eligibility requirement for non-convertible corporate debt securities.

⁸⁷⁴ In addition to investment-grade rated securities, an ABS offering is shelf-eligible only if the following conditions are met: delinquent assets must not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date; and with respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor are or were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on Form S-3 subject to the requirements of Section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to Section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). Such material (except for certain enumerated items) must have been filed in a timely manner. We did not propose changes to these other eligibility conditions.

registration to access the capital markets quickly. ABS issuers' interest in shelf registration is also evidenced by the lack of ABS issuers using Form S-1.⁸⁷⁵

In the 2010 ABS Proposing Release, we proposed, among other things, new registration procedures, registration forms and shelf eligibility requirements for asset-backed security issuers. The 2010 ABS Proposals sought to address a number of concerns about the ABS offering process and ABS disclosures that were subsequently addressed in the Dodd-Frank Act, while others were not addressed by the Dodd-Frank Act. Two of the proposed shelf eligibility requirements – risk retention⁸⁷⁶ and continued Exchange Act reporting⁸⁷⁷ – were addressed by

⁸⁷⁵ According to EDGAR, since 2008, no ABS issuer has filed a registration statement on Form S-1 that went effective.

⁸⁷⁶ In the 2010 ABS Proposing Release, we proposed to require that sponsors of ABS transactions retain a specified amount of each tranche of the securitization, net of hedging. Section 941 of the Dodd-Frank Act added new Section 15G of the Exchange Act. Section 15G generally requires the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Commission and in the case of the securitization of any "residential mortgage asset," together with the Department of Housing and Urban Development and the Federal Housing Finance Agency, to jointly prescribe regulations relating to risk retention. In March 2011, the agencies proposed rules to implement Section 15G of the Exchange Act. In August 2013, the agencies re-proposed the rules. See the 2011 Risk Retention Proposing Release and the 2013 Risk Retention Re-Proposing Release.

⁸⁷⁷ The Commission proposed in the 2010 ABS Proposals to require that an ABS issuer undertake to file Exchange Act reports with the Commission on an ongoing basis as a condition to shelf eligibility. The 2010 ABS Proposals also proposed to require an issuer to confirm, among other things, whether Exchange Act reports required pursuant to the undertaking were current as of the end of the quarter in order to be eligible to use the effective registration statement for takedowns. Section 942(a) of the Dodd-Frank Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Exchange Act for ABS issuers, and granted authority to the Commission to issue rules providing for the suspension or termination of such duty. In the 2011 ABS Re-Proposing Release, we stated that due to the amendment to Section 15(d), the proposed shelf eligibility requirement to undertake to file Exchange Act reports is no longer necessary, including the quarterly evaluation by issuers of compliance with the undertaking. In August 2011, we adopted rules to provide for suspension of the reporting obligations for asset-backed securities issuers when there are no asset-backed securities of the class sold in a registered transaction held by non-affiliates of the depositor. See footnote 543.

provisions of the Dodd-Frank Act. In July 2011, we re-proposed some of the 2010 ABS Proposals in light of the changes made by the Dodd-Frank Act and comments we received.

The 2011 ABS Re-Proposals for ABS shelf registration eligibility were also part of several rule revisions we are considering in connection with Section 939A of the Dodd-Frank Act. Section 939A of the Dodd-Frank Act requires that we review any regulation issued by us that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Once we have completed that review, the statute provides that we modify any regulations identified in our review to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as we determine to be appropriate. In that connection, we take into account the context and purposes of the affected rules.

B. New Registration Procedures and Forms for ABS

1. New Shelf Registration Procedures

Under existing rules, as with current offerings of other types of securities registered on Form S-3 and Form F-3, the shelf registration statement for an offering of ABS will often be effective weeks or months before a takedown is contemplated. The prospectus in an effective registration statement must describe, among other things, the type or category of assets to be securitized, the possible structural features of the transaction, and identification of the types or

categories of securities that may be offered.⁸⁷⁸ Pursuant to existing Securities Act Rules 409 and 430B,⁸⁷⁹ the prospectus in the registration statement may omit the specific terms of a takedown if that information is unknown or not reasonably available to the issuer when the registration statement is made effective.⁸⁸⁰ For ABS offerings off the shelf, because assets for a pool backing the securities will not be identified until the time of an offering, information regarding the actual assets in the pool and the material terms of the transaction are typically only included in a prospectus or prospectus supplement that is required to be filed with the Commission by the second business day after first use.⁸⁸¹ This information includes information about the structure of the cash flows, the pool, underwriting criteria for the assets and exceptions made to the underwriting criteria, identification of the originators of the assets and other information that is related to the identification of specific assets for the pool. We understand that the creation of an asset pool to support securitized products is a dynamic and ongoing process in which changes can take place up until pricing. As a result, the new rules we are adopting maintain the

⁸⁷⁸ The form of prospectus in an effective registration statement should also include disclosure about the risks associated with changes in interest rates or prepayment levels as well as the various scenarios under which payments on the ABS could be impaired.

⁸⁷⁹ 17 CFR 230.409 and 17 CFR 230.430B.

⁸⁸⁰ The prospectus disclosure in the registration statement is often presented through a “base” or “core” prospectus and a prospectus supplement. We are eliminating this type of presentation for ABS issuers. See Section V.D.1 Presentation of Disclosure in Prospectuses.

⁸⁸¹ An instruction to Rule 424(b) [17 CFR 230.424(b)] requires that a form of prospectus or prospectus supplement relating to a delayed offering of mortgage-backed securities or an offering of asset-backed securities be filed no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

fundamental framework of shelf registration for delayed ABS offerings, but provide new important protections for investors who choose to commit capital to the ABS transactions.

We also recognize that it is important for investor protection that, in addition to receiving adequate information to make an investment decision, ABS investors also have adequate time to analyze the information and the potential investment. For the most part, each ABS offering off of a shelf registration statement involves securities backed by different assets, so that, in essence, from an investor point of view, each offering requires a new investment analysis. Information about the underlying assets is an important piece of information for analyzing the ability of those assets to generate sufficient funds to make payments on the securities. Furthermore, some have noted the lack of time to review transaction-specific information as hindering investors' ability to conduct adequate analysis of the securities.⁸⁸² We believe that a process for ABS offerings where investors and underwriters have additional time to conduct their review of offerings will result in improved investor protections and promote a more efficient asset-backed market, even if issuers may not always be able to complete their offering as swiftly as they could in the past.

⁸⁸² See, e.g., Section I.B. of CFA Institute Centre for Financial Market Integrity and Council of Institutional Investors, U.S. Financial Regulatory Reform: The Investor's Perspective, July 2009 (noting that securitized products are sold before investors have access to a comprehensive and accurate prospectus, noting that each ABS offering involves a new and unique security, and recommending that the Commission adopt rules to improve the timeliness of disclosures to investors); Securitization of Assets: Problems & Solutions Hearing Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs, 111th Cong. 11 (2009) (statement of William W. Irving) (recommending that there be ample time before a deal is priced for investors to review and analyze a full prospectus and not just a term sheet); The State of Securitization Markets Hearing Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs, 112th Cong. 9 (2011) (statement of Chris J. Katopis, Executive Director of the Association of Mortgage Investors) (recommending that there be a "cooling off period" when ABS are offered to provide investors with enough time to review and analyze prospectus information prior to making investment decisions). See also footnote 885 listing those commenters supporting the waiting period proposal.

Therefore, we are adopting rules designed to increase the amount of time that investors have to review information about a particular shelf takedown, which we believe will allow for better analysis of ABS in lieu of undue reliance on security ratings.

a) Rule 424(h) and Rule 430D

(1) Proposed Rule

In the 2010 ABS Proposing Release, we proposed to require that an ABS issuer using a shelf registration statement on proposed Form SF-3 file a preliminary prospectus containing transaction-specific information at least five business days in advance of the first sale of securities in the offering. This requirement would allow investors additional time to analyze the specific structure, assets and contractual rights of each transaction. We proposed this requirement in response to investors' concerns that ABS issuers were not providing them enough time to review the transaction-specific information, which hindered their ability to conduct adequate analysis of the securities. We noted in the 2011 ABS Re-Proposal that the five business-day waiting period was also intended to reduce undue reliance on security ratings, thus part of our efforts to remove the prior investment-grade ratings requirement.⁸⁸³ We believed that requiring such information to be filed at least five business days before the first sale of securities in the offering balances the interest of ABS issuers in quick access to the capital markets and the need of investors to have more time to consider transaction-specific information. In the 2010 ABS Proposing Release, we explained that we considered whether a longer minimum time

⁸⁸³ See the 2010 ABS Proposing Release at 23334, including footnote 80, and the 2011 ABS Re-Proposal at 47950, including footnote 19.

period than five business days would be more appropriate.⁸⁸⁴ We had proposed five business days because we believed that the companion proposals requiring the filing of standardized and tagged asset-level information and a computer program could reduce the amount of time required by investors to consider transaction specific information. The proposal also provided that a material change from the information provided in the preliminary prospectus, other than offering price, would require a new preliminary prospectus to be filed and therefore, a new five business-day waiting period.

(2) Comments on Proposed Rule

Comments received on this proposal were mixed. Several commenters supported the proposal that a preliminary prospectus be filed five business days in advance of the first sale.⁸⁸⁵ Two commenters generally supported the proposed five business-day waiting period and also provided additional feedback on other time periods.⁸⁸⁶ One of the commenters recommended

⁸⁸⁴ Some have suggested that investors be provided with up to two weeks to analyze asset information. See, e.g., Joshua Rosner, Securitization: Taming the Wild West, in ROOSEVELT INSTITUTE, MAKE MARKETS BE MARKETS 73 (2010).

⁸⁸⁵ See letters from AFL-CIO dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, AMI, CalPERS, CFA I, CREFC I, Rylee Houseknecht dated Apr. 26, 2010 submitted in response to the 2010 ABS Proposing Release, ICI I, Jamie L. Larson dated Apr. 27, 2010 submitted in response to the 2010 ABS Proposing Release, MetLife I, MBA I, Prudential I, and Realpoint.

MBA also requested that issuers, particularly CMBS issuers, also have the ability to update without restarting the five business-day period. See letter from MBA I (noting that while a five business-day minimum waiting period prior to the first sale will occasionally impose an “unwelcome timing constraint,” the minimum waiting period is unlikely to make shelf registration sufficiently less attractive if the rule provides flexibility for issuers to provide updates with a shorter waiting period). Comments about the waiting period for updates are addressed below.

⁸⁸⁶ See letters from ICI I (noting that if the Commission considers a shorter period, investors should be provided with no less than a three-day period) and CFA II (reiterating their support for the proposed five business-day waiting period).

that investors should have not less than three days to evaluate an ABS offering,⁸⁸⁷ while the other stated that two business days for repeat issuers may be sufficient.⁸⁸⁸

Other commenters opposed the five business-day waiting period⁸⁸⁹ and suggested shorter alternatives such as two business days prior to the first sale,⁸⁹⁰ one business day,⁸⁹¹ or no waiting period.⁸⁹² One commenter suggested that the waiting period vary by asset class.⁸⁹³ Another commenter recommended a one business-day waiting period for a category of “well-known seasoned asset-backed sponsors” that meet certain issuer classification (e.g., seasoned depositors and sponsors with established securitization programs that have issued more than a threshold aggregate amount and/or over a specified period of time), asset class classification (e.g., master trusts where the asset pool does not change materially from transaction to transaction and a specified dollar amount of transactions have been issued and supported by the pool), or transaction structure (e.g., transactions by the same depositor or sponsor, where issuances

⁸⁸⁷ See letter from ICI I.

⁸⁸⁸ See letter from CFA I.

⁸⁸⁹ See letters from ABA I, ASF I, AmeriCredit, CNH I, SIFMA I, and Wells Fargo I.

⁸⁹⁰ See letters from ABA I (suggesting two business days for all ABS transactions other than those by widely followed, well-known ABS issuers), ASF I, AmeriCredit, BoA I, CNH I, Vanguard, VABSS I (recommending no mandatory minimum waiting period, but suggesting two business days if a minimum is imposed), and Wells Fargo I.

⁸⁹¹ See letter from ABA I (one business day is appropriate for widely-followed, well-known ABS issuers, sponsors or asset classes or structures, similar to the well-known seasoned issuer concept).

⁸⁹² See letter from VABSS I.

⁸⁹³ See letter from SIFMA I (suggesting a two business-day period for bank credit card or charge card receivables; three business days for private-label credit card or charge card receivables, motor vehicle loans/leases, student loans, or equipment loans or leases; and five business days for any other asset class, including RMBS and CMBS).

involve waterfall structures that do not change materially from transaction to transaction).⁸⁹⁴

Along the same lines, another commenter suggested that certain types of ABS offerings do not warrant any mandatory waiting periods because of their frequency and nature (e.g., where a sponsor, its parent or a subsidiary has completed at least one public offering within the preceding two years of securities in the same asset class and where the cash flows and structure are substantially similar to a prior public offering).⁸⁹⁵ Several commenters argued that a five business-day waiting period is more consistent with the time delays associated with an equity initial public offering (“IPO”), and noted that the proposed rule could lead to the “perverse result” that a well-known seasoned issuer can issue relatively risky forms of capital such as equity or unsecured debt without any required waiting period, but secured debt, generally regarded as less risky, would have a waiting period.⁸⁹⁶

While we did not specifically request further comment on this topic in the 2011 ABS Re-Proposing Release, several commenters offered comment on the proposal. For the most part, commenters reiterated their suggestions from their comment letters on the 2010 ABS Proposing Release. Several commenters agreed that a preliminary prospectus should be provided to investors in advance.⁸⁹⁷ Some commenters noted concern if the proposed time period were to be

⁸⁹⁴ See letter from ABA I (noting that some programmatic issuers have issued hundreds of billions of dollars of ABS over decades, using securitization programs that have consistent documentation from deal to deal, and are well-known to their investor base which, as a result, needs less time to absorb transaction details).

⁸⁹⁵ See letter from VABSS I.

⁸⁹⁶ See letters from AmeriCredit and VABSS I.

⁸⁹⁷ See letters from ABA II, AFME, and CFA II.

shortened.⁸⁹⁸ One commenter reiterated its suggestion for different filing requirements based on asset class.⁸⁹⁹ Another commenter suggested a one business-day waiting period for “widely followed, programmatic ABS issuers” and a two business-day waiting period for all others.⁹⁰⁰

As noted above, the proposal provided that a material change from the information provided in a preliminary prospectus, other than offering price, would require a new preliminary prospectus and therefore, a new five business-day waiting period. Some investor commenters supported the proposal to require a new waiting period for any material changes.⁹⁰¹ However, several commenters recommended changes to this aspect of the proposal.

Some commenters, believing the five business-day waiting period after material changes was too long, suggested shorter periods.⁹⁰² Commenters recommending shorter periods generally argued that in most cases a material change can be easily identified and reviewed and

⁸⁹⁸ See letters from Better Markets and ICI II (also suggesting a time period of no less than three business days).

⁸⁹⁹ See letter from SIFMA III-dealers and sponsors (stating that “at least two business days before the date of the first sale in the offering, in the case of ABS backed by bank credit card or charge card receivables; at least three business days before the date of the first sale in the offering, in the case of ABS backed by private-label credit card or charge card receivables, motor vehicle loans or leases, student loans, or equipment loans or leases; and at least five business days before the date of the first sale in the offering, in the case of ABS backed by any other asset class, including residential or commercial mortgage loans”).

⁹⁰⁰ See letter from ABA II.

⁹⁰¹ See letters from AMI, MetLife I, and Prudential I.

⁹⁰² See letters from ABA I, ASF I (expressed views of issuers and investors only) (supporting a one business-day minimum if a minimum period is imposed but noting that even a one business-day minimum period could be overly rigid and unnecessarily long in some cases), AmeriCredit, AMI, BoA I, CNH I, CREFC I (suggesting a waiting period up to five business days based upon the nature of the change and the length of time that would be needed for the market to digest that change in accordance with past experience, and that sponsors should be given the latitude to determine the appropriate length of review on a case-by-case basis based on their “unique” understanding of the CMBS market and experience with the investor community), MBA I, Prudential I, SIFMA I (expressed views of issuers and investors only), VABSS I, and Wells Fargo I (asserting that one business day should be sufficient where a material change was made during the first day of the initial waiting period, and two business days if made later in the initial period).

will not take investors the same amount of time to consider as compared to the first review of the entire preliminary prospectus.⁹⁰³ Some investor commenters suggested that the waiting period should be shortened because investors will have the opportunity to become familiar with the transaction documents during the initial marketing period.⁹⁰⁴ One commenter stated that a five business-day waiting period unnecessarily exposes well-established sponsors to market and execution risk without providing a meaningful benefit to investors and recommended both a shorter waiting period and a requirement that material changes be disclosed in a supplement to the preliminary prospectus to facilitate easy identification of such changes.⁹⁰⁵

Some commenters suggested that no additional waiting period after material changes may be necessary.⁹⁰⁶ One investor commenter recommended a new filing and a new five business-day period only if a change to the transaction occurs that a reasonable investor would consider material to an investment decision, such as: changes to more than 1% of the collateral pool,

⁹⁰³ See letters from BoA I and SIFMA I (expressed views of issuers and investors only). See also AmeriCredit (suggesting an additional waiting period should apply only in cases where the material changes significantly affect the asset pool, the cash flows or the transaction structure, otherwise no waiting period should be required, such as when “upsizing” a transaction due to strong investor demand), CREFC I (stating that a free writing prospectus that highlights a material change will expedite and improve the review of changes by the investor community rather than requiring review of an entirely new 424(h) filing), and MBA I (noting that investors in CMBS do not need five business days to understand all material changes, and that CMBS issuers commonly issue “pre-pricing updates,” often no more than one or two pages, to investors prior to pricing to convey any material changes since the preliminary prospectus and also suggesting that the period be shortened to one day or have the rule focus more on the length of time necessary for an investor to understand the change rather than the materiality of the change).

⁹⁰⁴ See letters from AMI and Prudential I.

⁹⁰⁵ See letter from ABA I.

⁹⁰⁶ See letters from ASF I (expressed views of issuers and investors only) and BoA I. These commenters reasoned that existing Rule 159 provides adequate protections by promoting the delivery of updated information in a manner that provides investors with an opportunity to evaluate the disclosure prior to contract of sale.

including changes at the property, tenant or borrower level; any changes to the priority of payment (i.e., waterfall); any changes of any service provider or party to the transaction; or any changes to the terms in the documents related to the transaction, including changes to any representations and warranties, covenants or indemnities originally contained in such documents.⁹⁰⁷

Commenters also requested that we provide additional clarity regarding the material changes to the preliminary prospectus that would trigger a new five business-day waiting period.⁹⁰⁸ One of those commenters stated that changes in pool composition as a result of ordinary events, such as payments of interest or principal, should not require additional disclosure or a renewed waiting period unless such payments reflect another material change.⁹⁰⁹ Several commenters recommended that the requirement should not focus so much on the materiality of the change in terms of its economic impact or importance, but rather on the likely extent of the effect of such a change on the disclosure itself and the need for more time to review.⁹¹⁰

We also received comments on our proposal to permit omission of pricing information in the required preliminary prospectus. One commenter recommended that we define what is contemplated by the phrase “information dependent on pricing” and whether this would include

⁹⁰⁷ See letter from MetLife I.

⁹⁰⁸ See letters from ABA I, BoA I, CREFC I, ICI I, and MBA I.

⁹⁰⁹ See letter from ABA I.

⁹¹⁰ See letters from BoA I, CREFC I, and MBA I (noting that many material changes (e.g., a change in payment priority) that are important can nevertheless be easily described and quickly understood, particularly if one has already received a preliminary prospectus).

only quantitative pricing terms, or whether it could also include other additional information that is typically determined at pricing (e.g., selection of a swap counterparty, weighted average life calculations, or, in the case of credit card master trusts, transaction size and minimum principal receivables balance requirements).⁹¹¹ Along the same lines, several commenters suggested an accommodation for transactions involving derivative contracts.⁹¹² Another commenter suggested that the preliminary prospectus should have a section that specifically discusses any aspect of the transaction that is “to be determined” at the time of the filing.⁹¹³

We did not receive comments on our proposed conforming revisions to the undertakings that are required by Item 512 of Regulation S-K⁹¹⁴ in connection with a shelf registration statement for ABS. We also did not receive comments on our proposed addition to Item 512 to require an issuer to undertake to file the information required to be contained in a preliminary prospectus.

(3) Final Rule and Economic Analysis of the Final Rule

(a) Rule 424(h) Filing

Under the final rule, with respect to any takedown of securities in a shelf offering of asset-backed securities where information is omitted from an effective registration statement in

⁹¹¹ See letter from ABA I.

⁹¹² See letters from ASF I and BoA I (explaining that in these cases the preliminary prospectus could not include information relating to a specific swap counterparty or other information dependent on the pricing because the optimal pricing of the derivative and the counterparty with the most competitive bid cannot be determined by the issuer until the time of pricing for the offered securities).

⁹¹³ See letter from Prudential I.

⁹¹⁴ 17 CFR 229.512.

reliance on new Rule 430D, as discussed below, a form of prospectus meeting certain requirements must be filed with the Commission in accordance with the new Rule 424(h) preliminary prospectus at least three business days prior to the first sale of securities in the offering.⁹¹⁵ After considering the various comments received on the initial five-business day waiting period, we have shortened the waiting period as proposed from five business days to three business days. We believe that three business days balances the benefit to investors of providing additional time to conduct an analysis of the offering – a longstanding concern of ABS investors⁹¹⁶ – and the concerns of issuers expressed in the comment letters. While the final rule imposes a minimum three-day waiting period, issuers may provide additional time to potential investors to consider the offering.

We recognize that the final rule will require issuers to provide information to investors earlier in the process than was often provided for ABS issued before the crisis. During the required waiting period, issuers may be exposed to the risk of changing market conditions because they may have to hold the underlying assets on their balance sheets (inventory risk), and the risk may have larger impact on small sponsors with smaller balance sheets. To assess the

⁹¹⁵ Sale includes “contract of sale.” See footnote 391 and accompanying text of the Securities Offering Reform Release. We are clarifying the final rule to note that the preliminary prospectus must be filed two business days after first use but no later than three business days before first sale. See also letter from SIFMA I (noting that the Commission should make clear that a preliminary prospectus must be filed not later than the earlier of (i) the applicable number of business days before the date of the first sale, or (ii) or the second business day after first use).

⁹¹⁶ See the 2004 ABS Adopting Release at 1527. Although the investment analysis does not have to be completely done anew for master trust transactions since the asset pools do not necessarily change with each takedown, we believe that the three business-day waiting period is still important for investors in such transactions as investors are not only reviewing the assets but also any changes to the structure to ensure that it will produce the expected cash flows, which can be intricate and complex for master trusts.

magnitude of this risk and the costs that it may impose on issuers, we analyzed time series changes in the price of the Bank of America Merrill Lynch U.S. Fixed Rate Asset Backed Securities Index (R0A0).⁹¹⁷ Average index returns for the pre-crisis, crisis, and post-crisis periods are presented in Table 1. To assess the cost of the three business-day waiting period that we are adopting against the cost of reasonable alternatives, we calculated index returns over one, three, five and ten days. Outside of the volatile 2008-2009 crisis period, the average change in ABS market conditions as measured by index returns is below 1.5 basis points (bps) for all horizons (1, 3, 5, and 10 days) with the standard deviation below 15bp for three-day returns. These results suggest that the economic exposure of issuers to market conditions (opportunity cost) is relatively small for all waiting period lengths in the range from 1 day to 10 days, but increases with the horizon. Further, reducing the waiting period from 5 days to 3 days lowers the riskiness of returns by more than 15% (the standard deviation drops from 17bps to 14bps). To put these numbers in perspective, for a \$100 million ABS issuance that is similar to the above-mentioned R0A0 ABS index, a three business-day waiting period during the analyzed period would result in an expected change of less than \$10,000 and a 10% likelihood of a more than

⁹¹⁷ The Bank of America Merrill Lynch U.S. Fixed Rate Asset Backed Securities Index (the "Index") tracks the performance of U.S. dollar denominated investment-grade fixed rate asset-backed securities issued in the U.S. domestic market. Qualifying securities must have an investment-grade rating (based on an average of Moody's, S&P, and Fitch ratings). In addition, qualifying securities must have the following: (1) a fixed rate coupon (including callable fixed-to-floating rate securities); (2) at least one year remaining term to final stated maturity; (3) at least one month to the last expected cash flow; (4) an original deal size for the collateral group of at least \$250 million; (5) a current outstanding deal size for the collateral group greater than or equal to 10% of the original deal size; and (6) a minimum outstanding tranche size of \$50 million for senior tranches and \$10 million for mezzanine and subordinated tranches. Floating rate, inverse floating rate, interest only, and principal only tranches of qualifying deals are excluded from the Index as are all tranches of re-securitized and agency deals. Securities to be sold in reliance on Securities Act Rule 144A qualify for inclusion in the Index.

\$230,000 increase or decrease in the value of the issuance. Additionally, exposure to several sources of risk, for example, the three-day interest rate risk or credit spread risk, can be hedged with forward contracts, further reducing potential exposure to losses due to a three-day delay in offering.⁹¹⁸

Table 1. Index returns are calculated using the price of Bank of America Merrill Lynch U.S. Fixed Rate Asset Backed Securities Index for the 5/6/2004 to 12/31/2013 period. Three, five, and ten day returns are overlapping.

Time period	Number of daily observations	1-day		3-day		5-day		10-day	
		Average	Standard Deviation	Average	Standard Deviation	Average	Standard Deviation	Average	Standard Deviation
5/6/2004 – 12/31/2007	954	0.0000	0.0011	-0.0001	0.0017	-0.0002	0.0020	-0.0003	0.0025
1/1/2008 – 12/31/2009	524	-0.0001	0.0021	-0.0003	0.0037	-0.0005	0.0050	-0.0009	0.0077
1/1/2010 – 12/31/2013	1046	0.0000	0.0006	0.0000	0.0011	0.0000	0.0014	0.0000	0.0020
2004–2013 excl. 2008–2009	2000	0.0000	0.0009	0.0000	0.0014	-0.0001	0.0017	-0.0001	0.0022

As noted above, comments received on the waiting period were mixed on the appropriate length of time for the initial waiting period before first sale with mostly investors supporting⁹¹⁹ an initial waiting period of five business days and issuers mostly opposing⁹²⁰ such a requirement. Commenters opposing five business days provided various suggested alternatives to the proposal – ranging from two business days prior to first sale to no waiting period at all.⁹²¹ Some of these commenters recommended that the length of the waiting period be determined based on asset

⁹¹⁸ The inventory risk can also be transferred to underwriters that would commit to buy the issue from securitizers.

⁹¹⁹ See footnote 885.

⁹²⁰ See footnote 889.

⁹²¹ See footnotes 890, 891, and 892.

class or whether the issuer is a repeat issuer.⁹²² Because we believe that, regardless of the asset class or whether the issuer is well-known, investors should have more time to conduct their analysis before making an investment decision than was provided previously, we are not adopting such distinctions based on asset class or type of issuer. We also believe that given the complexity of ABS transactions that two-business days, and especially one-business day, would not provide investors with enough time to conduct their due diligence.⁹²³ As a result, we believe that a minimum of three business days strikes the appropriate balance of providing investors with more time to analyze the information related to the transaction while also minimizing issuers' exposure to changing market conditions and giving them flexibility in timing of ABS issuance.

Finally, while we have observed that post-crisis ABS issuers have provided investors with additional time, we are concerned that market practice could change in a heated market with many issuers possibly reverting to the practice of providing investors with insufficient time and causing investors to place undue reliance on ratings. Because of this concern and our belief that investors should conduct their own due diligence rather than unduly rely on ratings, we are mandating a waiting period of at least three-business days as part of our rules.⁹²⁴ We are persuaded by commenters that neither a new preliminary prospectus nor a restart of the waiting

⁹²² See footnote 893.

⁹²³ Even though most ABS offerings are structured as shelf offerings, each takedown off a shelf registration statement is more akin to an IPO given that each ABS offering consists of new assets and a new structure, which requires investors to conduct their investment analysis anew to make an informed investment decision.

⁹²⁴ See letter from ICI I (noting that although they support an initial five-business day waiting period, should the Commission decide to reduce the waiting period, that investors should have not less than three business days to evaluate an ABS shelf offering).

period is necessary for material changes because, in most cases, a material change can be easily identified and reviewed and therefore may not take an investor as long to review compared to the first review of the preliminary prospectus.⁹²⁵ The final rule will require that the issuer disclose any material changes in a supplement to the preliminary prospectus that must be filed with the Commission at least 48 hours before the date and time of the first sale.⁹²⁶ The supplement must provide a description of how the information in the initial preliminary prospectus has changed so that the changes are apparent to investors.

This revision will help to address cost and other concerns expressed by issuers and others about the proposed amount of waiting time after a material change and the concerns about filing an entirely new preliminary prospectus. It should reduce some commenters' concerns regarding exposure to market risk and unnecessary delay. We are concerned, however, that extensive material changes, even after an initial waiting period for the preliminary prospectus, could be difficult for investors to review in this shortened timeframe; therefore, we are requiring issuers to clearly delineate in a prospectus supplement what material information has changed and how the information has changed from the initial preliminary prospectus. We expect that the asset-level disclosure requirements that we are adopting, which will provide investors with standardized machine-readable data about the pool assets, will facilitate investors' ability to update their

⁹²⁵ See, e.g., letters from ABA I, AmeriCredit, ASF I (issuers and investors), SIFMA I, VABSS I, and Wells Fargo I.

⁹²⁶ The changes must be filed in a supplement in accordance with Rule 424(h)(2); provided that if the material change relates to the assets within the pool also provide the information required by Item 1125. Whether a change is material for purposes of the requirement will depend on the facts and circumstances. See *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49 (1976). See also *Basic v. Levinson*, 485 U.S. 224, 231 (1988).

investment analysis quickly. As a result, we do not believe that investors will need as much time to review the supplement as they will need for their initial review of the preliminary prospectus.

(b) New Rule 430D

Prior to the rules we are adopting, the framework for ABS shelf offerings, along with shelf offerings for other securities, was outlined in Rule 430B of the Securities Act. Rule 430B describes the type of information that primary shelf-eligible and automatic shelf issuers may omit from a base prospectus in a Rule 415 offering and include instead in a prospectus supplement, Exchange Act reports incorporated by reference, or a post-effective amendment, and addresses both the treatment of prospectuses filed pursuant to Rule 424(b) and effective date triggers for securities sold off the shelf registration statement.⁹²⁷ As discussed above, we are adopting new Rule 430D to provide the framework for shelf offerings of asset-backed securities pursuant to revised Rule 415(a)(1)(vii) or (xii); therefore, ABS issuers eligible to conduct shelf offerings are no longer eligible to use Rule 430B. By removing ABS shelf offerings from existing Rule 430B and creating new Rule 430D, we are providing a shelf offering framework that is appropriately tailored to ABS shelf offerings and that incorporates the new preliminary prospectus requirement.⁹²⁸

New Rule 430D requires that, with respect to each offering, all the information previously omitted from the prospectus filed as part of an effective registration statement must be filed at least three business days in advance of the first sale of securities in the offering in

⁹²⁷ See Section V.B.1.b of the Securities Offering Reform Release.

⁹²⁸ For offerings of ABS on Form SF-1, existing Securities Act Rule 430A would apply.

accordance with new Rule 424(h), except for the omission of information with respect to the offering price, underwriting syndicate (including any material relationships between the registrant and underwriters not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price to the extent such information is unknown or not reasonably available to the issuer pursuant to Rule 409. The information required to be filed pursuant to Rule 424(h) includes, among other things, information about the specific asset pool that is backing the securities in the takedown and the structure of the transaction. As summarized above, commenters requested that we clarify what we mean by information with respect to the offering price. We note that new Rule 430D largely conforms to existing Rule 430B but is tailored to ABS shelf offerings; therefore, the type of information permitted to be omitted from a preliminary prospectus is the same as the information that Rule 430B permitted to be omitted from the base prospectus in a shelf offering prior to this rulemaking.

As we stated in the 2010 ABS Proposing Release, so long as a form of prospectus has been filed in accordance with Rule 430D,⁹²⁹ asset-backed issuers can continue to utilize a free writing prospectus or ABS informational and computational materials in accordance with existing rules.⁹³⁰ Because we believe that investors should have access to a comprehensive

⁹²⁹ Rule 430D(c) provides that a form of prospectus that omits information as provided in the rule will be a permitted prospectus. Thus, after a registration statement is filed, offering participants can use a form of prospectus that omits information in accordance with the rule.

⁹³⁰ ABS informational and computational materials, as defined in Item 1101 of Regulation AB [17 CFR 229.1101], may be used in accordance with Securities Act Rules 167 and 426 [17 CFR 230.167 and 17 CFR 230.426]. Materials that constitute a free writing prospectus, as defined in Securities Act Rule 405

prospectus that contains all of the required information; a free writing prospectus or ABS... informational and computational materials could not be used for the purpose of meeting the requirements of new Rule 424(h). As proposed, the Rule 424(h) preliminary prospectus filing will be deemed part of the registration statement on the earlier of the date such form of prospectus is filed with the Commission or, if used earlier, the date of first use.⁹³¹ A final prospectus for ABS shelf offerings should continue to be filed pursuant to Rule 424(b). Consistent with Rule 430B for shelf offerings of corporate issuers, under new Rule 430D, the filing of the final prospectus under Rule 424(b) will trigger a new effective date for the registration statement relating to the securities to which such form of prospectus relates for purposes of liability.

To reflect the requirements under new Rule 424(h) and new Rule 430D, we are also adopting, as proposed, conforming revisions to the undertakings that are required by Item 512 of Regulation S-K⁹³² in connection with a shelf registration statement. For the most part, ABS issuers will continue to provide the same undertakings that have been required of ABS issuers conducting delayed shelf offerings. In light of adopting the new Rule 424(h) preliminary prospectus, we are adopting conforming revisions to the undertakings relating to the determination of liability under the Securities Act as to any purchaser in the offering. In particular, the issuer must undertake that information that was omitted from an effective

[17 CFR 230.405] may be used in accordance with Securities Act Rules 164 and 433 [17 CFR 230.164 and 17 CFR 230.433].

⁹³¹ This is consistent with the existing provisions for other preliminary prospectuses. See Rule 430B(e).

⁹³² 17 CFR 229.512.

registration statement and then later included in a Rule 424(h) preliminary prospectus shall be deemed part of and included in the registration statement on the earlier of the date the Rule 424(h) preliminary prospectus was filed with the Commission, or if used earlier, the date it was first used after effectiveness. Also, in light of the new Rule 424(h) preliminary prospectus, under our revisions to Item 512 of Regulation S-K, an issuer is required to undertake to file the information required to be contained in a Rule 424(h) filing with respect to any offering of securities.

2. Forms SF-1 and SF-3

a) Proposed Rule

In order to delineate between ABS filers and corporate filers and, more importantly, to tailor requirements for ABS offerings, we proposed to add new registration forms that would be used for any sales of a security that is an asset-backed security, as defined in Item 1101 of Regulation AB.⁹³³ New forms named Form SF-1 and Form SF-3 would require all the items applicable to ABS offerings that are currently required in Form S-1 and Form S-3 as modified by the proposals in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposal. Under the proposal, ABS offerings that qualify for shelf registration would be registered on proposed Form SF-3, and all other ABS offerings would be registered on Form SF-1.⁹³⁴

⁹³³ 17 CFR 229.1101(c).

⁹³⁴ We also proposed to make conforming changes throughout our rules to refer to the new forms. See, e.g., proposed revisions to Securities Act Rules 167 and 190(b)(1) and the exhibit table in Item 601 of Regulation S-K.

b) Comments on Proposed Rule

Several commenters specifically supported adopting new Forms SF-1 and SF-3 and none opposed.⁹³⁵

c) Final Rule and Economic Analysis of the Final Rule

We are adopting new Forms SF-1 and SF-3 for ABS offerings, which are largely based on existing Forms S-1 and S-3. ABS offerings that qualify for shelf registration will be registered on Form SF-3, and all other ABS offerings will be registered on Form SF-1. These new registration forms are tailored to ABS offerings and incorporate the offering and disclosure changes that we are adopting. The new forms will help in providing organizational clarity to our registration forms and their requirements.⁹³⁶ In addition to providing organizational clarity to our forms, the new forms will facilitate easy identification of registered ABS offerings. We acknowledge, however, that ABS issuers may incur some costs in revising their information systems to reflect the new forms, but we believe that such one-time costs will be justified by the benefits of tailoring the registration system for ABS offerings.⁹³⁷

⁹³⁵ See letters from ABA I and MBA I.

⁹³⁶ For example, prior to the adoption of these new registration forms for ABS, ABS form requirements were included with some other form requirements that were not applicable to ABS offerings. New Form SF-1, as proposed, does not include the instructions as to summary prospectuses. We also note that we are adopting, as proposed, some disclosure requirements that were previously located in Form S-3 that are now in Form SF-3, such as transaction requirements from Form S-3 relating to delinquent assets and residual value for certain securities. See General Instruction I.B.1(e)-(f) of Form SF-3. We are also retaining the existing registrant requirement in Form S-3 relating to delinquent filings of the depositor or an affiliate of the depositor for purposes of new Form SF-3.

⁹³⁷ Economic analysis of the new disclosure requirements required by the new forms, such as asset-level data, and the new shelf eligibility requirements are discussed in the sections describing those changes.

3. Shelf Eligibility for ABS Offerings

In the 2010 ABS Proposing Release, we proposed revisions to both the registrant and the transaction shelf eligibility requirements for ABS issuers.⁹³⁸ In particular, ABS issuers would no longer establish shelf eligibility through an investment-grade credit rating. The proposals were part of a broad ongoing effort to remove references to NRSRO credit ratings from our rules in order to reduce the risk of undue ratings reliance and eliminate the appearance of an imprimatur that such references may create.⁹³⁹ In place of credit ratings, we had proposed to establish four shelf eligibility criteria that would apply to mortgage-related securities and other asset-backed securities alike.⁹⁴⁰ Similar to the existing requirement that the securities must be investment grade, the 2010 ABS Proposal for registrant and transaction requirements were designed to provide that asset-backed securities that are eligible for delayed shelf registrations are shelf appropriate. As noted above, the 2011 ABS Re-Proposal for registrant and transaction requirements for shelf did not contain a requirement for risk retention or a requirement to include

⁹³⁸ See the 2010 ABS Proposing Release at 23338.

⁹³⁹ See the Security Ratings Release.

⁹⁴⁰ The four proposed shelf criteria from the 2010 ABS Proposing Release included: (1) A certification filed at the time of each offering off of a shelf registration statement, or takedown, by the chief executive officer of the depositor that the assets in the pool have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows to service any payments on the securities as described in the prospectus; (2) Retention by the sponsor of a specified amount of each tranche of the securitization, net of the sponsor's hedging (also known as "risk retention" or "skin-in-the-game"); (3) A provision in the pooling and servicing agreement that requires the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased; and (4) An undertaking by the issuer to file Exchange Act reports so long as non-affiliates of the depositor hold any securities that were sold in registered transactions backed by the same pool of assets. See the 2010 ABS Proposing Release at 23338-48.

an undertaking to provide Exchange Act reports in light of the changes mandated by the Dodd-Frank Act.⁹⁴¹

We believe the new transaction and registrant shelf eligibility requirements being adopted will continue to allow ABS issuers to access the market quickly by conducting delayed shelf offerings (rather than registering each offering on Form SF-1), while imposing conditions that we think are appropriate in light of the compressed timing and lack of staff review inherent in the shelf offering process. These new shelf eligibility conditions should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and, along with providing investors stronger enforcement mechanisms in the transaction agreements, should incentivize issuers to provide investors with accurate and complete information at the time of the offering. We believe that such transactions are appropriate for public offerings off a shelf without prior staff review.

a) Shelf Eligibility – Transaction Requirements

The new transaction requirements for shelf offerings include:

- A certification filed at the time of each offering from a shelf registration statement, or takedown, by the chief executive officer of the depositor concerning the disclosure contained in the prospectus and the structure of the securitization;

⁹⁴¹

See footnotes 876 and 877.

- A provision in the underlying transaction agreements requiring review of the assets for compliance with the representations and warranties following a specific level of defaults and security holder action;
- A provision in the underlying transaction agreements requiring repurchase request dispute resolution; and
- A provision in the underlying transaction agreements to include in ongoing distribution reports on Form 10-D a request by an investor to communicate with other investors.

In both the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, we did not propose to change the other current ABS shelf offering transaction requirements related to the amount of delinquent assets in the asset pool and the residual values of leases.⁹⁴² Therefore, those transaction requirements remain unchanged and have been moved to new Form SF-3.

(1) Certification

(a) Proposed Rule

As part of the 2010 ABS Proposing Release, we proposed to require a certification by the depositor's chief executive officer as a criterion for shelf eligibility.⁹⁴³ After considering the comments received on the proposed certification in the 2010 ABS Proposing Release, we re-

⁹⁴² See footnote 874.

⁹⁴³ In the 2010 ABS Proposing Release, we proposed that the depositor's chief executive officer certify that to his or her knowledge, the assets have characteristics that provide a reasonable basis to believe they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus. Under the 2010 ABS Proposal, the chief executive officer would also certify that he or she has reviewed the prospectus and the necessary documents for this certification.

proposed the requirement in the 2011 ABS Re-Proposing Release. The re-proposed requirement would require the CEO or the executive officer in charge of securitization for the depositor to certify that:

- The executive officer has reviewed the prospectus and is familiar with the structure of the securitization, including without limitation the characteristics of the securitized assets underlying the offering, the terms of any internal credit enhancements, and the material terms of all contracts and other arrangements entered into to effect the securitization;
- Based on the executive officer's knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;
- Based on the executive officer's knowledge, the prospectus and other information included in the registration statement of which it is a part, fairly present in all material respects the characteristics of the securitized assets underlying the offering described therein and the risks of ownership of the asset-backed securities described therein, including all credit enhancements and all risk factors relating to the securitized assets underlying the offering that would affect the cash flows sufficient to service payments on the asset-backed securities as described in the prospectus; and
- Based on the executive officer's knowledge, taking into account the characteristics of the securitized assets underlying the offering, the structure of the securitization, including internal credit enhancements, and any other material features of the

transaction, in each instance, as described in the prospectus, the securitization is designed to produce, but is not guaranteed by the certification to produce, cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities offered and sold pursuant to the registration statement.

In the 2011 ABS Re-Proposal, we stated, as we did when we proposed the certification for Exchange Act periodic reports, that a certification may cause these officials to review more carefully the disclosure, and in this case, the transaction, and to participate more extensively in the oversight of the transaction, which is intended to result in shelf-eligible ABS being of a higher quality than ABS structured without such oversight.⁹⁴⁴

(b) Comments on Proposed Rule

Comments on the certification requirement in the 2010 ABS Proposing Release were mixed. Some commenters supported our proposed certification by noting, among other things, that the certification would create accountability at the highest levels of an issuer's organization and more careful issuer review of the securitization.⁹⁴⁵ Other commenters generally opposed the

⁹⁴⁴ See the 2011 ABS Re-Proposal at 47951-52 and the 2010 ABS Proposal at 23345. See also Certification of Disclosure in Companies' Quarterly and Annual Reports, Release No. 34-46079 (June 14, 2002) and Concerning Implementation of the Sarbanes-Oxley Act of 2002: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs, 108th Cong. (2003) (statement of William H. Donaldson, Chairman of the U.S. Securities and Exchange Commission) (noting that a consequence of "the combination of the certification requirements and the requirement to establish and maintain disclosure controls and procedures has been to focus appropriate increased senior executive attention on disclosure responsibilities and has had a very significant impact to date in improving financial reporting and other disclosure").

⁹⁴⁵ See letters from CalPERS, CFA I, Mass. Atty. Gen., SIFMA I (expressed views of investors only), and Vanguard.

proposed-certification in the 2010 ABS Proposing Release for various reasons, including that the certification would constitute a guarantee or would cause undue reliance on the certification.⁹⁴⁶

In response to comments on the proposed certification, in the 2011 ABS Re-Proposing Release, we re-proposed the certification taking into account commenters' concerns and recommendations. Comments received on the re-proposed certification requirement were mixed. Several commenters generally supported the re-proposed certification for similar reasons as articulated in comments on the 2010 proposed certification.⁹⁴⁷ For example, one commenter agreed with our view that the certification may result in a more careful review of the disclosure and transaction by the issuer, and ultimately in higher-quality ABS eligible for shelf.⁹⁴⁸ Other commenters generally opposed the re-proposed certification shelf requirement.⁹⁴⁹ Although the investors of a trade association applauded the intention behind the proposed certification requirement and concurred with us that executive oversight of a securitization transaction is important, they also expressed concern about the certification imposing a barrier to new ABS issuance.⁹⁵⁰ Some of these commenters contended that the proposed certification would not

⁹⁴⁶ See letters from ABA I, ABAASA I, ASF I, BoA I, CNH I, CREFC I, FSR, J.P. Morgan I, MetLife I, MBA I, Sallie Mae I, SIFMA I (expressed views of dealers and sponsors only), and Wells Fargo I.

⁹⁴⁷ See letters from Better Markets, CFA II, and ICI II.

⁹⁴⁸ See letter from CFA II (also noting support for the proposed requirement that an officer sign the certification, as opposed to engaging "an independent evaluator").

⁹⁴⁹ See letters from ABA II, Bank of America Corp. dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("BoA II"), CREFC II, Kutak Rock, LLP dated Sept. 27, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("Kutak"), MBA III, SIFMA II-investors, SIFMA III-dealers and sponsors, and Wells Fargo II.

⁹⁵⁰ See letter from SIFMA II-investors (noting that, as investors, they would like nothing more than to have individual officers stand firmly behind the product of their employers; however, also noting that the

provide any additional benefits by noting the existing regulatory framework for accountability and their trust in the market's determination of the issuer's soundness.⁹⁵¹

Commenters provided differing views on the scope of the certification. Some commenters believed the certification should encompass both the structure of the transaction and the prospectus disclosure, as proposed.⁹⁵² One commenter, supportive of the re-proposed certification, emphasized that the quality of an ABS offering is fundamentally a function of whether the assets and structure are capable of producing sufficient cash flows to service payments.⁹⁵³ On the other hand, several commenters believed that the certification should focus only on the disclosure in the prospectus and not on the performance of the assets for various reasons, including the role of the executive officers and their limited credit analysis expertise.⁹⁵⁴

Many commenters also offered alternative language or specific changes to the text of the certification to address their concerns. The specific changes included: using defined terms, adding materiality to certain parts of the certification, replacing the term "fairly presented," and permitting the certifier to take into consideration external credit enhancement. We considered

certification requirements, as proposed, were broad and executives would fear litigation if, in fact, the securities failed to perform as expected).

⁹⁵¹ See letters from BoA II, CREFC II, Kutak, and Sallie Mae II.

⁹⁵² See letters from Better Markets (specifically stating that the certification must cover expected cash flows from the offering) and ICI II.

⁹⁵³ See letter from Better Markets.

⁹⁵⁴ See letters from ABA II, American Bankers Association/ABA Securities Association dated Nov. 10, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("ABAASA II"), AFME, American Securitization Forum dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("ASF III"), CREFC II, Kutak, SIFMA II-investors, SIFMA III-dealers and sponsors, and Wells Fargo II (suggesting that the certification should consist only of paragraph 2).

these specific changes and made revisions to the certification, which are reflected in the final version of the certification that we are adopting. Below we discuss these recommendations and the revisions made to each paragraph of the certification in order to highlight how we have addressed commenters' concerns.

(c) Final Rule and Economic Analysis of the Shelf Certification Requirement

After taking into consideration the comments we received and alternatives to the re-proposed certification, we are adopting as one of the transaction requirements for shelf eligibility that a certification about the disclosures contained in the prospectus and the structure of the securitization be provided by the chief executive officer of the depositor at the time of each takedown. We believe, as discussed more fully below, that requiring the chief executive officer to sign a certification at the time of each takedown will help to ensure that he or she is actively involved in the oversight of the transaction when the actual structuring occurs. We have made significant changes to the language of the certification to address commenters' concerns, which are described below.

The financial crisis revealed several failures of the ABS market. Some issuers of asset-backed securities were creating securitization transactions without considering whether the assets or the structuring of cash flows could support the scheduled distributions due to investors.⁹⁵⁵ In

⁹⁵⁵ See, e.g., Susanne Craig & Kara Scannell, *Goldman Settles Its Battle with SEC*, WALL ST. J., July 16, 2010, at A1 and John Griffin and Gonzalo Maturana, "Who Facilitated Misreporting in Securitized Loans?," working paper, 2013 (for evidence that underwriters were aware of some types of asset quality misrepresentation by loan originators, but nevertheless facilitated issuance of RMBS backed by such assets).

addition, it has been difficult to hold senior officers of ABS issuers accountable for the failure to provide accurate information.

At the time of filing a shelf registration statement, the chief executive officer of the depositor, as well as the depositor's other principal officers, are required to sign the registration statement and are liable under Securities Act Section 11 for material misstatements or omissions in the registration statement, subject to a due diligence defense. As a result, signers of a registration statement are expected to satisfy themselves about the accuracy of disclosure at the time of effectiveness. The disclosure at the time of effectiveness of the shelf registration statement does not typically include transaction specific information because the shelf registration process permits a separation between the time of effectiveness and the time securities are offered in a takedown. Shelf takedowns sometimes occur long after the effectiveness of the registration statement, and the signers of a registration statement are not required to sign a prospectus supplement for a takedown. Thus, the process that an officer signing the registration statement would undertake at the time of shelf effectiveness might not necessarily be followed at the time of a takedown. At the time of a takedown, some of these officers may not have carefully reviewed the prospectus disclosures for the accuracy of the disclosures of the pool assets, cash flows, and other transaction features. We believe that investors' willingness to participate in ABS offerings may have suffered, in part, because of a belief by investors that sufficient attention may not have been devoted to the preparation of the disclosures in prospectuses, especially in asset classes characterized by the largest losses and due diligence failures.

Prior to today, a certification by the chief executive officer of the depositor has not been a requirement at the time of registered offerings of ABS. As part of the Sarbanes-Oxley Act ("SOX") enacted in 2002, CEOs of operating companies are required to certify to the accuracy of the financial statements of their companies.⁹⁵⁶ Those SOX certifications are filed with their periodic reports and then incorporated by reference into their shelf registration statements. The same does not apply to ABS. The SOX certifications that are provided by ABS issuers are limited to the disclosures regarding periodic distributions and servicing of the underlying assets since ABS issuers do not provide financial statements. Further, the information in periodic reports relates to an individual ABS transaction, and therefore in most cases, periodic reports of one ABS offering would be unrelated to future offerings of ABS off the same shelf. Thus, the periodic reports of an ABS issuer are not typically incorporated into the shelf registration statement.

We believe, therefore, that because of the market failures described above and where the depositor is a limited purpose entity created by the sponsor for a particular securitization program, it is appropriate to condition shelf eligibility on a certification requirement that should result in a review of the disclosure at the time of a takedown similar to what would occur if the offering were being conducted at the time of effectiveness of the initial registration statement. As noted above, the shelf requirements and practices under the existing regulatory structure were not sufficient to address the failures in the market to provide accurate and full information to

⁹⁵⁶ Pub. L. 107-204, Section 302, 116 Stat. 745 (2002).

investors. An ABS offering most resembles an IPO,⁹⁵⁷ which under our rules would not be eligible for shelf registration. The principal executive officer signs the registration statement for an IPO, but no similar process is involved at the time of an offering of ABS off a shelf registration statement. Corporate issuers that are eligible for shelf registration file periodic reports that are certified by their principal executive and financial officers and, for Section 11 purposes, the filing of the annual report on Form 10-K is considered an amendment to a shelf registration statement with a new effective date. We believe that requiring the certification with each takedown will put ABS issuers on a similar footing in that this requirement will provide an incentive for all CEOs to participate more extensively in the oversight of the transaction at the time of takedown. We acknowledge that the certification shelf transaction requirement will impose additional costs on ABS issuers, as discussed more fully below.

The depositor's chief executive officer will need to certify to the characteristics of the asset pool, the payment and rights allocations, the distribution priorities and other structural features of the transaction. We note that because the chief executive officer could rely, in part, on the review that is already required in order for an issuer to comply with Securities Act Rule 193, much of the additional costs will relate to reviewing the securitization structure to have a reasonable basis to conclude that the expected cash flows are sufficient to service payments or distributions in accordance with their terms.⁹⁵⁸ We also note that the certification requirement

⁹⁵⁷ See footnote 923.

⁹⁵⁸ See Securities Act Rule 193 (requiring, at a minimum, that the issuer review must be designed and effected to provide reasonable assurances that the disclosure regarding the pool assets in the prospectus is accurate in all material respects). In that rulemaking, we also added Item 1111(a)(7) to Regulation AB [17 CFR

does not dictate that the chief executive officer follow any particular procedures in order to make the certification. By allowing the issuers to determine what procedures are necessary to meet the obligations of the certification, we have attempted to mitigate the costs associated with compliance. The new certification, however, is intended to increase oversight by the chief executive officer, which will likely require that issuers create or strengthen internal controls and procedures to enable the chief executive officer to meet the certification obligation under the new requirement. To the extent that issuers already regularly monitor and evaluate their policies and procedures, their incremental costs will be lower than those issuers with less robust controls and procedures. Because the size and scope of these internal systems is likely to vary among issuers, it is difficult for us to provide an accurate cost estimate.⁹⁵⁹

The final rules may also affect competition in the asset-backed securities market. For example, the requirement that the chief executive officer provide a certification concerning the disclosures contained in the prospectus and the structure of the securitization is based on the intent that the certification will strengthen oversight over the transaction. Prior to today, a certification by the chief executive officer has not been a requirement of public offerings of ABS. Just as every issuer in an IPO must go through a process to satisfy itself with the

229.1111(a)(7)] to require disclosure in the prospectus regarding the nature of the review performed by the issuer, and the findings and conclusions of the review of the assets. See the January 2011 ABS Issuer Review Release.

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The number of ABS deals by each depositor annually varies widely. According to ABS issuance databases ABAlert and CMAAlert, the maximum annual number of ABS issued by a single depositor was 175 (Countrywide Home Loans in 2005), the maximum annual number issued post-crisis was 15 (Citibank in 2013), and, in the real estate sector, 14 (Redwood Trust in 2013), the median is 2 deals per year per depositor both pre- and post-crisis.

disclosure in a prospectus, ABS issuers must institute controls in order to provide the certification. The burden of the certification requirements will likely fall disproportionately on smaller-sized sponsors to the extent that there are direct fixed (i.e., non-scalable) costs related to administrative and legal expenses. This could ultimately result in smaller sponsors not registering their offerings on shelf (by registering their ABS on Form SF-1 instead), offering them through unregistered offerings, or quitting the securitization markets altogether, thereby reducing competition.⁹⁶⁰

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We considered academic studies that examined the overall impact of the SOX requirements, which included officer certification as one element, for information about the possible differential impact of a certification requirement on differently-sized sponsors. Because the SOX requirements apply primarily to operating companies and include the internal control report requirement and the auditor's attestation of the report in addition to officer certification, we do not believe these studies provide a direct comparison for assessing the impact of the certification alone. For a general discussion of costs related to these requirements under the Sarbanes-Oxley Act, see, e.g., OFFICE OF ECONOMIC ANALYSIS, STUDY OF THE SARBANES-OXLEY ACT OF 2002 SECTION 404 INTERNAL CONTROL OVER FINANCIAL REPORTING REQUIREMENTS (2009), available at http://www.sec.gov/news/studies/2009/sox-404_study.pdf (finding that the start-up costs related to SOX Section 404 compliance and the internal control report requirement weighed proportionally more on smaller companies, but dissipated over time and noting that 79% of executives surveyed acknowledged that compliance had a positive impact on the quality of their internal control structure); Cindy R. Alexander, Scott W. Bauguess, Gennaro Bernile, Yoon-Ho Alex Lee, & Jennifer Marietta-Westberg, Economic Effects of SOX Section 404 Compliance: A Corporate Insider Perspective, 56 J. ACCT. & ECON. 267 (2013) (finding that corporate executives perceived significant benefits from compliance, particularly for larger companies); Ehud Kamar, Pinar Karaca-Mandic & Eric Talley, Sarbanes-Oxley's Effects on Small Firms: What is the Evidence?, in IN THE NAME OF ENTREPRENEURSHIP? THE LOGIC AND EFFECTS OF SPECIAL REGULATORY TREATMENT FOR SMALL BUSINESS 143 (Susan M. Gates & Kristin J. Leuschner, eds., Kauffman-RAND Inst. for Entrepreneurship Pub. Pol'y 2007) (discussing the impact of the entire Sarbanes-Oxley Act, not only the CEO certification requirement); Ellen Engel, Rachel M. Hayes & Xue Wang, The Sarbanes-Oxley Act and Firms' Going Private Decisions, J. ACCT. & ECON. (2007) (finding that the frequency of going-private transactions increased after the passage of SOX, that SOX compliance costs were more burdensome for smaller and less liquid firms, and that small firms with highly concentrated ownership structures had higher going-private announcement returns); and Peter Iliev, The Effect of SOX Section 404: Costs, Earnings Quality and Stock Prices, J. FIN. (2010) (finding that among small companies, SOX compliance reduced the market value of those that had to comply with Section 404 relative to those that did not because they were under the \$75 million compliance threshold).

As noted above, commenters expressed concern that the certification could be interpreted as a guarantee of the future performance of the assets underlying the ABS. In an attempt to mitigate these costs and taking into account commenters' suggestions, we have revised the certification language to reflect that it is a statement of what is known by the certifier at the time of the offering and that he or she has a reasonable basis to conclude that the securitization is structured to produce, but the certification is not a guarantee that it will produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.⁹⁶¹ In addition, to address some commenters' concerns about increased certifier liability, which would in turn increase costs, the final certification includes a new paragraph that clarifies that the certifier has any and all defenses available under the securities laws.⁹⁶²

When deciding whether to conduct a shelf offering, an issuer may consider the review and due diligence costs, the liability implications, and the reputational consequences to the chief executive officer of signing the certification. We believe that for securitizations of low-risk pool assets, simple structures, or structures used previously that have performed well in the past, issuers likely will conclude that the due diligence, liability, and reputation costs will be relatively low. For such securitizations these costs will likely be justified by the benefits of quick access to

⁹⁶¹ See, e.g., letters from AFME, J.P. Morgan Chase & Co. dated Oct. 4, 2010 submitted in response to the 2010 ABS Proposing Release ("J.P. Morgan II"), SIFMA III-dealers and sponsors, and Wells Fargo II.

⁹⁶² See, e.g., letters from ABA II, ABAASA II, ASF V, and J.P. Morgan II.

the capital markets, and these securitizations will continue to be offered off a shelf registration statement. On the other hand, for securitizations of high-risk assets and complex cash-flow structures, the expected costs of shelf offerings may increase. Issuers may choose not to use shelf registration because the chief executive officer may need to dedicate additional time to review the pool assets and the securitization structure in order to provide the assurances included in the certification. In addition, for such securitizations, the potential litigation risk to the chief executive officer may be higher, even when prudent measures are employed to structure an offering, thus further increasing the costs of shelf registration.

We also acknowledge a commenter's concern that certification is not a requirement for any other debt or equity offering and another commenter's opinion that the certification requirement will impose a barrier to new ABS issuance.⁹⁶³ We note, however, unlike other offerings, ABS issuers can go directly to shelf without any reporting and operating experience for the trust or any size requirement designed to be a proxy for market following.⁹⁶⁴ We also note that the principal executive and financial officers certify the Exchange Act reports that are incorporated by reference into a shelf prospectus of a corporate issuer. The certification requirement is not intended to be a barrier to new issuance of ABS since the certification is not a condition for selling or registering ABS as they may be offered in unregistered transactions or registered on new Form SF-1. The certification requirement, along with the other shelf

⁹⁶³ See letters from Kutak and SIFMA II-investors.

⁹⁶⁴ We further note that we have replaced the investment-grade rating shelf criterion for non-convertible securities with alternative criteria that serve as proxies for market following. See the Security Ratings Release.

transaction requirements, should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. It is these transactions that are appropriate to be offered to the public off a shelf without prior staff review. For these reasons, we are not limiting the certification to disclosure alone as suggested by some commenters, but we have taken into account those commenters' concerns in developing the text of the final certification.

Other financial regulators, including foreign counterparts, have adopted similar rules designed to enhance accountability for the transaction structure. For example, the European Union adopted requirements that ABS issuers disclose in each prospectus that the securitized assets backing the issue have characteristics that demonstrate a capacity to produce funds to service any payments due and payable on the securities.⁹⁶⁵ Although we considered adopting an issuer disclosure requirement, we believe that requiring the chief executive officer to provide a certification is a stronger approach and more appropriate for purposes of determining shelf eligibility.

Therefore, while we recognize that the new shelf certification requirement introduces new costs to issuers, we believe that its net effect on capital formation in the ABS markets would be positive. The certification will help to ensure that the chief executive officer of the depositor

⁹⁶⁵ Annex VIII, Disclosure Requirements for Asset-Backed Securities Additional Building Block, Section 2.1 (European Commission Regulation (EC) No. 809/2004 (Apr. 29, 2004). See also the North American Securities Administrators Association's ("NASAA") guidelines for registration of asset-backed securities, in which sponsors are required to demonstrate that for securities without an investment-grade rating, based on eligibility criteria or specifically identified assets, the eligible assets being pooled will generate sufficient cash flow to make all scheduled payments on the asset-backed securities after taking certain allowed expenses into consideration. The guidelines are available at <http://www.nasaa.org/>.

is actively involved in the oversight of the transaction, and, as discussed above, along with the other shelf transaction requirements, it should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. As a result, we believe that the certification may also improve investor perceptions about the accuracy and completeness of the disclosures, which may, in turn, help restore investors' willingness to invest and participate in the ABS markets. The impact of certification requirements in other contexts – in particular, certification requirements under the Sarbanes-Oxley Act – provides information about the potential consequences of certification in the securitization market.⁹⁶⁶ Several academic studies found that the overall effect on issuer's capitalization and on measures of market efficiency has been estimated to be either neutral⁹⁶⁷ or positive,⁹⁶⁸ suggesting that many investors perceived that

⁹⁶⁶ We note that there are some differences between the SOX certification requirements and the certification requirements in the rule we are adopting. First, the burdens are different, as SOX mandates that a CEO sign certifications that require a sizeable commitment of resources, whereas the rule we are adopting may require hundreds of ABS deals to be certified each year (see footnote 959 for the estimates of annual certification burden per depositor) but with a significantly lower burden for each certification. Second, the SOX CEO certification carries both civil and criminal penalties for false certification, and, thus, due in part to the availability of criminal penalties, likely imposes higher litigation costs for certifying officers and issuing corporations than the new shelf certification.

⁹⁶⁷ See Utpal Bhattacharya et al., Is CEO Certification of Earnings Numbers Value-Relevant?, 14 J. EMPIRICAL FIN., 611 (2007) and Brett R. Wilkinson & Curtis E. Clements, Corporate Governance Mechanisms and the Early-Filing of CEO Certification, 25 J. ACCT. & PUB. POL'Y, 121 (2006). These papers examined the market reaction to early filing of CEO certifications that the Commission required in advance of the passage of SOX using event-study methodology and found no reaction to early filing for the market as a whole. The Bhattacharya et al. study also found that certification had a neutral effect on returns, volatility of returns, and volume of trade not only for early certifiers around their certification date, but for the non-certifiers as well.

⁹⁶⁸ See Hsuihui Chang et al., CEOs'/CFOs' Swearing by the Numbers: Does It Impact Share Price of the Firm?, 81 ACCT. REV. 1 (2006) (finding also that certifying firms benefited from a significant decline in information asymmetry, as measured by bid-ask spread, after certification) and Beverly Hirtle, Stock Market Reaction to Financial Statement Certification by Bank Holding Company CEOs, 38 J. MONEY

the benefits of SOX certification outweighed the costs. We believe there will be potentially similar benefits for capital formation and market efficiency resulting from the new shelf certification. The final certification consists of five paragraphs.⁹⁶⁹ We discuss each one in order below.

(i). Paragraph One

The first paragraph of the final certification is substantially similar to the re-proposed text, with some modifications made in response to comments. The final text of paragraph one reads as follows:

I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] (the “securities”) and am familiar with, in all material respects, the following: the characteristics of the securitized assets underlying the offering (the “securitized assets”), the structure of the securitization, and all material underlying transaction agreements as described in the prospectus;

As proposed, the certifier is required to certify that he or she has reviewed the prospectus and the necessary documents to make the certification. We believe that the chief executive officer should be sufficiently involved in overseeing the transaction and should review the prospectus and the documents necessary to make the certification. Several commenters suggested that we clarify that the chief executive officer may rely on senior officers under his or

CREDIT AND BANKING, 1263 (2006) (finding a positive market reaction to certification requirements among bank holding companies, given the inherent opacity in the banking system, with the certification providing valuable information to investors). Because we are requiring new asset-level disclosure to address asymmetric information in addition to the shelf certification, we recognize that the results from these studies may not provide a fully comparable basis for the potential impact of requiring certification for asset-backed securities.

⁹⁶⁹ Consistent with other certifications, the language of the certification must not be revised in providing the required certification. See the 2004 ABS Adopting Release at 1570.

her supervision that are more familiar and involved with the structuring of the transaction in order to more accurately reflect the team-oriented nature of the transaction.⁹⁷⁰ We understand that a principal officer of the depositor may rely on the work of other parties, thus we are not requiring that the chief executive officer actually structure the transaction. We continue to believe, however, that the chief executive officer should provide appropriate oversight so that he or she is able to make the certification. Furthermore, the text of this certification in this respect is consistent with the text of other certifications, which do not specifically state that the certifier relied on the work of others.⁹⁷¹

At the suggestion of commenters, we are adding defined terms for “securities” and “securitized assets” for purposes of the certification and incorporating those defined terms throughout the remainder of the certification to ease readability.⁹⁷² In the final rule, the term “securities” refers to all of the securities that are offered and sold with the related prospectus. The term “securitized assets” refers to the assets underlying the securities that are being offered.

Commenters also requested that the paragraph be revised to make it more explicit that the certifier is responsible for knowing material aspects of the assets and the material underlying transaction agreements.⁹⁷³ Commenters argued that “material” is consistent with customary

⁹⁷⁰ See letters from ABA II, ABAASA II, ASF V, BoA II, and Wells Fargo II.

⁹⁷¹ See, e.g., the 2004 ABS Adopting Release at 1569 (amending Item 601 of Regulation S-K to add specific form and content of the required ABS Section 302 certification to the exhibit filing requirements).

⁹⁷² See letters from ABA II, ABAASA II, ASF V, CREFC II, and J.P. Morgan II.

⁹⁷³ See letters from ABA II, ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

disclosure principles, including Regulation AB, and therefore provides consistency.⁹⁷⁴

Additionally, commenters explained that the contracts for the transaction and the documents for each underlying asset are extensive and that the certifying officer should not be expected to be familiar with all of the terms in these documents.⁹⁷⁵ We have revised the first paragraph to clarify that the certifier is speaking of material facts by inserting “in all material respects.” We have also used this phrase at the beginning of paragraphs three and four to address similar concerns by commenters.

We have deleted “including without limitation” in response to commenters’ suggestions that this language made the scope of the certification unclear.⁹⁷⁶ In addition, some commenters requested that we add “described therein” following “am familiar with the structure of the securitization” to clarify that the certification is based on the certifier’s review of the prospectus.⁹⁷⁷ The final text does not incorporate this suggestion because we do not believe the chief executive officer’s review should necessarily be based solely on the review of the prospectus, which we discuss in more detail below.

Finally, under the re-proposed rule, the certifying officer could take into account only internal credit enhancements in making the certification.⁹⁷⁸ Commenters, however, believed that

⁹⁷⁴ See, e.g., letter from ABA II.

⁹⁷⁵ See, e.g., letter from Wells Fargo II.

⁹⁷⁶ See letters from ABA II, ABAASA II, ASF V, BoA II, CREFC II, and J.P. Morgan II.

⁹⁷⁷ See letters from ABA II, ABAASA II, ASF V, CREFC II, and J.P. Morgan II.

⁹⁷⁸ See footnotes 33 and 55 in the 2011 ABS Re-Proposal. In the 2011 ABS Re-Proposing Release, we noted that internal credit enhancement would include subordination provisions, overcollateralization, reserve accounts, cash collateral accounts or spread accounts, as well as guarantees applicable to an underlying

the certifier should be permitted to take into consideration external credit enhancement in providing the certification. One commenter noted, for example, that investors in ABS with external credit enhancement rely on and give credit for external credit enhancement just as they do for internal credit enhancement.⁹⁷⁹ Another commenter noted that external credit enhancements can play an integral role in maximizing the likelihood that securities will receive payment.⁹⁸⁰ Further, one issuer noted that it could not provide the certification unless it is able to take into account external credit enhancements.⁹⁸¹

In light of comments, under the final rule, the certifier is permitted to consider internal and external credit enhancement in providing the certification. We continue to believe, however, that the primary focus of the certification should be on the underlying assets rather than on any credit enhancement since, consistent with the Regulation AB definition of asset-backed security, the cash flows from the pool assets should primarily service distributions on the ABS.⁹⁸² We also note that we decided not to list “credit enhancement” specifically in the final certification because we believe that the phrase “the structure of the securitization” encompasses, among other things, credit enhancement and cash flows.

loan, whereas, external credit enhancement would include third-party insurance to reimburse losses on the pool assets or the securities.

⁹⁷⁹ See letter from SIFMA III-dealers and sponsors.

⁹⁸⁰ See letter from ASF V.

⁹⁸¹ See letter from Sallie Mae II (noting that it could not certify student loan transactions without taking into account related government guarantees). In the 2011 ABS Re-Proposing Release, we noted internal credit enhancement would include guarantees applicable to the underlying loans.

⁹⁸² See Regulation AB definition of asset-backed security in Item 1101(c) of Regulation AB.

(ii) **Paragraph Two**

We did not receive any comments suggesting specific changes to paragraph two and we continue to believe that it is appropriate to expect signers of a registration statement to satisfy themselves about the accuracy of the disclosure at the time of each takedown. The final text reads, as proposed:

Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(iii) **Paragraph Three**

The third paragraph of the final certification is substantially similar to the proposed text, with some modifications. The final text of paragraph three reads as follows:

Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part fairly present, in all material respects, the characteristics of the securitized assets, the structure of the securitization and the risks of ownership of the securities, including the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms; and

Paragraph three requires a certification that the disclosures in the prospectus and other information in the registration statement are fairly presented.⁹⁸³ Several commenters requested that we delete the term “fairly present” and suggested that we use alternative language.⁹⁸⁴ Some commenters noted that the term “fairly presents” is customarily used by experts primarily in

⁹⁸³ For the same reasons articulated in our discussion of paragraph one, we have also added “structure of the securitization” here in paragraph three and in paragraph four.

⁹⁸⁴ See letters from ABA II, ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

certifying the accuracy of the financial information.⁹⁸⁵ For example, one commenter stated that because the certifying officer is not certifying to the accuracy of the financial information, but rather to the adequacy of the disclosure in the prospectus regarding the securitization it would be more appropriate to use a different term.⁹⁸⁶ Commenters differed as to an appropriate replacement. Several commenters recommended “describe,”⁹⁸⁷ and several other commenters suggested “disclose.”⁹⁸⁸ The term “fairly presents” is used in our regulations with respect to financial information; however, we do not intend for the term to have the same meaning in this context. We are retaining the phrase in the certification because we believe it articulates the appropriate standard for the certification. The term “fairly presents,” as adopted, will require the CEO to consider whether the disclosure is tailored to the risks of the particular offering and presented in a clear, non-misleading fashion. Commenters also requested that we insert the term “material” in certain places in the paragraph similar to their requests in connection with paragraph one.⁹⁸⁹ We are not adding the term “material” in multiple parts of the paragraph as requested because we believe that the phrase “in all material respects” sufficiently captures materiality across all the statements in the paragraph and therefore use of the term “material” elsewhere in the paragraph would be redundant.

⁹⁸⁵ See letters from ABA II, ASF V, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

⁹⁸⁶ See, e.g., letter from ABA II.

⁹⁸⁷ See letters from ABAASA II, ASF V, BoA II, J.P. Morgan II, and Wells Fargo II.

⁹⁸⁸ See letters from ABA II (recommending the term “disclose fairly”), AFME, CREFC II, and SIFMA III-dealers and sponsors.

⁹⁸⁹ See, e.g., letters from ABA II, AFME, BoA II, SIFMA III-dealers and sponsors, and Wells Fargo II (recommending adding “material” before “credit enhancements”). See also letters from BoA II and Wells Fargo II (proposing to add “material” before “characteristics of the securitized assets”).

In addition, paragraph three, as re-proposed, would have required that the certifier consider the risk factors relating to the securitized assets underlying the offering that would affect the cash flows sufficient to service payments on the asset-backed securities as described in the prospectus. Commenters requested that we revise our reference to “risk factors”⁹⁹⁰ so that the certifier considers instead “all material risks” because disclosure of risks related to the securitized assets is not limited to the information included under the risk factors section of the prospectus but also includes information in other parts of the prospectus, such as historical static pool “loss” data.⁹⁹¹ One commenter recommended that instead of referring to “all risk factors,” as proposed, that the certification be limited to only the most significant risks because a certifying officer cannot reasonably anticipate that an insignificant risk might cause significant losses at the time the officer signs the certification.⁹⁹² The same commenter noted that the existing standard for risk factor disclosure requires “a discussion of the most significant risk factors that make the offering speculative or risky” and expressed concern that the language in paragraph three could lead to increased disclosure of risk factors that are not significant to the ABS transaction.⁹⁹³

We have considered the comments received and are revising the language of the certification to replace the phrase “all risk factors” with “the risks relating to the securitized

⁹⁹⁰ See letters from ABA II, ABAASA II, and ASF V. See also letter from CREFC II (recommending a slightly different qualification, namely that “all risks relating to the Assets that would materially and adversely affect the cash flows”) (emphasis added).

⁹⁹¹ See, e.g., letter from ABA II.

⁹⁹² See letter from BoA II.

⁹⁹³ See *id.* See also Item 1103(b) of Regulation AB and Item 503(c) of Regulation S-K.

assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms.” We agree with commenters that the disclosure related to the risks of the securitized assets is not limited to only the risk factor section of the prospectus and may be appropriately presented in other parts of the prospectus. Some commenters also believed that the certification with regard to material risks related to the securitized assets should be further qualified to include only those that would “adversely” affect the cash flows “available” to service payments on the ABS “in accordance with their terms.”⁹⁹⁴ We are not inserting the word “adversely” because we believe that the concept is incorporated in the term “risk” and therefore would be redundant to include. We are, however, revising the phrase “cash flows sufficient” to “cash flows available” in order to more accurately reflect the nature of pass-through certificates and junior tranches of registered ABS. We are also adding the phrase “in accordance with their terms” as suggested, because we believe it better describes the certification that we are requiring by paragraph three (i.e., fair presentation of the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms).⁹⁹⁵

⁹⁹⁴ See letters from ASF V and J.P. Morgan II.

⁹⁹⁵ We are also making revisions to enhance readability by listing each element of the certification in paragraph three, which eliminates redundancies from the proposed language, as phrases in the proposed language such as “described therein” and “as described in the prospectus” are no longer necessary to include. See letters from ABAASA II, ASF V, BoA II, J.P. Morgan II, and Wells Fargo II (noting that it was unclear how the language after the third comma modifies the prior portion of the sentence and also whether this language is intended to extend the certification beyond the disclosure to the performance of the transaction and recommending that “including all material credit enhancements” should be moved to follow “the material characteristics of the securitized assets underlying the offering described therein”).

(iv) Paragraph Four

Paragraph four of the final certification has also been modified. As described below, we have also added a fifth paragraph to address concerns related to paragraph four. The final text of paragraph four reads as follows:

Based on my knowledge, taking into account all material aspects of the characteristics of the securitized assets, the structure of the securitization, and the related risks as described in the prospectus, there is a reasonable basis to conclude that the securitization is structured to produce, but is not guaranteed by this certification to produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.

We have made revisions to this paragraph similar to revisions made to paragraph one.

First, commenters suggested that we add the word “material” because, in general, the paragraph should relate only to material information about the securitized assets, the structure of the securitization (as discussed below, which includes any credit enhancement) and the related risks of the offering.⁹⁹⁶ We are adding the phrase “all material aspects of” to paragraph four. Second, commenters asked that we remove the limitation that the certifier consider only internal credit enhancement in providing the certification.⁹⁹⁷ In response to comments, we have revised

⁹⁹⁶ See letters from ABA II, ABAASA II, ASF V, BoA II, CREFC II, J.P. Morgan II, and Wells Fargo II.

⁹⁹⁷ Several commenters contended that the certifying officer must be permitted to take into account the external credit enhancements given that they can play a critical role in certain transactions. See letters from ABAASA II, ASF V, AFME, and SIFMA III-dealers and sponsors. Another commenter requested that the Commission clarify that external credit enhancement that is ultimately backed by the full faith and credit of the United States government may be considered by the certifying officer. See letter from Sallie Mae II. This commenter explained that a certifying officer cannot certify that “a transaction backed by FFELP loans is designed to produce cash flows at times and in amounts sufficient to service expected payments on the ABS” unless it is able to take into account external credit enhancement. To address this issue, this commenter recommended that the Commission either exempt ABS transactions backed by FFELP loans

paragraph four to remove this limitation for the same reasons articulated in our discussion of paragraph one.⁹⁹⁸

We also received several detailed comments on the remaining text of paragraph four. Some commenters suggested that we replace the word “designed” with “structured” when certifying to the cash flows that will service payments on the securities.⁹⁹⁹ Commenters explained that the term “structured” is better understood in the context of these transactions and also reflects the nature of these securitizations as a type of structured finance.¹⁰⁰⁰ Several commenters recommended adding that the securitization is structured “to be expected to produce” rather than just “structured to produce” for further clarification that paragraph four does not constitute a guarantee.¹⁰⁰¹ We are revising the final certification to use the term “structured” as requested by some commenters; however, we note that we believe the term “structured” to encompass more than tranching to include, among other things, selection of the assets, credit enhancement, and other structural features designed to enhance credit and facilitate

from the proposed certification requirement or clarify that external credit enhancements from sources backed by the full faith and credit of the United States government may be considered by the certifying officer.

⁹⁹⁸ As we emphasized in connection with paragraph one, while we are permitting the certifier to consider credit enhancement in providing the certification, the primary focus in providing the certification should be on the assets, not the credit enhancement. We note that we have also removed the phrase “any other material features of the transaction” from paragraph four since we also believe that “structure of the securitization” encompasses such features.

⁹⁹⁹ See letters from ABA II, ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, SIFMA III- dealers and sponsors, and Wells Fargo II.

¹⁰⁰⁰ See, e.g., letter from ABA II.

¹⁰⁰¹ See letters from J.P. Morgan II and Wells Fargo II.

timely payment of monies due on the pool assets to security holders.¹⁰⁰² We are not inserting the term “expected” before “to produce” because we believe that the concept of expected is implicit in the phrase “structured to produce” and that the phrase “is not guaranteed by this certification to produce” adequately addresses some commenters’ concern about paragraph four constituting a guarantee.

Many commenters stressed that they were unsure what the “expected payments” would be with respect to any particular securitization, such as with pass-through certificates or more junior tranches of registered ABS. With respect to the issue of pass-through certificates, one commenter noted that “no fixed principal payments are required to be made.”¹⁰⁰³ Additionally, several commenters explained that the proposed language failed to account for the possibility that more junior tranches of registered ABS may bear a moderate credit risk somewhere in between the most senior registered tranches and the most subordinated unregistered tranches.¹⁰⁰⁴ Several commenters recommended deleting “expected payment” and inserting “the assets will produce cash flows at times and in amounts sufficient to service payments on the offered securities in accordance with the terms described in the prospectus.”¹⁰⁰⁵ One commenter expressed concern that the proposed form of the certification could be interpreted to suggest that

¹⁰⁰² See, e.g., Item 1113 of Regulation AB (describing the disclosure required for the structure of transaction).

¹⁰⁰³ See letter from ABA II (noting that many pass-through securities “require payment only to the extent of cash flows actually received and available in accordance with the priority of payments waterfall” and also indicating that credit rating agencies, in evaluating the likelihood of the payment on ABS classes, typically refer to “scheduled payments” of interest and “ultimate” repayment of principal and recommended using those terms here).

¹⁰⁰⁴ See letters from AFME, J.P. Morgan II, and SIFMA III-dealers and sponsors.

¹⁰⁰⁵ See letters from AFME, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

the adverse effects of the potential risk had been negated through structuring.¹⁰⁰⁶ Therefore, this commenter supported modifying the certification so that it clearly states that the risks described in the prospectus could adversely affect the cash flows.¹⁰⁰⁷ Other commenters similarly noted that the certification fails to acknowledge the Commission's intent, as stated in the 2010 ABS Proposing Release, to qualify the certification by the disclosure in the prospectus.¹⁰⁰⁸

To address commenters' concerns with "expected payments," we have revised paragraph four so that the certification relates to "expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus." We agree with commenters that certain ABS may not be required to produce fixed payments, as is the case with pass-through certificates, and that using the term "expected payments" may have caused confusion.¹⁰⁰⁹ We believe the revised language provides greater clarity as to what the chief executive officer is certifying to and more

¹⁰⁰⁶ See letter from ABA II. See also letter from Wells Fargo II (stating that the certification, as currently drafted, could be interpreted to say that the certifying officer has taken into consideration all the material information included in the prospectus and that, notwithstanding the risks and uncertainties described in the prospectus, the certifying officer has certified that the securitization is designed to produce cash flows sufficient to service the ABS).

¹⁰⁰⁷ See letter from ABA II (recommending the following language: "provided that the risks described in the prospectus may adversely affect such cash flows").

¹⁰⁰⁸ See letters from ABAASA II, AFME (stating that it is important that the certification specifically state that its conclusion takes into account any assumptions described in the prospectus, and also that it state that cash flows may vary if and to the extent that any of the risk factors described in the prospectus come to pass), ASF V, and SIFMA III-dealers and sponsors.

¹⁰⁰⁹ See, e.g., letter from ABA II.

precisely captures the varying terminology used to describe the amounts due to investors depending upon the type of ABS transaction.

We also recognize that characterizing the cash flows as “sufficient” to service the payments or distributions may have inadvertently implied that there will always be adequate cash flows to service such payments or distributions regardless of whether the ABS is of a lower tranche or structured as a pass-through security. We have deleted the term “sufficient” to eliminate this possible confusion.¹⁰¹⁰ We believe, however, that even if fixed payments are not required to be made, a securitization is structured with the expectation that cash flows from the assets will provide distributions at certain times and amounts, and accordingly we believe that certification should reflect that expectation. We have therefore moved “expected” to before “cash flows” to clarify the requirement. We also believe that this change addresses some commenters’ concerns about lower tranches of shelf registered ABS in that the expectation is not so much related to payment as to how the cash flow has been structured to allocate distributions of interest and principal.

One commenter suggested inserting language to indicate that the certifying officer’s statements are his or her “current beliefs” and that there may be future developments that would cause his or her opinion to change or result in the assets not generating sufficient cash flows.¹⁰¹¹ Also, commenters stressed the importance of including cautionary statements in the certification

¹⁰¹⁰ We also removed the term “sufficient” in paragraph three for the same reason where we changed the language from “the cash flows sufficient” to “cash flows available.”

¹⁰¹¹ See letter from J.P. Morgan II.

that identify those risks and uncertainties as factors that could cause the actual results to differ materially from those set forth in the certification.¹⁰¹² Several commenters supported the Commission's language outlined in Request for Comment No. 4 in the 2011 ABS Re-Proposal.¹⁰¹³ As we note above, the certification will be a statement of what is known by the certifier at the time of the offering. This is made clear by the introductory language to paragraphs three and four ("based on my knowledge") and therefore we have not made this change.¹⁰¹⁴ We are also revising the text to insert the phrase "a reasonable basis to conclude," as suggested by some commenters to further clarify that the certification applies to what is known at the time of securitization.¹⁰¹⁵ Many commenters argued that paragraph four represents an assessment and forecast of the future performance of the securitized assets and the ABS, which would make it a forward-looking statement, and thus the issuers should be entitled to protections afforded by the safe harbor for forward-looking statements.¹⁰¹⁶ We do not believe that paragraph four is protected by the statutory safe harbor for a forward-looking statement.¹⁰¹⁷ We have,

¹⁰¹² See letters from ABA II, AFME, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

¹⁰¹³ See letters from ABAASA II, AFME, ASF V, and SIFMA III-dealers and sponsors. See also the 2011 ABS Re-Proposal Release at 47954, Request for Comment No. 4 (requesting comment on whether to allow the certification to state, among other things, that it is only an expression of the executive officer's current belief and is not a guarantee that those assets will generate such cash flows).

¹⁰¹⁴ Also note that paragraph one requires that the certifier review the prospectus and the necessary documents regarding the assets, transactions and disclosures.

¹⁰¹⁵ See letters from ABAASA II, ASF V, J.P. Morgan II (noting that this language is also consistent with the defenses that an officer of a registrant would have under the federal securities laws), and Wells Fargo II.

¹⁰¹⁶ See letters from ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, MBA III, SIFMA III-dealers and sponsors, and Wells Fargo II.

¹⁰¹⁷ The statutory safe harbor for forward-looking statements is only available to an issuer that is subject to the reporting requirements of Section 13(a) or Section 15(d) of the Exchange Act. The depositor for the

however, included "related risks" of the securitized assets and structure as described in the prospectus to address comments that the certifier should be allowed to take risk disclosure into account. We also note that because the language of the certification cannot be altered, any issues in providing the required certification must be addressed through disclosure in the prospectus. For example, if the prospectus describes the risk of nonpayment or other risk that such cash flows will not be produced, then the certifier would take those disclosures into consideration in signing the certification.

(v) Paragraph Five

As discussed above, some commenters expressed concern over potential increased liability with the certification. We acknowledge that the potential litigation risk to the chief executive officer may be higher, and we recognize that participants in securities offerings who make statements about those offerings can face liability for their statements, but we believe that possible additional risk to the certifier is justified where each takedown provides investors with offering information about the underlying assets and structure of the securities and recent market events persuade us that these were insufficient incentives for proper oversight over the transaction. In this regard, we also note that the certification is tied to the disclosure in the prospectus. For example, if the prospectus includes disclosure that the terms of the securities do

issuing entity of an asset-backed security is a different "issuer" from that same person acting as a depositor for any other issuing entity or for purposes of that person's own securities. See Securities Act Rule 191 [17 CFR 230.191], and Exchange Act Rule 3b-19 [17 CFR 240.3b-19]. Therefore, at the time of an ABS takedown, other than in the case of master trusts, the entity acting as issuer is not subject to the reporting requirements of Section 13(a) or Section 15(d) of the Exchange Act. See Securities Act Section 27A (15 U.S.C. 77z-2).

not include any expectation (or limited expectation) that the structure will produce cash flows sufficient to make distributions, the certifier would nonetheless be able to sign the certification because the certification is based, in part, on the disclosure in the prospectus. In response to commenters' concerns about certifier liability,¹⁰¹⁸ we note that the CEO can take steps to mitigate the risks of signing. In addition, the final certification includes a fifth paragraph to further clarify that the certifier has any and all defenses available to him or her under the federal securities laws. The final text of paragraph five reads:

The foregoing certifications are given subject to any and all defenses available to me under the federal securities laws, including any and all defenses available to an executive officer that signed the registration statement of which the prospectus referred to in this certification is part.

(vi) Signature Requirement

In the 2010 ABS Proposing Release, we had proposed that the depositor's chief executive officer sign the certification. We explained that the chief executive officer of the depositor is already responsible for the disclosure as a signer of the registration statement.¹⁰¹⁹ We also asked, in the 2010 ABS Proposing Release, whether an individual in a different position should be required to provide the certification, such as the senior officer of the depositor in charge of securitization, in order to be consistent with other signature requirements for ABS. In response to comments, as part of the 2011 ABS Re-Proposal, we re-proposed to allow either the chief

¹⁰¹⁸ See letter from ASF V (requesting that the Commission make clear that the certifying officer have any and all defenses available under the federal securities laws as a person signing the registration statement and providing recommended language to include in the certification). See also letters from ABA II & J.P. Morgan II (supporting ASF's recommended language).

¹⁰¹⁹ See the 2010 ABS Proposing Release at 23346.

executive officer of the depositor or the executive officer in charge of securitization of the depositor sign the certification.

We received various comments on the appropriate party to sign the certification. One commenter supported the re-proposal to allow “the executive officer in charge of securitization” to sign the certification but suggested modifying it to require the signature of “an executive officer in charge of the securitization.”¹⁰²⁰ This commenter explained that it may be the case that more than one person may satisfy the role of executive officer in charge of securitization, and it would be appropriate to permit the executive officer with particular knowledge of the specific securitization to sign the certification. In response to a request for comment in the 2011 ABS Re-Proposal regarding whether we should conform signature requirements across forms (e.g., Form 10-K and proposed Form SF-3),¹⁰²¹ one commenter recommended that the “senior officer in charge of securitization” sign the certification,¹⁰²² and another suggested we broaden the list of signers to include the principal executive officer, the principal financial officer and controller or the principal accounting officer of the depositor.¹⁰²³ One commenter recommended requiring an

¹⁰²⁰ See letter from MBA III (stressing that in the context of CMBS it is common for more than one person to satisfy the definition of executive officer who has worked closely with the securitization).

¹⁰²¹ See Request for Comment No. 3 in the 2011 ABS Re-Proposing Release. The Form 10-K [17 CFR 249.310] report for ABS issuers must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor, or on behalf of the issuing entity by the senior officer in charge of the servicing. In addition, the certifications for ABS issuers that are required under Section 302 of the Sarbanes-Oxley Act must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor if the depositor is signing the Form 10-K report, or on behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer if the servicer is signing the Form 10-K report.

¹⁰²² See letter from Sallie Mae II.

¹⁰²³ See letter from J.P. Morgan II.

executive officer with a title such as “chief transaction officer” if the Commission is seeking a party to assume more responsibility for disclosure.¹⁰²⁴

Commenters also provided comments as to why an executive officer would be unable to provide the certification. For example, some commenters argued that executive officers lack the expertise to perform the credit analysis necessary to provide the certification.¹⁰²⁵ Another commenter recommended that, with respect to paragraph four as to any assurance about the structure and cash flows of the securitization, the issuer, not a principal officer, should provide the certification because the chief executive officer may be too removed from the process and the team approach to securitization may not leave any one person in a position to evaluate all of the material attributes of the securitization.¹⁰²⁶

Similarly, some commenters explained why an executive officer might be unwilling to provide the certification. One commenter noted that depositors would be unable to effectively price for the possibility of liability under such a broad certification.¹⁰²⁷ The commenter explained that to the extent that an executive officer is willing to sign it, he or she will likely do so only in the most conservative circumstances, which may result in shelf-offered ABS of only the highest quality and thus preclude shelf offerings of securities with different credit risk and

¹⁰²⁴ See letter from Kutak (proposing “chief transaction officer” (without defining this position) because the proposed certification would not provide any additional oversight than what is presently required with regard to the signers of a registration statement).

¹⁰²⁵ See letters from AFME and SIFMA III-dealers and sponsors (noting that executives may not be trained to perform the type of credit analysis that would be required to give a certification and that credit rating agencies are the more appropriate parties to perform the credit analysis).

¹⁰²⁶ See letter from ABA II.

¹⁰²⁷ See letter from SIFMA III-dealers and sponsors.

profiles. Another expressed concern that principal officers may be discouraged from taking such positions due to exposure to personal litigation.¹⁰²⁸

After considering the comments, the final rule requires that the certification be signed by the chief executive officer. We are not adopting the suggestion that the executive officer in charge of the securitization for the depositor sign the certification, as re-proposed, because we are not acting at this time on the proposal to revise the signature requirements for the registration statement. We believe that the certification should be signed by a signatory to the registration statement. Furthermore, we believe that having the chief executive officer as the sole signatory is appropriate for other policy reasons. Although we understand that the chief executive officer may not personally undertake credit analysis and that he or she will likely rely on the work of others to assist him or her with structuring the transaction and preparing the certification as noted by some commenters, we believe that the depositor's chief executive officer, as an officer of the depositor at the highest level, should be responsible for providing proper oversight over the transaction and thus should be held accountable for the structuring of the transaction and for the disclosure provided in the prospectus supplement. In that regard, we believe, as we did when we proposed the certification for Exchange Act periodic reports, that a certification should cause the chief executive officer to more carefully review the disclosure, and in this case, the transaction, and to participate more extensively in the oversight of each transaction.¹⁰²⁹

¹⁰²⁸ See letter from SIFMA II-investors.

¹⁰²⁹ See the 2011 ABS Re-Proposing Release at 47951 and the 2010 ABS Proposing Release at 23345.

(vii) Date of the Certification

The date of the certification, as proposed, is required to be as of the date of the final prospectus.¹⁰³⁰ One commenter supported the proposed date because the deal structure will be final at that time and the final deal structure is what is being addressed in the certification.¹⁰³¹

(viii) Opinion by an Independent Evaluator Alternative

In the 2011 ABS Re-Proposing Release, we also requested comments on whether, in lieu of the requirement that the chief executive officer or executive officer in charge of the securitization of the depositor provide a certification, the Commission should allow an opinion to be provided by an “independent evaluator.”¹⁰³² Several commenters supported allowing an opinion by an “independent evaluator” in lieu of the proposed certification.¹⁰³³ One commenter believed that allowing an opinion by an independent evaluator meeting particular requirements would provide a more detached and objective basis for certification.¹⁰³⁴ The other commenter stressed that an independent evaluator is particularly important in evaluating the structure of a

¹⁰³⁰ See Item 601(b)(36) of Regulation S-K [17 CFR 229.601(b)(36)]. The certification should be filed as an exhibit to the final 424(b)(2) or (5) prospectus. See also new Item 1100(f) of Regulation AB [17 CFR 229.1100(f)] (specifying procedures for filing required exhibits).

¹⁰³¹ See letter from Sallie Mae II.

¹⁰³² See Request for Comment No. 12 in the 2011 ABS Re-Proposing Release.

¹⁰³³ See letters from C. Barnard (recommending independence, experience, and related disclosure requirements related to the independent evaluator) and Kutak (suggesting limiting information disclosed to identification of the independent evaluator, compensation, and affiliations and that the person not be considered an expert).

¹⁰³⁴ See letter from C. Barnard (acknowledging that such opinion could reduce the executive oversight of the transaction structure but emphasized that the responsibility for the certification would still reside with the executive).

transaction given that structures are often the product of investment bankers or third parties who know what securities will sell in the market.¹⁰³⁵ Relatedly, several commenters noted that a credit rating agency is the more appropriate party to perform the credit analysis required.¹⁰³⁶

In contrast, one commenter noted its opposition to allowing the use of an independent evaluator, stating that the certification, as proposed, may result in a more careful review of the disclosure and transaction by the issuer and ultimately higher-quality ABS in shelf offerings.¹⁰³⁷ Another commenter recommended that we not mandate the use of an independent evaluator, explaining that it is uncertain, especially in the RMBS market, whether there are companies willing to serve as an independent evaluator given the possibility of increased liability and preclusion from performing other more desirable roles in the transaction.¹⁰³⁸

As reflected in the comments above, an independent evaluator alternative may provide benefits to investors and issuers. For issuers that conduct offerings on an infrequent basis, such an alternative may be less costly than implementing an infrastructure in order for the chief executive officer to conduct the review required by the certification. However, as one commenter noted with respect to RMBS, such issuers may encounter difficulty hiring a company

¹⁰³⁵ See letter from Kutak.

¹⁰³⁶ See letters from AFME and SIFMA III-dealers and sponsors (noting that any conflict of interest inherent in the rating agency's credit analysis would be magnified exponentially were such analysis to be effectively required to be undertaken by an affiliate of an issuer). Additionally, SIFMA III-dealers and sponsors was troubled that given the Commission's express intent to reduce the reliance on credit analysis by NRSROs, that shelf eligibility would instead be conditioned on a credit analysis by an officer of the depositor.

¹⁰³⁷ See letter from CFA II.

¹⁰³⁸ See letter from MBA III.

that is willing to provide such services and sign the certification.¹⁰³⁹ A certification by the chief executive officer is designed to increase internal oversight within the issuer. For investors, the independent evaluator may be able to provide a more detached and objective opinion; however, investors should also benefit from the enhanced internal oversight by the issuer obtained from the CEO certification. We are therefore not adopting the independent evaluator as an alternative to providing a certification.

(2) Asset Review Provision

(a) Proposed Rule

Investors have expressed concerns about the effectiveness of the contractual provisions related to the representations and warranties about the pool assets and the lack of responsiveness by sponsors about potential breaches.¹⁰⁴⁰ A significant hurdle faced by investors seeking to enforce repurchase obligations has been that transaction agreements typically have not included specific mechanisms to identify breaches of representations and warranties or to resolve a question as to whether a breach of the representations and warranties has occurred. Further, investors have had to rely upon the trustees to enforce repurchase covenants because the transaction agreements do not typically contain a provision for an investor to directly make a repurchase demand. Investors have been frustrated with this structure and process because

¹⁰³⁹ See letter from MBA III.

¹⁰⁴⁰ In the underlying agreements for an asset securitization, sponsors or originators typically make representations and warranties about the pool assets and their origination, including representations about the quality of the pool assets. Upon discovery that a pool asset does not comply with the representation or warranty, an obligated party (typically the sponsor) must repurchase the asset or replace it with an asset that complies with the representations and warranties. See the 2011 ABS Re-Proposal at 47956-57. See also the Section 943 Adopting Release at 4489-90.

trustees have not enforced repurchase rights, and investors have been unable to locate other investors in order to force trustees to do so.¹⁰⁴¹ Furthermore, these contractual agreements have frequently been ineffective because, without access to documents relating to each pool asset, it can be difficult for the trustee, which typically notifies the sponsor of an alleged breach, to determine whether a representation or warranty relating to a pool asset has been breached.¹⁰⁴² The impact of these difficulties for investors is particularly concerning given the pervasiveness of misrepresentation among securitized residential real estate loans in the 2000's.¹⁰⁴³

To address this concern, we proposed in the 2011 ABS Re-Proposal as one of the transaction requirements for shelf eligibility, that the underlying transaction documents of an ABS include provisions requiring a review of the underlying assets of the ABS for compliance with the representations and warranties upon the occurrence of certain post-securitization trigger

¹⁰⁴¹ Typically, investor rights require a minimum percentage of investors acting together in order to enforce the representation and warranty provisions contained in the underlying transaction agreements. See Housing Finance Reform: Fundamentals of a Functioning Private Label Mortgage Backed Securities Market Hearing Before the S. Comm. on Banking, Housing & Urban Affairs, 113th Cong. 39 (2013) (statement of Adam J. Levitin, law professor at Georgetown University Law Center) (noting that “before PLS [private label securities] investors are able to spur a trustee to take action to protect their interests, they face the challenge of limited information available on which to determine if an event of default has occurred, the information problem of identifying other PLS investors in their deal, and the collective action problem of coordinating the required threshold of PLS investors (who do not always have identical incentives and may trade in and out of their positions), and the expense of indemnifying the trustee).

¹⁰⁴² See, e.g., Kathryn Brenzel, \$615M MBS Suit Aims To Rewrite Deal's Terms, Deutsche Says, LAW360, May 6, 2013 (noting that the defendant argued that the notification provided by the trustee did not adequately show misrepresentations). Our requirement addresses this problem because the review required will provide evidence of misrepresentations that the trustees and investors can then use in making a repurchase request.

¹⁰⁴³ Between 10% and 30% of securitized residential real estate loans exhibited some indication of potential misrepresentation. See Tomasz Piskorski et al., Asset Quality Misrepresentation by Financial Intermediaries: Evidence from RMBS Market, (Nat'l Bureau of Econ. Research, Working Paper No. 18843, 2013) and John Griffin & Gonzalo Maturana, Who Facilitated Misreporting in Securitized Loans?, (University of Texas at Austin, Working Paper, 2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2256060&download=yes.

events. Specifically, we proposed that the transaction agreements require, at a minimum, a review of the underlying assets (1) when the credit enhancement requirements, as specified in the transaction documents, are not met, or (2) at the direction of investors pursuant to processes provided in the transaction agreement and disclosed in the prospectus.¹⁰⁴⁴ We proposed that the review would be conducted by a “credit risk manager” who would have access to the underlying loan documents to assist in determining whether the loan complied with the representations and warranties provided to investors.¹⁰⁴⁵ A report of the findings and conclusions of the review would be provided to the trustee to use in determining whether a repurchase request would be appropriate, and would also be filed as an exhibit to the Form 10-D.

Finally, we proposed to require certain provisions in the underlying transaction agreements that would help to resolve repurchase request disputes. We discuss the dispute resolution provision requirement below in Section V.B.3.a)(3) Dispute Resolution Provision because we are adopting it as a stand-alone shelf eligibility condition.

As noted above, studies have highlighted the extent of misrepresentations among securitized residential real estate loans in the 2000’s; however, we are unable to quantify the extent to which enforcing representations and warranties was an issue during the crisis. While recently adopted Exchange Act Rule 15Ga-1 implementing Section 943 of the Dodd-Frank Act

¹⁰⁴⁴ We also proposed that disclosure of the findings and conclusions of the review be required on Form 10-D if an event triggers a review.

¹⁰⁴⁵ Under the proposal, the credit risk manager would be appointed by the trustee and could not be affiliated with any sponsor, depositor, or servicer in the transaction. Disclosure about the experience of the credit risk manager in prospectuses would also be required.

requires disclosure of fulfilled and unfulfilled repurchase request activity, as a practical matter, it does not address directly the enforceability of put-back provisions in the underlying transaction agreements. Further, the historical data provided by Rule 15Ga-1 is limited, as initially only those securitizers that issued ABS between January 1, 2009 and December 31, 2011 were required to report on Form ABS-15G demand and repurchase history that occurred during that same period.¹⁰⁴⁶ As we discussed in the Section 943 Adopting Release, we limited the rule to a three-year look-back period because we recognized concerns regarding the availability and comparability of historical information related to repurchase demands.¹⁰⁴⁷ While we recognize these limitations, we used the information contained in recent Form ABS-15G filings in order to provide some baseline information on current market practices. Based on Form ABS-15G filings of the first quarter of 2013, we find that more than 99% of repurchase requests are in dispute, and with respect to the resolved requests: 16.5% were satisfied, 48.5% were withdrawn, and 35% were rejected.¹⁰⁴⁸ These numbers highlight the fact that enforcing representations and warranties may be time-consuming and lead to uncertain outcomes for investors. We believe that the asset review shelf requirement will help to address this problem and enhance the enforceability of the representations and warranties regarding the pool assets.

¹⁰⁴⁶ See Exchange Act Rule 15Ga-1(c)(1). After December 31, 2011 all securitizers are required to report, on a quarterly basis, demand and repurchase activity for any new or outstanding ABS. See Exchange Act Rule 15Ga-1(c)(2).

¹⁰⁴⁷ See the Section 943 Adopting Release at 4498-99. We noted that the three-year look-back period for initial disclosures struck the right balance between the disclosure benefits to investors, availability of historical information and compliance costs to securitizers. In doing so, we acknowledged that older data may be very hard or impossible for securitizers to obtain if they have not had systems in place to track the data required for the required disclosures, which may lead to less comparable data.

¹⁰⁴⁸ We found similar figures for Form ABS-15G filings in other quarters.

(b) Comments on Proposed Rule

Several commenters generally agreed that a review of assets for compliance with representations and warranties should be a shelf eligibility requirement.¹⁰⁴⁹ Commenters made it clear that investors desire more robust representation and warranty enforcement mechanisms.¹⁰⁵⁰ Many commenters noted that a review mechanism would enhance investor protection and promote the integrity of asset-backed securities.¹⁰⁵¹ Some commenters argued that the proposed requirement should not be imposed upon transactions other than RMBS transactions.¹⁰⁵² They were concerned that enforcement mechanisms could increase costs on transactions where there have been only a limited number of repurchase requests historically.¹⁰⁵³ Some commenters responded to the 2011 ABS Re-Proposal by suggesting that the Commission adopt, as an alternative criterion for shelf eligibility for asset classes other than RMBS, the original proposed

¹⁰⁴⁹ See letters from C. Barnard, ICI II, MBA III, Metlife II, Prudential II, SIFMA II-investors, and Sallie Mae II.

¹⁰⁵⁰ See letters from Metlife II, Prudential II, and SIFMA II-investors (stating that they do not believe the ABS market will recover without a mechanism to enforce breaches of representations and warranties).

¹⁰⁵¹ See letters from ASF III, C. Barnard, ICI II (noting that “it would provide investors with a stronger basis to pursue remedies under the transaction agreement for violations of representations and warranties relating to pool assets, and create better incentives for obligated parties to consider and monitor the quality of the assets in the pool”), Prudential II, and SIFMA II-investors.

¹⁰⁵² See letters from ABA II (stating that transactions with assets that have no meaningful history of repurchase demands should not be subject to the requirement), ABAASA II (noting that the proposed requirement should be required only for RMBS transactions), ASF III, J.P. Morgan II, and Wells Fargo II (stating that credit card and auto transactions should not be subject to the requirement), BoA II (recommending a tailored approach), Sallie Mae II (noting student loans should not be subject to the proposal), and VABSS III (noting that auto deals have not had a history of significant repurchases and thus should not incur the costs associated with the proposed requirement).

¹⁰⁵³ See letters from ABA II, ABAASA II, ASF III, and Wells Fargo II (all supporting a review system for residential mortgage-backed securities transactions and opposing a requirement for other asset-backed securities that do not typically have repurchase demands).

shelf requirements that there be a quarterly third-party review of the assets for compliance with the representations and warranties, which we did not re-propose in light of comments.¹⁰⁵⁴ Below we discuss comments about the various parts of the proposal.

Commenters provided varying comments on the appropriateness of the proposed review triggers. Several commenters suggested that a trigger for review should not be tied to credit enhancement, as proposed.¹⁰⁵⁵ Commenters stated that, for most transactions, a credit enhancement trigger would not be a feasible measurement across asset classes because many deals provide for a buildup of credit enhancement over time and, under the proposed rule, the first distribution could trigger a review.¹⁰⁵⁶ One commenter stated that certain transactions do not have pool-level credit enhancements that would trigger a review.¹⁰⁵⁷ Given these potential issues with a credit enhancement trigger, some commenters suggested as an alternative that the

¹⁰⁵⁴ See letters from ASF III, BoA II, and VABSS III. In the 2010 ABS Proposing Release, the Commission proposed to require a provision in the pooling and servicing agreement requiring the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased. In the 2011 ABS Re-Proposal, we replaced the quarterly third-party opinion proposal with a proposed review of the underlying assets upon certain triggers being reached in response to the comments received on the 2010 ABS Proposal.

¹⁰⁵⁵ See letters from ABA II, ABAASA II, ASF III, BoA II, CREFC II, J.P. Morgan II, Kutak, MBA III, SIFMA III-dealers and sponsors, VABSS III, and Wells Fargo II.

¹⁰⁵⁶ See, e.g., letters from ASF III, SIFMA III-dealers and sponsors, and Wells Fargo II (explaining that transactions involving assets with interest rates in excess of the rates required to be paid on the ABS may initially be structured with little or no initial overcollateralization and that the required credit enhancement is built up over time by applying excess interest to pay principal on the ABS, resulting in overcollateralization), BoA II (noting that in cases where credit enhancement is built over time, credit enhancement levels do not meet required target levels during most of the early life of the deal), VABSS III (noting that while credit enhancement may increase over time, in other transactions, credit enhancement can be reduced if certain performance results are achieved).

¹⁰⁵⁷ See letter from MBA III.

trigger for review be based on a more common measurement of asset performance such as delinquencies.¹⁰⁵⁸

As part of the 2011 ABS Re-Proposal, we requested comments on certain aspects of the investor-directed trigger. For example, we requested comment on whether we should require that at least 5% of investors must first call for an investor vote on the question of whether to initiate a review before a vote occurs.¹⁰⁵⁹ Although comments received were mixed, several commenters supported such a provision.¹⁰⁶⁰ Additionally, many commenters agreed that investors should have the ability to direct a review of assets and suggested procedures that would provide investors with an effective means to request a review while minimizing baseless claims that could impose costs.¹⁰⁶¹

¹⁰⁵⁸ See letters from ASF III (suggesting objective factors such as cumulative losses, delinquencies, or average loss severity be the trigger), Metlife II (noting the review should be based on delinquencies as a percentage of the original subordination for the senior-most class in a transaction), Prudential II (stating that a review should be triggered if the 60+ day delinquencies percentage is greater than the currently available credit support or if a loan becomes 90 days delinquent within six months of the loan's origination or four months from being included in the pool) and Sallie Mae II (recommending "linking the action of the CRM to an element that can arise across all asset classes and all structures, namely losses").

¹⁰⁵⁹ See Request for Comment No. 30 in the 2011 ABS Re-Proposing Release at 47958.

¹⁰⁶⁰ See letters from Metlife II (suggesting that we require 5% of investors to initiate a vote), Prudential II, and SIFMA II-investors (suggesting that at least 5% of the total interest in the pool may poll other investors to determine whether a review should be performed). See also letter from Metlife I (explaining that the vast majority of securitization transactions require a "25%-in-interest voting threshold" before the trustee can be directed by investors to undertake actions such as polling investors as to whether to exercise rights or remedies under the transaction agreements).

¹⁰⁶¹ See, e.g., letters from ASF III (stating that its investor members generally favor the proposal while issuer members generally oppose it), J.P. Morgan II (stating their belief that investors representing a minimum of 25% of the pool be required to trigger a review), MBA III (noting that a threshold of investors should be required to agree to a review due to the potential costs), Prudential II (stating that note holders should be permitted to request a credit risk manager review if 25% of the note holders believe a review is warranted), SIFMA II-investors (stating their belief that a review be triggered if investors with at least 25% (by principal balance) of the total interest in the pool of securitized assets agree to a review), and Sallie Mae II

We also requested comment on whether, as an alternative to specifying voting procedures, it would be appropriate to specify certain maximum conditions, where the percentage of investors required to direct review could be no more than a certain percentage, such as 5%, 10%, or 25%. Commenters provided differing views on imposing maximum conditions. Several commenters suggested that 25% would be the appropriate percentage of investors that should agree to a review before one is required.¹⁰⁶² Another commenter suggested that we consider a majority or plurality of those casting a vote, and that we also specify a quorum requirement.¹⁰⁶³ One commenter suggested that a super-majority would be appropriate.¹⁰⁶⁴

With respect to disclosing the report on the findings and conclusions of the review, several commenters recommended that we require a summary of the report instead of the proposed requirement that the full report be filed as an exhibit to Form 10-D because of privacy

(suggesting specific requirements if the final rule permits investors to direct a review independently of the credit enhancement trigger).

¹⁰⁶² See letters from J.P. Morgan II (stating that “if there is a requirement for review based on a certain percentage of investors, we strongly recommend that the required percentage of investors required to direct a review be no less than 25% of each class of securities outstanding”), Prudential II (“Note holders should be permitted to request a credit risk manager review if 25% of the note holders believe a review is warranted. A 25% threshold would serve to limit both the number of frivolous claims and any unnecessary credit risk manager expenses.”), and Sallie Mae II (stating that if an investor is allowed to direct a review, among other requirements, the requesting investor must own at least 25% of the outstanding principal balance of the related ABS).

¹⁰⁶³ See letter from Metlife II.

¹⁰⁶⁴ See letter from Wells Fargo II.

concerns or potential problems that the requirement would cause with workouts or modifications with delinquent borrowers.¹⁰⁶⁵

We also received comments on the selection and appointment of the credit risk manager. Commenters, in general, opposed the proposal to require that the trustee appoint the credit risk manager. Commenters noted that the trustee would not be a suitable party to appoint the credit risk manager and would not be likely to accept the responsibility for appointing the credit risk manager.¹⁰⁶⁶ Furthermore, commenters generally explained that the appointment by a trustee would be unworkable since the trustee is not typically a party to the transaction until it closes, therefore the trustee would technically not have the authority to appoint the manager until after the transaction closes.¹⁰⁶⁷ One of these commenters stated that it is important to have details about the manager disclosed in the prospectus so that investors can fully understand their impact on the transaction.¹⁰⁶⁸

With respect to the proposed prohibited affiliations between the credit risk manager and certain transaction parties, several commenters supported the proposal, although some commenters suggested that we not permit the credit risk manager to be affiliated with other

¹⁰⁶⁵ See letters from ASF III (noting that the report may include confidential or non-public personal information on obligors), CREFC II (stating too much detailed information provided to the public could provide a borrower with an inappropriate advantage in negotiations), MBA III, and Wells Fargo II.

¹⁰⁶⁶ See, e.g., letters from ABA II (noting that appointing any transaction party is outside the scope of a trustee's duties), ASF III (stating that in conversation with trustees the trustees have indicated their discomfort with appointing a manager), BoA II, J.P. Morgan II, SIFMA III-dealers and sponsors (noting that trustees would not likely accept the responsibility of appointing a manager), and VABSS III (stating that the independent reviewer should be appointed in the relevant agreement but not solely by the trustee).

¹⁰⁶⁷ See letters from ABA II, ABAASA II, ASF III, BoA II, SIFMA II-investors, and VABSS III.

¹⁰⁶⁸ See letter from ABAASA II.

additional transaction parties, such as the trustee or any investor.¹⁰⁶⁹ One commenter stated that the credit risk manager should not be affiliated with any party hired by the sponsor or underwriter to perform pre-closing due diligence on the pool assets.¹⁰⁷⁰ However, one commenter suggested that the proposal to limit affiliations was overly broad.¹⁰⁷¹

Additionally, commenters provided comments about other aspects of the credit risk manager. For example, some commenters recommended that we revise the title "credit risk manager" as it may not properly describe its function.¹⁰⁷² Commenters also stated that it was important for managers to have access to the underlying documents in order to perform their duties.¹⁰⁷³ Some commenters also offered their views about the process and conditions for the removal and replacement of a credit risk manager. One commenter stated that it would be acceptable for the trustee to appoint a new credit risk manager if the existing one needs to be removed or replaced for any reason.¹⁰⁷⁴ Another commenter suggested that we require an

¹⁰⁶⁹ See letters from Better Markets (stating that, to ensure independence, the proposal must provide that the manager have no conflicts of interest with any party including investors), J.P. Morgan II (suggesting that the manager not be affiliated with other transaction parties such as the trustee or any investor), Metlife II (noting that independence from other parties in the securitization is imperative), Prudential II (also stating the manager not be affiliated with the trustee), and SIFMA II-investors.

¹⁰⁷⁰ See letter from SIFMA II-investors.

¹⁰⁷¹ See letter from MBA III.

¹⁰⁷² See letters from ASF III and VABSS III (both noting that prior credit risk managers had varied functions including loss mitigation and reporting advice to the servicer), and Wells Fargo II (noting that the title "credit risk manager" could be misleading because the credit risk manager would not guarantee the credit of an underlying borrower).

¹⁰⁷³ See letters from Metlife II, Prudential II, and SIFMA III-dealers and sponsors (generally expressing support for the proposal to require the manager to have access to all underlying documents including the underwriting guidelines and credit underwriting files and any other documents necessary to investigate compliance).

¹⁰⁷⁴ See letter from MBA III (RMBS).

affirmative vote of 25% of the investors in order for investors to initiate replacement.¹⁰⁷⁵ One commenter recommended that the transaction documents detail the conditions and process for removal.¹⁰⁷⁶

(c) Final Rule and Economic Analysis of the Asset Review Provision

We are adopting, as a second shelf eligibility requirement, that the underlying transaction agreements include provisions requiring a review of pool assets in certain situations for compliance with the representations and warranties made with regard to those assets. Under the final rule, the agreements must require a review, at a minimum, upon the occurrence of a two-pronged trigger based first upon the occurrence of a specified percentage of delinquencies in the pool and if the delinquency trigger is met, then upon direction of investors by vote. We have made modifications to the review triggers, discussed below, that we believe help to address some of the cost concerns expressed by commenters for asset classes that historically have seen a limited number of repurchase requests. Because we are unable to predict which asset classes may experience problems in the future, we believe that it is prudent to impose this requirement for all asset classes.¹⁰⁷⁷

We have taken into consideration the array of comments received related to the triggers and potential costs, while at the same time balancing the need for stronger mechanisms to

¹⁰⁷⁵ See letter from Prudential II.

¹⁰⁷⁶ See letter from MetLife II.

¹⁰⁷⁷ We note, for example, that there was not a need to enforce representations and warranties for RMBS and CMBS until the crisis.

enforce underlying contract terms. As we noted above, most transaction agreements lack a specific mechanism for investors to not only identify potential assets that fail to comply with the representations and warranties made but also to resolve a question of whether noncompliance of the representations and warranties constitutes a breach of the contractual provisions. These problems have been compounded by the fact that investors typically cannot make repurchase requests directly, thus they have had to rely upon the trustees who have not enforced repurchase requests in most circumstances. We believe that adopting this shelf provision coupled with the new dispute resolution and investor communication shelf requirements should provide investors with effective tools to address the enforceability of repurchase obligations and help overcome collective action problems. In that regard, we see these shelf requirements working together to help investors enforce repurchase obligations. Our investor communication provision, discussed below, will help investors to communicate with each other in order to determine whether they should vote to direct a review of the assets and later whether to initiate a repurchase request. The review of the assets required once certain triggers are met will not only benefit investors in determining whether the assets have breached the representations and warranties but also whether to move forward with a repurchase request. Additionally, should those parties with repurchase obligations fail to address investors' repurchase requests in a timely manner, investors will now have a means to demand resolution through arbitration or mediation. We believe that these transactional safeguards will collectively enhance the enforceability of representations and warranties about the pool assets and provide incentives for obligated parties to more carefully consider the characteristics and quality of the assets that are included in the pool. Therefore, this shelf transaction requirement should encourage ABS issuers to design and

prepare ABS offerings with greater oversight and care. We believe that stronger enforcement mechanisms should incentivize issuers to provide investors with accurate and complete information at the time of the offering. It is these transactions that are appropriate for public offerings off a shelf without prior staff review. The magnitude of these benefits will depend on whether the reviewers are able to correctly evaluate the contractual terms to identify non-compliance with the representations and warranties about the pool assets. Such evaluations may be challenging to the extent that the contractual language for the representations and warranties are incomplete or ambiguous. Nonetheless, we conclude that the asset review provision will enhance investor protection for the reasons stated above. We also note that the review requirement we are adopting is similar to post-crisis industry efforts, such as the American Securitization Forum's Project RESTART, which includes repurchase principles for investigating, resolving, and enforcing remedies with respect to representations and warranties in RMBS transactions.¹⁰⁷⁸ Additionally, some recent CMBS deals have included a provision for a third-party review of the underlying assets.

While we believe that this review requirement will enhance the enforceability of repurchase obligations, we acknowledge that it will also increase costs, particularly on investors, who will incur the expense of the reviews. A group of investors noted that despite the additional costs, increased investor protection will produce net economic benefits to investors.¹⁰⁷⁹ We

¹⁰⁷⁸ See letter from ASF III.

¹⁰⁷⁹ See letter from SIFMA II-investors ("The concept of increasing costs to investors in order to increase investor protections is not new. On balance, the strict enforcement of the deal documents by an

expect that the bulk of the costs for this shelf requirement will be incurred with individual reviews of pool assets directed by investors. There will also be some expense arising from retaining a reviewer to conduct the reviews in the form of an annual retainer fee.¹⁰⁸⁰ Although the exact magnitude of the expenses incurred in connection with the reviews is not possible to predict, we expect that they will depend on the frequency with which a review is triggered and on the extent of the review.¹⁰⁸¹ For instance, securitizations of high-risk assets are more likely to meet the delinquency threshold and therefore more likely to undergo a review and incur the review expenses. Additionally, sponsor representations about pool assets characterized by low or no documentation may require more time for the reviewer to examine and therefore may result in higher expenses. We have attempted to mitigate the potential costs by not requiring a review of the assets until after the occurrence of a two-pronged trigger as described below. We expect that investors will weigh the benefits of a review of the assets against the costs and vote for a

independent credit risk manager, we believe, will in the ordinary course produce net economic benefits to the investors.”).

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The staff is aware of only several recent unregistered RMBS transactions that include a comparable provision for which we have some cost information. According to Kroll's Pre-Sale Report for J.P. Morgan Mortgage Trust 2013-1, the reviewer will be paid an annual retainer fee of \$20,000 for the first six years and \$12,000 annually thereafter. The reviewer will also be paid \$525 for each mortgage loan subject to a review. See Kroll's Pre-Sale Report: J.P. Morgan Mortgage Trust 2013-1 (Mar. 20, 2013). We believe that these costs figures are generally comparable to the costs that RMBS issuers and investors will likely incur in connection with our review requirement. The costs for other asset classes may be more or less than these costs figures depending upon the quality of the assets, the extensiveness of the representations and warranties, and the volume of documents required to review.

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In a typical ABS transaction, fees are paid before distributions are made to investors. We remind issuers that information related to the review fees should be disclosed in accordance with Regulation AB requirements. See, e.g., Items 1109(b)(4) and 1113 of Regulation AB.

review only if the benefits justify the costs. This revised approach should address concerns about potentially frivolous review requests being made at the cost of other investors.

We also recognize that our approach to require that a reviewer be engaged at the time of issuance, as opposed to when the above two triggers are met, will be more costly. For asset classes that rarely experience breaches of representations and warranties, the benefits of this shelf provision may be smaller than for other asset classes and thus there may be situations where the costs may be greater than the benefits. We believe, however, that for asset classes where the likelihood of investors using the review provision is low, the upfront retainer fee should also be low. We note also that the requirement that the reviewer be engaged at the time of issuance could potentially create incentive alignment issues. Because of this requirement, a reviewer could seek to be appointed to as many ABS transactions as possible, thus potentially creating an incentive to submit reports favorable to sponsors and win future business from them. This could potentially impact the quality and usefulness of the reports if the reviews are not – or are not perceived as being – objective.¹⁰⁸² The significance of this problem should be reduced to the extent that the reviewer's compensation is paid by investors, particularly if done so after the objective triggers for the asset reviews are met. In addition, transaction agreements may prescribe mechanisms to replace reviewers in the event of failure to meet their obligations. Finally, reputational concerns could potentially influence reviewers' decisions to adhere to their limited role of determining whether the assets comply with the representations and warranties

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We note that our rules do not mandate the particular contents of the report. Should these reports ultimately include subjective elements, the potential incentive misalignments could increase.

made. As discussed below, the investors through the trustee, not the reviewer, are responsible for determining whether to initiate a repurchase request.¹⁰⁸³ Furthermore, we have chosen to require that the reviewer be named in the offering documents because the identity and competency of the reviewer is an important consideration for investors in making an ABS investment decision.

(i) Triggers for Review

As noted above, the 2011 ABS Re-Proposal specified two separate events, either of which would trigger a review of the underlying assets under the new shelf eligibility requirement. One proposed trigger would have required a review when the credit enhancement requirements of the transaction are not met. The other proposed trigger would have permitted investors to direct a review of the assets, pursuant to procedures specified in the transaction agreements. After taking into account the comments received related to the applicability of the proposed triggers and potential costs, we are modifying the triggers for review.

Under the new shelf eligibility requirement, the pooling and servicing agreement, or other transaction agreement, must provide for a review of assets, at a minimum, upon the occurrence of a two-pronged trigger with the first prong being a percentage of delinquencies in the pool and the second prong being the direction of an investor vote, in each case as specified in the transaction agreements. Because these thresholds are negotiated by sponsors and investors in

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As we have indicated above, investors have encountered difficulty with getting the trustees to initiate repurchase obligations. We believe that the required report of the conclusions and findings to the trustee, which should provide evidence of any noncompliance, will make it difficult for trustees to ignore possible breaches of the contractual provisions.

advance of the ABS issuance, and could vary by asset class, deal structure, or takedown, this approach allows the market to optimize and determine the most effective thresholds, subject to caps discussed below. In developing this two-prong trigger approach, we have attempted to balance some commenters' concerns about potentially unfounded claims by requiring that an objective threshold based on delinquencies first be met while protecting investors' ability to effectively direct a review at a time when rising delinquencies may begin to cause concern that the assets in the pool may not have met the representations and warranties made in the transaction documents.

(a) Delinquency Prong

Rather than tying the trigger to credit enhancement levels, we are adopting an objective trigger based on delinquencies.¹⁰⁸⁴ As summarized above, although commenters generally supported the requirement of an objective trigger, many stated that the proposed credit enhancement trigger did not easily apply across different asset classes and deal structures.¹⁰⁸⁵

¹⁰⁸⁴ Current Regulation AB does not establish a standard for determining delinquencies, and we are not providing a definition of delinquency for purposes of the asset review provision. Regulation AB requires disclosure of the methodology for determining delinquencies in the prospectus and accordingly, we expect that the transaction agreements provide the method of determining delinquencies. See Item 1101(d) of Regulation AB [17 CFR 229.1101(d)]. If the transaction agreements do not use delinquencies to measure late or non-payment of an underlying obligor, then in order to meet this shelf requirement, a comparable metric measuring late or non-payment should be used and disclosed. As discussed below, the final rule requires disclosure regarding how the delinquency trigger was determined to be appropriate. See Item 1113(a)(7)(i) of Regulation AB [17 CFR 229.1113(a)(7)(i)]. Under the new rule, in the case of a transaction using a metric other than delinquencies, disclosure regarding why a different metric is appropriate would need to be included.

¹⁰⁸⁵ See letters from ASF III, BoA II, MBA III, SIFMA II-investors, VABSS III, and Wells Fargo II (all noting that many transactions do not provide for a specific level of credit enhancement to be maintained or the credit enhancement levels build up over time to a target. In these situations, the review would be triggered before there would be any real indication that there have been breaches of representations or warranties).

We received some recommendations for alternative objective triggers and, in particular, commenters noted that a trigger based on delinquencies would work across all deal types.¹⁰⁸⁶ The amount of delinquencies in an asset pool is a metric that is required to be reported at the time of offering and on an ongoing basis.¹⁰⁸⁷

We are not specifying the threshold amount of delinquencies that must first be reached, given the variety of thresholds that may be relevant and the differing approaches offered by commenters. For instance, we note that some ABS transactions include delinquent loans at the onset. Furthermore, the shelf eligibility requirements permit registration of offerings of ABS that include up to 20% of delinquent assets.¹⁰⁸⁸ We also acknowledge that transaction participants should have some flexibility across deal structures and asset classes so that they may negotiate the terms appropriate for each particular offering, including the appropriate delinquency threshold.¹⁰⁸⁹ We recognize, however, that providing the transaction parties with such flexibility may impose costs to investors depending on the procedures established. In particular, we recognize that by not prescribing a particular delinquency threshold, transaction

¹⁰⁸⁶ See letters from ASF III (suggesting objective factors such as cumulative losses, delinquencies or average loss severity be the trigger), Metlife II (noting the review should be based on delinquencies as a percentage of the original subordination for the senior-most class in a transaction), and Prudential II (stating that a review should be triggered if the 60+ day delinquencies percentage is greater than the currently available credit support or if a loan becomes 90 days delinquent within six month of the loan's origination or four months from being included in the pool).

¹⁰⁸⁷ See Items 1100(b), 1101(c), 1105, 1111(c) and 1121(a)(9) of Regulation AB.

¹⁰⁸⁸ See General Instruction I.B.1(e) of Form SF-3.

¹⁰⁸⁹ We also note that our proposed credit enhancement trigger provided the transaction parties with the flexibility to set the target levels of the credit enhancement requirements so that they could tailor the procedures to each ABS transaction, taking into account the specific features of the transaction and/or asset class.

parties could theoretically set this threshold high and thereby make it difficult for investors to exercise their rights under this provision. To address this concern, we are requiring disclosure in the prospectus that describes how the delinquency trigger was determined to be appropriate.¹⁰⁹⁰ The disclosure must include a comparison of the delinquency trigger against the delinquencies disclosed for prior securitized pools of the sponsor for that asset type. Using this disclosure, investors will be able to analyze the reasonableness of the delinquency trigger.

The final rule provides some specificity as to how the delinquency threshold must be calculated in order to provide clarity to issuers and consistency to investors across various transactions and assets classes, and to prevent possible mechanisms from reducing the effectiveness of the trigger. The delinquency prong requires that the delinquency threshold be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period in accordance with the issuer's reporting obligations. By requiring that the delinquency calculation be measured as a percentage of the aggregate dollar amount of all assets in the pool, the calculation will better reflect the magnitude of delinquencies, as compared to a delinquency calculation measured by counting only the number of delinquent assets without consideration of the delinquent assets' relative dollar values.¹⁰⁹¹ Furthermore, to prevent issuers from imposing a higher hurdle to trigger the delinquency threshold for transactions with multiple

¹⁰⁹⁰ See Item 1113(a)(7)(i) of Regulation AB.

¹⁰⁹¹ We also note that this requirement is similar to how delinquencies are reported by servicers in their monthly reports (as a percentage of the ending pool balance).

sub-pools; we are also requiring that the percentage be based on the percentage of delinquencies in the sub-pool. For example, if a transaction has divided the underlying assets into three sub-pools, there will be three separate delinquency trigger calculations. If the delinquencies in one sub-pool triggers an investor vote (and, as explained below, the subsequent vote is attained to trigger a review), the final rule requires that the transaction documents specify, at a minimum, that the assets of the respective sub-pool would be subject to review.¹⁰⁹² We believe that requiring the delinquency threshold to be calculated on a sub-pool basis also recognizes the notion that investors would be primarily concerned about the assets that support their respective pool.¹⁰⁹³

(b) Investor Vote Prong

The underlying transaction documentation must include a provision that, after the delinquency threshold has been reached or exceeded, investors have the ability to vote to direct a review. In formulating the final rule, we considered whether an investor vote would be necessary given that the final rule would require an objective trigger first be satisfied. We appreciate the costs that will be incurred by the investors in connection with these reviews.¹⁰⁹⁴ Furthermore, we acknowledge that there may be cases where some investors may not wish to incur the cost of an asset review, for example, when the transaction is performing as expected.

¹⁰⁹² Transaction participants may, however, provide for reviews of additional assets in this instance.

¹⁰⁹³ See letter from Metlife II (noting that the review should be based on delinquencies as a percentage of the original subordination for the senior-most class in a transaction).

¹⁰⁹⁴ See letter from SIFMA II-investors (noting that although the review requirement would result in additional costs, it would also increase investor protections).

For these reasons, the review is not automatic but rather must be initiated by investors as specified in the transaction documents. In order to balance the concern that the transaction parties may impose stringent voting requirements in the transaction documents in an effort to diminish investors' voting rights, we have imposed certain restrictions on the voting requirements in response to comments that we received.

Under the final rule, if the transaction agreement includes a minimum investor demand percentage in order to trigger a vote on the question of whether to direct a review, then the maximum percentage of investors' interest in the pool required to initiate a vote may not be greater than 5% of the total investors' interest in the pool (i.e., interests that are not held by affiliates of the sponsor or servicer).¹⁰⁹⁵ We are imposing this restriction because we believe that a higher threshold will blunt its effectiveness.¹⁰⁹⁶ Once the requisite percentage of investors' interest seeks to initiate a vote, as required by the transaction agreement, investors will proceed to vote on whether to direct a review. Our interpretation of "pool," as discussed above in connection with the delinquency trigger, is also applicable for the voting procedures. Thus, if there are multiple sub-pools, then the calculation of whether there is the requisite percentage of investors' interest to initiate a vote would be determined based on that particular sub-pool.

¹⁰⁹⁵ The final rule does not require that the transaction agreement include a minimum investor demand percentage to trigger a vote; rather the final rule requires that if such provision is part of the transaction agreement, then it may require no more than 5% of the total interest in the pool.

¹⁰⁹⁶ See letter from Metlife I (noting that many securitization transactions impose a 25%-in-interest voting threshold before the trustee can be directed by investors to undertake certain actions such as polling investors on questions as to whether to exercise certain rights or remedies, thereby making it difficult for investors to act).

Under the proposed rule, the transaction parties would have been given significant flexibility in setting the voting requirements for the investor vote trigger. We are concerned, however, that the transaction parties could establish a high delinquency threshold and high investor vote threshold as noted by one commenter, thus making it difficult for investors to utilize this shelf provision.¹⁰⁹⁷ We requested comments in the 2011 ABS Re-Proposal on whether we should establish maximum conditions for voting. Commenters offered a range of thresholds from 25% to a supermajority.¹⁰⁹⁸ Under the final rule, the transaction parties will be able to specify the percentage of investors' interest required to direct a review, provided that the threshold of approval shall be no more than a simple majority of those interests casting a vote. The final rule requires a simple majority of those interests casting a vote as the maximum condition because we believe that a simple majority threshold will help to reduce potentially frivolous claims while also helping to ensure that investors will be able to use the review provision. In addition to imposing restrictions on the voting requirements, we note that issuers are required to provide disclosure in the prospectus regarding the voting procedures for the review under existing Regulation AB, which will permit investors to analyze the reasonableness of the voting procedures.¹⁰⁹⁹

¹⁰⁹⁷ See letter from MetLife II (explaining, for example, that in a case where a transaction agreement requires 25% of all investors to initiate a vote, and 75% of all investors to approve a resolution, the likelihood of meeting a voting threshold would be slim at best).

¹⁰⁹⁸ See letters from J.P. Morgan II and Sallie Mae II (recommending a 25% threshold), MetLife II (suggesting a majority or plurality of those casting a vote), and Wells Fargo II (recommending a supermajority).

¹⁰⁹⁹ See Item 1113(a)(12) of Regulation AB (requiring disclosure regarding allocation of voting rights among security holders).

We also recognize that the rule may complicate the voting process for investors in transactions that include assets consisting of previously issued ABS. In particular, when trigger conditions for a review are met in connection with the previously issued ABS, the trustee acting on behalf of the investors in the second securitization must vote since they are also investors in the first securitization via the resecuritization. To address this potential issue, each securitization will need to have clearly delineated voting rules and eligibility criteria in the event that some of its investors are through a resecuritization. It is hard for us to evaluate the extent to which this problem may affect the ABS markets because, over the past several years, there have been no registered resecuritizations of RMBS, CMBS, or Auto ABS.

The requirements of this shelf eligibility criterion are meant to be the minimum procedures that should be included in the transaction documents to provide investors with a means to trigger a review of the assets. We acknowledge that transaction parties have and may develop more specific and robust procedures for monitoring and reviewing assets that support the ABS.¹¹⁰⁰ The adoption of this rule will not preclude the transaction parties from specifying additional, separate triggers for a review in the transaction agreements, as appropriate for a particular deal or asset class. To clarify, while we are permitting additional triggers to be established by the transaction parties, the final rule does not allow the transaction parties to add

¹¹⁰⁰ For example, the shelf requirement would not preclude an ABS issuer from including a review trigger for any asset delinquent for 120 days or more, without requiring an investor vote, if such a trigger is appropriate for that transaction. The transaction documents for the shelf registration statement would, however, need to include, at minimum, the asset review requirements that we are adopting.

additional restrictions or requirements on the two triggers that we are establishing in order to make it more onerous for investors to utilize the provision.

(ii) Scope of the Review

We are also modifying the proposal to add some specificity regarding the scope of the review, since we have changed the objective trigger from being based on credit enhancement to one based on delinquencies and received varied comments regarding the appropriate scope for a review based on delinquencies.¹¹⁰¹ Under the final rule, once both prongs have been met (the delinquencies have reached or exceeded the threshold and investors have voted to conduct a review), a review must be conducted of all assets that are 60 or more days delinquent as reported in the most recent periodic report, at a minimum, for compliance with the related representations and warranties, as suggested by commenters. We are also adopting, as proposed, that the transaction agreement must provide the reviewer with access to copies of the underlying loan documents in order to determine whether the loan complied with the representations and warranties.¹¹⁰² As discussed below, a summary of the reviewer's report must be included in the Form 10-D.¹¹⁰³

¹¹⁰¹ See letters from Metlife II (stating that a random sample of all 60+ day delinquent loans should be reviewed once a review is triggered) and Prudential II (stating that once a review is triggered the reviewer should be required to "review all 60+ day delinquent loans and prior defaults").

¹¹⁰² See General Instruction I.B.1(b)(B) of Form SF-3.

¹¹⁰³ We would expect that the reviewer would conduct the review and provide its report to the trustee in a reasonably prompt manner once the review is triggered.

(iii) Report of the Findings and Conclusions

As proposed, under the final rule, a report of the reviewer's findings and conclusions for all assets reviewed will be required to be provided to the trustee.¹¹⁰⁴ The trustee could then use the report to determine whether a repurchase request would be appropriate under the terms of the transaction agreements. We are also requiring, as proposed, that disclosure be provided about any event triggering a review of the assets in the Form 10-D filing for the period in which the event occurred.¹¹⁰⁵

We proposed to require that any report of results provided to the trustee also be filed on periodic report Form 10-D. Commenters generally supported filing the reports on Form 10-D. Several commenters indicated, however, that privacy concerns may arise related to the information about the underlying loans if a full report is filed and recommended that we instead require summaries of the reports.¹¹⁰⁶ We are persuaded by commenters that only a summary of the report of the findings and conclusions needs to be included on the Form 10-D. We acknowledge, however, a potential cost of this approach is that investors may not receive all of the information necessary to determine whether the trustee, or another party with demand rights, has made an appropriate decision regarding whether to initiate a repurchase request.

¹¹⁰⁴ See General Instruction I.B.1(b)(E) of Form SF-3.

¹¹⁰⁵ If the transaction parties decide to include additional triggers beyond the minimum two-prong trigger required by this shelf eligibility rule, then disclosure is required about those trigger events as well.

¹¹⁰⁶ See letters from ABAASA II, ASF III, CREFC II, MBA III, VABSS III, and Wells Fargo II.

(iv) Selection of the Reviewer

In response to comments received, we are not adopting the proposal to require that the trustee appoint the reviewer. We are requiring, instead, that the pooling and servicing agreement or other transaction agreement provide for the selection and appointment of the reviewer since we believe that the transaction parties should be able to agree on who should serve as the reviewer.¹¹⁰⁷

We are requiring, as proposed, disclosure in the prospectus of the name of the reviewer, its form of organization, the extent of its experience serving as a reviewer for ABS transactions involving similar pool assets, and the manner and amount in which the reviewer is compensated.¹¹⁰⁸ ABS investors will benefit from this increased disclosure as they will be able to assess the qualifications of the reviewer. ABS issuers will incur some additional disclosure costs to provide this information. In addition, as proposed, under the new rule disclosure is required with respect to: the reviewer's duties and responsibilities under the governing documents and under applicable law; any limitations on the reviewer's liability under the transaction agreements; any indemnification provisions; any contractual provisions or understanding regarding the reviewer's removal, replacement, or resignation, and how any related expenses would be paid.¹¹⁰⁹ In addition, we are adopting, as proposed, a requirement that if, during the reporting period, the reviewer has resigned, or has been removed, replaced or

¹¹⁰⁷ See General Instruction I.B.1(b) of Form SF-3.

¹¹⁰⁸ See Item 1109(b) of Regulation AB [17 CFR 229.1109(b)].

¹¹⁰⁹ Id.

substituted, or if a new reviewer has been appointed, then disclosure regarding the event and circumstances surrounding the change must be provided in the report for the period in which the event occurred.¹¹¹⁰

We are also adopting a requirement that prohibits the reviewer from being affiliated with certain transaction parties and from performing certain duties due to concerns over potential conflicts of interest. Under the final rule, the reviewer, at a minimum, cannot be affiliated with the sponsor, depositor, servicer, the trustee, or any of their affiliates.¹¹¹¹ In addition, a conflict may arise if the reviewer is also assigned the responsibility under the transaction documents to determine whether non-compliance with representations and warranties constitutes a breach of any contractual provision. Therefore, the reviewer shall not be the party to determine whether the non-compliance constitutes a breach. We believe that the role of the reviewer should be limited to reviewing the assets' compliance with the representations and warranties since we believe that the investors through the trustee are the most appropriate parties for determining, after reviewing the report of the conclusions and findings, whether to pursue a repurchase claim. In response to comments, particularly in the context of CMBS, the final rule will permit that the reviewer may be the same party serving another role in the transaction, provided that it is not affiliated with the sponsor, depositor, servicer, trustee, or any of their affiliates. As recommended by one commenter, however, the final rules prohibit the reviewer from being the same party or an affiliate of the party hired by the sponsor or underwriter to perform pre-closing

¹¹¹⁰ See Item 1121(d)(2).

¹¹¹¹ See Item 1101(m) of Regulation AB (defining the reviewer).

due diligence on the pool assets due to the inherent conflict posed by the same party performing the pre-closing review and the review required by this shelf provision.¹¹¹² The reviewer is also prohibited from being affiliated with the trustee in light of several commenters recommending this prohibition given the economic relationships the trustee or its affiliates may have with other transaction parties and the conflicts of interest that such relationships may create.¹¹¹³ We have not, however, added investors as a prohibited affiliation, as some commenters requested.¹¹¹⁴ We understand that issuers might view investor affiliation with the reviewer as a possible conflict; however, since issuers will be responsible for selecting the reviewer, they will be able to address any concern. We do not think such an affiliation will likely cause harm or conflict to investors as a whole because, if there is evidence of high or growing delinquencies in the asset pool, it would be in the best interest of investors as a whole to have a review conducted in order to determine whether investors should make a repurchase demand.¹¹¹⁵ Because the rule establishes the minimum restrictions on affiliations, the transaction parties could agree to exclude other parties based on their relationships. As proposed, the final rule requires disclosure about those relationships in the prospectus, which will help alert investors to any potential conflicts.¹¹¹⁶

¹¹¹² See letter from SIFMA II-investors.

¹¹¹³ See letters from Better Markets, J.P. Morgan II, and Prudential II.

¹¹¹⁴ See letters from Better Markets and J.P. Morgan II.

¹¹¹⁵ However, any investor, or affiliate of an investor, affiliated with a sponsor, depositor, or any servicer would not qualify as a reviewer. For example, in the context of CMBS, an investor that is affiliated with a special servicer would not qualify as a reviewer.

¹¹¹⁶ Item 1119 of Regulation AB requires disclosure of any known, material relationships among the various parties to the transaction and the character of those relationships.

As noted above, some commenters suggested, as an alternative, that we revert back to an approach proposed in the 2010 ABS Proposing Release. They recommended that we allow issuers of asset classes other than residential mortgages the option to choose between the 2011 ABS Re-Proposal to require review of the assets upon certain triggers being met or the 2010 ABS Proposal to allow for a third-party review opinion.¹¹¹⁷ These commenters explained that the 2010 ABS Proposal for a third-party review opinion would limit costs on the issuers where repurchases have not presented the same difficulties as they have in RMBS.¹¹¹⁸ However, in response to the 2010 ABS Proposal, some commenters stated that the third-party opinion provision would not provide investors with the protection they would need in the event issues arise with the enforcement of representations and warranties provisions because, in general, transaction agreements have not included mechanisms to identify potential breaches of representations and warranties.¹¹¹⁹ The rule we are adopting is designed to protect against potential risks even where they have not surfaced in the past. As noted above, a group of investors commented that despite the additional costs, increased investor protections will produce net economic benefits to investors.¹¹²⁰ In light of these considerations, rather than permitting a third-party opinion as an alternative requirement for shelf eligibility, we have revised the review process to address the costs concerns.

¹¹¹⁷ See letters from ASF III, BoA II, and VABSS III. See also footnote 1054.

¹¹¹⁸ See letters from ASF III, BoA II, and VABSS III.

¹¹¹⁹ See letters from ABAASA I, ASF I, BoA I, J.P. Morgan I, Metlife I, Prudential I, SIFMA I, VABSS I, Vanguard, and Wells Fargo I.

¹¹²⁰ See letter from SIFMA II-investors.

(3) Dispute Resolution Provision

(a) Proposed Rule

In the 2011 ABS Re-Proposal, along with the credit risk manager proposal, we proposed to require that underlying transaction documents include repurchase request dispute resolution procedures. As we have noted elsewhere, not only have investors lacked a mechanism to identify potential breaches of the representations and warranties, they have also lacked a mechanism to require sponsors to address their repurchase requests in a timely manner.¹¹²¹ Under the proposal, the transaction agreements would be required to provide that if an asset subject to a repurchase request pursuant to the terms of the transaction agreements is not repurchased by the end of the 180-day period beginning when notice is received, then the party submitting such repurchase request will have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method. As noted above, the dispute resolution provision, along with the other new shelf transaction requirements, should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care. We believe that the dispute resolution provision will enhance the enforceability of the transaction terms and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. We believe that these requirements are appropriate for asset-backed securities transactions to be offered to the public off a shelf registration statement.

¹¹²¹ See the 2011 ABS Re-Proposal at 47956-57. See also the Section 943 Adopting Release at 4489-90.

(b) Comments on Proposed Rule

Commenters generally supported a dispute resolution process.¹¹²² Several commenters recommended that we require that binding arbitration be the sole process.¹¹²³ We received a significant number of comments stating that 180 days is an appropriate time period for the obligated party to review repurchase requests.¹¹²⁴ One commenter stated that 180 days may not be long enough for RMBS.¹¹²⁵ Another commenter noted that transactions backed by assets that have shorter maturity dates should have a shorter timeframe.¹¹²⁶ Although the proposed rule did not specifically address payment of the costs of the dispute resolution process, several commenters made recommendations for which party should pay.¹¹²⁷ We also received comments that we specify that a repurchase is not the only way a repurchase request can be satisfied.¹¹²⁸

¹¹²² See letters from ASF III, BoA II, J.P. Morgan II, MBA III, Metlife II, Prudential II, SIFMA III-dealers and sponsors, and Wells Fargo II.

¹¹²³ See letters from BoA II, J.P. Morgan II, Prudential II, SIFMA II-investors, SIFMA III-dealers and sponsors, and Wells Fargo II (all noting that binding arbitration would be the best form of dispute resolution).

¹¹²⁴ See letters from ASF III, J.P. Morgan II, Metlife II, and Prudential II.

¹¹²⁵ See letter from MBA III (stating that due to rebuttals it may take longer than 180 days to resolve a dispute).

¹¹²⁶ See letter from Metlife II (stating that 180 days may be too long for shorter term transactions since some investors may hold classes that pay off sooner).

¹¹²⁷ Nine commenters suggested that the party that loses the dispute should pay for all legal fees incurred by the prevailing party. See letters from ABASA II, BoA II, J.P. Morgan II, MBA III, Metlife II, SIFMA II-investors, SIFMA III-dealers and sponsors, and Sallie Mae II. One commenter recommended that the arbitrator should be responsible for determining who pays. See letter from Prudential II. Another suggested that the transaction documents specify who pays for the resolution. See letter from Wells Fargo II.

¹¹²⁸ See letters from ASF III (stating that the requirement, as written, may have the unintended effect of restricting the resolution of a repurchase request to only repurchasing the asset), MBA III (stating "given the potential for non-repurchase resolution of a breach, MBA recommends changing the focus of the Re-

(c) Final Rule and Economic Analysis of the Dispute Resolution Shelf Requirement

As a third transaction requirement for shelf registration, we are requiring, as proposed but with slight modification, that the underlying transaction documents include dispute resolution procedures for repurchase requests.¹¹²⁹ We note that our original proposal for the dispute resolution requirement appeared in the same subsection of Form SF-3 as our credit risk manager proposal, even though we intended them to operate separately from each other. Thus, while we believed that our asset review shelf requirement would help investors evaluate whether a repurchase request should be made, we structured the dispute resolution provision so that investors could utilize the dispute resolution provision for any repurchase request, regardless of whether investors direct a review of the assets. We believe that organizing the dispute resolution requirement as a separate subsection in the shelf eligibility requirements will help to clarify the scope of the dispute resolution provision.

As we have discussed above, the shelf eligibility conditions that we are adopting are intended to help ensure that ABS shelf offerings have transactional safeguards and features that make securities appropriate to be issued off a shelf. We believe that the dispute resolution provision will provide a key procedural safeguard for investors to resolve disputes over

proposal from 'repurchases' not completed in 180 days to 'resolutions' not completed within 180 days"), and SIFMA II-investors and SIFMA III-dealers and sponsors (noting that remedies for a breach would be "cure of the breach, repurchase of the affected pool asset for the purchase price specified in the transaction documents, or, if applicable and if provided in the transaction documents, substitution of a pool asset having substantially similar characteristics as the defective pool asset").

¹¹²⁹ Disclosure regarding the dispute resolution procedures is required in the prospectus under Item 1111(e) of Regulation AB.

repurchase requests in an effective and timely manner. We expect that the dispute resolution provision should generate efficiencies in the repurchase request process. We believe that, as a result of the asset review provision and the dispute provision, sponsors may have an increased incentive to carefully consider the characteristics of the assets underlying the securitization and to accurately disclose these characteristics at the time of the offering. We also believe that investors should benefit from reduced losses associated with nonperforming assets since, as a result of this new shelf requirement, sponsors will have less of an incentive to include nonperforming assets in the pool.

Under the new rule, the transaction agreements must provide that if an asset subject to a repurchase request pursuant to the terms of the transaction agreements is not resolved by the end of the 180-day period beginning when notice is received, then the party submitting such repurchase request will have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase or replace must agree to the selected resolution method.¹¹³⁰ In response to comments, the final rule applies to those assets subject to a repurchase request that has not been resolved. We agree with several commenters that indicated that the term “resolved” is more appropriate than “repurchased,” which was proposed, since “repurchased” could have the unintended effect of restricting resolution of a repurchase request

¹¹³⁰ Several commenters asked us to clarify that a repurchase is not the only way a repurchase request can be satisfied. See letters from ASF III, MBA III, SIFMA II-investors, and SIFMA III-dealers and sponsors.

only to repurchasing the asset.¹¹³¹ We also believe that investors should be able to utilize the dispute resolution provision not only in connection with those requests in which the sponsor has failed to respond in a timely manner but also for those requests in which investors believe that the resolution offered by the sponsor does not make them whole.

We realize there are possible costs associated with setting the waiting period at 180 days before the party submitting the request has the right to refer the matter to mediation or arbitration. On the one hand, we recognize that there is the possibility that 180 days may not be long enough to come to a resolution due to numerous rebuttals in some situations, as noted by one commenter.¹¹³² This commenter recommended that the 180 days serve as a timeframe for due diligence and discussion and that the transaction parties be permitted to specify in the transaction agreements how much additional time beyond the 180 days the responsible party should be provided before the requesting party has the right to refer the dispute to mediation or arbitration. We believe that such an approach, however, may result in investors having to wait too long before being able to proceed to mediation or arbitration. On the other hand, we also recognize that the 180-day period may be too long for shorter term transactions since some investors may hold classes of assets that pay off sooner than 180 days. Although commenters generally supported the 180-day waiting period, one commenter recommended, for shorter term transactions, that the timeframe be reduced to 90 days before investors could proceed to

¹¹³¹ See letters from ASF III, MBA III, SIFMA II-investors, and SIFMA III-dealers and sponsors. We made a similar change in an asset-level data point capturing repurchase requests in order to use consistent terminology and to help ensure accurate tracking of the status of repurchase requests. See footnote 225.

¹¹³² See letter from MBA III.

mediation or arbitration.¹¹³³ While we appreciate the timing issues raised by shorter term transactions, it is not clear that 90 days provides the responsible party with enough time to complete due diligence and engage in discussions with the requesting party. For these reasons, we believe 180 days, in general, fairly balances the need of investors for quick resolution with the desire of issuers for time to address the request.

In addition, some commenters recommended that we require binding arbitration as the single form of dispute resolution. Because we believe that investors should have access to all options available to resolve a dispute, we are not requiring a specific form or process to resolve disputes. The final rule permits a demanding party to determine what form of dispute resolution is appropriate.

Finally, after considering the comments received, we are requiring that the transaction documents specify that if arbitration occurs, the arbitrator will determine the party responsible for paying the dispute resolution fees and in the case of mediation, the parties, with the assistance of the mediator, will mutually agree on the allocation of the expenses incurred. While some commenters recommended that the losing party should pay the expenses, we believe that letting the arbitrator or the parties in mediation determine who pays balances competing concerns. On the one hand, some commenters expressed concern about the possibility of investors using the dispute resolution process for frivolous disputes and therefore recommended that we require the

¹¹³³ See letter from MetLife II.

transaction documents to specify that the losing party pays.¹¹³⁴ On the other hand, there may be instances where the requesting party uses the dispute resolution process for a legitimate claim and the arbitrator rules against the claim but believes that the requesting party should not be required to bear all the expenses associated with the dispute resolution.¹¹³⁵ By giving the arbitrator the discretion to make this determination based on the facts and circumstances of the repurchase claim at issue, we believe investors will not be discouraged from using the dispute resolution process for valid claims while also curbing potentially frivolous claims, given the possibility of having to pay the fees associated with the dispute resolution.

We recognize that the dispute resolution provision could result in increased costs for ABS issuers and investors. We believe that these costs will likely be similar to other securities industry dispute resolution costs, which typically include filing fees, hearing session fees, and other miscellaneous arbitrator or mediator expenses. According to FINRA, arbitration and mediation filing fees depend on the size of the claim and can be up to \$500 for an amount in controversy over \$100,000.¹¹³⁶ In addition, the dispute parties will incur the costs of arbitrator/mediator compensation, which depends on the length of the hearing and the complexity of the case. A typical arbitration hearing of three days can cost from \$2,700 to

¹¹³⁴ See, e.g., letters from BoA II, J.P. Morgan II, and MBA III.

¹¹³⁵ See letter from Prudential II.

¹¹³⁶ For more information about securities-related arbitration and mediation, including typical costs, see FINRA's Dispute Resolution Web site, <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/>.

\$6,750 for an amount in controversy in the \$100,000 to \$500,000 range.¹¹³⁷ A typical mediation hearing of one day can cost between \$1,000 and \$6,400.¹¹³⁸ The parties will also incur attorneys' fees with arbitration or mediation hearings, which will depend upon the length of the hearing, the number of attorneys involved, and the amount of preparation required.

Because the dispute resolution provision is not limited strictly to repurchase requests connected with a review pursuant to the asset review provision, there is a possibility that frivolous repurchase requests could be made and thus subject to the dispute resolution process. As discussed above, under the final rule the requesting party could be responsible for paying the dispute resolution expenses based on a determination by the arbitrator (or if the parties mutually agree that the requesting party should incur these expenses in the case of mediation). This is intended to limit the number of potentially frivolous claims.

(4) Investor Communication

(a) Proposed Rule

In the 2011 ABS Re-Proposing Release, we proposed, as a shelf eligibility requirement, a method for facilitating investor communication with other investors related to their rights under

¹¹³⁷ See FINRA Manual, Section 12902, Hearing Session Fees, and Other Costs and Expenses, available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4190. See also Seth Lipner, *Is Arbitration Really Cheaper?*, FORBES, July 14, 2009, available at <http://www.forbes.com/2009/07/14/lipner-arbitration-litigation-intelligent-investing-cost.html> (stating that the average arbitration requires three days of hearings).

¹¹³⁸ See FINRA's Mediation Web site, <http://www.finra.org/ArbitrationAndMediation/Mediation/Process/MediationSessions/index.htm> (stating that mediations usually take one day). We used mediation hourly rates provided by the American Arbitration Association for cost estimates for mediation since FINRA does not provide information on mediator's hourly rates. For more information about the costs of mediation, see the American Arbitration Association's Web site, www.adr.org.

the terms of the ABS. In particular, the proposed rule would require that the transaction agreements contain a provision requiring the party responsible for filing the Form 10-D to include in ongoing distribution reports on Form 10-D any request received from an investor to communicate with other investors related to investors exercising their rights under the terms of the asset-backed security. The request to communicate would be required to include: the name of the investor making the request, the date the request was received, and a description of the method by which other investors may contact the requesting investor. As we discussed in the 2011 ABS Re-Proposing Release, investors have raised concerns about the inability to locate other investors in order to enforce rights contained in the transaction documents, such as those relating to the repurchase of underlying assets for breach of representations and warranties.¹¹³⁹ Frequently, in order to act, the transaction agreements require a minimum percentage of investors acting together. Additionally, as one investor noted, since most ABS are held by custodians or brokers in “street name” through the Depository Trust Company (DTC), investors face further difficulties in trying to locate one another to communicate about exercising their investor rights.¹¹⁴⁰

¹¹³⁹ See the 2011 ABS Re-Proposing Release at 47959. See also Alex Ulam, Investors Try to Use Trustees as Wedge in Mortgage Put-Back Fight, AMERICAN BANKER (June 24, 2011) (noting that many attempted put-backs have “flamed out after investor coalitions failed to get the 25% bondholder votes that pooling and servicing agreements require for a trustee to be forced to take action against a mortgage servicer”); Tom Hals & Al Yoon, Mortgage Investors Zeroing in on Subprime Lender, THOMSON REUTERS (May 9, 2011) (noting that gathering the requisite number of investors needed to demand accountability for faulty loans pooled into investments is a laborious task).

¹¹⁴⁰ See letter from MetLife I. DTC is a securities depository and a clearing agency registered with the Commission and provides settlement services, including immobilizing securities and making book-entry changes to ownership of securities deposited by its participants, in order to facilitate the end-of-day net settlement in multiple markets. For a more detailed description of DTC’s services see The Depository

While we did not propose specific procedural requirements for verifying that the person requesting to communicate is a beneficial owner of the particular ABS, we proposed to include an instruction to limit investor verification requirements, if the underlying transaction agreements contain such procedures, to no more than the following: (1) If the investor is a record holder of the securities at the time of a request to communicate, then the investor would not have to provide verification of ownership because the person obligated to make the disclosure will have access to a list of record holders; and (2) if the investor is not the record holder of the securities at the time of the request to communicate, the person obligated to make the disclosure must receive a written statement from the record holder verifying that, at the time the request is submitted, the investor beneficially held the securities.

(b) Comments on Proposed Rule

Many commenters were generally supportive of the concept to allow for mechanisms for investors to contact and communicate with each other.¹¹⁴¹ Some commenters generally supported the proposal that investors' requests to communicate be reported on Form 10-D.¹¹⁴² Other commenters suggested that the Commission allow for alternative methods of communication and recommended that the Commission permit the use of investor registries and

Trust Company Assessment of Compliance with the CPSS/IOSCO Recommendations for Securities Settlement Systems (Dec. 12, 2011), <http://dtcc.com/en/legal/policy-and-compliance.aspx>.

¹¹⁴¹ See letters from ABA II, ABAASA II, ASF III, BoA II, CREFC II, ICI II, MBA III, Metlife II, Prudential II, VABSS III, and Wells Fargo II.

¹¹⁴² See letters from ASF III, BoA II, ICI II, Metlife II, and VABSS III.

trustee Web site processes currently in practice for many recent CMBS transactions.¹¹⁴³ Some of these commenters noted that it would be quicker for investors to communicate with each other on a Web site compared to requiring the issuer to include the notice on Form 10-D and would be less costly.¹¹⁴⁴ One of these commenters also recommended a Web site approach because it would provide investors with more privacy, which investors may want in certain situations.¹¹⁴⁵ The other commenter noted that a Web site approach could provide investors with an open and instant dialogue with other investors.¹¹⁴⁶

Commenters suggested other methods to simplify the verification process. One commenter opposed the proposed instruction on how an investor's ownership of the securities is verified because most certificates are held through DTC, which may make it difficult and costly to determine who the ultimate holders are.¹¹⁴⁷ Several commenters suggested requiring investors to complete a certification regarding their ownership.¹¹⁴⁸ Another commenter suggested a written certification plus one or more items to verify interest.¹¹⁴⁹ One commenter suggested that the right to communicate be limited to current investors and that the nature of communication be

¹¹⁴³ See letters from ABA II, ABAASA II, ASF III, BoA II, CREFC II, Metlife II, MBA III, Prudential II, VABSS III, and Wells Fargo II.

¹¹⁴⁴ See letters from CREFC II and Wells Fargo II.

¹¹⁴⁵ See letter from CREFC II.

¹¹⁴⁶ See letter from Wells Fargo II.

¹¹⁴⁷ See letter from CREFC II.

¹¹⁴⁸ See letters from MBA III and Wells Fargo II.

¹¹⁴⁹ See letter from ABA II (stating "in circumstances in which rapid verification of investor status has been required, trustees have accepted screen shots from DTC, letters from registered broker-dealers affirming the identity of the beneficial owner on whose behalf they hold a position, and copies of trade confirmations").

limited to a “factual statement that the investor wishes to communicate with other investors with respect to exercising a right under the transaction documents.”¹¹⁵⁰ This commenter explained that limiting the nature of the communication would eliminate any need for the filing party to monitor or edit the communication and also would address any liability concerns associated with the inclusion of references to a specific party to the transaction or as to what contractual standard may have been violated. Responding to a request for comment in the 2011 ABS Re-Proposing Release,¹¹⁵¹ some commenters stated the disclosure should include a reason for the communication that would be specified in a pre-set list.¹¹⁵² One commenter, however, opposed requiring the issuer to disclose the type or category of matter that the investor wishes to discuss with other investors.¹¹⁵³

**(c) Final Rule and Economic Analysis of the
Investor Communication Shelf Requirement**

We are adopting, as proposed, a shelf eligibility requirement that an underlying transaction agreement include a provision to require the party responsible for making periodic filings on Form 10-D to include in the Form 10-D any request from an investor to communicate with other investors related to an investor’s rights under the terms of the ABS that was received

¹¹⁵⁰ See letter from MBA III.

¹¹⁵¹ See Request for Comment No. 43 in the 2011 ABS Re-Proposing Release (requesting comment as to whether a pre-set list of reasons for communication should be required – the pre-set list would include the following categories: servicing, trustee, representations and warranties, voting matters, pool assets, and other).

¹¹⁵² See letters from ABAASA II and BoA II.

¹¹⁵³ See letter from ABA II (noting its belief that “such information is more appropriately conveyed directly by the investor itself and should not be given an imprimatur of the issuer (or trustee) involved in facilitating the request”).

during the reporting period by the party responsible for making the Form 10-D filings.¹¹⁵⁴

Without an effective means for investors to communicate with each other, investors may be unable to utilize the contractual rights provided in the underlying transaction agreements.¹¹⁵⁵

Therefore, we are requiring that the investor communication provision be included in an underlying transaction agreement so that the party responsible for making Form 10-D filings will be contractually obligated to disclose an investor's desire to communicate.¹¹⁵⁶ We continue to believe that this is an appropriate requirement for ABS shelf eligibility because facilitating communications among investors enables them to more effectively exercise the rights included in the underlying transaction agreements, which we believe will enhance the enforceability of representations and warranties regarding the pool assets. As noted above, the new shelf transaction requirements should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care. We believe that stronger enforcement mechanisms should incentivize issuers to provide investors with accurate and complete information at the time of the offering. This shelf eligibility requirement, for example, will assist investors in exercising their rights related to the new asset review provision required for shelf eligibility. Those rights would

¹¹⁵⁴ Most ABS issuers report and distribute payments to investors on a monthly basis. The Form 10-D is required to be filed within fifteen days after a required distribution date, and a distribution date is typically two weeks after the end of a reporting period. For example, under our final rule, for the month of June, a request from an investor would have to be received prior to the close of the reporting period on June 30, a distribution would be due to investors by July 15, and the Form 10-D filing due date would be July 30.

¹¹⁵⁵ See Paul A. Burke & Michael C. Morcom, Improving Issuer-Investor Communication in U.S. Securitization Transactions, J. STRUCTURED FIN., Summer 2013, at 27-31 (discussing the problems associated with the current communication process between issuers and investors and arguing that "[a] critical piece of an effective bondholder communication system is [the] initial 'push' of information out to the investor").

¹¹⁵⁶ See also new Item 1121(e) (requiring disclosure of investors' request to communicate on Form 10-D).

include the right to direct a review of underlying assets to determine whether the assets comply with the representations and warranties. Consequently, we believe that these new shelf requirements aimed at helping investors exercise their contractual rights will assist in increasing investors' participation in the ABS markets and thereby foster greater capital formation.

In previous releases, we have recognized that in certain circumstances the Internet can present a cost-effective alternative or supplement to traditional disclosure methods. We considered whether a Web site or investor registry would be a more effective approach to facilitate investor communication, including consideration of the comments received supporting a Web site approach. While we appreciate some of the potential benefits that may be afforded by a Web site approach, such as faster dissemination of the notices and more robust communication capabilities as noted by some commenters,¹¹⁵⁷ we believe that requiring that the investor communication notices be filed with the Form 10-D is the best way to ensure that these requests reach investors. This approach is consistent with our efforts to facilitate the distribution of all investor information regarding the ABS in one place at an expected time – that is, through distribution reports that are attached as exhibits to the Form 10-D. We also believe that this approach is a cost-effective means for issuers to provide investors with communication notices since we are using an existing periodic report. Additionally, by requiring issuers to file the notices with the Commission, as opposed to posting the notices on a Web site, we will be able to more effectively monitor compliance with this shelf requirement and provide investors with

¹¹⁵⁷ See, e.g., letters from CREFC II and Wells Fargo II.

reliable access to the notices through EDGAR, even at times when the markets are in distress and issuers' Web sites are not accessible. Finally, we note that while our shelf requirement is intended to provide investors with at least one method to contact other investors, the final rule does not preclude issuers from utilizing Web sites to provide investors with more robust communications capabilities and we encourage issuers to do so.

We acknowledged in the 2011 ABS Re-Proposing Release that transaction parties might want to specify procedures in the underlying transaction agreements for verifying the identity of a beneficial owner in a particular ABS prior to including a notice in a Form 10-D. While we did not propose specific procedural requirements to be added to the agreements, we did propose to limit the extent of the verification procedures that the transaction parties could impose to verify investor ownership. As summarized above, several commenters consisting of issuers, investors, trustees, and trade associations suggested that the investor verification procedures should be easy and quick to perform and provided various recommendations for the Commission to consider.¹¹⁵⁸ Taking into account suggestions from commenters, we are modifying part of the proposed instruction to specify that, if the investor is not the record holder of the securities, an issuer may require no more than a written certification from the investor that it is a beneficial owner and another form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document verifying ownership.¹¹⁵⁹ We are making this

¹¹⁵⁸ See letters from ABA II, BoA II, CREFC II, and MBA III.

¹¹⁵⁹ We note that these ownership verification procedures are less prescriptive than the ownership eligibility requirements to submit a proposal under Exchange Act Rule 14a-8; however, we believe that this flexibility

change since ownership of most ABS is held in book-entry form through DTC.¹¹⁶⁰ We are also adopting, as proposed, the other part of the instruction that states that if the investor is the record holder of the securities, an investor will not have to provide verification of ownership because the person obligated to make the disclosure will have access to a list of record holders.

Under the final rule, the disclosure in Form 10-D is required to include no more than the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10-D has received a request from such investor, stating that such investor is interested in communicating with other investors about the possible exercise of rights under the transaction agreements, and a description of the method by which other investors may contact the requesting investor.¹¹⁶¹ While we requested comment on whether we should prescribe a pre-set list of objective categories from which an investor could choose for the purpose of indicating why it is requesting communication with other investors, we are not requiring that the investor specify the substance of the communication due to concerns raised by commenters. As summarized above, some commenters opposed imposing any obligation on the party responsible for filing the Form 10-D to monitor or edit the communications.¹¹⁶² We also agree with one commenter that the substance of the communication is more appropriately conveyed directly by the investor and should not be given

is appropriate because the provision is more limited in its scope to only providing notification to other investors of their interest to communicate.

¹¹⁶⁰ See letter from CREFC II (explaining that although the trustee can request a list of beneficial owners from DTC, the process can be costly and can take days or weeks to complete).

¹¹⁶¹ See Item 1121(e) and Item 1.B. of Form 10-D.

¹¹⁶² See letters from ABA II and MBA III.

an imprimatur of the party involved in facilitating the communication request.¹¹⁶³ Thus, the purpose of this communication requirement is not to communicate specific issues or concerns of an investor but rather is intended to be a method for investors to notify other investors of their interest to communicate.

As proposed, we are also including an instruction to Item 1121(e) of Regulation AB to define the type of notices that are required to be on Form 10-D. The party responsible for filing the Form 10-D will be required to include disclosure of only those notices of an investor's desire to communicate where the communication relates to the investor exercising its rights under the terms of the ABS. Thus, the party responsible for filing is not required to disclose an investor's desire to communicate for other purposes, such as identifying potential customers or marketing efforts.¹¹⁶⁴

While we acknowledge that issuers will incur some cost to implement this provision, we believe, taken together with the new asset review provision, that the disclosure will benefit investors by helping them establish communication and overcome collective action problems. As a result, this requirement should help investors exercise their rights under the transaction agreements, including those that are required to be included in the transaction documents to comply with shelf eligibility requirements. We acknowledge that the rule will minimally

¹¹⁶³ See letter from ABA II.

¹¹⁶⁴ To the extent an investor wishes to communicate with other investors about other matters, the investor must consider independently the potential applicability of other regulatory provisions under the federal securities laws. For example, an investor proposing to commence a tender offer for securities in the ABS class must evaluate whether such a communication is subject to Exchange Act Sections 14(d) and 14(e) and Regulations 14D and 14E thereunder.

increase the costs for the party responsible for making the periodic filings on Form 10-D since it will need to modify its existing information systems to receive investors' requests to communicate. However, this is a very low cost method to help distinguish shelf appropriate ABS offerings. The Form 10-D is an existing periodic report that provides investors with, among other things, distribution information and pool performance information for the distribution period. Given the nature and frequency of the Form 10-D, we believe that adding the investor communication request requirement to the Form 10-D is appropriate and beneficial to investors because it will facilitate the distribution of all investor information regarding the ABS in one place, at an expected time. Using an existing form will also limit the cost for issuers because a separate reporting mechanism will not be necessary. While we have sought to limit costs by using Form 10-D, we recognize for those issuers that currently offer investor registries or Web sites and decide to continue to offer those methods of communication that there will be additional costs.

b) Shelf Eligibility – Registrant Requirements

In the 2010 ABS Proposing Release, we proposed new registrant requirements related to compliance with the proposed transaction requirements for shelf eligibility (i.e., risk retention, a third-party opinion provision in transaction agreements, an officer certification, and an undertaking to file ongoing Exchange Act reports).¹¹⁶⁵ We proposed that prior to filing a registration statement on proposed Form SF-3 to the extent the depositor, any issuing entity that

¹¹⁶⁵ For a list of existing shelf eligibility conditions that we are including in new Form SF-3, see footnote 874.

was previously established by the depositor, or an affiliate of the depositor is or was at any time during the previous twelve months required to comply with the proposed transaction requirements of Form SF-3 with respect to a previous offering of asset-backed securities involving the same asset class, such depositor, each such issuing entity, and any affiliate of the depositor must have filed all material required to be filed during the twelve months (or shorter period that the entity was required to have filed such materials). Also, such material, other than certain specified reports on Form 8-K, must have been filed in a timely manner.¹¹⁶⁶ Finally, we proposed a separate registrant requirement that there be disclosure in the registration statement stating that the proposed registrant requirements have been complied with.

In light of the changes to proposed amendments to the transaction requirements for shelf eligibility, we revised the proposed registrant requirements to make conforming changes in the 2011 ABS Re-Proposal. We re-proposed that to the extent the depositor, any issuing entity that was previously established by the depositor, or any affiliate of the depositor is or was at any time during the twelve month look-back period required to comply with the proposed transaction requirements of Form SF-3 with respect to a previous offering of asset-backed securities involving the same asset class then the registrant must meet certain registrant requirements at the time of filing the shelf registration statement. The re-proposed registrant requirements would require that such depositor, each such issuing entity, and any affiliate of the depositor must have timely filed all required certifications and all transaction agreements that contain the required

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See General Instruction I.A.2 to Form SF-3.

provisions relating to the credit risk manager, repurchase request disputes, and investor communication.

In addition, we re-proposed to make the proposed separate registrant requirement that would have required the registrant to include disclosure in the registration statement stating the depositor has complied with the registrant requirements an instruction rather than a shelf eligibility registrant requirement.

Because we did not receive any comments on the revised registrant requirements for shelf eligibility, we are adopting the revised registrant requirements largely as re-proposed. Under the final rule, we are retaining the registrant requirement that was previously in Form S-3 relating to delinquent filings of the depositor or an affiliate of the depositor for purposes of new Form SF-3. Since registrants are already required to comply with this particular existing shelf registrant requirement, registrants should not incur additional compliance costs.

The final rule also requires that to the extent the depositor or any issuing entity that was previously established by the depositor, or any affiliate of the depositor is or was at any time during the twelve month look-back period required to comply with the transaction requirements of Form SF-3 with respect to a previous offering of asset-backed securities involving the same asset class, then such depositor, each such issuing entity, and any affiliate of the depositor, must have timely filed all required certifications and all transaction agreements that contain the required provisions relating to the asset review provision, dispute resolution, and investor communication.

We believe that connecting the registrant requirements to the transaction requirements of prior offerings by the depositor, or affiliates of the depositor, will incentivize the depositor to

timely file all required transaction documents with the required provisions and the required certifications.

In addition, as proposed, we are including an instruction stating that the registrant must disclose in a prospectus that it has met the registrant requirements. We believe disclosure of compliance with the registrant requirements will provide a means for market participants (as well as the Commission and its staff) to better gauge compliance with the shelf eligibility conditions of Form SF-3.

c) Annual Evaluation of Form SF-3 Eligibility in Lieu of Section 10(a)(3) Update

(1) Annual Compliance Check Related to Timely Exchange Act Reporting

(a) Proposed Rule

As we noted in the 2010 ABS Proposing Release, Form S-3 eligibility is determined at the time of filing the registration statement and again at the time of updating the registration statement under Securities Act Section 10(a)(3) by filing audited financial statements.¹¹⁶⁷ We explained that, because ABS registration statements do not contain financial statements of the issuer, we believe a different periodic determination of continued shelf eligibility must be established. We believed that such an evaluation would provide us and the staff with a better means to oversee compliance of the new Form SF-3 eligibility conditions that would replace the investment-grade ratings requirement. Therefore, in lieu of the Section 10(a)(3) updating, we

¹¹⁶⁷ 15 U.S.C. 77j(a)(3).

proposed to revise Securities Act Rule 401 to require, as a condition to conducting an offering off an effective shelf registration statement, an annual evaluation of whether the Exchange Act reporting registrant requirements have been satisfied. An ABS issuer wishing to conduct a takedown off an effective shelf registration statement would be required to evaluate whether the depositor, any issuing entity previously established by the depositor or any affiliate of the depositor that was required to report under Sections 13(a) and 15(d) of the Exchange Act during the previous twelve months for asset-backed securities involving the same asset class, have filed such reports on a timely basis, as of 90 days after the end of the depositor's fiscal year end.¹¹⁶⁸ Under this proposal the related registration statement could not be utilized for subsequent offerings for at least one year from the date the depositor or the affiliated issuing entity that had failed to file Exchange Act reports then became current in its Exchange Act reports (and the other requirements had been met).

(b) Comments on Proposed Rule

We received only a few comments on our proposal. One commenter expressed concern that it is not possible for ABS issuers to fully verify compliance with the Exchange Act reporting registrant requirements as of 90 days after the end of the depositor's fiscal year end because there could be an unknown defect, latent or otherwise, in one or another of the relevant issuing

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See the 2004 ABS Adopting Release at 1525 (noting our belief that given past deficiencies in Exchange Act reporting compliance in the ABS sector that issuers that fail to comply with their responsibilities under the Exchange Act for prior transactions should not continue to receive the benefits of shelf registration and, further, that issuers should not be able to create a new special purpose depositor to avoid the consequences of Exchange Act reporting noncompliance).

entities' reports or reporting history.¹¹⁶⁹ Another commenter suggested that the loss of shelf eligibility should not be automatic.¹¹⁷⁰ This commenter suggested allowing for an explanation and any resulting penalty should be at the staff's discretion.¹¹⁷¹

(c) Final Rule and Economic Analysis of the Final Rule

Under the new rule, an ABS issuer with an effective shelf registration statement will be required to evaluate whether the depositor, any issuing entity previously established by the depositor or any affiliate of the depositor was required to report under Sections 13(a) or 15(d) of the Exchange Act during the previous twelve months for asset-backed securities involving the same asset class, have filed such reports on a timely basis. As noted above, one commenter expressed concern that ABS issuers would be unable to fully verify compliance with the Exchange Act reporting registrant requirements as of 90 days after fiscal year end due to an unknown defect in one or another of the relevant issuing entities' periodic reports or reporting history.¹¹⁷² We note that this annual compliance check is the same evaluation undertaken today by registrants at the time of filing the registration statement and at the time of filing Form 10-K; therefore, we expect that issuers would use the same procedures that are used to verify

¹¹⁶⁹ See letter from ASF III.

¹¹⁷⁰ See letter from SIFMA III-dealers and sponsors.

¹¹⁷¹ Id.

¹¹⁷² See letter from ASF III (also suggesting that we follow Rule 401(g) and deem the registration statement to be filed on the proper registration form unless and until the Commission notifies the issuer of its objection). We note that Rule 401(g) applies to automatically effective registration statements, and those are not the type of registration statements in question here.

compliance at the time of filing the registration statement. As a result, this rule conforms the ABS process to the corporate issuers' process. Additionally, we believe that the costs will be minimal and limited to ABS issuers performing the same procedures they perform at the time of filing a registration statement. We believe that this annual shelf eligibility compliance check will benefit investors because it will encourage issuers to file their Exchange Act reports in connection with prior offerings at the required time and therefore enhance informed investment decisions. We acknowledge, however, that there will be costs to those issuers that determine, as a result of their annual evaluation, that they did not timely file their Exchange Act reports and lose shelf access since they will be required to use Form SF-1. These costs are related to market timing given the possibility of additional staff review that may occur with a Form SF-1 compared to Form SF-3. We believe that this new provision simply ensures that the shelf process for ABS includes a mechanism to check whether the shelf issuer is current and timely with its Exchange Act reporting obligations as is currently required for corporate shelf issuers.

(2) Annual Compliance Check Related to the Fulfillment of the Transaction Requirements in Previous ABS Offerings

(a) Proposed Rule

In the 2010 ABS Proposing Release, we also proposed to require that, for continued shelf eligibility, an ABS issuer would be required to conduct an evaluation at the end of the fiscal quarter prior to the takedown of whether the ABS issuer was in compliance with the proposed transaction requirements relating to risk retention, third-party opinions, the officer certification, and the undertaking to file ongoing reports. If the ABS issuer was not in compliance with the

transaction requirements, then it could not utilize the registration statement or file a new registration statement on Form SF-3 until one year after the required filings were filed.

In the 2011 ABS Re-Proposal, we re-proposed this registrant requirement to require an annual evaluation of compliance with the transaction requirements of shelf registration rather than an evaluation on a quarterly basis as we had originally proposed. Therefore, notwithstanding that the registration statement may have been previously declared effective, in order for the registrant to conduct a takedown off an effective registration statement, an ABS issuer would be required to evaluate, as of 90 days after the end of the depositor's fiscal year end, whether it meets the registrant requirements. Under the 2011 ABS Re-Proposal, to the extent that the depositor or any issuing entity previously established by the depositor or any affiliate of the depositor, is or was at any time during the previous twelve months, required to comply with the proposed new transaction requirements related to the certification, credit risk manager and repurchase dispute resolution provisions, and investor communication provision, with respect to a previous offering of ABS involving the same asset class, such depositor and each issuing entity must have filed on a timely basis, at the required time for each takedown, all transaction agreements containing the provisions that are required by the proposed transaction requirements as well as all certifications.

In response to commenters' concerns that the one-year penalty for non-compliance with the transaction requirements was too extreme, we revised and re-proposed to allow depositors and issuing entities to cure any failure to file the required certification or transaction agreements with the required shelf provisions. Under the proposed cure mechanism, the depositor or any

issuing entity would be deemed to have met the registrant requirements, for purposes of Form SF-3, 90 days after the date all required filings were made.

(b) Comments on Proposed Rule

Commenters recommended that we reduce the waiting period after curing the deficiency. Some commenters requested that the waiting period after curing the deficiency be reduced to 30 days.¹¹⁷³ Another commenter recommended changing the period to 30 or 45 days.¹¹⁷⁴

(c) Final Rule and Economic Analysis of the Final Rule

The final rule includes a registrant requirement that requires an annual evaluation of compliance with the transaction requirements of shelf registration, as re-proposed in the 2011 ABS Re-Proposing Release. Under the final rule, notwithstanding that the registration statement may have been previously declared effective, in order to conduct a takedown off an effective shelf registration statement, an ABS issuer would be required to evaluate, as of 90 days after the end of the depositor's fiscal year end, whether it meets the registrant requirements, which is the same look-back period for the ABS issuer as the compliance evaluation for Exchange Act reporting described above.

Under the final rule, a depositor and issuing entity may cure the deficiency if it subsequently files the information that was required. After a waiting period, it will be permitted

¹¹⁷³ See letters from CREFC II and Kutak.

¹¹⁷⁴ See letter from MBA III.

to continue to use its shelf registration statement.¹¹⁷⁵ Under the cure mechanism, the depositor and issuing entity will be deemed to have met the registrant requirements; for purposes of Form SF-3, 90 days after the date all required filings are filed.

Because the issuer can cure the deficiency while it continues to use the shelf and before the required annual evaluation, the issuer can avoid being out of the market. For example, a depositor with a December 31 fiscal year end has an effective shelf registration statement and on March 30 of Year 1, it evaluates compliance with all registrant requirements under new Rule 401(g) (90 days after the last fiscal year end) and determines that it is in compliance. The depositor then offers ABS but does not timely file the required transaction agreements that should have been filed on June 20 of Year 1. The depositor would be able to continue to use its existing shelf until it is required to perform the annual evaluation required by new Rule 401(g), on March 30 of Year 2. After March 30 of Year 2 and until June 20 of Year 2 (one year after the agreements should have been filed), the depositor would not be able to offer ABS off of the shelf registration statement, and would not be permitted to file a new shelf registration statement. However, if the depositor had cured the deficiency by filing the agreements on July 1 of Year 1, under the final rule, a new registration statement could be filed 90 days after July 1 of Year 1 (or September 29 of Year 1), instead of waiting until June 20 of Year 2 (when it otherwise would

¹¹⁷⁵ Curing the deficiency also allows the depositor, or its affiliates, to file a new registration statement if it also meets the other registrant requirements. See General Instruction I.A.1. of Form SF-3. As we emphasized in the 2011 ABS Re-Proposing Release, failure to file the information required (i.e., the required certification and transaction agreements with required provisions) will be a violation of our rules, and subject to liability accordingly. Furthermore, failing to provide disclosure at the required time periods may raise serious questions about whether all required disclosure was provided to investors prior to investing in the securities.

meet the twelve month timely filing requirement). In that case, at the time of the next annual evaluation for the registration statement on March 30 of Year 2, the depositor would be deemed to have met the registrant requirements because it would have cured the deficiency more than 90 days earlier on July 1 of Year 1, and thus the depositor could continue to use its existing shelf registration statement.¹¹⁷⁶

Our approach is designed to strike a balance between encouraging issuers' compliance with the shelf transaction requirements and commenters' concerns that the one-year time out period in the 2010 ABS Proposals was too long. Also, as discussed above, we received comments that 90 days was still too long and that a 30 or 45 day waiting period would be more appropriate.¹¹⁷⁷ We continue to be concerned that 30 or 45 days would not adequately incentivize issuers to comply with the transaction requirements. Based on staff observations of shelf offerings since the crisis, registrants typically conduct between two and three offerings during the course of a year. Under such conditions, a short waiting period such as 30 or 45 days would provide minimal, if any, incentive to comply with transaction requirements.

We are not adopting another commenter's suggestion that the loss of shelf eligibility not be automatic and that issuers should instead be allowed to explain and be penalized at the staff's

¹¹⁷⁶ Using the example above; if the failure occurs in the first 90 days of the year before the March 30 annual compliance evaluation, but the issuer corrects the deficiency by filing the required information before providing the evaluation on March 30, the issuer will still be deemed to satisfy the registrant requirements for purposes of continued shelf eligibility and thus not be required to wait until March 30 of the next year to use the existing shelf registration statement or file a new one. The issuer, however, must still wait 90 days after filing the required information before using the existing effective shelf registration statement or filing a new shelf registration statement. We have revised the requirement to make this clear.

¹¹⁷⁷ See letters from MBA III and SIFMA III-dealers and sponsors.

discretion.¹¹⁷⁸ The eligibility requirement is an incentive for issuers to comply with the shelf transaction requirements – providing the market with information about the issuer and thus an appropriate eligibility criterion to offer securities off the shelf. Furthermore, an ad hoc review of justifications for delays or missing filings would be inefficient use of the Commission’s resources and would not incentivize issuers to monitor compliance.

We believe that the annual shelf eligibility compliance check will benefit investors because it will encourage issuers to file their transaction documents in connection with prior offerings at the required time and therefore enhance informed investment decisions. We acknowledge that the annual evaluations of compliance with the transaction requirements will impose additional costs on ABS issuers in the form of systems needed to examine compliance with the filing requirements. However, we believe that these costs should be minimal because issuers should already have, in most instances, systems designed to ensure that the transaction agreements are being filed timely in accordance with rules under the Securities Act.

4. Continuous Offerings

a) Proposed Rule

In the 2010 ABS Proposing Release, we had proposed to amend Rule 415 to limit the registration of continuous offerings for ABS offerings to “all or none” offerings. In an “all or none” offering, the transaction is completed only if all of the securities are sold. In contrast, in a “best-efforts” or “mini-max” offering, a variable amount of securities may be sold by the issuer.

¹¹⁷⁸ See letter from SIFMA III-dealers and sponsors.

In those latter cases, because the size of the offering would be unknown, investors would not have the transaction-specific information and, in particular, would not know the specific assets to be included in the transaction. Thus, information about the asset pool required by Item 1111 of Regulation AB, either in its existing form or as amended today, could not be complied with.¹¹⁷⁹ As noted in the 2010 ABS Proposing Release, we believe that our proposed restriction would help ensure that ABS investors receive sufficient information relating to the pool assets, if an issuer registered an ABS offering to be conducted as a continuous offering.¹¹⁸⁰

b) Comments on Proposed Rule

Only one commenter commented on the proposal to limit the use of continuous offerings on shelf to “all or none” offerings.¹¹⁸¹ This commenter agreed that “in a continuous offering where the ultimate size of the offering is unknown, investors would not necessarily know the specific assets to be included in the transaction” and the proposal properly eliminates this issue. However, this commenter suggested more guidance on what constitutes an “all or none” offering.¹¹⁸²

c) Final Rule and Economic Analysis of the Final Rule

We are adopting the rule as proposed. The new rule will provide ABS investors in continuous ABS offerings with information about all relevant pool assets and would close a

¹¹⁷⁹ The staff has advised us that they believe that neither “best efforts” offerings nor any continuous offerings have been utilized in the past for public offerings of asset-backed securities.

¹¹⁸⁰ See the 2010 ABS Proposing Release at 23350.

¹¹⁸¹ See letter from ASF I.

¹¹⁸² See letter from ASF I (suggesting that there are offerings that should not be included in the “mini-max” definition).

potential gap in our regulations for ABS offerings. Under the final rule, the continuous offering must be commenced promptly and must be made on the condition that all of the consideration paid for such security will be promptly refunded to the purchaser unless (A) all of the securities being offered are sold at a specified price within a specified time, and (B) the total amount due to the seller is received by the seller by a specified date.¹¹⁸³

As one commenter noted, in some ABS offerings, all or a portion of one or more classes of ABS that are offered for sale to investors through one or more underwriters may initially be retained by the depositor or sold to one or more of its affiliates.¹¹⁸⁴ In these cases, the offerings may be conducted as a firm commitment underwritten offering or as a best efforts offering. The commenter believed that such offering would not be a “mini-max” offering because the total size of the offering is known and disclosed in the prospectus. We agree with the commenter that these offerings would not be a “mini-max” offering if the prospectus includes all transaction-specific information, including information about the specific assets included in the pool.

This rule will be beneficial to investors in continuous offerings by ensuring that the information they receive is about all pool assets underlying the asset-backed securities they purchase. While ABS offerings are typically not conducted as a continuous offering, we believe that it is important for us to close a potential gap in our regulations for ABS offerings so that

¹¹⁸³ All or none offerings are described in Exchange Act Rules 10b-9 [17 CFR 240.10b-9] and 15c2-4 [17 CFR 240.15c2-4] in the same manner.

¹¹⁸⁴ See letter from ASF I (noting that this typically arises when the offered securities have a lower return or carry a lower spread relative to market demand and confirming that any subsequent sale of the securities by the depositor or its affiliates would be undertaken in accordance with the registration provisions under the Securities Act).

ABS investors receive this material information when making an investment decision – irrespective of the type of public offering. We acknowledge that restricting continuous offerings to “all or none” limits issuers’ choice and may potentially impose costs on those issuers that would have preferred to conduct the offering on a best efforts basis. However, we also note that the staff is not aware of any prior public offering of ABS that was conducted on a continuous offering – either as “all or none” or best efforts – and therefore we expect these costs to be minimal. For similar reasons, we do not believe that the amended rule will have an impact on competition, efficiency, or capital formation.

5. Mortgage Related Securities

a) Proposed Rule

In the 2010 ABS Proposing Release, we proposed to require that offerings of mortgage related securities be eligible for shelf registration on a delayed basis only if, like other asset-backed securities, they meet the registrant and transaction requirements for shelf registration. Under the proposal, delayed shelf offerings of mortgage related securities could be registered only on new Form SF-3, and accordingly, must meet the eligibility requirements of Form SF-3. We proposed eliminating the provision in Rule 415 that permits the registration of “mortgage related securities,” as that term is defined in Section 3(a)(41) of the Exchange Act, for shelf offerings without regard to form eligibility requirements. This was a provision that was added to Rule 415 contemporaneous with the enactment of SMMEA.¹¹⁸⁵ Therefore, under the provision,

¹¹⁸⁵ See Section V.A. Background and Economic Discussion.

an offering of mortgage related securities did not have to meet the requirements of Form S-3 and could have been registered on a delayed basis on Form S-1.¹¹⁸⁶ As we stated in the 2010 ABS Proposing Release, we proposed this requirement based on our belief that mortgage related securities should be required to meet all the requirements that we proposed for shelf eligibility in order to be eligible for registration on a delayed basis since these securities present the same complexities and concerns as other ABS.¹¹⁸⁷

b) Comments on Proposed Rule

One commenter agreed that mortgage related securities should be held to the same standards as other asset-backed securities.¹¹⁸⁸ Another commenter believed that both proposed Forms SF-1 and SF-3 should be available for delayed offerings of mortgage related securities “to accommodate issuers or transactions that may not have a need for an SF-3 registration or assets that are unique and better suited for an SF-1 filing,” but the commenter did not provide specific examples or further explanation.¹¹⁸⁹

c) Final Rule and Economic Analysis of the Final Rule

We are revising Rule 415 as proposed. The change requires that mortgage related securities meet all criteria for eligibility for shelf registration on new Form SF-3. We believe that mortgage related securities should meet all the requirements we are adopting in order to be

¹¹⁸⁶ See footnote 61 of the 2004 ABS Adopting Release.

¹¹⁸⁷ See the 2010 ABS Proposing Release at 23350.

¹¹⁸⁸ See letter from CFA I.

¹¹⁸⁹ See letter from MBA I.

eligible for shelf registration on a delayed basis since these securities present the same complexities and concerns as other asset-backed securities. If we continue to allow issuers of mortgage related securities to offer securities on a delayed basis off the shelf without regard to the shelf eligibility requirements, we would effectively allow mortgage related securities issuers to circumvent the requirements we are adopting.

We believe that the amendment to Rule 415 adopted today will result in consistent and fair treatment of all asset-backed securities, regardless of the nature of the underlying pool assets. We believe that the impact of this rule on competition and capital formation will be minimal since most, if not all, issuers of mortgage related securities have met the shelf eligibility requirements and conducted offerings off shelf registration statements.

C. Exchange Act Rule 15c2-8(b)

1. Proposed Rule

Except for securities issued under master trust structures, shelf-eligible ABS issuers generally are not reporting issuers at the time of issuance. Under Exchange Act Rule 15c2-8(b),¹¹⁹⁰ with respect to an issue of securities where the issuer has not been previously required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act, unless the issuer has been exempted from the requirement to file reports thereunder pursuant to Section 12(h) of the Exchange Act, a broker or dealer is required to deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the

¹¹⁹⁰ 17 CFR 240.15c2-8(b).

sending of such confirmation (“48-hour preliminary prospectus delivery requirement”). The rule contains an exception to the 48-hour preliminary prospectus delivery requirement for offerings of asset-backed securities eligible for registration on Form S-3. An exception to the 48-hour preliminary prospectus delivery requirement was first provided in 1995 by staff no-action position.¹¹⁹¹ This staff position was later codified in 2004.¹¹⁹²

In light of recent economic events and to make this rule consistent with our other proposed revisions, in the 2010 ABS Proposing Release, we proposed to eliminate this exception so that a broker or dealer would be required to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale for all offerings of asset-backed securities, including those involving master trusts. Because each pool of assets in an ABS offering is unique, we believe that an ABS offering is akin to an IPO, and therefore we believe the 48-hour preliminary prospectus delivery requirement in Rule 15c2-8(b) should apply. Even with subsequent offerings of a master trust, the offerings are more similar to an IPO given that the mix of assets changes and is different for each offering. Additionally, requiring that a broker or dealer provide an investor with a preliminary prospectus at least 48 hours before sending a confirmation of sale should be feasible and made easier to implement as a result of our proposal that a form of

¹¹⁹¹ See footnote 163 of the 2004 ABS Adopting Release and accompanying text (discussing staff no-action letters providing relief to ABS issuers from Rule 15c2-8(b)).

¹¹⁹² In the 2004 ABS Adopting Release, we noted some concerns that investors did not have sufficient time to consider ABS offering information. However, as we were considering other proposals at that time that sought to address information disparity in the offering process, we decided to codify the staff position.

preliminary prospectus be filed with the Commission at least three business days in advance of the first sale in a shelf offering.

2. Comments on Proposed Rule

Commenters generally supported the proposal.¹¹⁹³ Several trade associations agreed that investors should have sufficient time to review an offering.¹¹⁹⁴ One trade association supported the proposal, but suggested an “access equals delivery” model akin to final prospectuses to satisfy the requirements.¹¹⁹⁵ One individual commenter supported the proposal but suggested that ABS structured as master trusts be treated differently so as not to require information delivered previously to be delivered again.¹¹⁹⁶

3. Final Rule and Economic Analysis of the Final Rule

We are eliminating the exception in Rule 15c2-8(b) for shelf-eligible asset-backed securities from the 48-hour preliminary prospectus delivery requirement as proposed.¹¹⁹⁷ Under

¹¹⁹³ See letters from ASF I, A. Zonca, BoA I, MBA I, Sallie Mae I, and SIFMA I.

¹¹⁹⁴ See letters from ASF I, MBA I, and SIFMA I.

¹¹⁹⁵ See letter from ASF. See also letters from MBA I and SIFMA I (focusing their comments in this area on the waiting period that would be required by proposed Rules 424(h) and 430D).

¹¹⁹⁶ See letter from A. Zonca (also suggesting that ABS master trusts not be required to deliver the information if any changes to previously delivered information relates to new account additions with balances representing less than five percent of the master trust).

¹¹⁹⁷ Because of the other changes we are adopting, we are also repealing Securities Act Rule 190(b)(7). Rule 190(b)(7) provides that if securities in the underlying asset pool of asset-backed securities are being registered, and the offering of the asset-backed securities and the underlying securities is not made on a firm commitment basis, the issuing entity must distribute a preliminary prospectus for both the underlying securities and the expected amount of the issuer's securities that is to be included in the asset pool to any person who is expected to receive a confirmation of sale of the asset-backed securities at least 48 hours prior to sending such confirmation. Rule 190(b)(7) effectively overrules the exclusion in Rule 15c2-8 for ABS issuers from the 48-hour preliminary prospectus delivery requirement for particular types of ABS offerings. Because we are repealing the Rule 15c2-8 exclusion for ABS issuers, and because our disclosure requirements regarding the underlying securities for securitizations requires significantly more

the final rule, a broker or dealer is required to comply with the 48-hour preliminary prospectus delivery requirement with respect to the sale of securities by each ABS issuer, regardless of whether the issuer has previously been required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act.¹¹⁹⁸ In addition, the 48-hour preliminary prospectus delivery requirement also applies to ABS issuers utilizing master trust structures that are exempt from the reporting requirements pursuant to Section 12(h) of the Exchange Act. This requirement is necessary because assets in a master trust routinely change, whether or not they are exempt from or subject to Section 13(a) or 15(d) reporting requirements. In a master trust securitization, assets may be added to the pool in connection with future issuances of the securities backed by the pool.¹¹⁹⁹ Although ABS issuers utilizing master trust structures may be reporting under the Exchange Act at the time of a “follow-on” or subsequent offering of securities, additional assets are added to the entire pool backing the trust in connection with a subsequent offering of securities.

The adoption of today’s amendment will benefit investors by allowing them more time to consider the characteristics of the offering. We recognize that this benefit may be lower for investors in ABS structured as master trusts, because such offerings are issued from an existing issuing entity, which would have previously disclosed much of the information to be provided in the 48-hour preliminary prospectus. Nonetheless, such investors should benefit from having

information than what is required in Rule 190(b)(7) to be provided in the preliminary prospectus, we are deleting Rule 190(b)(7).

¹¹⁹⁸ See definition of issuer in relation to asset-backed securities in Exchange Act Rule 3b-19.

¹¹⁹⁹ The typical master trust securitization is backed by assets arising out of revolving accounts such as credit card receivables or dealer floorplan financings.

additional time to consider information about the new assets that is not provided in Exchange Act reports. The cost of today's amendment will be borne by issuers, who will have to prepare and provide to investors the preliminary prospectus. These costs will likely be small as a result of our other new rule requiring that a preliminary prospectus be filed with the Commission at least five days in advance of the first sale.¹²⁰⁰

We considered one commenter's suggestion to provide for an "access equals delivery" model akin to final prospectuses.¹²⁰¹ Access equals delivery is only permitted for a final prospectus and not a preliminary prospectus. The rule is the same for prospectuses of both corporate securities as well as ABS. The commenter did not address why ABS should be different from corporate securities in the context of delivery of a preliminary prospectus under Rule 15c2-8(b).¹²⁰²

We are also adopting, as proposed, a correcting amendment to Rule 15c2-8(j). Paragraph (j) states that the terms "preliminary prospectus" and "final prospectus" include terms that are defined in Rule 434.¹²⁰³ In 1995, at the same time we adopted Rule 434, we added paragraph (j) to expand the use of the terms "preliminary prospectus" and "final prospectus" to reflect the

¹²⁰⁰ See Section V.B.1 New Shelf Registration Procedures.

¹²⁰¹ See letter from ASF I. See also the Securities Offering Reform Release at 44783.

¹²⁰² However, as is the case today, delivery of a preliminary prospectus may be made electronically as permitted under our current rules. See Use of Electronic Media for Delivery Purposes, Release No. 33-7233 (Oct. 6, 1995) [60 FR 53458] (the 1995 Release).

¹²⁰³ 17 CFR 230.434. Securities Act Rule 434 allowed issuers and other offering participants to meet their prospectus delivery requirement by delivering a preliminary prospectus and a term sheet or abbreviated term sheet before or at the time of sale. The information contained in the preliminary prospectus, confirmation and term sheet or abbreviated term sheet must, in the aggregate, meet the informational requirements of Securities Act Section 10(a).

terminology used in Rule 434.¹²⁰⁴ Rule 434, however, was later repealed in 2005.¹²⁰⁵

Accordingly, we are deleting paragraph (j), which is no longer applicable.

D. Including Information in the Form of Prospectus in the Registration Statement

1. Presentation of Disclosure in Prospectuses

a) Proposed Rule

We proposed to eliminate the current practice in shelf ABS offerings of providing a base prospectus and prospectus supplement by requiring the filing of a form of prospectus at the time of effectiveness of the Form SF-3 and a single prospectus for each takedown. As we noted in the 2010 ABS Proposing Release, we are concerned that the base and supplement format has resulted in unwieldy documents with excessive and inapplicable disclosure that is not useful to investors.¹²⁰⁶ To address this concern, we proposed to add a provision in proposed Rule 430D and an instruction to proposed Form SF-3 that would require ABS issuers to file a form of prospectus at the time of effectiveness of the proposed Form SF-3 and to file a single prospectus for each takedown, which would include all of the information required by Regulation AB. We also proposed to require each depositor to file a separate registration statement for each form of prospectus. Under this proposal, each registration statement would cover offerings by depositors securitizing only one asset class.

¹²⁰⁴ See Section II.B.4.a of Prospectus Delivery; Securities Transactions Settlement, Release No. 33-7168 (May 11, 1995) [60 FR 26604].

¹²⁰⁵ Rule 434 was repealed in the Securities Offering Reform Release.

¹²⁰⁶ See the 2010 ABS Proposing Release at 23352.

b) Comments on Proposed Rule

Several commenters supported¹²⁰⁷ our proposal requiring the filing of one integrated prospectus rather than a base prospectus and prospectus supplement for each takedown, and one commenter opposed.¹²⁰⁸ One commenter, in support of the proposed rules, believed that our proposal will provide investors with clearer information relating to the assets that are the subject of the takedown by not being encumbered with information that may not relate to that particular transaction.¹²⁰⁹ Another commenter, opposing the proposal, argued that our concern that the base and supplement format has resulted in unwieldy documents with excessive and inapplicable disclosure that is not useful to investors is unwarranted.¹²¹⁰

With respect to our proposal to limit each shelf registration statement to one asset class, one commenter asserted its belief that this proposal had no bearing on the nature and quality of disclosure for any particular shelf offering.¹²¹¹ This commenter also noted that our proposed limitation would not permit securitization platforms where more than one depositor transfers or sells pool assets into the same issuing entity to conduct shelf offerings. The commenter, although opposing the proposal, recommended that the Commission clarify the scope of any

¹²⁰⁷ See letters from BoA I, CFA I, and MBA I.

¹²⁰⁸ See letter from ASF I.

¹²⁰⁹ See letter from CFA I.

¹²¹⁰ See letter from ASF I (expressed views of issuers only). ASF investor members offered mixed views on the proposal.

¹²¹¹ See letter from ASF I.

limitation so that multiple depositors who transfer or sell pool assets into the same issuing entity would be permitted under the final rule.

c) Final Rule and Economic Analysis of the Final Rule

After considering the comments provided, we are adopting the rule regarding presentation of disclosure in prospectuses as proposed so that issuers must file a form of prospectus at the time of effectiveness of Form SF-3 and file a single prospectus for each takedown.¹²¹² We continue to believe that the current format has the unintended effect of encouraging ABS issuers to draft disclosure documents that build in maximum flexibility for as many differing transactions as possible with the investor bearing the burden of determining which disclosures are relevant to a particular transaction. Given that the registration statement is primarily for the benefit of investors, we believe that we should facilitate investor understanding and access to prospectuses for ABS and eliminate unnecessary disclosures given to investors.¹²¹³ A single form of prospectus at the time of effectiveness and a single prospectus for each takedown should provide investors with clearer and more focused information relating to the assets that are the subject of the takedown by not encumbering investors with information that may not relate to that particular transaction. Additionally, because we believe that this rule will enhance investor understanding of the offering materials and the transaction, the rule will, in turn, promote more efficient capital formation. While we note one commenter's view that the

¹²¹² See General Instruction IV of Form SF-3.

¹²¹³ See the 2010 ABS Proposing Release at 23352.

existing practice did not result in unwieldy documents,¹²¹⁴ we remain concerned about the usefulness of the prospectus supplement format for investors, especially in light of other commenters' support for our proposal and the staff's experience in reviewing prospectuses in registration statements and in takedowns.¹²¹⁵

We are also adopting our proposed limitation of one asset class per registration statement with one clarification in response to comments.¹²¹⁶ We continue to note the practice of some issuers to include multiple depositors, multiple base prospectuses and multiple prospectus supplements all in one registration statement.¹²¹⁷ We believe that this practice has made the disclosure difficult for investors to understand and difficult for market participants to locate and obtain offering documents. Although one commenter stated that limiting each shelf registration statement to one asset class has no bearing on the quality or nature of the disclosure for any particular shelf offering, we disagree.¹²¹⁸ The cumulative effect of including multiple depositors, multiple base prospectuses and multiple prospectus supplements in one registration statement is an unwieldy registration statement for investors to navigate in determining what information they should review before making their investment decision and difficult for market participants to

¹²¹⁴ See letter from ASF I.

¹²¹⁵ See letters from BoA I, CFA I, and MBA I.

¹²¹⁶ See General Instruction IV of Form SF-3. We note existing market practice in the case of some master trust structures, such as credit card ABS involving a single platform, in which multiple affiliated depositors transfer credit card receivables into the issuing entity. We would view, in these limited instances, such master trust structure with a single securitization platform as one transaction (that is, one program), with multiple registrants.

¹²¹⁷ See the 2010 ABS Proposing Release at 23352.

¹²¹⁸ See letter from ASF I.

follow which registration statement relates to which takedown. By limiting a registration statement to one asset class, the quality and nature of the disclosure should be enhanced as the disclosure would be presented in a more accessible and useful format for investors. While the revisions to both presentation of disclosure as well as the limitation of one asset class per registration statement could place additional costs on issuers that need to file additional registration statements, we believe that these additional costs are reasonable in light of the expected improved transparency benefits for investors.¹²¹⁹ Furthermore, we believe that our pay-as-you-go amendment that we are also adopting should offset some of the costs that issuers could incur with additional registration statements.

2. Adding New Structural Features or Credit Enhancements

a) Proposed Rule

We proposed to restrict the ability of ABS issuers to add information about new structural features or credit enhancements by filing a prospectus under Rule 424(b).¹²²⁰ It has been our longstanding position, as articulated in the 2004 ABS Adopting Release, that structural features or credit enhancements must be fully described in the registration statement at the time of effectiveness.¹²²¹ As part of this position, we have stated that a takedown off a shelf that involves new structural features or credit enhancements that were not described as contemplated in the base prospectus will usually require a post-effective amendment rather than describing

¹²¹⁹ See Section X Paperwork Reduction Act (estimating this requirement will result in approximately four new registration statements to be filed annually by shelf ABS issuers).

¹²²⁰ See the 2010 ABS Proposing Release at 23353.

¹²²¹ See the 2004 ABS Adopting Release at 1524.

them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424.¹²²² In that regard, we proposed to codify our position that when an issuer desires to add information that relates to new structural features or credit enhancements, the issuer must file that information by a post-effective amendment to the registration statement. By requiring the issuer to file a post-effective amendment, the Commission's staff would have an opportunity to review the disclosure regarding these new structural features and credit enhancements that would be contemplated for future takedowns from the shelf registration statement.

b) Comments on Proposed Rule

Commenters were generally supportive of our proposal to codify the requirement of a post-effective amendment for new structural features or credit enhancements.¹²²³ One commenter believed that all market participants would benefit from the enhanced understanding of a transaction that would result from the proposed rule.¹²²⁴ One commenter noted that the proposed rule would provide the staff with time to focus on new structural features or credit enhancements.¹²²⁵ Another commenter noted that the proposed rule would allow the Commission to control the purpose of shelf filing and allow for more targeted review.¹²²⁶ One

¹²²² See *id.* See also the 2010 ABS Proposing Release at 23353 (noting that although Rule 430B provides all issuers on Form S-3 with the ability to include information previously omitted in a prospectus filed pursuant to Securities Act Rule 424(b), the staff has continued to apply our position articulated in the 2004 ABS Adopting Release).

¹²²³ See letters from BoA I, CFA I, MBA I, Prudential I, and Wells Fargo I.

¹²²⁴ See letter from Prudential I.

¹²²⁵ See letter from CFA I.

¹²²⁶ See letter from Wells Fargo I.

commenter noted that the term “structural features” is too vague and suggested that the Commission provide more specificity.¹²²⁷

c) Final Rule and Economic Analysis of the Final Rule

After considering the comments, we are adopting, as proposed, new Securities Act Rule 430D(d)(2), which codifies a longstanding position of the Commission that an ABS issuer must file a post-effective amendment to the registration statement when it wants to add information about new structural features or credit enhancements that were not described as contemplated in the base prospectus of an effective registration statement. As noted above, one commenter stated that the term “structural features” was too vague to use as a trigger for a post-effective amendment and was concerned that the term could be interpreted to trigger a post-effective amendment for minor structural adjustments that would not have required a post-effective amendment under the existing standard.¹²²⁸ Because our new rule merely codifies the Commission’s longstanding position, the final rule does not change when such requirement is triggered.¹²²⁹

We believe that codification of our existing position will provide issuers with clarity about how the rules work. It will also help to ensure that the staff has the opportunity to review

¹²²⁷ See letter from BoA I.

¹²²⁸ See letter from BoA I.

¹²²⁹ See the 2004 ABS Adopting Release at 1524 (“A takedown off of a shelf that involves assets, structural features, credit enhancement or other features that were not described as contemplated in the base prospectus will usually require either a new registration statement (e.g., to include additional assets) or a post-effective amendment (e.g., to include new structural features or credit enhancement) rather than simply describing them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424.”).

these new structural features or credit enhancements that would be contemplated for future offerings. Because this rule is simply a codification of our existing position, we believe that the new rule will result in no material increase in costs and will be neutral in terms of its impact on competition, efficiency, and capital formation.

E. Pay-as-You-Go Registration Fees

1. Proposed Rule

To alleviate some of the burden of managing multiple registration statements among ABS issuers, we proposed to allow, but not require, ABS issuers eligible to use Form SF-3 to pay filing fees as securities are offered off a shelf registration statement, commonly known as “pay-as-you-go.”¹²³⁰ Under the proposal, the triggering event for a fee payment would be the filing of a preliminary prospectus.

2. Comments on Proposed Rule

Several trade associations agreed that the proposal would be a helpful change.¹²³¹ Some commenters noted that they would like the Commission to clarify that, under existing Rule 457(p), if an ABS offering is not completed, or the size of the offering is reduced, after the fee is

¹²³⁰ In 2005, we first adopted pay-as-you-go rules to allow well-known seasoned issuers using automatic shelf registration statements to pay filing fees at the time of a securities offering. See Section V.B.2.b.(D) of the Securities Offering Reform Release. Under the current pay-as-you-go procedure for WKSIs, an issuer can pay any filing fee, in whole or in part, in advance of takedown or at the time of takedown, providing flexibility in the timing of the fee payment. Issuers using pay-as-you-go can still deposit monies in an account for payment of filing fees when due. The fee rules applicable to the use of such account, also referred to as the “lockbox account,” apply. The amount of the fee is calculated based on the fee schedule in effect when the money is withdrawn from the lockbox account. This flexibility had been provided so issuers may determine the fee payment approach most appropriate for them. See footnote 529 of the Securities Offering Reform Release. See Securities Act Rules 456(b) [17 CFR 230.456(b)] and 457(r) [17 CFR 230.457(r)].

¹²³¹ See letters from ABA I, ASF I, MBA I, and SIFMA I.

paid, the unused portion of the fee can be applied to future takedowns off the same or a replacement registration statement by the depositor or an affiliate of such depositor.¹²³² One issuer requested that the timing of the fee payment be changed from the filing of the preliminary prospectus to the filing of the final prospectus in order to alleviate any risk that the issuer did not pay sufficient registration fees to cover any upsizing of the offering as well as to alleviate the possibility of overpayment of the registration fees if the offering is downsized.¹²³³

3. Final Rule and Economic Analysis of the Final Rule

We are adopting, as proposed, revisions to our rules to permit ABS issuers to pay registration fees as securities are offered off a registration statement as opposed to paying all registration fees upfront at the time of filing a registration statement on Form SF-3. As proposed, under the new rule, a dollar amount or a specific number of securities is not required to be included in the calculation of the registration fee table in the registration statement, unless a fee based on an amount of securities is paid at the time of filing.¹²³⁴ As proposed, the fee table on the cover of the registration statement must list the securities or class of securities registered and must indicate if the filing fee will be paid on a pay-as-you-go basis.¹²³⁵

¹²³² See letters from ASF I, BoA I, MBA I, and Sallie Mae I.

¹²³³ See letter from Sallie Mae I.

¹²³⁴ See new Securities Act Rule 457(s).

¹²³⁵ In the case of ABS, the fee table on the registration statement typically lists the offering of certificates and notes as separate classes of securities. Each class (or tranche) of those certificates and notes offered would not need to be separately listed on the fee table. However, if the ABS is a resecuritization, where registration of the underlying securities would be required under Rule 190 and the underlying security was not listed on the fee table of the Form SF-3 registration statement, the underlying securities would need to be registered on a different new registration statement. Likewise, if a servicer or trustee invests cash collections in other instruments which may be securities under the Securities Act, such as guarantees or

Under the final rule, as proposed, the triggering event for a fee payment will be the filing of an initial preliminary prospectus.¹²³⁶ At the time of filing an initial preliminary prospectus,¹²³⁷ the ABS issuer is required to include a calculation of registration fee table on the cover page of the prospectus and to pay the appropriate fee calculated in accordance with Securities Act Rule 457. In light of one commenter's concern about the possibility of overpaying the registration fee by requiring it to be paid in connection with the preliminary prospectus, we note ABS issuers opting to pay the required registration fees with each takedown could rely upon Rule 457(p) to apply a portion of the fee associated with the unsold securities under a previously-filed registration statement as an offset against the filing fee due at the time of the preliminary prospectus filing by the same depositor or affiliates of the depositor across asset classes. Similarly, such registrants could apply unused fees paid in connection with a preliminary prospectus filing toward a future takedown off the same registration statement. We believe that this amendment will alleviate some of the burden ABS issuers incur with managing multiple registration statements. Additionally, it should offset some of the additional costs that issuers

debt instruments of an affiliate, under Rule 190 those underlying securities also may need to be registered concurrently with the asset-backed offering. If those underlying securities were not listed on the fee table of the registration statement, a new registration statement would be required.

¹²³⁶ See new Securities Act Rule 456(c). Unlike the pay-as-you-go rules for WKSIs, we do not believe that a cure period is necessary for ABS issuers because we are requiring ABS issuers to pay the required fee at the time the preliminary prospectus is filed. The timing of the fee payment for ABS would not give rise to the same effective date and registration concerns that arise with WKSIs. See Section V.B.2.b.(D) of the Securities Offering Reform Release.

¹²³⁷ If, after the initial preliminary prospectus, an issuer files a subsequent preliminary prospectus or prospectus supplement solely to update the fee table and pay additional fees, the subsequent preliminary prospectus will not trigger a new waiting period. See discussion in Section V.B.1 New Shelf Registration Procedures related to preliminary prospectuses and related waiting periods.

will incur with our new rule, discussed earlier, requiring a separate registration statement for each form of prospectus. We also believe that our pay-as-you-go rule should produce some efficiencies in the shelf offering process by providing shelf issuers with greater payment flexibility.

F. Codification of Staff Interpretations Relating to Securities Act Registration

We proposed to codify several staff positions relating to the registration of asset-backed securities.¹²³⁸ In proposing these codifications, we sought to simplify our rules by making our staff's positions more transparent and readily available to the public.

1. Fee Requirements for Collateral Certificates or Special Units of Beneficial Interest

We proposed to amend Rule 190¹²³⁹ of the Securities Act to clarify the existing requirement that if the pool assets for the asset-backed securities are collateral certificates or special units of beneficial interest (SUBIs),¹²⁴⁰ then the offer and sale of those collateral certificates or SUBIs must be registered concurrently with the registration of the asset-backed securities. While the offer and sale of the certificates or SUBIs must be concurrently registered, we proposed to codify the staff position that no separate registration fee for the collateral

¹²³⁸ See Section VII.A. of the 2010 ABS Proposing Release.

¹²³⁹ 17 CFR 230.190. Rule 190 governs the registration requirements for the underlying securities of an asset securitization.

¹²⁴⁰ In some ABS transactions backed by auto leases, the leases and car titles are originated in the name of a separate trust to avoid the administrative expenses of re-titling the physical property underlying the leases. The separate trust, commonly referred to as the "origination trust" or "titling trust," will issue a collateral certificate, often called a "special unit of beneficial interest," to the issuing entity for the asset-backed security. The issuing entity will then issue the asset-backed securities backed by the collateral certificate or SUBI.

certificates or SUBIs is required to be paid, provided that the certificates or SUBIs meet the requirements of Rule 190(c).¹²⁴¹ Additionally, we proposed to amend Rule 457¹²⁴² of the Securities Act, governing the computation of registration fees, to reflect the staff's position that where the securities to be offered are collateral certificates or SUBIs underlying asset-backed securities which are being concurrently registered, no separate fee for the certificates or SUBIs will be payable.

Several commenters supported the proposal to codify the staff's position in Rule 190 and Rule 457 under the Securities Act.¹²⁴³ One commenter noted generally that codifying the staff's interpretations is a benefit for all market participants,¹²⁴⁴ and another commenter indicated that it concurred with the Commission's rationale.¹²⁴⁵ No commenter opposed the proposal. After considering the comments, we are adopting the amendments to Rule 190 and Rule 457 of the Securities Act as proposed.¹²⁴⁶

2. Incorporating by Reference Subsequently Filed Exchange Act Reports

¹²⁴¹ Rule 190(c) provides for the conditions in which an asset-backed issuer is not required to register a pool asset representing an interest in or the right to the payments or cash flows of another asset.

¹²⁴² 17 CFR 230.457.

¹²⁴³ See letters from BoA I, Prudential I, and SIFMA I.

¹²⁴⁴ See letter from Prudential I.

¹²⁴⁵ See letter from BoA I.

¹²⁴⁶ See 17 CFR 230.190(d) and 457(t).

a) Proposed Rule

Item 12(b) of Form S-3 requires that the registrant incorporate by reference all subsequently filed Exchange Act reports prior to the termination of the offering. In the 2004 ABS Adopting Release, we explained that Item 12(b) of Form S-3 is required for asset-backed issuers only “if applicable.”¹²⁴⁷ The staff has provided interpretive guidance to issuers as to which periodic reports and other Exchange Act reports the issuer may be required to incorporate by reference into the registration statement.¹²⁴⁸ The staff has noted that information filed with a current report on Form 8-K prior to the termination of the offering would often be required to be incorporated into the registration statement.¹²⁴⁹ In contrast, the staff has explained that Form 10-D or Form 10-K reports may not necessarily contain information that is required to be, or that the issuer desires to be, incorporated by reference into the registration statement.¹²⁵⁰

To simplify our rules, we proposed to codify the staff’s position that an issuer of asset-backed securities may modify the incorporation by reference language included in the registration statement to provide that only the current reports on Form 8-K subsequently filed by

¹²⁴⁷ See Section III.A.3 of the 2004 ABS Adopting Release.

¹²⁴⁸ See Interpretation 15.02 of the Division’s Manual of Publicly Available Interpretations on Regulation AB and Related Rules.

¹²⁴⁹ Examples of circumstances when an asset-backed issuer may be required to incorporate by reference its current reports on Form 8-K into the registration statement include filing required exhibits, such as legal and tax opinions, or to provide disclosure under Item 6.05 of Form 8-K regarding changes in the composition of the pool assets.

¹²⁵⁰ We explained in the 2010 ABS Proposing Release that because the Form 10-Ds and Form 10-Ks that are filed prior to the termination of the offering are generally for a different ABS issuer than the ABS issuer that has filed the prospectus, the Form 10-D and Form 10-K reports may not be relevant to the asset-backed offering that is the subject of the prospectus. See Section VII.B of the 2010 ABS Proposing Release.

the registrant prior to the termination of the offering shall be deemed to be incorporated by reference into the registration statement.¹²⁵¹

b) Comments on Proposed Rule

Several commenters supported the proposal, and no commenters opposed it.¹²⁵² One commenter believed that the proposed rule struck the right balance by permitting issuers to incorporate by reference only Form 8-K filings rather than requiring issuers to incorporate all subsequently filed Exchange Act reports.¹²⁵³ Some commenters indicated that the proposed rule is consistent with current practice of issuers.¹²⁵⁴

c) Final Rule and Economic Analysis of the Final Rule

After consideration of the comments, we are adopting the proposed codification of the staff's position regarding incorporation by reference of subsequently filed periodic reports in Form SF-3. Thus, under Item 10(d) of Form SF-3, the prospectus shall provide a statement regarding the incorporation by reference of Exchange Act reports prior to the termination of the offering pursuant to one of the following two ways. The registrant may state that all reports subsequently filed by the registrant pursuant to Sections 13(a), 13(c), or 15(d) of the Exchange Act prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus. In the alternative, the registrant may state that all current reports on Form 8-K

¹²⁵¹ See Section VII.B of the 2010 ABS Proposing Release.

¹²⁵² See letters from BoA I, MBA I, Prudential I, and SIFMA I.

¹²⁵³ See letter from BoA I.

¹²⁵⁴ See letters from BoA I and MBA I.

subsequently filed by the registrant pursuant to Sections 13(a), 13(c), or 15(d) of the Exchange Act prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

We believe that the codification of these staff positions will simplify our rules by making our staff's positions more transparent and readily available to the public. Because these codifications are consistent with current practice of issuers, we do not believe that they will pose a cost to either issuers or investors.

VI. Filing Requirements for Transaction Documents

A. Proposed Rule

Item 1100(f) of Regulation AB allows ABS issuers to file agreements or other documents as exhibits on Form 8-K and, in the case of offerings off a shelf registration statement, incorporate the exhibits by reference instead of filing a post-effective amendment. In the 2010 ABS Proposing Release, we noted our belief that the information in the transaction agreements and other documents provide important information on the terms of the transactions, representations and warranties about the assets, servicing terms, and many other rights that would be material to an investor. In the staff's experience with the filing of these documents, some ABS issuers have delayed filing such material agreements with the Commission until several days or even weeks after the offering of securities off a shelf registration statement. We also noted that investors have expressed concerns regarding the timeliness of information in ABS

offerings, including the timeliness of the filing of these documents.¹²⁵⁵ In light of these concerns, we proposed to revise Item 1100(f) of Regulation AB to state explicitly that the exhibits filed with respect to an ABS offering registered on Form SF-3 must be on file and made part of the registration statement at the latest by the date the final prospectus is required to be filed.¹²⁵⁶ In response to the 2010 ABS Proposing Release, some commenters recommended that the exhibits should be available for investor review prior to making an investment decision.¹²⁵⁷ Therefore, in the 2011 ABS Re-Proposing Release, we re-proposed the amendments to Item 1100(f) of Regulation AB to also require that the underlying transaction documents, in substantially final form, be filed and made part of the registration statement by the date the preliminary prospectus is required to be filed rather than by the date that the final prospectus is required to be filed.

¹²⁵⁵ See the 2010 ABS Proposing Release at 23388.

¹²⁵⁶ We permit the filing of these agreements with the Form 8-K and incorporated by reference into the registration statement in lieu of filing a post-effective amendment to the registration statement. As such, the filing requirements for these agreements, including the timing of the filing, is governed by our registration requirements, not the provisions of Form 8-K.

¹²⁵⁷ See letters from Tricadia Capital, Pacific Life Insurance Company, PPM America, Inc., Allstate Investments LLC, New York Life Investments, Guardian Life Insurance Company, AllianceBernstein L.P., Prudential Fixed Income Management, Principal Real Estate Investors, Capital Research Company, T. Rowe Price Associates, Inc., BlackRock, AEGON USA Investment Management, and State Street Corporation (collectively, "CMBS Investors") dated Feb. 25, 2011 submitted in response to the 2010 ABS Proposing Release (suggesting that the rules require that key disclosures, including the pooling and servicing agreement, be made available to investors during the marketing period so that investors have adequate time to review prior to making an investment decision), Prudential I (noting its concern with possible "last minute financial engineering" that contributes to poor understanding of the transaction), and SIFMA I (requesting for purposes of shelf eligibility that we clarify that if exhibits are timely filed in substantially final form, the fact that any such document is subsequently amended or otherwise corrected will not be viewed by the Commission as a failure to timely file the corrected document).

B. Comments Received on Proposed Rule

Comments on the re-proposed amendments to Item 1100(f) of Regulation AB were mixed with mostly investors supporting the amendments¹²⁵⁸ and issuers opposing them.¹²⁵⁹ The commenters that opposed the proposal generally believed that the preliminary prospectus provides all material information related to a particular transaction and, therefore, there is no material benefit to providing the transaction documents in substantially final form.¹²⁶⁰ The commenters also were concerned that the requirement would likely result in additional costs to issuers or consumers;¹²⁶¹ that it would pose a restriction on the parties' ability to tailor the transaction to meet investor requests;¹²⁶² revising the prospectus and the transaction documents at the same time could lead to more inconsistencies or errors;¹²⁶³ and may require the filing of

¹²⁵⁸ See letters from ASF V (expressed views of investors only), Better Markets, ICI II, MetLife II (stating that the prospectus and transaction documents in substantially final form should be provided at least five business days before the first sale in an offering), Prudential II (stating that a draft set of operative documents should be released at least five business days prior to the first sale in the offering and the executed set of operative documents should be released with the final prospectus filing at least three business days prior to closing), and SIFMA II-investors.

¹²⁵⁹ See letters from ABA II, AFME, ASF V (expressed views of dealers and sponsors only), Kutak, SIFMA III-dealers and sponsors, Sallie Mae II, VABSS III, and Wells Fargo II.

¹²⁶⁰ See, e.g., letters from ABA II, Sallie Mae II (suggesting the transaction documents should be filed no earlier than the time the final prospectus is filed), SIFMA III-dealers and sponsors, VABSS III, and Wells Fargo II. See also letter from AFME (supporting SIFMA's (dealer and sponsor members) position and stating that any filing requirements adopted by the Commission should be consistent with the requirements already in place in the European Union and its member states, such as posting the relevant closing documents on an issuer Web site).

¹²⁶¹ See letters from Sallie Mae II (focusing on increased costs to the issuer without any explanation or quantification), VABSS III (focusing on costs to the issuer without any explanation or quantification), and Wells Fargo II.

¹²⁶² See letters from AFME and SIFMA III-dealers and sponsors.

¹²⁶³ See letter from ABA II (stating that the proposed amendments to Item 1100(f) will impose unnecessary costs and timing constraints on the issuer and introduce "inefficiencies into the offering process," but if the Commission requires "current documentation" before pricing, the ABA believes that to the extent that deal-

the same documents three times.¹²⁶⁴ Some commenters also believed that for certain transactions the documents cannot be given in the proposed time frame.¹²⁶⁵ Similarly, another commenter contended that the requirement compels issuers to “finalize transaction agreements” by the time of the preliminary prospectus filing, which will inevitably delay issuers’ access to the market and thereby potentially expose both issuers and investors to market movements that may be adverse to one or the other.¹²⁶⁶

On the other hand, some investors believed that the transaction documents should be provided in substantially final form at least five business days before the first sale in an offering,¹²⁶⁷ and one of these investors believed that an executed set of operative documents should be released with the filing of the final prospectus (at least three business days prior to

specific terms create significant changes to or clarifications of the forms filed with the registration statement, then the updated documents should be made available to investors one business day before they are asked to make an investment decision).

¹²⁶⁴ See letter from ASF V (stating that a filing may be necessary, at the time the preliminary prospectus is filed, again at the time the final prospectus is filed, in the event a change (other than a “minor” change) to the agreement occurs, and at or after the time those transaction agreements are executed because “regulations appear to provide that an exhibit to a registration statement filed without signatures would be considered an incomplete exhibit and, therefore, could not be incorporated by reference in any subsequent filing under any Act administered by the Commission”).

¹²⁶⁵ See letters from ABA II (stating swap agreements are generally negotiated after the transaction has been priced to reflect pricing terms and market conditions on the date of entry and that some of the technical real estate mortgage investment conduit (“REMIC”) provisions that must be added into RMBS and CMBS documentation cannot be provided within the proposed time frame (but also have little relevance for investors, so long as they are properly drafted) and Kutak (suggesting the documents are constantly being revised, although in most cases, not materially, until the final prospectus is filed).

¹²⁶⁶ See letter from ASF V (without clarification as to why this requirement may delay pricing and the formation of contracts).

¹²⁶⁷ See letters from ASF V (expressed views of investors only), MetLife II, Prudential II, and SIFMA II-investors.

closing).¹²⁶⁸ One investor stated that access to these documents was necessary in order to conduct appropriate due diligence on transactions,¹²⁶⁹ and a group of investors also stated that the underlying transaction documents are material to their investment decision and should be available in substantially final form at the time the preliminary prospectus is filed.¹²⁷⁰ Another group of investors supported the proposal and stated that “[t]he complexity of those transactions does not lend itself to abbreviated disclosure.”¹²⁷¹ Another commenter noted that “access to the underlying transaction documents is also essential for the benefit of investors.”¹²⁷²

In the 2011 ABS Re-Proposing Release, we also requested comment on whether we should require issuers to file as an exhibit a copy of the representations, warranties, remedies, and exceptions marked to show how it compares to industry-developed model provisions. The comments that we received on our request for comment as to filing exhibits marked to industry-developed models were mixed with investors supporting the proposal¹²⁷³ and mostly issuers opposing it.¹²⁷⁴

¹²⁶⁸ See letter from Prudential II.

¹²⁶⁹ See letter from MetLife II (stating that in order to conduct due diligence, investors need access to the following documents: the pooling and servicing agreement and a blackline against the original pooling and servicing agreement contained in the shelf; the representations, warranties, and exceptions and a blackline against industry model representations and warranties (e.g., CMBS or other sectors that adopt these); or a blackline against original representations and warranties contained in the shelf; and the indenture (along with any blacklines thereto)).

¹²⁷⁰ See letter from ASF V (expressed views of investors only).

¹²⁷¹ See letter from SIFMA II-investors.

¹²⁷² See letter from Better Markets.

¹²⁷³ See letters from ASF V (expressed views of investors only), MetLife II (recommending that a copy of the current pooling and servicing agreement be marked against the original pooling and servicing agreement in the registration statement), and Prudential II (recommending that we should require certain marked copies of current filings against prior filings to assist investors in identifying structural changes and suggesting

C. Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting the requirement, as proposed in the 2010 ABS Proposing Release, to clarify existing exhibit filing requirements by making explicit that the exhibits filed with respect to an ABS offering, registered on new Form SF-3, must be on file and made part of the registration statement at the latest by the date the final prospectus is filed. We believe that this revision should address the problem that we noted above about some issuers delaying their filing of the transaction agreements with the Commission until several days and, in some cases, even weeks after a shelf offering of the securities. We also note that ABS shelf offerings were designed to mirror non-shelf offerings in terms of filing the exhibits and final prospectuses. Because all exhibits to Form SF-1 must be filed by the time of effectiveness, we believe that all transaction agreements for shelf offerings filed as exhibits should be filed and made part of the shelf registration statement by the time of the final prospectus.

We are not adopting at this time, however, the part of the proposal to require the transaction documents be filed, in substantially final form, and made part of the registration statement by the date the preliminary prospectus is required to be filed. We continue to consider

that the release of operative documents and blacklined documents should begin within 30 days after adoption of the new rules because this information is critical to an investor's understanding of a securitization).

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See letters from Better Markets, CREFC II (noting that the representations and warranties will be in the "substantially final mortgage loan purchase agreement" filed with the Rule 424(h) filing), MBA II (with respect to CMBS), and SIFMA III-dealers and sponsors (noting its support of industry efforts to develop model provisions but emphasizing that such models do not currently exist for most asset classes and that identifying trade associations to be tasked with generating model provisions and doing so in a fair and open manner would be an enormous challenge while resulting in minimal additional investor protection).

the balance between investors' interest in having access to the transaction documents earlier and the costs and difficulties with requiring issuers to provide the transaction documents in substantially final form by the time of the preliminary prospectus. Also, in light of the new disclosure requirements that must be provided at the time of the preliminary prospectus, as well as the certification by the issuer that the prospectus must fairly present information about the transaction, including the structure of the transaction, we believe further consideration is warranted. Therefore, the proposal to require the transaction documents be filed, in substantially final form, and made part of the registration statement by the date of the preliminary prospectus is required to be filed remains outstanding and unchanged.

In light of the comments received, we are also not adopting any requirements that investors be provided with blacklines of how the issuer's representations and warranties compare against the industry-developed model provisions or blacklines of how the transaction documents compare to the transaction documents from prior transactions or from prior versions of the transaction documents filed for the current transaction. While we believe that these types of marked documents could be an important tool for the identification of discrete or material changes between original and revised documents, we acknowledge commenters' concerns that there is no consistent industry standard at this time nor a clear identity of what other agreements to use as a comparison. We also believe, at this time, that most investors should have the capacity to produce documents marked to show differences from prior documents.

VII. Definition of Asset-Backed Security

A. Proposed Rule

As part of our effort to provide more timely and detailed disclosure regarding the pool assets to investors, we proposed revisions to the Regulation AB definition of an asset-backed security.¹²⁷⁵ A security must meet the definition of an “asset-backed security” under Regulation AB in order to utilize the disclosure requirements of Regulation AB and be eligible for shelf registration as an asset-backed security.¹²⁷⁶ As noted in previous releases, a core principle of the Regulation AB definition of an asset-backed security is that the security is backed by a discrete pool of assets that by their terms convert into cash, with a general absence of active pool management. However, in response to commenters and previous staff interpretation, in 2004, we adopted certain exceptions to the “discrete pool” requirement in the definition of asset-backed security to accommodate master trusts, prefunding periods, and revolving periods.¹²⁷⁷

In the 2010 ABS Proposing Release, we proposed to amend the “discrete pool of assets” exceptions to the current definition of “asset-backed security” by amending:

- (i) the master trust exception to exclude securities that are backed by assets that arise in non-revolving accounts;
- (ii) the revolving period exception to reduce the permissible duration of the revolving period for securities backed by non-revolving assets from three years to one year; and

¹²⁷⁵ See Item 1101(c) of Regulation AB.

¹²⁷⁶ See Item 1100 of Regulation AB.

¹²⁷⁷ See Item 1101(c)(3) of Regulation AB.

- (iii) the prefunding exception to decrease the prefunding limit from 50% to 10% of the offering proceeds or, in the case of master trusts, from 50% to 10% of the principal balance of the total asset pool.¹²⁷⁸

We were concerned that pools that are not sufficiently developed at the time of an offering to fit within the ABS disclosure regime may, nonetheless, qualify for ABS treatment, which may result in investors not receiving appropriate information about the securities being offered.¹²⁷⁹ Consequently, we proposed amendments to these exceptions in order to restrict deviations from the “discrete pool of assets” requirement.

B. Comments on Proposed Rule

While some commenters provided specific comments, several commenters provided general comments on the proposal to change the definition of asset-backed security. One commenter noted that the changes to the definition would not prohibit public issuances of ABS with larger prefunding accounts and revolving periods, and noted that such offerings would be governed by the more extensive disclosure requirements of Form S-1.¹²⁸⁰ Another commenter requested that the definition of asset-backed security be sufficiently narrow to restrict access to only those securities where sufficient and robust disclosure, including collateral pool disclosure, can be provided during the initial offering process and at the same time, the definition should be

¹²⁷⁸ See the 2010 ABS Proposing Release at 23389.

¹²⁷⁹ Id.

¹²⁸⁰ See letter from ELFA I.

calibrated to permit a reasonable degree of flexibility to accommodate innovation and new product development.¹²⁸¹

1. The Master Trust Exception

One commenter supported the proposal to exclude securities that are backed by assets that arise in non-revolving accounts.¹²⁸² This commenter noted that master trust structures are appropriate for sponsors with recurring variable collateral funding needs (e.g., credit cards, fleet leases, floor plans, and rental cars) and that any asset type that follows a traditional amortization schedule or without the ability to redraw on the loan generally should not be included in a publicly issued master trust structure.¹²⁸³

However, other commenters opposed the proposal to limit the exception to master trusts backed by revolving accounts.¹²⁸⁴ Several commenters believed that distinguishing securities backed by revolving versus non-revolving assets is unwarranted. One commenter noted that it did not believe there is any credit, disclosure, or other investor protection reason to support the change.¹²⁸⁵ The issuer and investor members of another commenter agreed that, in applying the master trust exception, efforts to distinguish securities backed by revolving versus non-revolving

¹²⁸¹ See letter from FSR.

¹²⁸² See letter from Prudential I.

¹²⁸³ See letter from Prudential I.

¹²⁸⁴ See letters from AFME/ESF, ASF I, BoA I, and IPFS I.

¹²⁸⁵ See letter from IPFS I.

assets will impose artificial limits on which asset classes may use the master trust structure, thereby eliminating an investment option that both issuers and investors desire.¹²⁸⁶

Some commenters noted that the master trust structure is commonly used to securitize mortgages in the United Kingdom and that the proposed rule would result in those mortgage master trusts no longer being eligible for shelf registration.¹²⁸⁷ One commenter noted that European market participants expressed concern that since the proposed change would reduce the ability of mortgage master trust issuers to place their bonds in the U.S. market, it would effectively reduce the efficiency of issuances for existing master trusts, which would adversely impact the overall efficiency of the asset-backed market.¹²⁸⁸

2. The Revolving Period Exception

Although an investor commenter supported the proposal relating to reducing the revolving period for non-revolving assets (e.g., auto loans and equipment loans), the commenter acknowledged that concerns about lack of information about new collateral additions to the pool would be mitigated if the issuer would be required to file loan-level information at issuance and each month that new assets are added to the collateral pool.¹²⁸⁹ This commenter also noted that

¹²⁸⁶ See letter from ASF I.

¹²⁸⁷ See letters from AFME/ESF (noting that it would still be possible for such transactions to be registered in the U.S. using a new registration statement for each offering) and BoA I (noting that while the domestic RMBS market does not currently utilize a master trust structure, given the current mortgage finance market, we should allow for the possibility that a master trust structure could develop).

¹²⁸⁸ See letter from AFME/ESF.

¹²⁸⁹ See letter from Prudential I.

this transparency will allow investors to evaluate the changing nature of the risk layering introduced by the new assets.

Several commenters opposed the proposal.¹²⁹⁰ One commenter noted that investors have a significant interest in purchasing ABS supported by non-revolving assets with longer maturities than are possible without the use of revolving periods and reducing the revolving period to one year would effectively eliminate the ability of issuers to satisfy such investor demand.¹²⁹¹ One commenter stated that the primary effect of not being able to register these offerings on Form SF-3 would be to increase the timing and cost burdens placed on issuers.¹²⁹² Another commenter stated that the proposed one-year period for revolving periods should not apply to certain loans that are homogenous in nature.¹²⁹³ It explained, for example, that since all loans issued under a federal student loan program such as the Federal Family Education Loan Program ("FFELP")¹²⁹⁴ have the same credit risk, investors need not be concerned that the addition of future FFELP loans would adversely impact the credit quality of the asset pool.¹²⁹⁵

¹²⁹⁰ See letters from ASF I, Sallie Mae I, and VABSS I.

¹²⁹¹ See letter from ASF I (also noting that the current three-year limitation on the use of revolving periods for non-revolving assets already limits the ability to issue publicly-registered ABS matching investor preferences).

¹²⁹² See letter from VABSS I.

¹²⁹³ See letter from Sallie Mae I (also proposing, in the alternative, a three-year revolving period limitation for homogenous assets, such as FFELP loans, and a one-year revolving period limitation for other assets).

¹²⁹⁴ See letter from Sallie Mae I (noting that FFELP loans are generally based on need, instead of credit quality of the underlying obligor).

¹²⁹⁵ See letter from Sallie Mae I (also noting that revolving periods allow issuers to efficiently manage their funding needs without having to issue additional bonds).

3. The Prefunding Exception

Certain investor members of one commenter were supportive of the proposal to decrease the prefunding limitation.¹²⁹⁶ Several commenters did not support the proposal to decrease the prefunding limitation and believed that the prefunding amount should remain at 50% of the offering proceeds.¹²⁹⁷ One commenter noted that by utilizing securitizations rather than more expensive warehouse credit facilities or other financing alternatives, it is able to pass along cost savings to consumers via low interest rates and that reducing the limit to 10% would reduce flexibility and cost efficiencies when executing a securitization.¹²⁹⁸

Issuer members of one commenter noted that the greater the limits on prefunding, the more expensive the carrying costs for originators and, potentially, the higher the borrowing rates for consumers and small businesses.¹²⁹⁹ This commenter suggested that the prefunding limit instead be based on the duration of the prefunding period,¹³⁰⁰ or the prefunding limit should decrease from 50% to 25% (but retain a prefunding period of up to one year), which would make the standard consistent with the prefunding standards under the Employee Retirement Income

¹²⁹⁶ See letter from ASF I.

¹²⁹⁷ See letters from AmeriCredit, IPFS I, and VABSS I.

¹²⁹⁸ See letter from AmeriCredit (also suggesting that disclosures involving prefunding structures be required to include certain representations and warranties that there has been no material variation in the overall composition of the characteristics (such as underwriting, origination, or pool selection criteria) of the initial loans and the pool of loans as whole after giving effect to the transfer of the subsequent loans).

¹²⁹⁹ See letter from ASF I.

¹³⁰⁰ See letter from ASF I (suggesting, for example, permitting prefunding not in excess of 10% where a prefunding period may last up to one year, prefunding not in excess of 25% where a prefunding period may last up to nine months, and prefunding not in excess of 50% where a prefunding period may last up to six months).

Security Act of 1974 ("ERISA").¹³⁰¹ Several other commenters also suggested that a 25% prefunding ceiling would be more appropriate for the same reason.¹³⁰² Another commenter suggested reducing the limit to 20%, while imposing a 10% limit in the case of shelf offerings on Form SF-3 because it would be more consistent with market practice and more restrictive than the limitation on prefunding that is applicable to ABS that are eligible for sale under ERISA.¹³⁰³

Lastly, one student loan issuer believed that the proposed 10% limitation on prefunding should not apply to FFELP loans (or other asset types) that are homogenous in nature.¹³⁰⁴

C. Final Rule and Economic Analysis of the Final Rule

We are adopting the prefunding limitation in the definition of asset-backed security, as proposed, with some modification. The new rule decreases the prefunding limit from 50% to 25% (instead of 10%, as proposed) of offering proceeds or, in the case of master trusts, the principal balance of the total asset pool. The new rule is based on suggestions from several commenters that 25% would be an appropriate restriction, in part, because it is consistent with prefunding standards under ERISA.

¹³⁰¹ Pub. L. No. 93-406, 88 Stat. 829 (1974). ERISA is a federal law that sets uniform minimum standards to ensure that employee benefit plans are established and maintained in a fair and financially sound manner. In addition, employers have an obligation to provide promised benefits and satisfy ERISA's requirements for managing and administering private retirement and welfare plans.

¹³⁰² See letters from BoA I and Sallie Mae I.

¹³⁰³ See letter from SIFMA I (also noting that the Commission staff would have the opportunity to review and comment on the disclosure for an offering on Form SF-1 where the 20% limit would be applicable and reiterating that a 10% limit on prefunding is appropriate in a shelf offering).

¹³⁰⁴ See letter from Sallie Mae I.

We believe that this reduction will result in the asset pool being more developed at the time of the offering, which will provide investors with more appropriate information about the securities being offered. We recognize, however, that the rule could impose higher carrying costs on originators and, in turn, potentially higher borrowing rates for consumers and small businesses. We believe that our final rule balances the need to provide investors with more appropriate information and these cost concerns by raising the prefunding period limit from the proposed 10% to 25% of the offering proceeds (or principal balance of the total assets for master trusts).

We are not adopting the revision to the master trust exception to exclude securities that are backed by assets that arise in non-revolving accounts because we are persuaded by commenters' concerns that it would eliminate the use of shelf for certain master trusts. The cost of not adopting this revision today is the possibility that more ABS issuers of non-revolving assets will utilize master trust structures, which will result in investors lacking access to information about all pool assets before making an investment decision. This concern is mitigated, to some extent, by the adoption of initial and ongoing asset-level disclosure requirements for some asset classes.

We are also not adopting the proposal to revise the revolving period exception that would reduce the permissible duration of the revolving period for securities backed by non-revolving assets from three years to one year due to comments received. An investor commenter noted, for example, that receiving updated asset-level information about the pool's assets on an ongoing

basis would mitigate concerns regarding the duration of the revolving period.¹³⁰⁵ We also recognize, as noted by another commenter, that shortening the revolving period for securities backed by non-revolving assets could preclude certain issuers, such as auto and equipment issuers, from issuing securities with longer maturities than the underlying loans.¹³⁰⁶

VIII. Exchange Act Reporting

A. Distribution Reports on Form 10-D

1. Delinquency Presentation

a) Proposed Rule

In the 2004 ABS Adopting Release, we stated that delinquency disclosures required in the Form 10-D under Item 1121(a)(9) were based on materiality¹³⁰⁷ and not on Item 1100(b) of Regulation AB, which requires presentation of delinquency data to be provided in 30- or 31-day increments, as applicable, beginning at least with assets that are 30 or 31 days delinquent, as applicable, through the point that assets are written off or charged off as uncollectable.

However, in registration statements, delinquency disclosures are to be presented pursuant to Item 1100(b). Consistent with our efforts to standardize the disclosure across all ABS, we proposed to add a new instruction to Item 1121(a)(9) to require that pool-level delinquency disclosure in periodic reports be provided in accordance with Item 1100(b) of Regulation AB.

¹³⁰⁵ See letter from Prudential I.

¹³⁰⁶ See letter from ASF I.

¹³⁰⁷ See footnote 477 of the 2004 ABS Adopting Release.

b) Comments on Proposed Rule

We received several comment letters that provided differing views on the proposal. One commenter stated that it would not object to the proposal because it would “provide clarity and consistency in reporting.”¹³⁰⁸ This commenter also indicated that disclosure provided in the CREFC’s IRP contains delinquency information in this format.¹³⁰⁹ On the other hand, several commenters expressed concern about applying the requirements of Item 1100(b) to ongoing reporting in that it applies a “one-size-fits-all approach across different asset classes.”¹³¹⁰ They believed that for various asset classes the presentation of delinquency information would be provided for “considerably longer periods of time, or in more granular increments, than would be required under general principles of materiality” and in ways that differ from the current disclosure practices across different asset classes.¹³¹¹ The commenter believed that issuers and servicers should not be required to incur the additional time and cost to track and present delinquency information in additional prescribed increments as required under Item 1100(b).¹³¹²

¹³⁰⁸ See letter from MBA I.

¹³⁰⁹ See letter from MBA I. For more information about the CREFC IRP, see footnote 104.

¹³¹⁰ See letters from ASF I and VABSS I.

¹³¹¹ See letter from ASF I (noting that standard practice in the mortgage industry has been to present delinquency information in Form 10-D reports and in static pool information in 30- or 31-day increments through the point that loans are 179 or 180 days delinquent, followed by an additional 180-day increment and a final increment of 359 or 360 days or more, and for ABS supported, directly or indirectly, by motor vehicles, equipment and other similar physical assets that have finite lives over which their value depreciates, delinquency information is presented in 30- or 31-day increments through the point that loans are 119 or 120 days delinquent, followed by a final increment of 119 or 120 days or more).

¹³¹² Even though we did not propose any changes to Item 1100(b)(1), ASF I requested we make revisions to Item 1100(b)(1) that they believed would provide for consistent presentation of delinquency information across issuers within the same asset class, while recognizing that “some variation across asset classes is meaningful and appropriate.” See letter from ASF I (Exhibit L).

c) Final Rule and Economic Analysis of the Final Rule

We are adopting a revised requirement in light of comments received. The final instruction to Item 1121(a)(9) requires delinquency disclosures included in the Form 10-D to be presented in accordance with Item 1100(b) with respect to presenting delinquencies in 30- or 31-day increments. In response to commenters' concerns that requiring such granular presentation through charge-off is too long a time period, we have modified the proposed instruction to require such presentation through no less than 120 days. We believe that this revised time period helps to address commenters' concerns about the cost and burden of having to track and report this information in a more granular manner for a longer period of time while still providing investors with a more comprehensive picture of delinquencies and losses in a uniform manner across asset classes. We also note that the revised time period is consistent with the new asset-level data requirement for presentation of delinquencies and losses in RMBS.¹³¹³ While investors will not receive as granular a presentation as proposed (through charge-off), investors investing in asset classes required to provide asset-level disclosures will be receiving more detailed information about the payment status of each individual asset, such as the paid through date.¹³¹⁴ We recognize that to the extent that issuers will now be required to present delinquencies and losses for a longer period of time than previously provided in the distribution

¹³¹³ See new Item 1(g)(33) of Schedule AL.

¹³¹⁴ See new Item 1(g)(28) of Schedule AL. See Section III.A.2.b Asset Specific Disclosure Requirements and Economic Analysis of These Requirements. Due to the transition period for implementing the loan-level requirements, there will be a period of time during which investors will not have access to this more granular data about assets in prior securitized pools. See Section IX.B Transition Period for Asset-Level Disclosure Requirements.

reports, such issuers will incur some costs. We believe, however, the benefits gained from standardized and comparable delinquency and loss disclosure justify the costs issuers may incur to provide the information.

2. Identifying Information and Cross-References to Previously Reported Information

In the 2010 ABS Proposing Release, we proposed several revisions to Exchange Act Form 10-D or to the requirements governing the disclosures to be provided with the Form 10-D.¹³¹⁵ We proposed to revise General Instruction C.3. of Form 10-D to provide that if information required by an item has been previously reported,¹³¹⁶ the Form 10-D does not need to repeat the information. Because information that is previously reported may relate to a different issuer from the issuer to which the report relates, such information may be difficult to locate. As a result, we also proposed to amend Form 10-D to require disclosure of a reference to the CIK number, file number, and date of the previously reported information. Additionally, we proposed to revise the cover page of the Form 10-D to include the name and phone number of the person to contact in connection with the filing because we believed this would assist the staff in its review of asset-backed filings.¹³¹⁷ We did not receive any comments regarding these proposed revisions to Form 10-D. We believe the costs of these requirements to be very limited and offset by the benefit to investors and staff in easily and quickly locating the previously

¹³¹⁵ See the 2010 ABS Proposing Release at 23390.

¹³¹⁶ The term “previously reported” is defined in Exchange Act Rule 12b-2 [17 CFR 240.12b-2].

¹³¹⁷ Issuers are also encouraged to provide the name and phone number of the outside attorney or other contact in accompanying correspondence to their reports on Form 10-D.

reported information. Because of that and since we did not receive any comments opposing these proposed revisions to Form 10-D, we are adopting them as proposed.

3. Changes in Sponsor's Interest in the Securities

a) Proposed Rule

To assist investors in monitoring the sponsor's interest in the securities, we proposed to add a new item to Form 8-K to require the filing of a Form 8-K for any material change in the sponsor's interest in the securities. Under the proposal, the report on Form 8-K would be required to include disclosure of the amount of change in interest and a description of the sponsor's resulting interest in the transaction.

b) Comments on Proposed Rule

We received a mixed response to the proposal with some commenters supporting the proposal¹³¹⁸ and other commenters opposing the disclosure and suggesting that the disclosures were not material.¹³¹⁹ In support of the proposal, the investor members of a trade association believed that if the sponsor retains exposure to the risks of the assets, the sponsor will likely have greater incentives to include higher quality assets and ongoing monitoring of this exposure helps to align the interests of the sponsor and investors.¹³²⁰ They also believed that the sponsor is akin

¹³¹⁸ See letters from ASF I (expressed views of investors only), Prudential I, and Sallie Mae I.

¹³¹⁹ See letters from ASF I (expressed views of dealer and sponsors only) (stating that the information has not been shown to be material), BoA I, MBA I (questioning the materiality of the disclosure and suggesting that all the disclosure would provide was that the sponsor was at some level above the minimum required level), and SIFMA I.

¹³²⁰ See letter from ASF I (expressed views of investors only) (suggesting that because our shelf eligibility requirements proposed in 2010 to require disclosure that the sponsor or an affiliate of the sponsor retained a

to an “insider” and its decision to hold or sell its retained interest may be triggered based upon a negative or positive view of the securitization. Another investor stated that the sponsor and its affiliates should regularly report their current risk retention related holdings by each tranche of a securitization, because any change in risk retention holdings is material.¹³²¹ Another commenter, an issuer of student loan ABS, generally supported the proposal, but requested an instruction be added to clarify that transfers by the sponsor to its affiliates or subsidiaries would not trigger a filing obligation under Item 6.09 because transfers within a corporate family are not material changes that should require a Form 8-K filing.¹³²²

Some commenters who opposed the proposal suggested it was too broad and should be limited to the monitoring of a sponsor’s retention of risk that is required as a condition of shelf eligibility, law, or regulation.¹³²³ Another commenter also opposed the proposal because it did not see a benefit to the disclosure, the compliance costs would be substantial, and the issuer would need information from parties that it does not control.¹³²⁴ In addition, the issuer members of a trade association also disagreed with the investor members who suggested, as discussed above, that a sponsor’s decision to hold or sell any portion of its interest in the securities may

net economic interest in each securitization that this requirement should be extended to affiliates of the sponsor).

¹³²¹ See letter from Prudential I.

¹³²² See letter from Sallie Mae I.

¹³²³ See letters from BoA I and SIFMA I.

¹³²⁴ See letter from MBA I.

serve as an indicator of the future prospects for the securitization¹³²⁵ and that the requirement should extend to changes in the interest of affiliates of the sponsors.¹³²⁶ The issuer members also stated that privacy concerns could arise with disclosing this type of information, although no further detail was provided.¹³²⁷

We also received several comments seeking revisions to the proposal. For instance, some commenters suggested that, if we adopt the rule, it should not include the reporting of changes that arise as a result of organic changes in the sponsor's interest in securities, such as pool assets converting into cash in accordance with their terms or, in the case of revolving pool assets, fluctuating account balances based on credit line usage or those arising as a result of payments made on other securities issued by the issuing entity.¹³²⁸ One of these commenters also suggested that we make clear that no reporting requirement arises as a result of the "sponsor's pledge of the securities in the ordinary course of business for on balance sheet funding purposes."¹³²⁹ Finally, some commenters suggested that the disclosure be provided in the Form

¹³²⁵ See letter from ASF I (expressed views of dealers and sponsors only) (stating in many deals, the sponsor is not an affiliate of the servicer and may not even be an affiliate of the depositor and, in any event, a sponsor's affiliation with an issuer or servicer does not involve the same level of relationship as the relationship of an officer, director, or other control person to a corporation).

¹³²⁶ See letter from ASF I (expressed views of dealers and sponsors only) (suggesting that this new requirement would entail an extraordinarily difficult monitoring process and that the sponsor may never be able to administer with reliable results).

¹³²⁷ See letter from ASF I (expressed views of dealers and sponsors only).

¹³²⁸ See letters from ABA I, ASF I (expressed views of dealers and sponsors only), and Discover.

¹³²⁹ See letter from ASF I (expressed views of dealers and sponsors only).

10-D rather than in the Form 8-K.¹³³⁰ One of these commenters believed that this approach would permit issuers to avoid constant monitoring of changes in retained interest and repeated filing of Forms 8-K, while keeping investors informed of the sponsor's retained interest amount.¹³³¹

c) Final Rule and Economic Analysis of the Final Rule

We are adopting the proposed requirement that disclosure be provided regarding material changes in a sponsor's interest in the ABS transaction with some modification. Instead of providing a description in a Form 8-K as proposed, we are requiring that if there has been a material change in the sponsor's interest during the period covered by the Form 10-D, then a description of the material change must be provided in the Form 10-D for that reporting period. We agree with the commenters that suggested this approach because it would permit issuers to avoid monitoring of changes in retained interest to meet the current reporting requirements of Form 8-K, thus minimizing costs.¹³³² At the same time, investors will continue to benefit from being kept informed of the sponsor's retained interest amount. Further, we are also clarifying

¹³³⁰ See letters from ASF I (expressed views of dealers and sponsors only) (requesting that, in cases where the sponsor is not an affiliate of the ABS issuer, the Commission except Item 6.09 Form 8-K reports from the Exchange Act filing requirements for Form SF-3 eligibility purposes. The dealer and sponsor members stated that unlike other cases where the content or completeness of an Exchange Act report is dependent on the timely receipt of reports or other information from unaffiliated third parties, an ABS issuer would have no way of even knowing whether and when a change in a sponsor's interest in the securities had occurred and, therefore, it would be inappropriate and unfair for a registrant to lose its eligibility to use Form SF-3) and Discover.

¹³³¹ See letter from Discover.

¹³³² See letters from ASF I (expressed views of dealers and sponsors only) and Discover. The obligation to file a report on Form 8-K is triggered by the occurrence of a reportable event described in Form 8-K, which typically must be filed within four business days of the event.

that disclosure of any material change in the sponsor's retained interest includes any interest held by an affiliate of the sponsor in order to be consistent with the disclosure required in the prospectus and to allow investors to monitor changes in the interest held. The rule requires disclosure of a material change in the sponsor's retained interest in the ABS transaction due to the purchase, sale or other acquisition or disposition of the securities by the sponsor or an affiliate.¹³³³ While we note that the credit risk retention rules under Section 15G of the Exchange Act have not yet been adopted,¹³³⁴ under the rules we are adopting, if there is a material change (such as a transfer) in any interest or assets that are required to be retained in compliance with law, disclosure of such change would be required. In order to clarify the interplay of the disclosure requirement with risk retention requirements, we have included an instruction specifying that the disclosure about the resulting amount and nature of any interest or asset retained in compliance with law must be separately stated. Finally, we understand that the sponsor may not be a party that is controlled by the issuer. We believe, however, that contracts that relate to the transfer of the assets to the trust can include an ongoing duty for the sponsor to provide the information required for this disclosure. Furthermore, we believe that by requiring changes in the sponsor's interest to be disclosed periodically on the Form 10-D, instead of on a Form 8-K, lessens the burden of obtaining this information from parties that the issuer may not control.

¹³³³ Activities like pledging would not be required. See letter from ASF I (expressed views of issuers only).

¹³³⁴ See the 2013 Risk Retention Re-Proposing Release.

B. Annual Report on Form 10-K

1. Servicer's Assessment of Compliance with Servicing Criteria

a) Proposed Rule

The Form 10-K report of an asset-backed issuer is required to contain, among other things, an assessment of compliance with servicing criteria that is set forth in Item 1122 of Regulation AB by each party participating in the servicing function.¹³³⁵ The body of the Form 10-K report must also contain disclosure regarding material instances of noncompliance with servicing criteria. Our rules require an asset-backed issuer to provide an assessment of compliance with respect to all asset-backed securities transactions involving the asserting party that are backed by assets of the type backing the asset-backed securities.¹³³⁶ In order to provide enhanced information regarding instances of noncompliance with servicing criteria with respect to the offering to which the annual report relates, including information on steps taken to address noncompliance, we proposed to expand the disclosure requirements to require in the body of the annual report disclosure as to whether the instance of noncompliance identified under Item 1122 involved the servicing of the assets backing the asset-backed securities covered in the particular

¹³³⁵ Exchange Act Rules 13a-18(b) and 15d-18(b) [17 CFR 240.13a-18(b) and 17 CFR 240.15d-18(b)] and Item 1122 of Regulation AB. Item 1122 of Regulation AB defines "a party participating in the servicing function" as any entity (e.g., master servicer, primary servicers, trustees) that is performing activities that address the criteria set forth in paragraph (d) of Item 1122, unless such entity's activities relate only to 5% or less of the pool assets. See Instruction 2 to Item 1122. For purposes of this discussion, we refer to the party that is required to provide a servicer's assessment as the "servicer."

¹³³⁶ Issuers should provide descriptions of each servicing party's role in the transaction, particularly if multiple servicing parties have overlapping responsibilities, by describing in the Form 10-K the responsibilities assigned to each party and the servicing criteria applicable to such party under Item 1122(d) of Regulation AB.

Form 10-K report.¹³³⁷ As part of its assessment of compliance, the asserting party typically conducts a sampling of the transactions for which it is responsible for the Item 1122 criteria in order to determine whether there is a material instance of noncompliance in their servicing. The proposed rule would require that if the examination of the sample found a material instance of noncompliance and that material instance of noncompliance involved the servicing of assets of a particular ABS, then the annual report covering that particular ABS would include disclosure indicating that the material instance of noncompliance involved the servicing of the assets underlying the ABS. We also proposed to require that the body of the annual report discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities made on a platform level.¹³³⁸

b) Comments on Proposed Rule

One commenter supported the proposed requirement that the body of the annual report indicate whether an instance of noncompliance identified under Item 1122 involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10-K report,¹³³⁹ while several commenters opposed the proposal.¹³⁴⁰

¹³³⁷ See the 2010 ABS Proposing Release at 23391. While some information about instances of noncompliance may also be required by Item 1123 of Regulation AB, because of the differences in the definition of servicer between Item 1122 and Item 1123, we believed that Item 1123 does not cover the same information that our proposed revision to Item 1122 would cover.

¹³³⁸ This proposed disclosure would be required whether or not the instance of noncompliance involved the servicing of assets backing the securities covered in the particular Form 10-K.

¹³³⁹ See letter from ABA I.

¹³⁴⁰ See letters from ASF I, CREFC I, and KPMG (stating the proposed requirement would require an issuer to identify each transaction that involved the instance of noncompliance identified in the Item 1122 assessment and attestation and then report in the annual report of each transaction that had that instance of

The commenter, who supported the proposed requirement, noted that such information is, in fact, already being reported in annual reports on Form 10-K.¹³⁴¹ However, the commenter requested that we clarify that the “lack of such disclosure could not be interpreted as confirmation that the transaction had not been affected.” On the other hand, a commenter who opposed the requirement stated that it is not possible “for the servicer (much less an ABS issuer) to identify each transaction impacted by the instance of noncompliance” and “it would be ‘inappropriate and arbitrary’ to require an ABS issuer to identify only those transactions within the test sample that were impacted by the instance of noncompliance.”¹³⁴² This commenter believed that if an ABS issuer were required to disclose whether a reported instance of noncompliance involved assets backing the ABS covered in a particular 10-K report, then investors may draw the incorrect conclusion that in the absence of such disclosure, the reported instance of noncompliance did not involve the servicing of assets backing its ABS.¹³⁴³

One commenter supported requiring the disclosure of any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for the

noncompliance, which may offset the efficiencies gained by allowing management to provide a platform-level assessment).

¹³⁴¹ See letter from ABA I.

¹³⁴² See letter from ASF I.

¹³⁴³ See letters from ASF I (noting “because the platform level report is based on only a sampling of transactions, a reported instance of noncompliance does not purport to, nor by its nature could it, identify all transactions where noncompliance may have occurred”), CREFC I, and KPMG.

activities made on a platform level.¹³⁴⁴ This commenter recommended, however, that instead of requiring the disclosure in the body of the annual report that the disclosure be included as part of the servicer's management assessment of compliance. The commenter explained that in certain circumstances the management responsible for the noncompliance (e.g., servicer management) is not the same as management responsible for filing the Form 10-K (e.g., issuer). The commenter also requested that we clarify that the remediation activity described in the servicer's management assessment is not covered by the auditor's servicing compliance report because the remediation activities are undertaken subsequent to the date of the auditor's report. Another commenter generally requested that we not adopt any of the proposed revisions to Item 1122.¹³⁴⁵

c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting a requirement that disclosure be provided in the body of the annual report as to whether the identified material instance of noncompliance pursuant to Item 1122 was determined to have involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10-K report.¹³⁴⁶ If the material instance of noncompliance is identified as relating to a particular transaction, investors

¹³⁴⁴ See letter from KPMG.

¹³⁴⁵ See letter from CREFC I (without explaining why this particular proposed revision to Item 1122 should not be adopted).

¹³⁴⁶ For example, if the servicer selected 10 transactions as part of their sample for purposes of assessing Item 1122 servicing criteria and it was determined that five of those transactions involved instances of noncompliance that are material to the platform, then, under this requirement, each Form 10-K report for those five transactions must disclose in the body of the 10-K report that: (1) this transaction was part of the sample and (2) it was determined that this particular transaction involved a material instance of noncompliance.

with investments in that particular transaction will benefit from receiving this information.¹³⁴⁷

We continue to believe that testing every transaction in the platform is cost prohibitive and that a platform-level assessment for purposes of assessing servicing compliance provides an appropriate level of information to investors while balancing the substantial increase in cost that issuers would incur to assess the compliance with servicing criteria for every transaction in the platform.¹³⁴⁸ The amendments that we adopt today do not require any change in that approach.

We understand that some commenters are concerned that requiring issuers to disclose a reported instance of noncompliance involving assets backing the ABS covered by the 10-K report may impose an indirect cost to investors if investors draw the incorrect conclusion that in the absence of such disclosure, the reported instance of noncompliance did not involve the servicing of assets backing its ABS.¹³⁴⁹ We believe disclosure can be provided in the Form 10-K or in the servicer's Item 1122 report regarding the scope and structure of the assessment that can adequately address this concern.

We are also adopting, as proposed, the requirement to disclose any steps taken to remedy a material instance of noncompliance for activities made on a platform level in the body of the annual report. While we note one commenter's recommendation that such disclosure be

¹³⁴⁷ We observe, however, that the absence of disclosure of instances of noncompliance involving the servicing of assets backing a particular transaction in an annual report is not necessarily an indication that the transaction had not been affected. We also note that, to the extent appropriate, issuers can provide explanatory disclosure in the annual reports of the transactions that were not part of the Item 1122 sample and explain that it is not clear whether their transaction has been affected by the material instance of noncompliance identified in the Item 1122 assessment and attestation.

¹³⁴⁸ See Section III.D.7.b.iii of the 2004 ABS Adopting Release.

¹³⁴⁹ See letters from ASF I, CREFC I, and KPMG.

provided as part of the servicer's management assessment of compliance rather than in the body of the Form 10-K, we continue to believe that the issuer is ultimately responsible for the disclosure provided in the Form 10-K and therefore should be assessing the information provided by the servicers in their reports, including considering whether the information provided by the servicers in their reports at the platform level applies to the transaction for which the 10-K is filed.¹³⁵⁰ The final rule does not, however, prohibit the servicer from also providing such disclosure in the servicer's assessment of compliance. We are adopting the disclosure requirement in order to provide investors with insight into the potential impact of the instance of noncompliance on their transaction and whether they should reassess their continuing investment decision. Further, we do not believe adding this disclosure is burdensome to the issuers since the information should be readily available to them and is a logical extension of the disclosure of material instances of noncompliance.

Finally, in the 2010 ABS Proposing Release, we noted the staff's belief that the application of Item 1108(b)(2), which requires a detailed discussion in the prospectus of the servicer's experience in, and procedures for, the servicing function it will perform in the current transaction for assets of the type included in the current transaction, has not been consistent among issuers.¹³⁵¹ While we are not adopting any changes to Item 1108(b)(2) at this time, we continue to believe that Item 1108(b)(2) requires disclosure in the prospectus of any material

¹³⁵⁰ See letter from KPMG.

¹³⁵¹ See the 2010 ABS Proposing Release at 23383. Item 1108 also requires a general discussion of the servicer's experience in servicing the assets of any type.

instances of noncompliance noted in the assessment or attestation reports required by Item 1122 or the servicer compliance statement that is required by Item 1123. In addition, the prospectus should provide disclosure of any steps taken to remedy the noncompliance disclosed and the current status of those steps. With respect to requiring disclosure in the prospectus of a material instance of noncompliance noted in Item 1123 servicer compliance statements, we believe such disclosure is appropriate because investors should have access to information related to the performance of servicers.

2. Codification of Prior Staff Interpretations Relating to the Servicer's Assessment of Compliance with Servicing Criteria

We also proposed to codify certain staff positions issued by the Division of Corporation Finance relating to the servicer's assessment requirement, with some modification. The first staff interpretation that we proposed to codify related to aggregation and conveyance of information between a servicer and another party (who may also be a servicer for purposes of the servicer's assessment requirement).¹³⁵² This new criterion, as proposed, would, if information obtained in the course of performing the servicer's duties is required by any party or parties in the transaction in order to complete their duties under the transaction agreements, require an

¹³⁵²

The staff had taken the position that, while the conveyance of information to another party is not explicitly contained in any of the criterion in Item 1122(d), the accurate conveyance of the information was part of the same servicing criterion under which the activity that generated the information was assessed. See the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 11.03. We proposed to codify this position, but instead of requiring it be included with an existing criterion, the proposed rule would make it a new servicing criterion in Item 1122. See proposed Item 1122(d)(1)(v).

assessment that the aggregation of such information, as applicable, is mathematically accurate and the information conveyed accurately reflects the information.¹³⁵³

We also proposed to codify in an instruction to Item 1122 staff interpretations relating to the scope of the Item 1122 servicer's assessment. In a publicly available telephone interpretation the staff explained, among other things, that the platform for reporting purposes should not be artificially designed, but rather, it should mirror the actual servicer practices of the servicer.¹³⁵⁴ The servicer may, however, take into account in determining the platform for reporting purposes divisions in its servicing function by geographic locations or among separate computer systems. Although, if the servicer includes in its platform less than all of the transactions backed by the same asset type that it services, the proposed instruction would provide that a description of the scope of the platform should be included in the servicer's assessment.

We received general support for the proposed codifications from several commenters¹³⁵⁵ and one commenter generally requested that we not adopt any of the proposed changes to Item

¹³⁵³ For example, if Servicer A is responsible for administering the assets of the pool and passing along the aggregated information about the assets in the pool to Servicer B, and Servicer B is responsible for calculating the waterfall or preparing and filing the Exchange Act reports with that information, Servicer A's activity with respect to administering the assets would be required to be assessed under Item 1122(d)(4). In addition to assessing Servicer A's pool asset administration, Servicer A would be required under proposed Item 1122(d)(1)(v) to separately assess whether its aggregation of the information is mathematically accurate and the information conveyed to Servicer B accurately reflects the information. If instead of aggregating the individual asset information, Servicer A conveys it un-aggregated, then Servicer B would be required to include its own aggregation of the individual asset data in Servicer B's assessment of calculating the waterfall or preparing and filing Exchange Act reports. Servicer A would still need to assess under proposed Item 1122(d)(1)(v) that the un-aggregated information conveyed to Servicer B accurately reflects the information.

¹³⁵⁴ See the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 17.03.

¹³⁵⁵ See letters from E&Y, KPMG, and Prudential I.

1122.¹³⁵⁶ We are adopting these codifications, as proposed, because we continue to believe that adopting these positions makes them more transparent and readily available to the public. We do not anticipate that these codifications will cause a hardship for servicers as they are consistent with current servicer practices to the extent they were executed under existing staff interpretations.

C. Central Index Key Numbers for Depositor, Sponsor and Issuing Entity

In the 2010 ABS Proposing Release, we noted that ABS offerings with a particular file number may be associated with a registration statement with a different file number and that Forms 8-K for ABS offerings may be filed under the depositor file number, making it difficult to track material for the related offering with only the information provided in the Form 8-K. To make it easier for interested parties to locate the depositor's registration statement and periodic reports associated with a particular offering and information related to the sponsor of the offering, we proposed amendments to require that the cover pages of registration statements on Form SF-1 and Form SF-3 include the CIK number¹³⁵⁷ of the depositor, and if applicable, the CIK number of the sponsor. We also proposed to require that the cover pages of the Form 10-D, Form 10-K, and Form 8-K for ABS issuers include the CIK number of the depositor, the issuing entity, and, if applicable, the sponsor.

¹³⁵⁶ See letter from CREFC I (opposing without providing an explanation why this particular proposed revision to Item 1122 should not be adopted).

¹³⁵⁷ The CIK is a number that we assign to each entity (company or individual) that submits filings to the Commission. Use of the CIK allows the Commission to differentiate between filing entities with similar names. A CIK is used to identify all filers, both EDGAR and non-EDGAR.

Several commenters expressed general support for these proposals; no commenters opposed.¹³⁵⁸ These commenters agreed that adding the CIK numbers of the depositor and the issuing entity to the cover pages of filings will enhance the accessibility of information to investors.¹³⁵⁹

We are adopting these amendments, as proposed, given the benefits that they will provide as recognized by commenters. Furthermore, we do not believe that requiring this information on certain cover pages for ABS filings will be burdensome to issuers, nor did we receive any comments stating any cost concern.

IX. Transition Period

In the 2010 ABS Proposing Release, we noted our belief that compliance dates should not extend past a year after adoption of the new rules, but we sought comment about feasible dates for implementation of the proposed amendments. We also acknowledged that the asset-level disclosure requirements may initially impose significant burdens on sponsors and originators as they adjust to the new requirements, including changes to how information relating to the pool assets is collected and disseminated to various parties along the chain of the securitization.¹³⁶⁰ We also requested comment on whether we should provide a transition period for compliance with the asset-level disclosure requirements that would allow the filing of test

¹³⁵⁸ See letters from BoA I and MBA I.

¹³⁵⁹ See letter from MBA I (noting that sponsors' CIK numbers should be required only if the sponsor has a CIK number). See also letter from BoA I (stating our proposal to require CIK numbers for the depositor and the sponsor (if applicable) on the cover pages of the proposed Forms SF-1 and SF-3 will also help investors locate materials related to an ABS offering or ABS issuer).

¹³⁶⁰ See Section VIII of the 2010 ABS Proposing Release.

submissions.¹³⁶¹ We describe below the comments received and the overall transition period for revisions to Regulation AB and the additional transition period for asset-level disclosure requirements.

A. General Transition Period

With respect to implementation of the overall proposals to revise Regulation AB, a majority of commenters expressed a need for a longer transition period. The commenters were generally concerned that the proposed rules would impose new substantial obligations on various industry parties, such as originators, sponsors, and other transaction parties that will require changes to operational procedures and infrastructures in order to meet the new disclosure requirements.¹³⁶² These commenters suggested that we consider various factors when determining the implementation timeframe, including: the existence of other rulemaking processes and regulatory developments,¹³⁶³ how the final regulations relate to and work with other new and revised regulations,¹³⁶⁴ and the ability of issuers to implement the various rules' changes simultaneously.¹³⁶⁵

¹³⁶¹ EDGAR currently provides the ability to file a test submission which allows the filer to test the ability to create a filing in an EDGAR-acceptable format. For a test submission, fees will not be deducted, the filing will not be disseminated, and the filing will not count towards any filing requirements.

¹³⁶² See letters from ASF I, ABA I, BoA I, CREFC I, and MBA I (requesting an 18-month implementation period because the new obligations will require the implementation of new operational procedures and infrastructures, and originators and servicers will need sufficient time to evaluate and update their origination and servicing platforms).

¹³⁶³ See, e.g., letters from ABA I, CREFC I, and MBA I.

¹³⁶⁴ See letters from CREFC I (stating we should take into consideration how the final rules' new and revised regulations relate to and work with other new or proposed regulations, such as those described in Section 941(b) of the Dodd-Frank Act, which provides for a two-year transition period for securitizers and

As noted above, several commenters suggested compliance timeframes that would extend past the proposed one-year transition period. One trade association suggested an implementation period of at least eighteen months¹³⁶⁶ and another suggested two years.¹³⁶⁷ Another commenter suggested that implementation of the proposed rules should be staggered in one and two year increments with those changes that can be implemented in the near-term implemented in a one-year timeframe and the “more elaborate implementation measures” implemented within two years.¹³⁶⁸ Another trade association did not specifically suggest a longer compliance period, but suggested that for the disclosure aspects of the proposal that the effective date should be no earlier than one year following the date of publication of the related final rules in the Federal Register.¹³⁶⁹

We understand that some of the requirements that we are adopting, including the asset-level disclosure requirements, will take time and resources in order to satisfy the new requirements. We also understand that issuers and market participants are working to implement

originators of all classes of asset-backed securities other than RMBS to comply with risk retention requirements) and MBA.

¹³⁶⁵ See letter from MBA I.

¹³⁶⁶ See letter from MBA I (with respect to RMBS).

¹³⁶⁷ See letter from CREFC I. See also letter from BoA I (suggesting, in general, a longer transition period should be provided).

¹³⁶⁸ See letter from MBA III (with respect to CMBS) (reiterating its suggested implementation timeframes in its Oct. 4, 2011 letter submitted in response to the 2011 ABS Re-Proposing Release).

¹³⁶⁹ See letter from ASF I (suggesting that if a prospectus is included in a new registration statement filed on or after the effective date that the new disclosure rules should apply to that prospectus and that we should also allow for a period to convert to the proposed new Form SF-3 so that a prospectus included in the registration statement may be made compliant). The ASF reiterated this position in its Oct. 4, 2011 letter submitted in response to the 2011 ABS Re-Proposing Release. See letter from ASF III.

many different regulations that have recently been adopted or may be adopted in the near future. We are therefore adopting a tiered approach. All new rules, except for asset-level disclosures require compliance within one year from the effective date of the rules. We believe that this time period provides a sufficient transition period for compliance. We believe that 12 months will allow the transaction parties to better manage the changes necessary to their systems and processes. Therefore, any registered offering of asset-backed securities commencing with an initial bona fide offer one year after the effective date of the rules and the asset-backed securities that are the subject of that offering must comply with the new rules and forms, except for asset-level disclosures. Consequently, after the one year transition period, ABS issuers seeking to conduct a shelf ABS offering must conduct such offering off of an effective Form SF-3 registration statement.

In addition, any Form 10-D or Form 10-K that is filed after one year after the effective date of the rules must include the information required by the new rules, except for asset-level disclosures.

B. Transition Period for Asset-Level Disclosure Requirements

We received substantial feedback with respect to the appropriate compliance dates for our requirements related to the asset-level disclosure requirements. Issuers, market participants, and trade associations representing issuers generally believed that a significant number of the proposed data points required data that is currently not captured by originators or servicers.¹³⁷⁰

¹³⁷⁰ See, e.g., letters from ABA I, ASF I, BoA I, CREFC I, J.P. Morgan I, PricewaterhouseCoopers dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release ("PwC"), MBA I, SIFMA I (expressed

They also argued that there will be substantial costs in time and resources to develop systems that will capture the data in the required format and, therefore, believed an extended implementation timeframe is appropriate.

Commenters suggested varying timeframes for implementation. For instance, investor members of one group suggested that the transition period should not exceed one year from the date the final rules are published.¹³⁷¹ In contrast, other commenters suggested longer timeframes, including: a transition period of no earlier than 12 months from the publication of the final rules in the Federal Register,¹³⁷² 18 months,¹³⁷³ and 24 months.¹³⁷⁴ We also received a number of comments suggesting that the asset-level disclosures may not be available for assets originated before the effective date of the asset-level disclosure requirements or for assets underlying asset-backed securities originated before the effective date of the requirements.¹³⁷⁵

views of dealers and sponsors only), and Wells Fargo I. None of these commenters provided a specific cost estimate for compliance.

¹³⁷¹ See letter from SIFMA I (expressed views of investors only). The dealer and sponsor members of this commenter suggested that a one-year transition period would be the minimum needed and recommending 18 months for asset-level disclosure because many securitizers are unprepared for these requirements and this timeframe would also allow smaller originators and servicers to examine the feasibility of converting their platforms to comply with the disclosure requirements.

¹³⁷² See letter from ASF I.

¹³⁷³ See letters from J.P. Morgan I (suggesting an 18-month implementation period following the effective date of the rule without specifying whether the recommended timeframe should apply to all of the rules or just the new asset-level requirements), MBA I (with respect to RMBS) (suggesting 18 months will ensure more compliance and smoother transition), SIFMA I, and Wells Fargo I (suggesting a 12-month implementation period followed by a six-month test period).

¹³⁷⁴ See letters from CREFC I, MBA I (with respect to CMBS), and PwC.

¹³⁷⁵ See, e.g., letters from ABA I, ASF I, BoA I, J.P. Morgan I, MBA I, and SIFMA I. See also letters from J.P. Morgan II and SIFMA III-dealers and sponsors.

These commenters suggested a range of possible solutions, including a full exemption,¹³⁷⁶ a multi-year phase-in,¹³⁷⁷ and an exemption to the extent that information called for under those rules with respect to legacy loans is unknown and not available to the issuer without unreasonable effort or expense.¹³⁷⁸ However, investor members of one trade association suggested that any grandfathering period for assets originated prior to the compliance date should be limited to an additional one year after the compliance date.¹³⁷⁹

Some commenters also recommended allowing exemptions or “deferrals” from the reporting requirements for data that they were unable to start collecting within the implementation timeframe.¹³⁸⁰ One commenter also stated that it was important that the Commission provide the public with the “the detailed file layout that is necessary with XML”

¹³⁷⁶ See letters from ABA I and Citi (also suggesting we create an explicit safe harbor for earlier-originated assets that may not be able to satisfy all of the disclosure requirements based on a Rule 409 type standard).

¹³⁷⁷ See letter from ABA I (without describing the multi-year phase-in approach).

¹³⁷⁸ See letters from ASF I (suggesting that securitizations supported by legacy underlying securities be grandfathered and not be subject to the new and amended rules, at least to the extent that information called for under those rules with respect to legacy assets is unknown and not available to the issuer without unreasonable effort or expense), Citi, and J.P. Morgan I (suggesting that we provide a bright-line test for compliance based on the origination date of the related asset, or allow as an acceptable response to the data points an indication that certain data fields for such asset are unavailable, accompanied by an explanation of why the data is not available and whether it will be available in the future). See also letters from ASF II and J.P. Morgan II.

¹³⁷⁹ See letter from SIFMA I (expressed views of investors only).

¹³⁸⁰ See letters from ASF I (suggesting that some cases will exist where compliance cannot be accomplished within the implementation timeframe and in those cases, issuers should be able to apply for a hardship exemption and be granted additional time to comply as needed on a case-by-case basis, or on a “class of transactions” basis, where the class might be defined by any number of common characteristics (e.g., common depositor, sponsor or other transaction party, asset type or transaction structure)) and BoA I (suggesting we allow issuers to report exceptions or deferrals in cases where responses to non-crucial data points cannot be provided in the exact manner contemplated by the proposed rule to ease transition concerns and indicating that this is consistent with Regulation AB, which permits concessions when data requests require significant cost or effort).

when the final rule is adopted so that market participants can begin programming their systems and that any delay in receiving this information will greatly affect the industry's ability to comply in a timely manner.¹³⁸¹

As we noted earlier, we believe that, in order for investors to have access to robust information concerning the pool-assets, asset-level disclosure needs to be provided. We understand that some of the disclosures that we are requiring are not currently captured by originators or servicers and that it will take time and resources to reprogram systems and processes to capture the data and then report it in XML. We also understand that issuers and market participants are working to implement many different regulations that have recently been adopted. Therefore, we have decided to delay the compliance date for the asset-level disclosure requirements so that market participants will have ample time to prepare and satisfy the new requirements. In this regard, issuers will be required to provide asset-level information no later than two years after the effective date of the rules, which we believe is a reasonable implementation timeframe. We believe the extended timeframe will ultimately benefit investors because it will give issuers and market participants the time to plan for and implement appropriate reporting processes and more meaningful and relevant disclosure documents. In addition, as discussed in Section III.A.2.b.5 Resecuritizations, we are adopting an exemption for res securitizations of ABS issued prior to two years after the effective date of the rules, the compliance date for the asset-level disclosure requirements.

¹³⁸¹

See letter from MBA I.

We also understand that certain changes to issuers' and market participants' systems may not be able to occur until the final technical requirements are published in the EDGAR Filer Manual and EDGAR Technical Specification documents. In order to provide issuers and other filers time to make adjustments to their systems, we anticipate making a draft of the EDGAR Technical Specification documents¹³⁸² available soon.

We also note that at least one commenter requested a test period. We believe that submissions may assist both the Commission and issuers with addressing unknown and unforeseeable issues that may arise with the submission of the asset-level disclosures.¹³⁸³ We will permit issuers to file test submissions during the transition period.

We are not adopting a commenter's suggestion that we adopt a hardship exemption from the reporting requirements for those issuers that may be unable to start collecting by the implementation timeframe. We believe that our timeframe provides ample time for the necessary reprogramming of systems and processes to capture the information, including for smaller originators.

C. Compliance Dates

As discussed above, we are adopting different compliance periods for the new rules. Registrants must comply with new rules, forms, and disclosures other than the asset-level disclosure requirements no later than [insert date 60 days plus one year after publication in the

¹³⁸² The draft EDGAR Technical Specification documents will include preliminary tagging requirements for asset-level data points.

¹³⁸³ See letter from Wells Fargo I (suggesting a six-month test period).

Federal Register]. Offerings of asset-backed securities backed by RMBS, CMBS, Auto ABS, and debt securities (including resecuritizations) must comply with the asset-level disclosure requirements no later than [insert date 60 days plus two years after publication in the Federal Register]. Any Form 10-D or Form 10-K filed after [insert date 60 days plus one year after publication in the Federal Register], must comply with the new rules and disclosures, except asset-level disclosures. If any provision of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

X. Paperwork Reduction Act

A. Background

Certain provisions of the new rules and rule amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).¹³⁸⁴ We published a notice requesting comment on the collection of information requirements in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, and we submitted these requirements to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.¹³⁸⁵

¹³⁸⁴ 44 U.S.C. 3501 *et seq.*

¹³⁸⁵ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:

- (1) "Form S-1" (OMB Control No. 3235-0065);
- (2) "Form S-3" (OMB Control No. 3235-0073);
- (3) "Form 10-K" (OMB Control No. 3235-0063);
- (4) "Form 10-D" (OMB Control No. 3235-0604);
- (5) "Form 8-K" (OMB Control No. 3235-0060);
- (6) "Regulation S-K" (OMB Control No. 3235-0071);
- (7) "Regulation S-T" (OMB Control No. 3235-0424);
- (8) "Form SF-1" (OMB Control No. 3235-0707);
- (9) "Form SF-3" (OMB Control No. 3235-0690); and
- (10) "Form ABS-EE" (OMB Control No. 3235-0706).

The forms listed in Nos. 1 through 7 were adopted under the Securities Act and the Exchange Act and set forth the disclosure requirements for registration statements and periodic and current reports filed with respect to asset-backed securities and other types of securities to inform investors. Regulation S-K, which includes the item requirements in Regulation AB, contains the requirements for disclosure that an issuer must provide in filings under both the Securities Act and the Exchange Act. Regulation S-T specifies the requirements that govern the submission of electronic documents.

The regulations and forms listed in Nos. 8 through 10 are new collections of information under the Securities Act and the Exchange Act. Form SF-1 and Form SF-3 represent the new

registration forms for offerings of asset-backed securities, as defined in Item 1101(c) of Regulation AB. Form SF-3 represents the registration form for asset-backed offerings that meet certain shelf eligibility conditions and can be offered off a shelf under Rule 415. Form SF-1 represents the registration form for other asset-backed offerings. Form ABS-EE¹³⁸⁶ is a new form for the filing of certain asset-level information required in connection with registration statements and periodic reports for asset-backed issuers. Under the requirements, an asset-backed issuer is required to submit to the Commission specified, tagged information on assets in the pool underlying the securities.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collections of information. Compliance with the rule amendments is mandatory. Responses to the information collection will not be kept confidential, and there is no mandatory retention period for the information disclosed.

B. Summary of Comment Letters on the PRA Analysis

In the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, we requested comment on the PRA analysis. While many commenters provided qualitative comments on the possible costs of the proposed rules and amendments, we received limited quantitative comments on our PRA analysis. The only quantitative comment we received on asset-level disclosure came from a commenter representing a group of Auto ABS sponsors. This

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We proposed this new collection of information in the 2010 ABS Proposing Release under the title "Asset Level Data." We have revised the title of this collection of information to reflect the location of the asset-level data requirements under the final rule.

commenter estimated that, if we adopted each of the Auto ABS data points originally proposed, the average costs and employee hours per sponsor necessary to comply with the asset-level requirements would be approximately \$2 million and 12,000 hours, respectively.¹³⁸⁷ This commenter also noted that if we adopted the reduced number of data points proposed in their comment letter, the burden would decrease to \$750,000 and 3,500 hours.

We received only one comment letter with quantitative comments on the additional burden to complete Form SF-3.¹³⁸⁸ This commenter believed that our 100 burden hour estimate for asset-backed issuers to complete the disclosure requirements for Form SF-3, prepare the information, and file it with the Commission is “inadequate” and “not realistic.” This commenter stated that at least 100 burden hours should be separately allocated to certain of the shelf transaction requirements, including the certification provision, the asset review provision, and the dispute resolution provision. The commenter noted that there would be an increased burden of at least 100 hours for the certification requirement because the certifying officer would likely need to rely on an independent evaluator or hire an additional executive officer with the expertise necessary in order to provide the certification. The commenter also noted that there will be additional burden in retaining a reviewer and its counsel to comply with the asset review

¹³⁸⁷ See letter from VABSS IV. As the commenter noted, the sponsors “estimated the costs and employee hours necessary to reprogram systems and business procedures to capture, track and report all of the items for auto loans currently set forth in the [2010 ABS Proposing Release].” We assume that these costs and burden hours include the costs and burden hours associated with providing information at the time the ABS is issued as well as on an ongoing basis, as was contemplated in the 2010 ABS Proposing Release.

¹³⁸⁸ See letter from Kutak.

provision. Finally, the commenter stated that the dispute resolution provision alone could exceed our 100 burden hour estimate without providing any quantitative analysis.

Qualitative comments that we received generally noted that the new data collection requirements will impose additional burdens on issuers and sponsors. For example, we received several qualitative comments noting that the proposal would likely impose burdens on sponsors by requiring them to collect, capture, maintain, evaluate and report data in new or different ways.¹³⁸⁹

C. Revisions to Proposals

We considered all of the comments we received, as we considered how to quantify and possibly mitigate the burdens that could potentially be imposed by the new requirements. In order to address commenters' concerns about the asset-level requirements for Auto ABS, we have significantly reduced the scope of the asset-level data required from the proposal.

For the new shelf eligibility criteria, we have made several changes to address cost concerns – for example, we revised the certification to indicate that the certification is not a guarantee about the future performance of the assets and have clarified that the certifying officer has any and all defenses available under the securities laws. We also note, in response to one commenter's concern discussed above,¹³⁹⁰ that we do not believe that an additional executive officer or independent evaluator will need to be hired as a result of the new rules to actually structure the transaction because the certifying officer may rely on senior officers under his or

¹³⁸⁹ See, e.g., letters from ABA I, J.P. Morgan II, MBA II, and Wells Fargo I.

¹³⁹⁰ See letter from Kutak.

her supervision that may be more familiar with the structuring of the transaction. We do expect, however, that the certifying officer will provide appropriate oversight over the transaction, including supervision of the structuring, so that he or she is able to make the certification. Finally, we believe that providing the certification should not impose any additional significant burden in terms of preparing additional disclosure, as such burden is already accounted for in the preparation of prospectus disclosure that is part of the Form SF-3 registration statement.

We acknowledge that the asset review provision will impose an upfront cost on the transaction since we are requiring that the reviewer be named in the prospectus. We believe, however, that most of the costs will be incurred in connection with reviews, which will occur during the life of the securitization only if the triggering events have been met. Consequently, if the reviewer does not perform any reviews, then the costs will be limited to the retainer fee. Recognizing that the bulk of the cost will be incurred with the actual reviews, we have attempted to reduce the burden of ongoing compliance with this shelf transaction requirement by requiring that a delinquency threshold must first be reached or exceeded before investors will be able to vote for a review. Disclosure is required in a Form 10-D only if a review is triggered.

We do not agree with a commenter that the dispute resolution provision could exceed the 100 burden hour estimate to collect the information. Under the final rules, a dispute resolution provision is required in the pooling and servicing agreement and disclosure of that provision is required in the prospectus. We acknowledge that additional costs may be incurred as a result of the number of hours that will be expended by certain personnel, including counsel, to come to a resolution if a dispute occurs. Because we are not requiring additional disclosures about the dispute resolution provision, we are not increasing our burden estimates. Accordingly, while we

recognize that the new shelf conditions will impose additional costs on issuers, these costs are not primarily disclosure or record keeping burdens. Thus, we do not believe that we need to increase the 100 burden hour estimate to complete and file Form SF-3.

We have also made a number of changes in response to more general qualitative comments in an effort to avoid potential unintended consequences and reduce potential additional costs or burdens identified by commenters. For example, for the asset-level requirements, we have attempted to reduce burden and cost concerns by aligning the requirements with industry standards where feasible. We have also revised how we are calculating the burden hours and costs for data collection to more accurately reflect how data will be captured and organized in the industry, as described by commenters. Further, we are providing for an extended implementation timeframe, which we also believe will reduce the burden of implementing the requirements.

D. PRA Reporting and Cost Burden Estimates

Our PRA burden estimate for each of the existing collections of information, except for Form 10-D, are based on an average of the time and cost incurred by all types of public companies, not just asset-backed issuers, to prepare a particular collection of information. Form 10-D is a form that is prepared and filed only by asset-backed issuers. In 2004, we codified requirements for asset-backed issuers in these regulations and forms, recognizing that the information relevant to asset-backed securities differs substantially from that relevant to other securities.

Our PRA burden estimates for the new rules and rule amendments are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189,

the code used for asset-backed securities, as well as information from outside data sources.¹³⁹¹

When possible, we base our estimates on an average of the data that we have available for years 2004 through 2013.¹³⁹² In some cases, our estimates for the number of asset-backed issuers that file Form 10-D with the Commission are based on an average of the number of ABS offerings from 2006 through 2013.¹³⁹³

1. Form ABS-EE

The asset-level reporting requirement that we are adopting for issuances of certain ABS is a new collection of information.¹³⁹⁴ As proposed, under the new rules the asset-level information will be provided at the time the ABS is issued and on an ongoing basis. The rules also require the information be filed as an exhibit to new Form ABS-EE.

¹³⁹¹ In the 2010 ABS Proposing Release, we relied on the AB Alert database for the initial terms of offerings and supplemented that data with information from the Securities Data Corporation (SDC). In this release, outside databases referenced in this section include the AB Alert and CM Alert databases for the initial terms of offerings.

¹³⁹² We selected this time period in order to account for the market disruption caused by the financial crisis by using data that captures both pre-crisis and post-crisis filings.

¹³⁹³ Form 10-D was not implemented until 2006. Before implementation of Form 10-D, asset-backed issuers often filed their distribution reports under cover of Form 8-K.

¹³⁹⁴ We proposed this new collection of information in the 2010 ABS Proposing Release under the title "Asset Level Data." We are revising the title to reflect that the asset-level information will be filed as an exhibit to new Form ABS-EE. Also, the proposed requirements would have required asset-level data across all asset types, except for credit card receivables ABS and stranded costs ABS. We proposed that credit card ABS issuers would be required to provide grouped account data, both at the time of securitization and on an ongoing basis. The rules we are adopting at this time, however, only require asset-level data for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans or auto leases, resecuritizations of ABS, or of debt securities. Also, we are not adopting at this time the proposed requirement that credit card ABS issuers provide grouped account data. Because of the number of data points involved, our estimates for the asset-level requirements in the proposal were based on data for RMBS, CMBS and credit card ABS issuers. In line with the requirements we are adopting, we have revised our burden hour estimate to base the estimate on the hours that sponsors of RMBS, CMBS, Auto ABS, debt security ABS or resecuritizations may incur to provide the required data.

Our estimates in the 2010 ABS Proposing Release were based on the costs to provide the required data at the time of securitization and on an ongoing basis. We estimated that each unique sponsor¹³⁹⁵ would incur a one-time setup cost for the initial filing of asset-level data.¹³⁹⁶ Software costs and costs associated with adjusting existing systems in order to provide the data are included in the one-time setup costs. The burden estimate also included costs associated with tagging the data and filing it with the Commission. After the first filing of asset-level

¹³⁹⁵ In the proposal, we estimated that the number of unique ABS sponsors from 2004 to 2009 was 343, for an average of 57 unique sponsors per year. We have updated our estimate of the total number of unique sponsors among the relevant assets classes. Based on our updated estimate, we estimate 60 as the average number of unique sponsors of registered ABS subject to the rules we are adopting per year (23 RMBS sponsors, 25 CMBS sponsors, 20 Auto ABS sponsors, two debt security ABS sponsors, and one resecuritization sponsor (the total of these numbers for all asset classes is greater than the 60 unique sponsors estimate due to the fact that a single sponsor often sponsors ABS from different asset classes). For purposes of our updated estimate, the average annual number of unique sponsors for RMBS, CMBS and Auto ABS is based on data from outside databases for the period of 2004 through 2013. See footnote 1391. We believe the time period selected provides a conservative estimate of the average annual number of unique sponsors for these asset classes as the 2004 through 2013 timeframe captures both the time period prior to the financial crisis when there was a larger number of unique ABS sponsors per year and the more recent time period when the number of unique sponsors per year has been substantially lower. For debt security ABS and resecritizations, we were unable to obtain from outside databases the average annual number of unique debt security ABS or resecritization sponsors. Based on data available through EDGAR for the period of 2010 to 2013, we estimate that for each year there will be two unique debt security ABS sponsors. There have been no registered resecritization offerings over the past several years. We assume for this estimate, however, that for each year there will be at least one unique resecritization sponsor.

¹³⁹⁶ Under the proposal, the asset-level information outlined in proposed Schedule L would be required at the time of issuance. On an ongoing basis, the asset-level information outlined in proposed Schedule L-D would be required. Under the final rules, we are condensing these schedules into one schedule titled Schedule AL. See Section III.B.2 The Scope of New Schedule AL. The burden estimate in the proposal provided an estimate for the one-time burden cost for issuers to provide the asset-level disclosures required at issuance and a separate estimate for the one-time burden cost for issuers to provide the ongoing disclosures. For purposes of our updated estimate and in line with the condensed schedule format we are adopting, we combined the estimates for one-time setup costs into one calculation. This change resulted in a substantially lower estimate of average annual burden hours for filing asset-level data on an ongoing basis, but a higher amount of professional costs associated with the first filing of asset-level data at issuance.

information, we estimated that sponsors would incur costs to provide the required data with subsequent offerings of ABS and with each Form 10-D.

Some comments on the asset-level proposal suggested that sponsors would incur substantial costs to capture the required data and to provide it in the format requested.¹³⁹⁷ We continue to assume that asset-backed issuers currently required by Regulation AB to file pool-level information on the assets in the underlying pool have access to a substantial portion of the required asset-level information, although we acknowledge that sponsors may incur additional costs to provide the data currently collected in the format required by the rules we are adopting. We recognize that some of the required data is not currently collected by sponsors and that sponsors will incur costs to capture and provide some of the required data in the format requested.

To address concerns about the costs to provide the data, we revised our calculation of the estimated number of burden hours a sponsor may incur to acknowledge that a sponsor may need to revise its existing systems or procedures for each required data point. The burden estimate in the proposal assumed that approximately two percent of the proposed asset-level data points would require a sponsor to adjust its existing systems and procedures for capturing and reporting data. For each data point that required the sponsor to adjust its existing systems and procedures, a sponsor would expend at least 18 minutes per adjustment for each asset in the pool. We have revised our estimate to assume that before the first filing of asset-level information a sponsor will

¹³⁹⁷ See, e.g., letters from ABA I, ABAASA I, SIFMA I (expressed views of dealer and sponsors only), and VABSS I.

need to adjust its existing systems and procedures in some way for each required data point in order to provide the response to the data point based on our definitions and that each adjustment will require ten hours.¹³⁹⁸

The burden estimate in the proposal for the initial filing of asset-level data included ten hours to tag and file the data with the Commission.¹³⁹⁹ We continue to believe that a sponsor will incur approximately ten hours to tag, review and file the required data the first time the sponsor files the asset-level data to comply with our rules. Based on comments received raising concerns about the burden to provide the asset-level data in XML, we are also estimating that each sponsor will also expend approximately 10 hours per data point in order to adjust its systems to be able to provide the data in XML with the first filing of asset-level data.¹⁴⁰⁰ Based on the asset-level requirements applicable to each asset class and our estimates for the XML conversion costs and filing costs, we estimate that each RMBS sponsor will incur 5,410 hours,

¹³⁹⁸ For instance, the requirements for RMBS include 270 data points, and we estimate that for each of these 270 data points a sponsor will need to adjust its systems and procedures in some way and that each adjustment will require ten hours. In the proposal, our calculation considered the number of assets in each pool. Since we continue to assume that a sponsor will need to make a one-time change to its existing systems and procedures before the first filing of asset-level information, the number of assets in the pool is less relevant because the revisions to a sponsor's existing systems and procedures will be completed before it provides asset-level data for any ABS. The revised estimate focuses on the changes each required data point will cause to a sponsor's existing systems and procedures before it must provide asset-level information.

¹³⁹⁹ See the 2010 ABS Proposing Release at 23404.

¹⁴⁰⁰ The estimated per hour cost to convert the required data into an XML format is based on the estimate of the cost to provide the required asset-level data in XML provided in Section III.B.3. See footnote 748. For purposes of that estimate, we assumed that a sponsor would work with all asset types and would need to convert the data for all asset classes into an XML format and that conversion would require 6,283 hours. With a combined 680 unique data points (RMBS = 270, CMBS = 152, Auto ABS = 138, debt security ABS = 60 and resecuritizations = 60), we estimate that responding to each data point in XML for the first time will require approximately 10 hours per data point.

each CMBS sponsor will incur 3,050 hours, each Auto ABS sponsor will incur 2,770 hours and each debt security ABS sponsor or resecuritization sponsor will incur 1,210 hours¹⁴⁰¹ in one-time setup costs and to provide the asset-level data for the first time.¹⁴⁰² Based on the average number of unique sponsors in each asset class, we estimate that the total burden estimate for the initial filing of asset-level data, including the one-time setup cost to be 259,711 hours.¹⁴⁰³ We allocate 25% of those hours (64,928) to internal burden hours and 75% of the hours (194,783) to out-of-pocket expenses for software consulting and filing agent costs at a rate of \$250 per hour for a total cost of \$48,695,625.

After a sponsor has made an initial filing of asset-level data, we estimate that each subsequent filing of asset-level data will take approximately 10 hours to prepare, review, tag and

¹⁴⁰¹ For each resecuritization, the asset pool is comprised of one or more ABS. The final rules require disclosures about the ABS in the pool, and if the ABS in the asset pool is an RMBS, CMBS or Auto ABS, issuers are also required to provide asset-level disclosures about the assets underlying the ABS. For purposes of this estimate, the one-time setup costs for resecuritizations is based on the number of data points each resecuritization sponsor must respond to for each ABS in the pool. Our estimate for the one-time setup cost for providing asset-level data for resecuritizations does not include the cost to provide asset-level data if the ABS in the pool is an RMBS, CMBS or Auto ABS since these one-time setup costs are already included in the one-time setup estimates for RMBS, CMBS and Auto ABS and sponsors of resecuritizations may be able to reference asset-level information about the assets underlying the securities in the pool.

¹⁴⁰² In the 2010 ABS Proposal, we estimated that an RMBS sponsor would incur a total of 7,005 hours (3,194 hours for the data required at securitization and 3,811 hours for the data required on an ongoing basis), and a CMBS sponsor would incur a total of 178 hours (86 hours for the data required at securitization and 92 hours for the data required on an ongoing basis). See the 2010 ABS Proposing Release at 23404.

¹⁴⁰³ The burden estimate in the proposal estimated the total annual burden hours for preparing, tagging and filing asset-level disclosure at the time of securitization for all ABS issuers to be 151,368 with 25% of those hours allocated to internal burden costs and 75% of those hours allocated to external burden hours. For a description of the factors that contributed to differences between the proposed and final estimates see footnotes 1396 and 1407.

file the information. Based on the number of offerings after the first filing of asset-level data¹⁴⁰⁴ and the number of Form 10-D filings per year,¹⁴⁰⁵ we estimate the average annual hours to prepare and file asset-level disclosure after the first filing of asset-level data will be 140,215 hours.¹⁴⁰⁶ We allocate 75% of those hours (105,161) to internal burden hours and 25% of the hours (35,054) to out-of-pocket expenses for software consulting and filing agent costs at a rate of \$250 per hour totaling \$8,763,438. Thus, we estimate the total annual burden hours for the

¹⁴⁰⁴ The burden estimate in the proposal estimated the average number of offerings for all asset classes to be 958 per year. For purposes of comparison, we have adjusted the average number of offerings from 958 to 629 to account for the fact that we are adopting asset-level requirements for fewer asset classes than we had proposed. For purposes of this burden estimate because we are adopting requirements only for certain asset classes, we estimate there will be an average of 431 registered ABS offerings per year (RMBS = 343, CMBS = 33, Auto ABS = 51, debt security ABS and resecuritizations = 4). For purposes of this estimate, the average annual number of registered RMBS, CMBS and Auto ABS offerings is based on data from outside databases for the period of 2004 through 2013. We believe the time period selected provides a conservative estimate of the average annual number of registered offerings for these asset classes as the 2004-2013 timeframe captures both the time prior to the financial crisis when there was a larger number of registered ABS offerings per year and the more recent time period when the number of registered ABS offerings per year has been substantially lower. For debt security ABS and resecuritizations, we are unable to obtain from outside databases the average annual number of registered offerings of debt security ABS or resecuritizations between 2004 and 2013. Based on data available through EDGAR for the period of 2010 to 2013, we estimate there will be three registered debt security ABS offerings per year. There have been no registered resecuritization offerings over the past several years. We assume for this estimate, however, that each year there will be at least one registered resecuritization offering.

¹⁴⁰⁵ For purposes of estimating the number of expected Form 10-D filings, we are using the actual average annual number of Form 10-D filings, which was 13,014. We apportioned the burden of Form 10-D filings across each asset class based on the average number of offerings per year for each asset class. We believe this results in a conservative estimate because the rules we are adopting do not require that all asset classes provide asset-level disclosure and therefore not every Form 10-D filed will include asset-level data.

¹⁴⁰⁶ We estimated in the 2010 ABS Proposing Release that the average annual burden hours to provide the asset-level data with Form 10-D on an ongoing basis would be 207,009 hours for all ABS issuers with 75% of those hours allocated to internal burden hours and 25% allocated to external burden hours. The final estimate reflects the cost of ongoing maintenance for XML, which we estimated to be 5% of the initial XML conversion costs. For a description of the factors that contributed to differences between the proposed and final estimate and the proposed estimate see footnotes 1396 and 1407.

asset-level disclosure requirements at 170,089 hours¹⁴⁰⁷ and the total amount of out-of-pocket expenses for software and filing agent costs at \$57,459,063.¹⁴⁰⁸

2. Form S-3 and Form SF-3

Our current PRA burden estimate for Form S-3 is 136,392 annual burden hours. This estimate is based on the assumption that most disclosures required of the issuer are incorporated by reference from separately filed Exchange Act reports. However, because an Exchange Act reporting history is not a condition for Form S-3 eligibility for ABS, asset-backed issuers using Form S-3 often must present all of the relevant disclosure in the registration statement rather than incorporate relevant disclosure by reference. Thus, our current burden estimate for asset-backed issuers using Form S-3 under existing requirements is similar to our current burden estimate for asset-backed issuers using Form S-1. During 2004 through 2013, we received an average of 71 Form S-3 filings annually related to asset-backed securities.

Under the rules that we are adopting, we are moving the requirements for asset-backed issuers into new forms that will be used solely to register offerings of asset-backed securities. New Form SF-3 is the ABS equivalent of existing Form S-3. For purposes of our calculations, we estimate that the provisions relating to shelf eligibility will cause a 5% movement in the

¹⁴⁰⁷ 170,089 = 64,928 + 105,161. The proposal estimated that the total average annual burden hours to provide the asset-level data or grouped asset data would be 193,099 hours and the total amount of out-of-pocket expenses for software and filing agent costs would be \$41,319,571. The drop in total average annual burden hours can be attributed to changes in the average annual number of unique RMBS sponsors and the expected annual number of registered ABS offerings. Also, other changes to our calculation to address comments received (e.g., XML conversion cost, system changes) and differences between the proposed requirements and the final requirements (e.g., combining the initial and ongoing disclosure schedules into one schedule) also impacted our estimate.

¹⁴⁰⁸ \$57,459,063 = \$48,695,625 + 8,763,438.

number of filers (i.e., a decrease of four registration statements) out of the shelf system due to the new requirements, which include the certification, the asset review provision, the dispute resolution provision, the investor communications provision, and the annual evaluations of compliance with timely Exchange Act reporting and timely filing of the transaction agreements and the related certifications.¹⁴⁰⁹ On the other hand, we estimate the number of shelf registration statements for asset-backed issuers will increase by four as a result of the amendments eliminating the practice of providing a base prospectus and a prospectus supplement for ABS offerings.¹⁴¹⁰ Thus, we estimate that the annual number of shelf registration statements concerning ABS offerings will remain the same. Accordingly, since the rule amendments will shift all shelf-eligible ABS filings from Form S-3 to Form SF-3, we estimate that the amendments will cause a decrease of 71 ABS filings on Form S-3 and a corresponding increase of 71 ABS filings on Form SF-3 filed annually.¹⁴¹¹

In 2004, we estimated that an asset-backed issuer, under the 2004 amendments to Form S-3, would take an average of 1,250 hours to prepare a Form S-3 to register ABS.¹⁴¹² Additionally, in the January 2011 ABS Issuer Review Release, we estimated that the

¹⁴⁰⁹ We calculated the decrease of four Form SF-3s by multiplying the average number of Form S-3s filed (71) by 5%.

¹⁴¹⁰ Based on staff reviews, we believe that it is unusual to see ABS registration statements with multiple unrelated collateral types such as auto loans and student loans. There are occasionally multiple related collateral types such as HELOCs, subprime mortgages and Alt-A mortgages in ABS registration statements.

¹⁴¹¹ This is based on the number of registration statements for asset-backed issuers currently filed on Form S-3 and the new shelf eligibility requirements.

¹⁴¹² See the 2004 ABS Adopting Release.

requirements described in that release would increase the annual incremental burden to asset-backed issuers by 30 hours per form.¹⁴¹³ For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of \$400 per hour.

We are also adopting additional disclosure requirements that will impose some additional costs to asset-backed issuers with respect to registration statements, which we have included as part of our burden estimate for Form SF-3. We do not believe, however, that the shelf eligibility requirements that we are adopting will substantially increase the burden hours of filing a Form SF-3 since they generally do not impose significant new disclosure or record-keeping obligations.¹⁴¹⁴ We note that we have added a disclosure component to the asset review provision to require information about the reasonableness of the delinquency trigger selected by the transaction parties. We did not increase the total burden hours for this additional disclosure because the additional burden to provide this information should be minimal since issuers already have the required information.

We estimate that the incremental burden for asset-backed issuers to complete the additional disclosure requirements for Form SF-3, prepare the information, and file it with the Commission will be 100 burden hours per response on Form SF-3. As a result, we estimate that

¹⁴¹³ See the 2011 ABS Issuer Review Adopting Release.

¹⁴¹⁴ In connection with the new shelf eligibility requirements, we are adopting a number of ongoing disclosure requirements that will be triggered at the time a particular provision (e.g., the asset review or investor communications provision) is invoked. As discussed below, the burden of these additional disclosure requirements is reflected in the revised burden estimate for Form 10-D.

each Form SF-3 will take approximately 1,380 hours to complete and file.¹⁴¹⁵ We estimate the total internal burden for Form SF-3 to be 24,495 hours and the total related professional costs to be \$29,394,000.¹⁴¹⁶ This would result in a corresponding decrease in Form S-3 burden hours of 22,720 and \$27,264,000 in professional costs.¹⁴¹⁷

3. Form S-1 and Form SF-1

New Form SF-1 is the ABS equivalent of existing Form S-1. As noted above, for purposes of our calculation, we estimate that the new requirements for shelf eligibility and new shelf procedures will cause some movement in the number of filers from the shelf system to the non-shelf system. For purposes of the PRA, we estimate four asset-backed issuers will move from the shelf system to the non-shelf system of Form SF-1.¹⁴¹⁸ From 2004 through 2013, an average of two Forms S-1 were filed annually by asset-backed issuers. Correspondingly, we

¹⁴¹⁵ The total burden hours to file Form SF-3 are calculated by adding the existing burden hours of 1,280 that we estimate for Form S-3 and the incremental burden of 100 hours imposed by our new requirements for a total of 1,380 total burden hours.

¹⁴¹⁶ To calculate these values, we first multiply the total burden hours per Form SF-3 (1,380) by the number of Forms SF-3 expected under the new requirements (71), resulting in 97,980 total burden hours. Then, we allocate 25% of those hours to internal burden, resulting in 24,495 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of \$400 per hour to calculate the external professional costs of \$29,394,000.

¹⁴¹⁷ To calculate these values, we first multiply the total burden hours per Form S-3 (1,280) by the average number of Forms S-3 over the period 2004-2013 (71), resulting in 90,880 total burden hours. Then, we allocate 25% of these hours to internal burden, resulting in 22,720 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of \$400 per hour to calculate the external professional costs of \$27,264,000.

¹⁴¹⁸ We estimate in the section above that the requirements relating to shelf eligibility and new shelf procedures will cause a 5% movement in the number of ABS filers out of the shelf system. We assume, for the purposes of our PRA estimates, that the other filers that do not move to Form SF-1 will utilize unregistered offerings or offshore offerings for offerings of ABS.

estimate that the number of filings on Form SF-1 will be six, which is the sum of the two average filings per year and the estimated incremental four filings from shelf to Form SF-1.

For ABS filings on Form S-1, we have used the same estimate of burden per response that we used for Form S-3, because the disclosures in both filings are similar.¹⁴¹⁹ Even under the new requirements, the disclosures will continue to be similar for shelf registration statements and non-shelf registration statements. The burden for the new requirements for the Asset Data File to be filed as an exhibit to Forms SF-1 and SF-3 is included in the new Form ABS-EE collection of information discussed above. Thus, we estimate that an ABS Form SF-1 filing will impose an incremental burden of 100 hours per response, which is equal to the incremental burden to file Form SF-3. We estimate the total number of hours to prepare and file each Form SF-1 to be 1,380, the total annual burden to be 2,070 hours and added costs for professional expenses to be \$2,484,000.¹⁴²⁰ This will result in a corresponding decrease in Form S-1 burden hours of 640 and \$768,000 in professional costs.¹⁴²¹

¹⁴¹⁹ See Section IV.B.2 of the 2004 ABS Proposing Release.

¹⁴²⁰ The total burden hours to file Form SF-1 are calculated by adding the existing burden hours of 1,280 and the incremental burden of 100 hours imposed by the new requirements for total of 1,380 hours. To calculate the annual internal and external costs, we first multiply the total burden hours per Form SF-1 (1,380) by the number of Forms SF-1 expected under the new requirements (six), resulting in 8,280 total burden hours. Then, we allocate 25% of these hours to internal burden, resulting in 2,070 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of \$400 per hour to calculate the external professional costs of \$2,484,000.

¹⁴²¹ To calculate these values, we first multiply the total burden hours per Form S-1 (1,280) by the average number of Form S-1s filed during 2004-2013 (two), resulting in 2,560 total burden hours. Then, we allocate 25% of these hours to internal burden, resulting in 640 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of \$400 per hour to calculate the external professional costs of \$768,000.

4. Form 10-K

The ongoing periodic and current reporting requirements applicable to operating companies differ substantially from the reporting that is most relevant to investors in asset-backed securities. For asset-backed issuers, in addition to a specified set of Form 10-K disclosure items, the issuer must file a servicer compliance statement, a servicer's assessment of compliance with servicing criteria, and an attestation of an independent public accountant as exhibits to the Form 10-K. In 2004, we estimated that 120 hours would be needed to complete and file a Form 10-K for an asset-backed issuer. We believe that our revisions related to the disclosure requirements for material instances of noncompliance will cause an increase in the number of hours incurred to prepare, review, and file Form 10-K by five hours. We estimate that, for Exchange Act reports, 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average rate of \$400 per hour. We also estimate that 1,046 Form 10-K filings for asset-backed issuers are filed per year, based on the average number of Forms 10-K filed over the period 2004-2013. Therefore, we estimate for PRA purposes that the increase in total annual number of hours to prepare, review, and file Form 10-K for asset-backed issuers will be 5,230 hours.¹⁴²² We allocate 75% of those hours (3,923) to internal burden and the remaining 25% to external costs totaling \$523,000 using a rate of \$400 per hour.

¹⁴²²

To calculate the annual internal and external costs, we first multiply the incremental burden of five hours imposed by the new requirements by the number of Forms 10-K (1,046), resulting in an increase of 5,230 burden hours.

5. Form 10-D

In 2004, we adopted Form 10-D as a new form for only asset-backed issuers. This form is filed within 15 days of each required distribution date on the asset-backed securities, as specified in the governing documents for such securities. The form contains periodic distribution and pool performance information.

In 2004, we estimated that it would take 30 hours to complete and file Form 10-D.¹⁴²³ We also estimate that 13,014 Form 10-D filings are filed per year based on current annual responses.¹⁴²⁴ As discussed above, we are adopting asset-level disclosure requirements that relate to ongoing performance of the assets to be filed at the same time as Form 10-D; the burden of this requirement is included in our estimate of the asset-level disclosure collection of information requirements. We estimate that the new Regulation AB disclosure requirements that will be included in Form 10-D related to the asset review (Item 1121(d)), investor communications (Item 1121(e)), and material changes to the sponsor's interest in the transaction (Item 1124) will result in an additional burden of five hours for Items 1121(d) & (e), plus two hours for Item 1124 per filing to prepare. Therefore, we estimate that the new requirements will increase the number of hours to prepare, review, and file a Form 10-D to 37 hours, thereby

¹⁴²³ See the 2004 ABS Adopting Release.

¹⁴²⁴ To calculate current annual responses, we used the average number of respondents that filed Form 10-Ds between 2011 and 2013, which was 2,169. We then multiplied the average number of respondents (2,169) by the average number of times that a respondent would file a Form 10-D per year (6) for a total of 13,014 Form 10-Ds per year. Different types of asset-backed securities have different distribution periods, and the Form 10-D is filed for each distribution period. We derived the multiplier of six by comparing the number of Forms 10-D that have been filed since 2006 with the number of Forms 10-K (which are only required to be filed once a year) that have been filed.

increasing the total burden hours for all Form 10-Ds filed annually to 481,518 hours. We allocate 75% of those hours (361,139) to internal burden and the remaining 25% to external costs totaling \$48,151,800 using a rating of \$400 per hour.

6. Form 8-K

Our current PRA estimate for Form 8-K is based on the use of the report to disclose the occurrence of certain defined reportable events, some of which are applicable to asset-backed securities. In the 2010 ABS Proposing Release, we noted three portions of the proposal which would cause an increase in the number of reports on Form 8-K for ABS issuers; however, we are not adopting any of those proposed requirements.¹⁴²⁵ We are amending Form 8-K to include a specific item number under which static pool information that is filed on Form 8-K must be reported. This amendment will assist investors in locating static pool information that is incorporated by reference into the prospectus. Because the static pool requirement is included in the existing burden estimate for Form S-3, which we are transferring to the new Form SF-3, we are not assigning any additional burden hours to the Form 8-K for this new requirement.

7. Regulation S-K and Regulation S-T

Regulation S-K, which includes the item requirements in Regulation AB, contains the requirements for disclosure that an issuer must provide in filings under both the Securities Act and the Exchange Act. As noted above, Regulation S-T contains the requirements that govern the electronic submission of documents.

¹⁴²⁵ See Section X.B.5. of the 2010 ABS Proposing Release.

The new rules and rule amendments that we are adopting will result in revisions to Regulation S-K and Regulation S-T. The collection of information requirements, however, are reflected in the burden hours estimated for the various Securities Act and Exchange Act forms related to asset-backed issuers. The rules in Regulation S-K and Regulation S-T do not impose any separate burden. Consistent with historical practice, we have retained an estimate of one burden hour each to Regulation S-T and Regulation S-K for administrative convenience.

E. Summary of Changes to Annual Burden of Compliance in Collection of Information

The table below illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports and registration statements and for the new registration statements and forms for asset-backed issuers. Bracketed numbers indicate a decrease in the estimate.

Form	Current Annual Responses ¹⁴²⁶	Final Annual Responses	Current Burden Hours	Decrease or Increase in Burden Hours	Final Burden Hours	Current Professional Costs	Decrease or Increase in Professional Costs	Final Professional Costs
S-3	1,153	1,082	136,192	[22,720]	113,472	163,435,444	[27,264,000]	136,171,444
S-1	903	901	219,501	[640]	218,861	263,401,488	[768,000]	262,633,488
SF-3	--	71	--	24,495	24,495	--	29,394,000	29,394,000
SF-1	--	6	--	2,070	2,070	--	2,484,000	2,484,000
10-K	8,137	8,137	12,198,094	3,923	12,202,017	1,626,412,494	523,000	1,626,935,494
10-D	13,014	13,014	292,815	68,324	361,139	39,042,000	9,109,800	48,151,800
Form ABS-EE	--	13,374	--	170,089	170,089	--	57,459,063	57,459,063

¹⁴²⁶

The current annual responses reflects the average number of filings that the Commission has received from 2011 to 2013.

XI. Regulatory Flexibility Act Certification

In Part XIV of the 2010 ABS Proposing Release and Part IX of the 2011 ABS Re-Proposing Release, we certified pursuant to 5 U.S.C. 605(b) that the new rules contained in this release would not have a significant economic impact on a substantial number of small entities. One commenter provided comments in response to the Commission's request for written comments regarding this certification.¹⁴²⁷ This commenter faulted the Commission for reaching its conclusion by "focusing exclusively on the size of the sponsors that would be required to comply."¹⁴²⁸ The commenter suggested that the analysis should extend beyond the impact on small entities as sponsors of securitization transactions.¹⁴²⁹ This commenter did not suggest that there would be a significant impact on entities directly subject to any of the rules we had proposed.¹⁴³⁰ Further, the commenter did not describe the nature of any impact on small entities or provide empirical data to support the extent of the impact. The Regulatory Flexibility Act analysis only applies to those entities "which will be subject to the requirement[s]" of the rule.¹⁴³¹ Accordingly, based on the analysis set forth in the 2010 ABS Proposing Release and the

¹⁴²⁷ See letter from ABA II.

¹⁴²⁸ Id.

¹⁴²⁹ In justifying a thorough regulatory analysis, the ABA contended, "[g]iven securitization's pervasive role in our economy and the importance of securitization to the availability of credit to small businesses; it is difficult to fathom how the 2010 ABS Proposals, as revised by the Re-Proposing Release, if adopted, would not have a significant impact on a substantial number of small entities."

¹⁴³⁰ See letter from ABA II.

¹⁴³¹ See 5 U.S.C. 604(a)(5). See also Mid-Tex Elec. Co-op, Inc. v. FERC, 773 F.2d 327, 343 (D.C. Cir. 1985) (reasoning that because "Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy"), Cement Kiln Recycling Coalition v. EPA, 255 F.3d 855, 869 (D.C. Cir. 2001) (reasoning that "to require an agency to assess the impact on all of the nation's small businesses possibly affected by a rule would be to convert

2011 ABS Re-Proposing Release, we continue to believe that the rules being adopted would not have a significant economic impact on a substantial number of small entities.

XII. Statutory Authority and Text of Rule and Form Amendments

We are adopting the new rules, forms and amendments contained in this document under the authority set forth in Sections 5, 6, 7, 8, 10, 19(a) and 28 of the Securities Act, Sections 12, 13, 15, 23(a), 35A and 36 of the Exchange Act, and Section 319 of the Trust Indenture Act.

List of Subjects

17 CFR Part 230

Advertising, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 229, 232, 239, 240, 243 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 229 -- STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 -- REGULATION S-K

1. The authority citation for Part 229 continues to read as follows:

every rulemaking process into a massive exercise in economic modeling, an approach we have already rejected”).

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 229.512 by:

a. In paragraph (a)(1)(iii)(B) adding the phrase “, Form SF-3 (§ 239.45 of this chapter)” immediately after the phrase, “Form S-3 (§ 239.13 of this chapter)”;

b. In paragraph (a)(1)(iii)(C) removing the phrase “on Form S-1 (§ 239.11 of this chapter) or Form S-3 (§ 239.13 of this chapter)” and adding in its place “Form SF-1 (§ 239.44 of this chapter) or Form SF-3 (§ 239.45 of this chapter)”;

c. Adding paragraphs (a)(5)(iii) and (a)(7); and

d. Removing paragraph (l).

The additions read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(5) * * *

(iii) If the registrant is relying on § 230.430D of this chapter:

(A) Each prospectus filed by the registrant pursuant to §§ 230.424(b)(3) and (h) of this chapter shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to § 230.424(b)(2), (b)(5), or (b)(7) of this chapter as part of a registration statement in reliance on § 230.430D of this chapter relating to an offering made pursuant to § 230.415(a)(1)(vii) or (a)(1)(xii) of this chapter for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a)) shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in § 230.430D of this chapter, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

* * * * *

(7) If the registrant is relying on § 230.430D of this chapter, with respect to any offering of securities registered on Form SF-3 (§ 239.45 of this chapter), to file the information previously omitted from the prospectus filed as part of an effective registration statement in accordance with § 230.424(h) and § 230.430D of this chapter.

* * * * *

3. Amend § 229.601 by:

- a. Adding a column for "Form ABS-EE" and an entry for (36), (102), (103), (104), (105) and (106)" to the exhibit table in paragraph (a); and
- b. Adding paragraphs (b)(36) and (b)(102) through (b)(106).

The additions read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

* * * * *

EXHIBIT TABLE																
Securities Act Forms								Exchange Act Forms								
<u>S-</u> <u>1</u>	<u>S-</u> <u>3</u>	<u>SF-</u> <u>1</u>	<u>SF-</u> <u>3</u>	<u>S-</u> <u>4</u> ¹	<u>S-8</u>	<u>S-</u> <u>11</u>	<u>F-</u> <u>1</u>	<u>F-</u> <u>3</u>	<u>F-</u> <u>4</u> ¹	<u>10</u>	<u>8-</u> <u>K</u> ²	<u>10</u> <u>-D</u>	<u>10-</u> <u>Q</u>	<u>10</u> <u>-K</u>	<u>ABS</u> <u>-EE</u>	
* * * * *																
(36) Depositor Certification for shelf offerings of asset-backed	---	---	---	X	---	---	---	---	---	---	---	---	---	---	---	---

securities																
(37) through (94) [Reserved]	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A
* * * * *																
(102) Asset Data File	---	---	X	X	---	---	---	---	---	---	---	---	X	---	---	X
(103) Asset Related Documents	---	---	X	X	---	---	---	---	---	---	---	---	X	---	---	X
(104) [Reserved]	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A
(105) [Reserved]	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A	N/ A
(106) Static Pool	---	---	X	X	---	---	---	---	---	---	---	X	---	---	---	---

* * * * *

(b) * * *

(36) Certification for shelf offerings of asset-backed securities. Provide the certification required by General Instruction I.B.1.(a) of Form SF-3 (§ 239.45 of this chapter) exactly as set forth below:

Certification

I [identify the certifying individual] certify as of [the date of the final prospectus under § 230.424 of this chapter] that:

1. I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] (the "securities") and am familiar with, in all material respects, the following: the characteristics of the securitized assets underlying the offering (the "securitized assets"), the structure of the securitization, and all material underlying transaction agreements as described in the prospectus;
2. Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;
3. Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part fairly present, in all material respects, the characteristics of the securitized assets, the structure of the securitization and the risks of ownership of the securities, including the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms; and
4. Based on my knowledge, taking into account all material aspects of the characteristics of the securitized assets, the structure of the securitization, and the related risks as described in the prospectus, there is a reasonable basis to conclude that the securitization is structured to produce, but is not guaranteed by this

certification to produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.

5. The foregoing certifications are given subject to any and all defenses available to me under the federal securities laws, including any and all defenses available to an executive officer that signed the registration statement of which the prospectus referred to in this certification is part.

Date: _____

[Signature]

[Title]

The certification must be signed by the chief executive officer of the depositor, as required by General Instruction I.B.1.(a) of Form SF-3.

* * * * *

(102) Asset Data File. An Asset Data File (as defined in § 232.11 of this chapter) filed pursuant to Item 1111(h)(3) of Regulation AB (§ 229.1111(h)(3)).

(103) Asset Related Document. Additional asset-level information or explanatory language pursuant to Item 1111(h)(4) and (5) of Regulation AB (§ 229.1111(h)(4) and (h)(5)).

(104) [Reserved].

(105) [Reserved].

(106) Static Pool. If not included in the prospectus filed in accordance with § 230.424(b)(2) or (5) and (h) of this chapter, static pool disclosure as required by § 229.1105.

* * * * *

4. Amend § 229.1100 by:

- a. Revising the heading and introductory text of paragraph (c); and
- b. Revising paragraph (f).

The revisions read as follows:

§ 229.1100 (Item 1100) General.

* * * * *

(c) Presentation of certain third party information. If information of a third party is required in a filing by Item 1112(b) of this Regulation AB (Information regarding significant obligors) (§ 229.1112(b)), Items 1114(b)(2) or 1115(b) of this Regulation AB (Information regarding significant provider of enhancement or other support) (§ 229.1114(b)(2) or 1115(b)), or Item 1125 of this Regulation AB (Asset-level information) (§ 229.1125) such information, in lieu of including such information, may be provided as follows:

* * * * *

(f) Filing of required exhibits. Where agreements or other documents in this Regulation AB (§§ 229.1100 through 229.1124) are specified to be filed as exhibits to a Securities Act

registration statement, such agreements or other documents, if applicable, may be incorporated by reference as an exhibit to the registration statement, such as by filing a Form 8-K (§ 249.308 of this chapter) in the case of offerings registered on Form SF-3 (§ 239.45 of this chapter). Final agreements must be filed and made part of the registration statement no later than the date the final prospectus is required to be filed under § 230.424 of this chapter.

5. Amend § 229.1101 by:

a. In paragraphs (c)(3)(ii)(A) and (B) removing the references to “50%” and adding in their place “25%”; and

b. Adding paragraph (m).

The addition reads as follows:

§ 229.1101 (Item 1101) Definitions.

* * * * *

(m) Asset representations reviewer means any person appointed to review the underlying assets for compliance with the representations and warranties on the underlying pool assets and is not affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates. The asset representations reviewer shall not be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. The asset representations reviewer also shall not be the same party or an affiliate of any party hired by the sponsor or underwriter to perform pre-closing due diligence work on the pool assets.

* * * * *

6. Amend § 229.1102 by adding a second sentence to paragraph (a) to read as follows:

§ 229.1102 (Item 1102) Forepart of registration statement and outside cover page of the prospectus.

* * * * *

(a) * * * Such identifying information should include a Central Index Key number for the depositor and the issuing entity, and if applicable, the sponsor.

* * * * *

7. Amend § 229.1103 by adding an instruction after paragraph (a)(2) to read as follows:

§ 229.1103 (Item 1103) Transaction summary and risk factors.

(a) * * *

(2) * * *

Instruction to Item 1103(a)(2). What is required is summary disclosure tailored to the particular asset pool backing the asset-backed securities. While the material characteristics will vary depending on the nature of the pool assets, summary disclosure may include, among other things, statistical information of: The types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination. Include a cross-reference in the prospectus summary to the more detailed statistical information found in the prospectus.

* * * * *

8. Amend § 229.1104 by:

a. In paragraph (e)(1) removing the phrase “Section 3(a)(77) of the Securities Exchange Act of 1934)” and adding in its place “Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))”; and

b. Adding paragraphs (f) and (g).

The additions read as follows:

§ 229.1104 (Item 1104) Sponsors.

* * * * *

(f) If the sponsor is required to repurchase or replace any asset for breach of a representation and warranty pursuant to the transaction agreements, provide information regarding the sponsor’s financial condition to the extent that there is a material risk that the effect on its ability to comply with the provisions in the transaction agreements relating to the repurchase obligations for those assets resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

(g) Describe any interest that the sponsor, or any affiliate of the sponsor, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the sponsor or, if known, by an affiliate of the sponsor to offset the risk position held.

Instruction to Item 1104(g). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the sponsor in order to satisfy such requirements.

9. Amend § 229.1105 by:

- a. Adding an undesignated introductory paragraph;
- b. Revising paragraph (a)(3)(ii);
- c. Adding an instruction to paragraph (a)(3)(ii);
- d. Adding paragraph (a)(3)(iv); and
- e. Revising paragraph (c).

The additions and revisions read as follows:

§ 229.1105 (Item 1105) Static pool information.

Describe the static pool information presented. Provide appropriate introductory and explanatory information to introduce the characteristics, the methodology used in determining or calculating the characteristics and any terms or abbreviations used. Include a description of how the static pool differs from the pool underlying the securities being offered, such as the extent to which the pool underlying the securities being offered was originated with the same or differing underwriting criteria, loan terms, and risk tolerances than the static pools presented. In addition to a narrative description, the static pool information should be presented graphically if doing so would aid in understanding.

(a) * * *

(3) * * *

(ii) Present delinquency, cumulative loss and prepayment data for each prior securitized pool or vintage origination year, as applicable, over the life of the prior securitized pool or

vintage origination year. The most recent periodic increment for the data must be as of a date no later than 135 days after the date of first use of the prospectus.

Instruction to Item 1105(a)(3)(ii). Present historical delinquency and loss information in accordance with Item 1100(b) of this Regulation AB (§ 229.1100(b)) through no less than 120 days.

* * * * *

(iv) Provide graphical illustration of delinquencies, prepayments and losses for each prior securitized pool or by vintage origination year regarding originations or purchases by the sponsor, as applicable for that asset type.

* * * * *

(c) If the information that would otherwise be required by paragraph (a)(1), (a)(2) or (b) of this section is not material, but alternative static pool information would provide material disclosure, provide such alternative information instead. Similarly, information contemplated by paragraph (a)(1), (a)(2) or (b) of this section regarding a party or parties other than the sponsor may be provided in addition to or in lieu of such information regarding the sponsor if appropriate to provide material disclosure. In addition, provide other explanatory disclosure, including why alternative disclosure is being provided and explain the absence of any static pool information contemplated by paragraph (a)(1), (a)(2) or (b) of this section, as applicable.

* * * * *

10. Amend § 229.1108 by:

a. In paragraph (a)(3) removing the phrase “(c) and (d)” and adding in its place “(c), (d), and (e)”;

b. Removing paragraph (c)(6);

c. Redesignating paragraphs (c)(7) and (c)(8) as paragraphs (c)(6) and (c)(7); and

d. Adding paragraph (e).

The addition reads as follows:

§ 229.1108 (Item 1108) Servicers.

* * * * *

(e) Describe any interest that the servicer, or any affiliate of the servicer, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the servicer or, if known, by an affiliate of the servicer to offset the risk position held.

Instruction to Item 1108(e). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the servicer in order to satisfy such requirements.

11. Amend § 229.1109 by:

a. Revising the section heading;

b. Redesignating paragraphs (a), (b), (c), (d), (e) and (f) as paragraphs (a)(1), (2), (3), (4), (5), and (6), respectively;

c. Redesignating the undesignated introductory paragraph as paragraph (a) introductory text and adding the paragraph heading "Trustees." to newly redesignated paragraph (a) introductory text; and

d. Adding new paragraph (b).

The revision and addition read as follows:

§ 229.1109 (Item 1109) Trustees and other transaction parties.

(a) Trustees. * * *

* * * * *

(b) Asset representations reviewer. Provide the following for each asset representations reviewer:

(1) State the asset representations reviewer's name and describe its form of organization.

(2) Describe to what extent the asset representations reviewer has had prior experience serving as an asset representations reviewer for asset-backed securities transactions involving similar pool assets.

(3) Describe the asset representations reviewer's duties and responsibilities regarding the asset-backed securities under the governing documents and under applicable law. In addition, describe any actions required of the asset representations reviewer, including whether notices are required to investors, rating agencies or other third parties, and any required percentage of a class or classes of asset-backed securities that is needed to require the asset representations reviewer to take action.

(4) Disclose the manner and amount in which the asset representations reviewer is compensated.

(5) Describe any limitations on the asset representations reviewer's liability under the transaction agreements regarding the asset-backed securities transaction.

(6) Describe any indemnification provisions that entitle the asset representations reviewer to be indemnified from the cash flow that otherwise would be used to pay holders of the asset-backed securities.

(7) Describe any contractual provisions or understandings regarding the asset representations reviewer's removal, replacement or resignation, as well as how the expenses associated with changing from one asset representations reviewer to another asset representations reviewer will be paid.

* * * * *

12. Amend § 229.1110 by:

- a. Adding a second sentence to paragraph (a); and
- b. Adding paragraphs (b)(3) and (c).

The additions read as follows:

§ 229.1110 (Item 1110) Originators.

(a) * * * Also identify any originator(s) originating less than 10% of the pool assets if the cumulative amount originated by parties other than the sponsor or its affiliates is more than 10% of the pool assets.

(b) * * *

(3) Describe any interest that the originator, or any affiliate of the originator, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the originator or, if known, by an affiliate of the originator to offset the risk position held.

Instruction to Item 1110(b)(3). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the originator in order to satisfy such requirements.

(c) For any originator identified under paragraph (b) of this section, if such originator is required to repurchase or replace a pool asset for breach of a representation and warranty pursuant to the transaction agreements, provide information regarding the originator's financial condition to the extent that there is a material risk that the effect on its ability to comply with the provisions in the transaction agreements relating to the repurchase obligations for those assets resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

13. Amend § 229.1111 by:

a. Revising paragraph (e); and

b. Adding paragraph (h).

The revision and addition read as follows:

§ 229.1111 (Item 1111) Pool assets.

* * * * *

(e) Representations and warranties and modification provisions relating to the pool assets.

Provide the following information:

(1) Representations and warranties. Summarize any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction, and describe briefly the remedies available if those representations and warranties are breached, such as repurchase obligations.

(2) Modification provisions. Describe any provisions in the transaction agreements governing the modification of the terms of any asset, including how such modification may affect the cash flows from the assets or to the securities.

* * * * *

(h) Asset-level information. (1) If the asset pool includes residential mortgages, commercial mortgages, automobile loans, automobile leases, debt securities or resecuritizations of asset-backed securities, provide asset-level information for each asset or security in the pool in the manner specified in Schedule AL (§ 229.1125).

(2) File the disclosures as an Asset Data File (as defined in § 232.11 of this chapter) in the format required by the EDGAR Filer Manual. See § 232.301 of this chapter.

(3) File the Asset Data File as an exhibit to Form ABS-EE (§ 249.1401 of this chapter) in accordance with Item 601(b)(102) of Regulation S-K (§ 229.601(b)(102)).

(4) A registrant may provide additional explanatory disclosure related to an Asset Data File by filing an asset related document as an exhibit to Form ABS-EE (§ 249.1401 of this chapter) in accordance with Item 601(b)(103) of Regulation S-K (§ 229.601(b)(103)).

(5) A registrant may provide other asset-level information in addition to the information required by Schedule AL (§ 229.1125) by filing an asset related document as an exhibit to Form ABS-EE (§ 249.1401 of this chapter) in accordance with Item 601(b)(103) of Regulation S-K (§ 229.601(b)(103)). The asset related document(s) must contain the definitions and formulas for each additional data point and the related tagged data and may contain explanatory disclosure about each additional data point.

Instruction to Item 1111(h). All of the information required by this Item must be provided at the time of every filing for each asset that was in the asset pool during the reporting period, including assets removed prior to the end of the reporting period.

* * * * *

§ 229.1112 [Amended]

14. Amend § 229.1112 by:

- a. Removing Instruction 2 to Item 1112(b); and
- b. Redesignating Instructions 1, 3 and 4 to Item 1112(b) as “Instruction 1 to Item 1112(b)”, “Instruction 2 to Item 1112(b)”, and “Instruction 3 to Item 1112(b)”, respectively.

15. Amend § 229.1113 by:

- a. Adding paragraph (a)(7)(i); and

b. Reserving paragraph (a)(7)(ii).

The addition reads as follows:

§ 229.1113 (Item 1113) Structure of the transaction.

(a) * * *

(7) * * *

(i) Describe how the delinquency threshold that triggers a review by the asset representations reviewer was determined to be appropriate. In describing the appropriateness of such delinquency threshold, compare such delinquency threshold against the delinquencies disclosed for prior securitized pools of the sponsor for that asset type in accordance with Item 1105 of Regulation AB (§ 229.1105).

(ii) [Reserved]

* * * * *

§ 229.1114 [Amended]

16. Amend § 229.1114 by:

a. Removing the heading "Instructions to Item 1114:"; and

b. Removing Instruction 3 to Item 1114(b); and

c. Redesignating Instructions 1, 2, 4 and 5 to Item 1114 as "Instruction 1 to Item 1114(b)", "Instruction 2 to Item 1114(b)", "Instruction 3 to Item 1114(b)" and "Instruction 4 to Item 1114(b)", respectively.

17. Amend § 229.1119 by adding paragraph (a)(7) to read as follows:

§ 229.1119 (Item 1119) Affiliations and certain relationships and related transactions.

(a) * * *

(7) Asset representations reviewer.

* * * * *

18. Amend § 229.1121 by:

a. Revising the second sentence of paragraph (a)(9); and

b. Adding paragraphs (d) and (e).

The revision and additions read as follows:

§ 229.1121 (Item 1121) Distribution and pool performance information.

(a) * * *

(9) * * * Present historical delinquency and loss information in accordance with Item 1100(b) of this Regulation AB (§ 229.1100(b)) through no less than 120 days.

* * * * *

(d) Asset review. (1) If during the distribution period a review of the underlying assets for compliance with the representations and warranties on the underlying assets is required, provide the following information, as applicable:

(i) A description of the event(s) that triggered the review during the distribution period;
and

(ii) If the asset representations reviewer provided to the trustee during the distribution period a report of the findings and conclusions of the review, a summary of the report.

(2) Change in asset representations reviewer. If during the distribution period an asset representations reviewer has resigned or has been removed, replaced or substituted, or if a new asset representations reviewer has been appointed, state the date the event occurred and the circumstances surrounding the change. If a new asset representations reviewer has been appointed, provide the disclosure required by Item 1109(b) (§ 229.1109(b)), as applicable, regarding such asset representations reviewer.

(e) Investor communication. Disclose any request received from an investor to communicate with other investors during the reporting period received by the party responsible for making the Form 10-D filings on or before the end date of a distribution period. The disclosure regarding the request to communicate is required to include the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10-D (§ 249.312 of this chapter) has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method by which other investors may contact the requesting investor.

Instruction to Item 1121(e). The party responsible for filing the Form 10-D (§ 249.312 of this chapter) is required to disclose an investor's interest to communicate only where the communication relates to an investor exercising its rights under the terms of the transaction agreement.

19. Amend § 229.1122 by:

- a. Revising paragraph (c)(1);
- b. Redesignating paragraph (c)(2) as paragraph (c)(3);
- c. Adding new paragraph (c)(2);
- d. Adding paragraph (d)(1)(v);
- e. Removing the heading "Instructions to Item 1122:";
- f. Redesignating Instructions 1, 2 and 3 to Item 1122 as, "Instruction 2 to Item 1122.", "Instruction 3 to Item 1122.", and "Instruction 4 to Item 1122.", respectively; and
- g. Adding a new instruction 1 to Item 1122.

The revision and additions read as follows:

§ 229.1122 (Item 1122) Compliance with applicable servicing criteria.

* * * * *

(c) * * * (1) If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, identifies any material instance of noncompliance with the servicing criteria, identify the material instance of noncompliance in the report on Form 10-K (§ 249.310 of this chapter). Also disclose whether the identified instance was determined to have involved the servicing of the assets backing the asset-backed securities covered in this Form 10-K report.

(2) Discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities with respect to asset-backed securities

transactions taken as a whole involving such party and that are backed by the same asset type backing the asset-backed securities.

* * * * *

(d) * * *

(1) * * *

(v) Aggregation of information, as applicable, is mathematically accurate and the information conveyed accurately reflects the information.

* * * * *

Instruction 1 to Item 1122: The assessment should cover all asset-backed securities transactions involving such party and that are backed by the same asset type backing the class of asset-backed securities which are the subject of the Commission filing. The asserting party may take into account divisions among transactions that are consistent with actual practices. However, if the asserting party includes in its platform less than all of the transactions backed by the same asset type that it services, a description of the scope of the platform should be included in the assessment.

* * * * *

20. Add § 229.1124 to read as follows:

§ 229.1124 (Item 1124) Sponsor interest in the securities.

Provide information about any material change in the sponsor's, or an affiliate's, interest in the securities resulting from the purchase, sale or other acquisition or disposition of the

securities by the sponsor, or an affiliate, during the period covered by the report. Describe the change, including the amount of change and the sponsor's, or the affiliate's, resulting interest in the transaction after the change.

Instruction to Item 1124. The disclosure required under this item shall separately state the resulting amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the sponsor in order to satisfy such requirement.

21. Add § 229.1125 to read as follows:

§ 229.1125 (Item 1125) Schedule AL – Asset-level information.

The following definitions apply to the terms used in this schedule unless otherwise specified:

Debt service reduction. A modification of the terms of a loan resulting from a bankruptcy proceeding, such as a reduction of the amount of the monthly payment on the related mortgage loan.

Deficient valuation. A bankruptcy proceeding whereby the bankruptcy court may establish the value of the mortgaged property at an amount less than the then-outstanding principal balance of the mortgage loan secured by the mortgaged property or may reduce the outstanding principal balance of a mortgage loan.

Underwritten. The amount of revenues or expenses adjusted based on a number of assumptions made by the mortgage originator or seller.

Item 1. Residential mortgages. If the asset pool includes residential mortgages, provide the following data and the data under Item 1 for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the residential mortgage.* (1) Original loan purpose. Specify the code which describes the purpose of the loan at the time the loan was originated.

(2) Originator. Identify the name of the entity that originated the loan.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan maturity date. Indicate the month and year in which the final payment on the loan is scheduled to be made at the time the loan was originated.

(5) Original amortization term. Indicate the number of months that would have been required to retire the mortgage loan through regular payments, as determined at the origination date of the loan. In the case of an interest-only loan, the original amortization term is the original term to maturity (other than in the case of a balloon loan). In the case of a balloon loan, the original amortization term is the number of months used to calculate the principal and interest payment due each month (other than the balloon payment).

(6) Original interest rate. Provide the rate of interest at the time the loan was originated.

(7) Accrual type. Provide the code that describes the method used to calculate interest on the loan.

(8) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable, step or other.

(9) Original interest only term. Indicate the number of months in which the obligor is permitted to pay only interest on the loan beginning from when the loan was originated.

(10) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(11) Original lien position. Indicate the code that describes the priority of the lien against the subject property at the time the loan was originated.

(12) Information related to junior liens. If the loan is a first mortgage with subordinate liens, provide the following additional information for each non-first mortgage if obtained or available:

(i) Most recent junior loan balance. Provide the most recent combined balance of any subordinate liens.

(ii) Date of most recent junior loan balance. Provide the date of the most recent junior loan balance.

(13) Information related to non-first mortgages. For non-first mortgages, provide the following information if obtained or available:

(i) Most recent senior loan amount. Provide the total amount of the balances of all associated senior loans.

(ii) Date of most recent senior loan amount. Provide the date(s) of the most recent senior loan amount.

(iii) Loan type of most senior lien. Indicate the code that describes the loan type of the first mortgage.

(iv) Hybrid period of most senior lien. For non-first mortgages where the associated first mortgage is a hybrid ARM, provide the number of months remaining in the initial fixed interest rate period for the first mortgage.

(v) Negative amortization limit of most senior lien. For non-first mortgages where the associated first mortgage features negative amortization, indicate the negative amortization limit of the mortgage as a percentage of the original unpaid principal balance.

(vi) Origination date of most senior lien. Provide the origination date of the associated first mortgage.

(14) Prepayment penalty indicator. Indicate yes or no as to whether the loan includes a penalty charged to the obligor in the event of a prepayment.

(15) Negative amortization indicator. Indicate yes or no as to whether the loan allows negative amortization.

(16) Modification indicator. Indicate yes or no as to whether the loan has been modified from its original terms.

(17) Number of modifications. Provide the number of times that the loan has been modified.

(18) Mortgage insurance requirement indicator. Indicate yes or no as to whether mortgage insurance is or was required as a condition for originating the loan.

(19) Balloon indicator. Indicate yes or no as to whether the loan documents require a lump-sum to fully pay off the loan.

(20) Covered/High cost loan indicator. Indicate yes, no or unknown as to whether as of the end of the reporting period the loan is categorized as "high cost," "higher priced" or "covered" according to applicable federal, state or local statutes, ordinances or regulations.

(21) Servicer-placed hazard insurance. Indicate yes, no or unknown as to whether as of the end of the reporting period the hazard insurance on the property is servicer-placed.

(22) Refinance cash-out amount. For any refinance loan that is a cash-out refinance provide the amount the obligor received after all other loans to be paid by the mortgage proceeds have been satisfied. For any refinance loan that is a no-cash-out refinance provide the result of the following calculation: [NEW LOAN AMOUNT]-[PAID OFF FIRST MORTGAGE LOAN AMOUNT]-[PAID OFF SECOND MORTGAGE LOAN AMOUNT]-[CLOSING COSTS].

(23) Total origination and discount points. Provide the amount paid to the lender to increase the lender's effective yield and, in the case of discount points, to reduce the interest rate paid by the obligor.

(24) Broker. Indicate yes or no as to whether a broker originated or was involved in the origination of the loan.

(25) Channel. Specify the code that describes the source from which the issuer obtained the loan.

(26) NMLS company number. Specify the National Mortgage License System (NMLS) registration number of the company that originated the loan.

(27) Buy-down period. Indicate the total number of months during which any buy down is in effect, representing the accumulation of all buy down periods.

(28) Loan delinquency advance days count. Indicate the number of days after which a servicer can stop advancing funds on a delinquent loan.

(29) Information related to ARMs. If the loan is an ARM, provide the following additional information:

(i) Original ARM Index. Specify the code that describes the type and source of index to be used to determine the interest rate at each adjustment.

(ii) ARM Margin. Indicate the number of percentage points that is added to the index value to establish the new interest rate at each interest rate adjustment date.

(iii) Fully indexed interest rate. Indicate the fully indexed interest rate to which the obligor was underwritten.

(iv) Initial fixed rate period for hybrid ARM. If the interest rate is initially fixed for a period of time, indicate the number of months between the first payment date of the loan and the first interest rate adjustment date.

(v) Initial interest rate decrease. Indicate the maximum percentage by which the interest rate may decrease at the first interest rate adjustment date.

(vi) Initial interest rate increase. Indicate the maximum percentage by which the interest rate may increase at the first interest rate adjustment date.

(vii) Index look-back. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate.

(viii) Subsequent interest rate reset period. Indicate the number of months between subsequent rate adjustments.

(ix) Lifetime rate ceiling. Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.

(x) Lifetime rate floor. Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.

(xi) Subsequent interest rate decrease. Provide the maximum number of percentage points by which the interest rate may decrease at each rate adjustment date after the initial adjustment.

(xii) Subsequent interest rate increase. Provide the maximum number of percentage points by which the interest rate may increase at each rate adjustment date after the initial adjustment.

(xiii) Subsequent payment reset period. Indicate the number of months between payment adjustments after the first interest rate adjustment date.

(xiv) ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor.

(xv) ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded.

(xvi) Option ARM indicator. Indicate yes or no as to whether the loan is an option ARM.

(xvii) Payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast.

(xviii) Initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make.

(xix) Convertible indicator. Indicate yes or no as to whether the obligor of the loan has an option to convert an adjustable interest rate to a fixed interest rate during a specified conversion window.

(xx) HELOC indicator. Indicate yes or no as to whether the loan is a home equity line of credit (HELOC).

(xxi) HELOC draw period. Indicate the original maximum number of months from the month the loan was originated during which the obligor may draw funds against the HELOC account.

(30) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information:

(i) Prepayment penalty calculation. Specify the code that describes the method for calculating the prepayment penalty for the loan.

(ii) Prepayment penalty type. Specify the code that describes the type of prepayment penalty.

(iii) Prepayment penalty total term. Provide the total number of months after the origination of the loan that the prepayment penalty may be in effect.

(iv) Prepayment penalty hard term. For hybrid prepayment penalties, provide the number of months after the origination of the loan during which a "hard" prepayment penalty applies.

(31) Information related to negative amortization. If the loan allows for negative amortization, provide the following additional information:

(i) Negative amortization limit. Specify the maximum amount of negative amortization that is allowed before recalculating a fully amortizing payment based on the new loan balance.

(ii) Initial negative amortization recast period. Indicate the number of months after the origination of the loan that negative amortization is allowed.

(iii) Subsequent negative amortization recast period. Indicate the number of months after which the payment is required to recast after the first amortization recast period.

(iv) Negative amortization balance amount. Provide the amount of the negative amortization balance accumulated as of the end of the reporting period.

(v) Initial fixed payment period. Indicate the number of months after the origination of the loan during which the payment is fixed.

(vi) Initial periodic payment cap. Indicate the maximum percentage by which a payment can increase in the first amortization recast period.

(vii) Subsequent periodic payment cap. Indicate the maximum percentage by which a payment can increase in one amortization recast period after the initial cap.

(viii) Initial minimum payment reset period. Provide the maximum number of months after the origination of the loan that an obligor can initially pay the minimum payment before a new minimum payment is determined.

(ix) Subsequent minimum payment reset period. Provide the maximum number of months after the initial period an obligor can pay the minimum payment before a new minimum payment is determined.

(x) Minimum payment. Provide the amount of the minimum payment due during the reporting period.

(d) *Information related to the property.* (1) Geographic location. Specify the location of the property by providing the two-digit zip code.

(2) Occupancy status. Specify the code that describes the property occupancy status at the time the loan was originated.

(3) Most recent occupancy status. If a property inspection has been performed after the loan is originated, provide the code that describes the manner in which the property is occupied.

(4) Property type. Specify the code that describes the type of property that secures the loan.

(5) Most recent property value. If an additional property valuation was obtained by any transaction party or its affiliates after the original appraised property value, provide the most recent property value obtained.

(6) Most recent property valuation type. Specify the code that describes the method by which the most recent property value was reported.

(7) Most recent property valuation date. Specify the date on which the most recent property value was reported.

(8) Most recent AVM model name. Provide the code indicating the name of the AVM model if an AVM was used to determine the most recent property value.

(9) Most recent AVM confidence score. If an additional AVM was obtained by any transaction party or its affiliates after the original valuation, provide the confidence score presented on the most recent AVM report.

(10) Original combined loan-to-value. Provide the ratio obtained by dividing the amount of all known outstanding mortgage liens on a property at origination by the lesser of the original appraised property value or the sales price.

(11) Original loan-to-value. Provide the ratio obtained by dividing the amount of the original mortgage loan at origination by the lesser of the original appraised property value or the sales price.

(e) *Information related to the obligor.* (1) Original number of obligors. Indicate the number of obligors who are obligated to repay the mortgage note at the time the loan was originated.

(2) Original obligor credit score. Provide the standardized credit score of the obligor used to evaluate the obligor during the loan origination process.

(3) Original obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor during the loan origination process.

(4) Most recent obligor credit score. If an additional credit score was obtained by any transaction party or its affiliates after the original credit score, provide the most recently obtained standardized credit score of the obligor.

(5) Most recent obligor credit score type. Specify the type of the most recently obtained standardized credit score of the obligor.

(6) Date of most recent obligor credit score. Provide the date of the most recently obtained standardized credit score of the obligor.

(7) Obligor income verification level. Indicate the code describing the extent to which the obligor's income was verified during the loan origination process.

(8) 4506 – T Indicator. Indicate yes or no whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506-T) was obtained and considered.

(9) Originator front-end debt-to-income (DTI). Provide the front-end DTI ratio used by the originator to qualify the loan.

(10) Originator back-end DTI. Provide the back-end DTI ratio used by the originator to qualify the loan.

(11) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment was verified during the loan origination process.

(12) Length of employment – obligor. Indicate whether the obligor was employed by its current employer for greater than 24 months at the time the loan was originated.

(13) Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan was verified during the loan origination process.

(14) Original pledged assets. If the obligor(s) pledged financial assets to the lender instead of making a down payment, provide the total value of assets pledged as collateral for the loan at the time of origination.

(15) Qualification method. Specify the code that describes the type of mortgage payment used to qualify the obligor for the loan.

(f) *Information related to mortgage insurance.* If mortgage insurance is required on the mortgage, provide the following additional information:

(1) Mortgage insurance company name. Provide the name of the entity providing mortgage insurance for the loan.

(2) Mortgage insurance coverage. Indicate the total percentage of the original loan balance that is covered by mortgage insurance.

(3) Pool insurance company. Provide the name of the pool insurance provider.

(4) Pool insurance stop loss percent. Provide the aggregate amount that the pool insurance company will pay, calculated as a percentage of the pool balance.

(5) Mortgage insurance coverage plan type. Specify the code that describes the coverage category of the mortgage insurance applicable to the loan.

(g) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added to the pool during the reporting period.

Instruction to paragraph (g)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the loan maturity date.

(3) Modification indicator – reporting period. Indicate yes or no whether the asset was modified during the reporting period.

(4) Next payment due date. For loans that have not been paid off, indicate the next payment due date.

(5) Advancing method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent loans.

(6) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are advanced by the servicer.

(7) Stop principal and interest advance date. Provide the first payment due date for which the servicer ceased advancing principal or interest.

(8) Reporting period beginning loan balance. Indicate the outstanding principal balance of the loan as of the beginning of the reporting period.

(9) Reporting period beginning scheduled loan balance. Indicate the scheduled principal balance of the loan as of the beginning of the reporting period.

(10) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(11) Reporting period interest rate. Indicate the interest rate in effect during the reporting period.

(12) Next interest rate. For loans that have not been paid off, indicate the interest rate that is in effect for the next reporting period.

(13) Servicing fee – percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(14) Servicing fee – flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(15) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.

(16) Other loan-level servicing fee(s) retained by the servicer. Provide the amount of all other fees earned by loan administrators during the reporting period that reduced the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(17) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(18) Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.

(19) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(20) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period.

(21) Reporting period ending actual balance. Indicate the actual balance of the loan as of the end of the reporting period.

(22) Reporting period ending scheduled balance. Indicate the scheduled principal balance of the loan as of the end of the reporting period.

(23) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees and escrows).

(24) Total actual amount paid. Indicate the total payment (including all escrows) paid to the servicer during the reporting period.

(25) Actual interest collected. Indicate the gross amount of interest collected during the reporting period, whether or not from the obligor.

(26) Actual principal collected. Indicate the amount of principal collected during the reporting period, whether or not from the obligor.

(27) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period, whether or not from the obligor.

(28) Paid through date. Provide the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.

(29) Interest paid through date. Provide the date through which interest is paid with the payment received during the reporting period, which is the effective date from which interest will be calculated for the application of the next payment.

(30) Paid-in-full amount. Provide the scheduled loan "paid-in-full" amount (principal) (do not include the current month's scheduled principal). Applies to all liquidations and loan payoffs.

(31) Information related to servicer advances.

(i) Servicer advanced amount – principal. Provide the total amount the servicer advanced for the reporting period for due but unpaid principal on the loan.

(ii) Servicer advanced amounts repaid – principal. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid principal on the loan.

(iii) Servicer advances cumulative – principal. Provide the outstanding cumulative amount of principal advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(iv) Servicer advanced amount – interest. Provide the total amount the servicer advanced for the reporting period for due but unpaid interest on the loan.

(v) Servicer advanced amounts repaid – interest. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid interest on the loan.

(vi) Servicer advances cumulative – interest. Provide the outstanding cumulative amount of interest advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(vii) Servicer advanced amount – taxes and insurance. Provide the total amount the servicer advanced for the reporting period for due but unpaid property tax and insurance payments (escrow amounts).

(viii) Servicer advanced amount repaid – taxes and insurance. Provide the total amount of any payment made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid escrow amounts.

(ix) Servicer advances cumulative – taxes and insurance. Provide the outstanding cumulative amount of escrow advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(x) Servicer advanced amount – corporate. Provide the total amount the servicer advanced for property inspection and preservation expenses for the reporting period.

(xi) Servicer advanced amount repaid – corporate. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding corporate advances.

(xii) Servicer advances cumulative – corporate. Provide the outstanding cumulative amount of corporate advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

Instruction to paragraph (g)(31): For loans modified or liquidated during a reporting period the data provided in response to this paragraph (g)(31) is to be information as of the liquidation date or modification date, as applicable.

(32) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan.

(i) Zero balance effective date. Provide the date on which the loan balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the loan's balance was reduced to zero.

(33) Most recent 12-month pay history. Provide the string that indicates the payment status per month listed from oldest to most recent.

(34) Number of payments past due. Indicate the number of payments the obligor is past due as of the end of the reporting period.

(35) Information related to activity on ARM loans. If the loan is an ARM, provide the following additional information.

(i) Rate at next reset. Provide the interest rate that will be used to determine the next scheduled interest payment, if known.

(ii) Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.

(iii) Next interest rate change date. Provide the next scheduled date on which the interest rate is scheduled to change.

(iv) Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change, if known.

(v) Exercised ARM conversion option indicator. Indicate yes or no whether the obligor exercised an option to convert an ARM loan to a fixed interest rate loan during the reporting period.

(h) *Information related to servicers.* (1) Primary servicer. Indicate the name of the entity that serviced the loan during the reporting period.

(2) Most recent servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(3) Master servicer. Provide the name of the entity that served as master servicer during the reporting period, if applicable.

(4) Special servicer. Provide the name of the entity that served as special servicer during the reporting period, if applicable.

(5) Subservicer. Provide the name of the entity that served as a subservicer during the reporting period, if applicable.

(i) *Asset subject to demand.* Indicate yes or no whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan from the pool.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(j) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charged-off principal amount. Specify the total amount of uncollected principal charged off.

(2) Charged-off interest amount. Specify the total amount of uncollected interest charged off.

(k) *Reserved.*

(l) *Loss mitigation type indicator.* Indicate the code that describes the type of loss mitigation the servicer is pursuing with the obligor, loan, or property as of the end of the reporting period.

(m) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Most recent loan modification event type. Specify the code that describes the most recent action that has resulted in a change or changes to the loan note terms.

(2) Effective date of the most recent loan modification. Provide the date on which the most recent modification of the loan has gone into effect.

(3) Post-modification maturity date. Provide the loan's maturity date as of the modification effective payment date.

(4) Post-modification interest rate type. Indicate whether the interest rate type on the loan after the modification is fixed, adjustable, step, or other.

(5) Post-modification amortization type. Indicate the amortization type after modification.

(6) Post-modification interest rate. Provide the interest rate in effect as of the modification effective payment date.

(7) Post-modification first payment date. Indicate the date of the first payment due after the loan modification.

(8) Post-modification loan balance. Provide the loan balance as of the modification effective payment date as reported on the modification documents.

(9) Post-modification principal and interest payment. Provide total principal and interest payment amount as of the modification effective payment date.

(10) Total capitalized amount. Provide the amount added to the principal balance of the loan due to the modification.

(11) Income verification indicator (at modification). Indicate yes or no whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506-T) was obtained and considered during the loan modification process.

(12) Modification front-end DTI. Provide the front-end DTI ratio used to qualify the modification.

(13) Modification back-end DTI. Provide the back-end DTI ratio used to qualify the modification.

(14) Total deferred amount. Provide the deferred amount that is non-interest bearing.

(15) Forgiven principal amount (cumulative). Provide the total amount of all principal balance reductions as a result of loan modifications over the life of the loan.

(16) Forgiven principal amount (reporting period). Provide the total principal balance reduction as a result of a loan modification during the reporting period.

(17) Forgiven interest amount (cumulative). Provide the total amount of all interest forgiven as a result of loan modifications over the life of the loan.

(18) Forgiven interest amount (reporting period). Provide the total gross interest forgiven as a result of a loan modification during the reporting period.

(19) Actual ending balance – total debt owed. For a loan with principal forbearance, provide the sum of the actual ending balance field plus the principal deferred amount. For all other loans, provide the actual ending balance.

(20) Scheduled ending balance – total debt owed. For a loan with principal forbearance, provide the sum of the scheduled ending balance field plus the deferred amount. For all other loans, provide the scheduled ending balance.

(21) Information related to ARM loan modifications. If the loan was an ARM before and after the most recent modification, provide the following additional information:

(i) Post-modification ARM indicator. Indicate whether the loan's existing ARM parameters have changed per the modification agreement.

(ii) Post-modification ARM index. Specify the code that describes the index on which an adjustable interest rate is based as of the modification effective payment date.

(iii) Post-modification margin. Provide the margin as of the modification effective payment date. The margin is the number of percentage points added to the index to establish the new rate.

(iv) Post-modification interest reset period (if changed). Provide the number of months of the interest reset period of the loan as of the modification effective payment date.

(v) Post-modification next reset date. Provide the next interest reset date as of the modification effective payment date.

(vi) Post-modification index lookback. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate as of the modification effective payment date.

(vii) Post-modification ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor as of the modification effective payment date.

(viii) Post-modification ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded as of the modification effective payment date.

(ix) Post-modification initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make as of the modification effective payment date.

(x) Post-modification next payment adjustment date. Provide the due date on which the next payment adjustment is scheduled to occur for an ARM loan per the modification agreement.

(xi) Post-modification ARM payment recast frequency. Provide the payment recast frequency of the loan (in months) per the modification agreement.

(xii) Post-modification lifetime rate floor. Provide the minimum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life as of the modification effective payment date.

(xiii) Post-modification lifetime rate ceiling. Provide the maximum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life as of the modification effective payment date.

(xiv) Post-modification initial interest rate increase. Indicate the maximum percentage by which the interest rate may increase at the first interest rate adjustment date after the loan modification.

(xv) Post-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date after the loan modification.

(xvi) Post-modification subsequent interest rate increase. Provide the maximum number of percentage points by which the rate may increase at each rate adjustment date after the initial rate adjustment as of the modification effective payment date.

(xvii) Post-modification subsequent interest rate decrease. Provide the maximum number of percentage points by which the interest rate may decrease at each rate adjustment date after the initial adjustment as of the modification effective payment date.

(xviii) Post-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period as of the modification effective payment date.

(xix) Post-modification payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast as of the modification effective payment date.

(xx) Post-modification ARM interest rate teaser period. Provide the duration in months that the teaser interest rate is in effect as of the modification effective payment date.

(xxi) Post-modification payment teaser period. Provide the duration in months that the teaser payment is in effect as of the modification effective payment date.

(xxii) Post-modification ARM negative amortization indicator. Indicate yes or no whether a negative amortization feature is part of the loan as of the modification effective payment date.

(xxiii) Post-modification ARM negative amortization cap. Provide the maximum percentage of negative amortization allowed on the loan as of the modification effective payment date.

(22) Information related to loan modifications involving interest-only periods. If the loan terms for the most recent loan modification include an interest only period, provide the following additional information:

(i) Post-modification interest-only term. Provide the number of months of the interest-only period from the modification effective payment date.

(ii) Post-modification interest-only last payment date. Provide the date of the last interest-only payment as of the modification effective payment date.

(23) Post-modification balloon payment amount. Provide the new balloon payment amount due at maturity as a result of the loan modification, not including deferred amounts.

(24) Information related to step loans. If the loans terms for the most recent loan modification agreement call for the interest rate to step up over time, provide the following additional information:

(i) Post-modification interest rate step indicator. Indicate whether the terms of the modification agreement call for the interest rate to step up over time.

(ii) Post-modification step interest rate. Provide the rate(s) that will apply at each change date as stated in the loan modification agreement. All rates must be provided, not just the first change rate, unless there is only a single change date.

(iii) Post-modification step date. Provide the date(s) at which the next rate and/or payment change will occur per the loan modification agreement. All dates must be provided, not just the first change, unless there is only a single change date.

(iv) Post-modification -- step principal and interest. Provide the principal and interest payment(s) that will apply at each change date as stated in the loan modification agreement. All payments must be provided, not just the first change payment, unless there is only a single change date.

(v) Post-modification -- number of steps. Provide the total number of step rate adjustments under the step agreement.

(vi) Post-modification maximum future rate under step agreement. Provide the maximum interest rate to which the loan will step up.

(vii) Post-modification date of maximum rate under step agreement. Provide the date on which the maximum interest rate will be reached.

(25) Non-interest bearing principal deferred amount (cumulative). Provide the total amount of principal deferred (or forborne) by the modification that is not subject to interest accrual.

(26) Non-interest bearing principal deferred amount (reporting period). Provide the total amount of principal deferred by the modification that is not subject to interest accrual.

(27) Recovery of deferred principal (reporting period). Provide the amount of deferred principal collected from the obligor during the reporting period.

(28) Non-interest bearing deferred paid-in-full amount. If the loan had a principal forbearance and was paid in full or liquidated, provide the amount paid towards the amount of the principal forbearance.

(29) Non-interest bearing deferred interest and fees amount (reporting period). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual during the reporting period.

(30) Non-interest bearing deferred interest and fees amount (cumulative). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual.

(31) Recovery of deferred interest and fees (reporting period). Provide the amount of deferred interest and fees collected during the reporting period.

(n) *Information related to forbearance or trial modification.* If the type of loss mitigation is forbearance or a trial modification, provide the following additional information. A forbearance plan refers to a period during which either no payment or a payment amount less than the contractual obligation is required from the obligor. A trial modification refers to a temporary loan modification during which an obligor's application for a permanent loan modification is under evaluation.

(1) Most recent forbearance plan or trial modification start date. Provide the date on which a payment change pursuant to the most recent forbearance plan or trial modification started.

(2) Most recent forbearance plan or trial modification scheduled end date. Provide the date on which a payment change pursuant to the most recent forbearance plan or trial modification is scheduled to end.

(3) Most recent trial modification violated date. Provide the date on which the obligor ceased complying with the terms of the most recent trial modification.

(o) *Information related to repayment plan.* If the type of loss mitigation is a repayment plan, provide the following additional information. A repayment plan refers to a period during which an obligor has agreed to make monthly mortgage payments greater than the contractual installment in an effort to bring a delinquent loan current.

(1) Most recent repayment plan start date. Provide the date on which the most recent repayment plan started.

(2) Most recent repayment plan scheduled end date. Provide the date on which the most recent repayment plan is scheduled to end.

(3) Most recent repayment plan violated date. Provide the date on which the obligor ceased complying with the terms of the most recent repayment plan.

(p) *Information related to short sales.* Short sale refers to the process in which a servicer works with a delinquent obligor to sell the property prior to the foreclosure sale. If the type of loss mitigation is short sale, provide the following information:

(1) Short sale accepted offer amount. Provide the amount accepted for a pending short sale.

(2) [Reserved]

(q) *Information related to loss mitigation exit.* If the loan has exited loss mitigation efforts during the reporting period, provide the following additional information:

(1) Most recent loss mitigation exit date. Provide the date on which the servicer deemed the most recent loss mitigation effort to have ended.

(2) Most recent loss mitigation exit code. Indicate the code that describes the reason the most recent loss mitigation effort ended.

(r) *Information related to loans in the foreclosure process.* If the loan is in foreclosure, provide the following additional information:

(1) Attorney referral date. Provide the date on which the loan was referred to a foreclosure attorney.

(2) Foreclosure delay reason. Indicate the code that describes the reason for delay within the foreclosure process.

(3) Foreclosure exit date. If the loan exited foreclosure during the reporting period, provide the date on which the loan exited foreclosure.

(4) Foreclosure exit reason. If the loan exited foreclosure during the reporting period, indicate the code that describes the reason the foreclosure proceeding ended.

(5) NOI Date. If a notice of intent (NOI) has been sent, provide the date on which the servicer sent the NOI correspondence to the obligor informing the obligor of the acceleration of the loan and pending initiation of foreclosure action.

(s) *Information related to REO.* REO (Real Estate Owned) refers to property owned by a lender after an unsuccessful sale at a foreclosure auction. If the loan is REO, provide the following additional information:

(1) Most recent accepted REO offer amount. If an REO offer has been accepted, provide the amount accepted for the REO sale.

(2) Most recent accepted REO offer date. If an REO offer has been accepted, provide the date on which the REO sale amount was accepted.

(3) Gross liquidation proceeds. If the REO sale has closed, provide the gross amount due to the issuing entity as reported on Line 420 of the HUD-1 settlement statement.

(4) Net sales proceeds. If the REO sale has closed, provide the net proceeds received from the escrow closing (before servicer reimbursement).

(5) Reporting period loss amount passed to issuing entity. Provide the cumulative loss amount passed through to the issuing entity during the reporting period, including subsequent loss adjustments and any forgiven principal as a result of a modification that was passed through to the issuing entity.

(6) Cumulative total loss amount passed to issuing entity. Provide the loss amount passed through to the issuing entity to date, including any forgiven principal as a result of a modification that was passed through to the issuing entity.

(7) Subsequent recovery amount. Provide the reporting period amount recovered subsequent to the initial gain/loss recognized at the time of liquidation.

(8) Eviction indicator. Indicate whether an eviction process has begun.

(9) REO exit date. If the loan exited REO during the reporting period, provide the date on which the loan exited REO status.

(10) REO exit reason. If the loan exited REO during the reporting period, indicate the code that describes the reason the loan exited REO status.

(t) Information related to losses.

(1) Information related to loss claims.

(i) UPB at liquidation. Provide the actual unpaid principal balance (UPB) at the time of liquidation.

(ii) Servicing fees claimed. Provide the amount of accrued servicing fees claimed at time of servicer reimbursement after liquidation.

(iii) Servicer advanced amounts reimbursed – principal. Provide the total amount of unpaid principal advances made by the servicer that were reimbursed to the servicer.

(iv) Servicer advanced amounts reimbursed – interest. Provide the total amount of unpaid interest advances made by the servicer that were reimbursed to the servicer.

(v) Servicer advanced amount reimbursed – taxes and insurance. Provide the total amount of any unpaid escrow amounts advanced by the servicer that were reimbursed to the servicer.

(vi) Servicer advanced amount reimbursed – corporate. Provide the total amount of any outstanding advances of property inspection and preservation expenses made by the servicer that were reimbursed to the servicer.

(vii) REO management fees. If the loan is in REO, provide the total amount of REO management fees (including auction fees) paid over the life of the loan.

(viii) Cash for keys/cash for deed. Provide the total amount paid to the obligor or tenants in exchange for vacating the property, or the payment to the obligor to accelerate a deed-in-lieu process or complete a redemption period.

(ix) Performance incentive fees. Provide the total amount paid to the servicer in exchange for carrying out a deed-in-lieu or short sale or similar activities.

(2) [Reserved]

(u) *Information related to mortgage insurance claims.* If a mortgage insurance claim (MI claim) has been submitted to the primary mortgage insurance company for reimbursement, provide the following additional information:

(1) MI claim filed date. Provide the date on which the servicer filed an MI claim.

(2) MI claim amount. Provide the amount of the MI claim filed by the servicer.

(3) MI claim paid date. If the MI claim has been paid, provide the date on which the MI company paid the MI claim.

(4) MI claim paid amount. If the MI claim has been decided, provide the amount of the claim paid by the MI company.

(5) MI claim denied/rescinded date. If the MI claim has been denied or rescinded, provide the final MI denial date after all servicer appeals.

(6) Marketable title transferred date. If the deed for the property has been conveyed to the MI company, provide the date of actual title conveyance to the MI company.

(v) *Information related to delinquent loans.* (1) Non-pay status. Indicate the code that describes the delinquency status of the loan.

(2) Reporting action code. Further indicate the code that defines the default/delinquent status of the loan.

Item 2. Commercial mortgages. If the asset pool includes commercial mortgages, provide the following data for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Group ID. Indicate the alpha-numeric code assigned to each loan group within a securitization.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the commercial mortgage.* (1) Originator. Identify the name or MERS organization number of the originator entity.

(2) Origination date. Provide the date the loan was originated.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan term. Indicate the term of the loan in months at the time the loan was originated.

(5) Maturity date. Indicate the date the final scheduled payment is due per the loan documents.

(6) Original amortization term. Indicate the number of months that would have been required to retire the loan through regular payments, as determined at the origination date of the loan.

(7) Original interest rate. Provide the rate of interest at the time the loan was originated.

(8) Interest rate at securitization. Indicate the annual gross interest rate used to calculate interest for the loan as of securitization.

(9) Interest accrual method. Provide the code that indicates the "number of days" convention used to calculate interest.

(10) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable, step or other.

(11) Original interest-only term. Indicate the number of months in which the obligor is permitted to pay only interest on the loan.

(12) First loan payment due date. Provide the date on which the borrower must pay the first full interest and/or principal payment due on the mortgage in accordance with the loan documents.

(13) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(14) Lien position at securitization. Indicate the code that describes the lien position for the loan as of securitization.

(15) Loan structure. Indicate the code that describes the type of loan structure including the seniority of participated mortgage loan components. The code relates to the loan within the securitization.

(16) Payment type. Indicate the code that describes the type or method of payment for a loan.

(17) Periodic principal and interest payment at securitization. Provide the total amount of principal and interest due on the loan in effect as of securitization.

(18) Scheduled principal balance at securitization. Indicate the outstanding scheduled principal balance of the loan as of securitization.

(19) Payment frequency. Indicate the code that describes the frequency mortgage loan payments are required to be made.

(20) Number of properties at securitization. Provide the number of properties which serve as mortgage collateral for the loan as of securitization.

(21) Number of properties. Provide the number of properties which serve as mortgage collateral for the loan as of the end of the reporting period.

(22) Grace days allowed. Provide the number of days after a mortgage payment is due in which the lender will not require a late payment charge in accordance with the loan documents. Does not include penalties associated with default interest.

(23) Interest only indicator. Indicate yes or no whether this is a loan for which scheduled interest only is payable, whether for a temporary basis or until the full loan balance is due.

(24) Balloon indicator. Indicate yes or no whether the loan documents require a lump-sum payment of principal at maturity.

(25) Prepayment premium indicator. Indicate yes or no whether the obligor is subject to prepayment penalties.

(26) Negative amortization indicator. Indicate yes or no whether negative amortization (interest shortage) amounts are permitted to be added back to the unpaid principal balance of the loan if monthly payments should fall below the true amortized amount.

(27) Modification indicator. Indicate yes or no whether the loan has been modified from its original terms.

(28) Information related to ARMs. If the loan is an ARM, provide the following additional information for each loan:

(i) ARM index. Specify the code that describes the index on which an adjustable interest rate is based.

(ii) First rate adjustment date. Provide the date on which the first interest rate adjustment becomes effective (subsequent to loan securitization).

(iii) First payment adjustment date. Provide the date on which the first adjustment to the regular payment amount becomes effective (after securitization).

(iv) ARM margin. Indicate the spread added to the index of an ARM loan to determine the interest rate at securitization.

(v) Lifetime rate cap. Indicate the maximum interest rate that can be in effect during the life of the loan.

(vi) Lifetime rate floor. Indicate the minimum interest rate that can be in effect during the life of the loan.

(vii) Periodic rate increase limit. Provide the maximum amount the interest rate can increase from any period to the next.

(viii) Periodic rate decrease limit. Provide the maximum amount the interest rate can decrease from any period to the next.

(ix) Periodic pay adjustment maximum amount. Provide the maximum amount the principal and interest constant can increase or decrease on any adjustment date.

(x) Periodic pay adjustment maximum percentage. Provide the maximum percentage amount the payment can increase or decrease from any period to the next.

(xi) Rate reset frequency. Indicate the code describing the frequency which the periodic mortgage rate is reset due to an adjustment in the ARM index.

(xii) Pay reset frequency. Indicate the code describing the frequency which the periodic mortgage payment will be adjusted.

(xiii) Index look back in days. Provide the number of days prior to an interest rate adjustment effective date used to determine the appropriate index rate.

(29) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information for each loan:

(i) Prepayment lock-out end date. Provide the effective date after which the lender allows prepayment of a loan.

(ii) Yield maintenance end date. Provide the date after which yield maintenance prepayment penalties are no longer effective.

(iii) Prepayment premium end date. Provide the effective date after which prepayment premiums are no longer effective.

(30) Information related to negative amortization. If the loan allows for negative amortization, provide the following additional information for each loan:

(i) Maximum negative amortization allowed (% of original balance). Provide the maximum percentage of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(ii) Maximum negative amortization allowed. Provide the maximum amount of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(iii) Negative amortization/deferred interest capitalized amount. Indicate the amount for the reporting period that was capitalized (added to) the principal balance.

(iv) Deferred interest – cumulative. Indicate the cumulative deferred interest for the reporting period and prior reporting cycles net of any deferred interest collected.

(v) Deferred interest collected. Indicate the amount of deferred interest collected during the reporting period.

(d) *Information related to the property.* Provide the following information for each of the properties that collateralizes a loan identified above:

(1) Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with “defeased.”

(2) Property address. Specify the address of the property which serves as mortgage collateral. If multiple properties, then print “various.” If the property has been defeased then leave field empty. For substituted properties, populate with the new property information.

(3) Property city. Specify the city name where the property which serves as mortgage collateral is located. If the property has been defeased, then leave field empty.

(4) Property state. Indicate the two character abbreviated code representing the state in which the property which serves as mortgage collateral is located.

(5) Property zip code. Indicate the zip (or postal) code for the property which serves as mortgage collateral.

(6) Property county. Indicate the county in which the property which serves as mortgage collateral is located.

(7) Property type. Indicate the code that describes how the property is being used.

(8) Net rentable square feet. Provide the net rentable square feet area of the property.

(9) Net rentable square feet at securitization. Provide the net rentable square feet area of the property as determined at the time the property is contributed to the pool as collateral.

(10) Number of units/beds/rooms. If the property type is multifamily, self-storage, healthcare, lodging or mobile home park, provide the number of units/beds/rooms of the property.

(11) Number of units/beds/rooms at securitization. If the property type is multifamily, self-storage, healthcare, lodging or mobile home park, provide the number of units/beds/rooms of the property at securitization.

(12) Year built. Provide the year that the property was built.

(13) Year last renovated. Provide the year that the last major renovation/new construction was completed on the property.

(14) Valuation amount at securitization. Provide the valuation amount of the property as of the valuation date at securitization.

(15) Valuation source at securitization. Specify the code that identifies the source of the property valuation.

(16) Valuation date at securitization. Provide the date the valuation amount at securitization was determined.

(17) Most recent value. If an additional property valuation was obtained by any transaction party or its affiliates after the valuation obtained at securitization, provide the most recent valuation amount.

(18) Most recent valuation date. Provide the date of the most recent valuation.

(19) Most recent valuation source. Specify the code that identifies the source of the most recent property valuation.

(20) Physical occupancy at securitization. Provide the percentage of rentable space occupied by tenants.

(21) Most recent physical occupancy. Provide the most recent available percentage of rentable space occupied by tenants.

(22) Property status. Provide the code that describes the status of the property.

(23) Defeasance option start date. Provide the date when the defeasance option becomes available.

(24) Defeasance status. Provide the code that indicates if a loan has or is able to be defeased.

(25) Largest tenant.

(i) Largest tenant. Identify the tenant that leases the largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(25)(i): If the tenant is not occupying the space but is still paying rent, print "Dark" after tenant name. If tenant has sub-leased the space, print "Sub-leased/name" after tenant name.

(ii) Square feet of largest tenant. Provide total number of square feet leased by the largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.

(26) Second largest tenant.

(i) Second largest tenant. Identify the tenant that leases the second largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(26)(i): If the tenant is not occupying the space but is still paying rent, print "Dark" after tenant name. If tenant has sub-leased the space, print "Sub-leased/name" after tenant name.

(ii) Square feet of second largest tenant. Provide the total number of square feet leased by the second largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.

(27) Third largest tenant.

(i) Third largest tenant. Identify the tenant that leases the third largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(27)(i): If the tenant is not occupying the space but is still paying rent, print "Dark" after tenant name. If tenant has sub-leased the space, print "Sub-leased/name" after tenant name.

(ii) Square feet of third largest tenant. Provide the total number square feet leased by the third largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.

(28) Financial information related to the property. Provide the following information as of the most recent date available:

(i) Date of financials as of securitization. Provide the date of the operating statement for the property used to underwrite the loan.

(ii) Most recent financial as of start date. Specify the first date of the period for the most recent, hard copy operating statement (e.g., year-to-date or trailing 12 months).

(iii) Most recent financial as of end date. Specify the last day of the period for the most recent, hard copy operating statement (e.g., year-to-date or trailing 12 months).

(iv) Revenue at securitization. Provide the total underwritten revenue amount from all sources for a property as of securitization.

(v) Most recent revenue. Provide the total revenues for the most recent operating statement reported.

(vi) Operating expenses at securitization. Provide the total underwritten operating expenses as of securitization. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance. Exclude capital expenditures, tenant improvements, and leasing commissions.

(vii) Operating expenses. Provide the total operating expenses for the most recent operating statement. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance. Exclude capital expenditures, tenant improvements, and leasing commissions.

(viii) Net operating income at securitization. Provide the total underwritten revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties as of securitization.

(ix) Most recent net operating income. Provide the total revenues less total operating expenses before capital items and debt service per the most recent operating statement.

(x) Net cash flow at securitization. Provide the total underwritten revenue less total underwritten operating expenses and capital costs as of securitization.

(xi) Most recent net cash flow. Provide the total revenue less the total operating expenses and capital costs but before debt service per the most recent operating statement.

(xii) Net operating income or net cash flow indicator at securitization. Indicate the code that describes the method used to calculate at securitization net operating income or net cash flow.

(xiii) Net operating income or net cash flow indicator. Indicate the code that describes the method used to calculate net operating income or net cash flow.

(xiv) Most recent debt service amount. Provide the amount of total scheduled or actual payments that cover the same number of months as the most recent financial operating statement.

(xv) Debt service coverage ratio (net operating income) at securitization. Provide the ratio of underwritten net operating income to debt service as of securitization.

(xvi) Most recent debt service coverage ratio (net operating income). Provide the ratio of net operating income to debt service during the most recent operating statement reported.

(xvii) Debt service coverage ratio (net cash flow) at securitization. Provide the ratio of underwritten net cash flow to debt service as of securitization.

(xviii) Most recent debt service coverage ratio (net cash flow). Provide the ratio of net cash flow to debt service for the most recent financial operating statement.

(xix) Debt service coverage ratio indicator at securitization. If there are multiple properties underlying the loan, indicate the code that describes how the debt service coverage ratio was calculated.

(xx) Most recent debt service coverage ratio indicator. Indicate the code that describes how the debt service coverage ratio was calculated for the most recent financial operating statement.

(xxi) Date of the most recent annual lease rollover review. Provide the date of the most recent annual lease rollover review.

(e) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (e)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Modification indicator – reporting period. Indicate yes or no whether the loan was modified during the reporting period.

(3) Reporting period beginning scheduled loan balance. Indicate the scheduled balance as of the beginning of the reporting period.

(4) Total scheduled principal and interest due. Provide the total amount of principal and interest due on the loan in the month corresponding to the current distribution date.

(5) Reporting period interest rate. Indicate the annualized gross interest rate used to calculate the scheduled interest amount due for the reporting period.

(6) Servicer and trustee fee rate. Indicate the sum of annual fee rates payable to the servicers and trustee.

(7) Scheduled interest amount. Provide the amount of gross interest payment that was scheduled to be collected during the reporting period.

(8) Other interest adjustment. Indicate any unscheduled interest adjustments during the reporting period.

(9) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(10) Unscheduled principal collections. Provide the principal prepayments and other unscheduled payments of principal received on the loan during the reporting period.

(11) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period, which are not considered unscheduled principal collections and are not scheduled principal amounts.

(12) Reporting period ending actual balance. Indicate the outstanding actual balance of the loan as of the end of the reporting period.

(13) Reporting period ending scheduled balance. Indicate the scheduled or stated principal balance for the loan (as defined in the servicing agreement) as of the end of the reporting period.

(14) Paid through date. Provide the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.

(15) Hyper-amortizing date. Provide the date after which principal and interest may amortize at an accelerated rate, and/or interest expense to the mortgagor increases substantially.

(16) Information related to servicer advances.

(i) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are advanced by the servicer.

(ii) Non-recoverability determined. Indicate yes or no whether the master servicer/special servicer has ceased advancing principal and interest and/or servicing the loan.

(iii) Total principal and interest advance outstanding. Provide the total outstanding principal and interest advances made (or scheduled to be made by the distribution date) by the servicer(s).

(iv) Total taxes and insurance advances outstanding. Provide the total outstanding tax and insurance advances made by the servicer(s) as of the end of the reporting period.

(v) Other expenses advance outstanding. Provide the total outstanding other or miscellaneous advances made by the servicer(s) as of the end of the reporting period.

(17) Payment status of loan. Provide the code that indicates the payment status of the loan.

(18) Information related to activity on ARM loans. If the loan is an ARM, provide the following additional information:

(i) ARM index rate. Provide the index rate used to determine the gross interest for the reporting period.

(ii) Next interest rate. Provide the annualized gross interest rate that will be used to determine the next scheduled interest payment.

(iii) Next interest rate change adjustment date. Provide the next date that the interest rate is scheduled to change.

(iv) Next payment adjustment date. Provide the date that the amount of scheduled principal and/or interest is next scheduled to change.

(f) *Information related to servicers.* (1) Primary servicer. Identify the name of the entity that services or will have the right to service the asset.

(2) Most recent special servicer transfer date. Provide the date the transfer letter, e-mail, etc. provided by the master servicer is accepted by the special servicer.

(3) Most recent master servicer return date. Provide the date of the return letter, email, etc. provided by the special servicer which is accepted by the master servicer.

(g) *Asset subject to demand.* Indicate yes or no whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, indicate the code that describes the status of the repurchase demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan from the pool.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase.

(h) *Realized loss to trust*. Indicate the difference between net proceeds (after liquidation expenses) and the scheduled or stated principal of the loan as of the beginning of the reporting period.

(i) *Information related to prepayments*. If a prepayment was received, provide the following additional information for each loan:

(1) Liquidation/Prepayment code. Indicate the code assigned to any unscheduled principal payments or liquidation proceeds received during the reporting period.

(2) Liquidation/Prepayment date. Provide the effective date on which an unscheduled principal payment or liquidation proceeds were received.

(3) Prepayment premium/yield maintenance received. Indicate the amount received from a borrower during the reporting period in exchange for allowing a borrower to pay off a loan prior to the maturity or anticipated repayment date.

(j) *Workout strategy*. Indicate the code that best describes the steps being taken to resolve the loan.

(k) *Information related to modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Date of last modification. Indicate the date of the most recent modification. A modification includes any material change to the loan document, excluding assumptions.

(2) Modification code. Indicate the code that describes the type of loan modification.

(3) Post-modification interest rate. Indicate the new initial interest rate to which the loan was modified.

(4) Post-modification payment amount. Indicate the new initial principal and interest payment amount to which the loan was modified.

(5) Post-modification maturity date. Indicate the new maturity date of the loan after the modification.

(6) Post-modification amortization period. Indicate the new amortization period in months after the modification.

Item 3. Automobile loans. If the asset pool includes automobile loans, provide the following data for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that

would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the automobile loan.* (1) Originator. Identify the name of the entity that originated the loan.

(2) Origination date. Provide the date the loan was originated.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan term. Indicate the term of the loan in months at the time the loan was originated.

(5) Loan maturity date. Indicate the month and year in which the final payment on the loan is scheduled to be made.

(6) Original interest rate. Provide the rate of interest at the time the loan was originated.

(7) Interest calculation type. Indicate whether the interest rate calculation method is simple or other.

(8) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable or other.

(9) Original interest-only term. Indicate the number of months from origination in which the obligor is permitted to pay only interest on the loan beginning from when the loan was originated.

(10) Original first payment date. Provide the date of the first scheduled payment that was due after the loan was originated.

(11) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(12) Grace period. Indicate the number of months during which interest accrues but no payments are due from the obligor.

(13) Payment type. Specify the code indicating how often payments are required or if a balloon payment is due.

(14) Subvented. Indicate yes or no to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the buyer.

(d) *Information related to the vehicle.* (1) Vehicle manufacturer. Provide the name of the manufacturer of the vehicle.

(2) Vehicle model. Provide the name of the model of the vehicle.

(3) New or used. Indicate whether the vehicle financed is new or used at the time of origination.

(4) Model year. Indicate the model year of the vehicle.

(5) Vehicle type. Indicate the code describing the vehicle type.

(6) Vehicle value. Indicate the value of the vehicle at the time of origination.

(7) Source of vehicle value. Specify the code that describes the source of the vehicle value.

(e) *Information related to the obligor.* (1) Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor during the loan origination process.

(2) Obligor credit score. Provide the standardized credit score of the obligor used to evaluate the obligor during the loan origination process.

(3) Obligor income verification level. Indicate the code describing the extent to which the obligor's income was verified during the loan origination process.

(4) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment was verified during the loan origination process.

(5) Co-obligor present indicator. Indicate whether the loan has a co-obligor.

(6) Payment-to-income ratio. Provide the scheduled monthly payment amount as a percentage of the total monthly income of the obligor and any other obligor at the origination date. Provide the methodology for determining monthly income in the prospectus.

(7) Geographic location of obligor. Specify the location of the obligor by providing the current U.S. state or territory.

(f) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (f)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the loan maturity date.

(3) Modification indicator – reporting period. Indicates yes or no whether the asset was modified from its original terms during the reporting period.

(4) Servicing advance method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent loans.

(5) Reporting period beginning loan balance. Indicate the outstanding principal balance of the loan as of the beginning of the reporting period.

(6) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(7) Reporting period interest rate. Indicate the current interest rate for the loan in effect during the reporting period.

(8) Next interest rate. For loans that have not been paid off, indicate the interest rate that is in effect for the next reporting period.

(9) Servicing fee – percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(10) Servicing fee – flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(11) Other loan-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by loan administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(12) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.

(13) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(14) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(15) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period.

(16) Reporting period ending actual balance. Indicate the actual balance of the loan as of the end of the reporting period.

(17) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees).

(18) Total actual amount paid. Indicate the total payment paid to the servicer during the reporting period.

(19) Actual interest collected. Indicate the gross amount of interest collected during the reporting period, whether or not from the obligor.

(20) Actual principal collected. Indicate the amount of principal collected during the reporting period, whether or not from the obligor.

(21) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period, whether or not from the obligor.

(22) Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.

(23) Interest paid through date. Provide the date through which interest is paid with the payment received during the reporting period, which is the effective date from which interest will be calculated for the application of the next payment.

(24) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan:

(i) Zero balance effective date. Provide the date on which the loan balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the loan's balance was reduced to zero.

(25) Current delinquency status. Indicate the number of days the obligor is delinquent past the obligor's payment due date, as determined by the governing transaction agreement.

(g) *Information related to servicers.* (1) Primary loan servicer. Provide the name of the entity that services or will have the right to service the loan.

(2) Most recent servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(h) *Asset subject to demand.* Indicate yes or no whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(i) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charged-off principal amount. Specify the amount of uncollected principal charged off.

(2) Amounts recovered. If the loan was previously charged off, specify any amounts received after charge-off.

(j) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Modification type. Indicate the code that describes the reason the asset was modified during the reporting period.

(2) Payment extension. Provide the number of months the loan was extended during the reporting period.

(k) *Repossessed.* Indicate yes or no whether the vehicle has been repossessed. If the vehicle has been repossessed, provide the following additional information:

(1) Repossession proceeds. Provide the total amount of proceeds received on disposition (net of repossession fees and expenses).

(2) [Reserved]

Item 4. Automobile leases. If the asset pool includes automobile leases, provide the following data for each lease in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(b) *Reporting period*. (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the automobile lease*. (1) Originator. Identify the name of the entity that originated the lease.

(2) Origination date. Provide the date the lease was originated.

(3) Acquisition cost. Provide the original acquisition cost of the lease.

(4) Original lease term. Indicate the term of the lease in months at the time the lease was originated.

(5) Scheduled termination date. Indicate the month and year in which the final lease payment is scheduled to be made.

(6) Original first payment date. Provide the date of the first scheduled payment after origination.

(7) Underwriting indicator. Indicate whether the lease met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(8) Grace period. Indicate the number of months during the term of the lease when no payments are due from the lessee.

(9) Payment type. Specify the code indicating the payment frequency of the lease.

(10) Subvented. Indicate yes or no whether a form of subsidy is received on the lease, such as cash incentives or favorable financing for the lessee.

(d) *Information related to the vehicle.* (1) Vehicle manufacturer. Provide the name of the manufacturer of the leased vehicle.

(2) Vehicle model. Provide the name of the model of the leased vehicle.

(3) New or used. Indicate whether the leased vehicle is new or used.

(4) Model year. Indicate the model year of the leased vehicle.

(5) Vehicle type. Indicate the code describing the vehicle type.

(6) Vehicle value. Indicate the value of the vehicle at the time of origination.

(7) Source of vehicle value. Specify the code that describes the source of the vehicle value.

(8) Base residual value. Provide the securitized residual value of the leased vehicle.

(9) Source of base residual value. Specify the code that describes the source of the base residual value.

(10) Contractual residual value. Provide the residual value, as stated on the contract, that the lessee would need to pay to purchase the vehicle at the end of the lease term.

(e) *Information related to the lessee.* (1) Lessee credit score type. Specify the type of the standardized credit score used to evaluate the lessee during the lease origination process.

(2) Lessee credit score. Provide the standardized credit score of the lessee used to evaluate the lessee during the lease origination process.

(3) Lessee income verification level. Indicate the code describing the extent to which the lessee's income was verified during the lease origination process.

(4) Lessee employment verification. Indicate the code describing the extent to which the lessee's employment was verified during the lease origination process.

(5) Co-lessee present indicator. Indicate whether the lease has a co-lessee.

(6) Payment-to-income ratio. Provide the scheduled monthly payment amount as a percentage of the total monthly income of the lessee and any other co-lessee at the origination date. Provide the methodology for determining monthly income in the prospectus.

(7) Geographic location of lessee. Specify the location of the lessee by providing the current U.S. state or territory.

(f) *Information related to activity on the lease.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (f)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the lease maturity date.

(3) Modification indicator -- reporting period. Indicates yes or no whether the asset was modified from its original terms during the reporting period.

(4) Servicing advance method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent leases.

(5) Reporting period securitization value. Provide the sum of the present values, as of the beginning of the reporting period, of the remaining scheduled monthly payment amounts and the base residual value of the leased vehicle, computed using the securitization value discount rate.

(6) Securitization value discount rate. Provide the discount rate of the lease for the securitization transaction.

(7) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(8) Servicing fee -- percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(9) Servicing fee -- flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(10) Other lease-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by lease administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(11) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the lessee.

(12) Reporting period ending actual balance. Indicate the actual balance of the lease as of the end of the reporting period.

(13) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees).

(14) Total actual amount paid. Indicate the total lease payment received during the reporting period.

(15) Actual other amounts collected. Indicate the total of any amounts, other than the scheduled lease payment, collected during the reporting period, whether or not from the lessee.

(16) Reporting period ending actual securitization value. Provide the sum of the present values, as of the end of the reporting period, of the remaining scheduled monthly payment amounts and the base residual value of the leased vehicle, computed using the securitization value discount rate.

(17) Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.

(18) Paid through date. Provide the date through which scheduled payments have been made with the payment received during the reporting period, which is the effective date from which amounts due will be calculated for the application of the next payment.

(19) Zero balance leases. If the lease balance was reduced to zero during the reporting period, provide the following additional information about the lease:

(i) Zero balance effective date. Provide the date on which the lease balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the lease's balance was reduced to zero.

(20) Current delinquency status. Indicate the number of days the lessee is delinquent past the lessee's payment due date, as determined by the governing transaction agreement.

(g) *Information related to servicers.* (1) Primary lease servicer. Provide the name of the entity that services or will have the right to service the lease.

(2) Most recent servicing transfer received date. If a lease's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(h) *Asset subject to demand.* Indicate yes or no whether during the reporting period the lease was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the lease is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the lease from the pool.

(3) Demand resolution date. Indicate the date the lease repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(i) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charge-off amounts. Provide the amount charged off on the lease.

(2) [Reserved]

(j) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Modification type. Indicate the code that describes the reason the lease was modified during the reporting period.

(2) Lease extension. Provide the number of months the lease was extended during the reporting period.

(k) *Information related to lease terminations.* If the lease was terminated, provide the following additional information:

(1) Termination indicator. Specify the code that describes the reason why the lease was terminated.

(2) Excess fees. Specify the amount of excess fees received upon return of the vehicle, such as excess wear and tear or excess mileage.

(3) Liquidation proceeds. Provide the liquidation proceeds net of repossession fees, auction fees and other expenses in accordance with standard industry practice.

Item 5. Debt securities. If the asset pool includes debt securities, provide the following data for each security in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the standard industry identifier assigned to the asset. If a standard industry identifier is not assigned to the asset, provide a unique ID number for the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the underlying security.* (1) Issuer. Provide the name of the issuer.

(2) Original issuance date. Provide the date the underlying security was issued. For revolving asset master trusts, provide the issuance date of the receivable that will be added to the asset pool.

(3) Original security amount. Indicate the amount of the underlying security at the time the underlying security was issued.

(4) Original security term. Indicate the initial number of months between the month the underlying security was issued and the security's maturity date.

(5) Security maturity date. Indicate the month and year in which the final payment on the underlying security is scheduled to be made.

(6) Original amortization term. Indicate the number of months in which the underlying security would be retired if the amortizing principal and interest payment were to be paid each month.

(7) Original interest rate. Provide the rate of interest at the time the underlying security was issued.

(8) Accrual type. Provide the code that describes the method used to calculate interest on the underlying security.

(9) Interest rate type. Indicate the code that indicates whether the interest rate on the underlying security is fixed, adjustable, step or other.

(10) Original interest-only term. Indicate the number of months from the date the underlying security was issued in which the obligor is permitted to pay only interest on the underlying security.

(11) First payment date from issuance. Provide the date of the first scheduled payment.

(12) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(13) Title of underlying security. Specify the title of the underlying security.

(14) Denomination. Give the minimum denomination of the underlying security.

(15) Currency. Specify the currency of the underlying security.

(16) Trustee. Specify the name of the trustee.

(17) Underlying SEC file number. Specify the registration statement file number of the registration of the offer and sale of the underlying security.

(18) Underlying CIK number. Specify the CIK number of the issuer of the underlying security.

(19) Callable. Indicate whether the security is callable.

(20) Payment frequency. Indicate the code describing the frequency of payments that will be made on the underlying security.

(21) Zero coupon indicator. Indicate yes or no whether an underlying security or agreement is interest bearing.

(d) *Information related to activity on the underlying security.* (1) Asset added indicator.

Indicate yes or no whether the underlying security was added to the asset pool during the reporting period.

Instruction to paragraph (d)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Modification indicator. Indicates yes or no whether the underlying security was modified from its original terms.

(3) Reporting period beginning asset balance. Indicate the outstanding principal balance of the underlying security as of the beginning of the reporting period.

(4) Reporting period beginning scheduled asset balance. Indicate the scheduled principal balance of the underlying security as of the beginning of the reporting period.

(5) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period.

(6) Reporting period interest rate. Indicate the interest rate in effect on the underlying security.

(7) Total actual amount paid. Indicate the total payment paid to the servicer during the reporting period.

(8) Actual interest collected. Indicate the gross amount of interest collected during the reporting period.

(9) Actual principal collected. Indicate the amount of principal collected during the reporting period.

(10) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period.

(11) Other principal adjustments. Indicate any other amounts that caused the principal balance of the underlying security to be decreased or increased during the reporting period.

(12) Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.

(13) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(14) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(15) Reporting period ending actual balance. Indicate the actual balance of the underlying security as of the end of the reporting period.

(16) Reporting period ending scheduled balance. Indicate the scheduled principal balance of the underlying security as of the end of the reporting period.

(17) Servicing fee – percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(18) Servicing fee – flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers as an amount.

(19) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan:

(i) Zero balance code. Provide the code that indicates the reason the underlying security's balance was reduced to zero.

(ii) Zero balance effective date. Provide the date on which the underlying security's balance was reduced to zero.

(20) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the maturity date of the underlying security.

(21) Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.

(22) Number of days payment is past due. If the obligor has not made the full scheduled payment, indicate the number of days since the scheduled payment date.

(23) Number of payments past due. Indicate the number of payments the obligor is past due as of the end of the reporting period.

(24) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(25) Next due date. For assets that have not been paid off, indicate the next payment due date on the underlying security.

(e) *Information related to servicers.* (1) Primary servicer. Indicate the name or MERS organization number of the entity that serviced the underlying security during the reporting period.

(2) Most recent servicing transfer received date. If the servicing of the underlying security has been transferred, provide the effective date of the most recent servicing transfer.

(f) *Asset subject to demand.* Indicate yes or no whether during the reporting period the asset was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the asset is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the underlying security from the pool.

(3) Demand resolution date. Indicate the date the underlying security repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

Item 6. Resecuritizations.

(a) If the asset pool includes asset-backed securities, provide the asset-level information specified in Item 5. Debt Securities in this Schedule AL for each security in the asset pool.

(b) If the asset pool includes asset-backed securities issued after [insert date 60 days plus two years after publication in the Federal Register], provide the asset-level information specified in § 229.1111(h) for the assets backing each security in the asset pool.

* * * * *

PART 230 -- GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

22. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. No. 112-106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

§ 230.139a [Amended]

23. Amend § 230.139a by:

a. In the undesignated introductory paragraph removing the phrase “General Instruction I.B.5 of Form S-3 (§ 239.13 of this chapter) (“S-3 ABS”)” and adding in its place “Form SF-3 (§ 239.45 of this chapter) (“SF-3 ABS”)”; and

b. Removing the phrase “S-3 ABS” and adding in its place the phrase “SF-3 ABS” where ever it appears.

* * * * *

§ 230.167 [Amended]

24. Amend § 230.167, paragraph (a), by removing the phrase “meeting the requirements of General Instruction I.B.5 of Form S-3 (§ 239.13 of this chapter) and registered under the Act on Form S-3 pursuant to § 230.415” and adding in its place “registered on Form SF-3 (§ 239.45 of this chapter)”.

25. Amend § 230.190 by:

- a. Revising paragraph (b)(1);
- b. In paragraph (b)(6) removing “; and” and adding a period in its place;
- c. Removing paragraph (b)(7); and
- d. Adding paragraph (d).

The revision and addition read as follows:

§ 230.190 Registration of underlying securities in asset-backed securities transactions.

* * * * *

(b) * * *

(1) If the offering of asset-backed securities is registered on Form SF-3 (§ 239.45 of this chapter), the offering of the underlying securities itself must be eligible to be registered under Form SF-3, Form S-3 (§ 239.13 of this chapter), or F-3 (§ 239.33 of this chapter) as a primary offering of such securities;

* * * * *

(d) Notwithstanding paragraph (c) of this section (that is, although the pool asset described in paragraph (c) of this section is not an “underlying security” for purposes of this section), if the pool assets for the asset-backed securities are collateral certificates or special units of beneficial interest, those collateral certificates or special units of beneficial interest must be registered concurrently with the registration of the asset-backed securities. However, pursuant to § 230.457(t) no separate registration fee for the certificates or special units of beneficial interest is required to be paid.

§ 230.193 [Amended]

26. Amend § 230.193 by removing the phrase “Section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)),” and adding in its place “Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)),”.

27. Amend § 230.401 by:

a. In paragraph (g)(1) removing the phrase “and (g)(3)” and adding in its place “, (g)(3), and (g)(4)”;

b. Adding paragraph (g)(4).

The addition reads as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g) * * *

(4) Notwithstanding that the registration statement may have become effective previously, requirements as to proper form under this section will have been violated for any offering of securities where the requirements of General Instruction I.A. of Form SF-3 (§ 239.45 of this chapter) have not been met as of ninety days after the end of the depositor's fiscal year end prior to such offering.

§ 230.405 [Amended]

28. Amend § 230.405 by, in paragraph (1) of the definition of a Free writing prospectus, adding the phrase "Rule 430D (§ 230.430D)," before "or Rule 431".

29. Amend § 230.415 by:

- a. Revising paragraphs (a)(1)(vii) and (a)(1)(ix); and
- b. Adding paragraph (a)(1)(xii).

The revisions and addition read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

(vii) Asset-backed securities (as defined in 17 CFR 229.1101(c)) registered (or qualified to be registered) on Form SF-3 (§ 239.45 of this chapter) which are to be offered and sold on an immediate or delayed basis by or on behalf of the registrant;

Instruction to paragraph (a)(1)(vii): The requirements of General Instruction I.B.1 of Form SF-3 (§ 239.45 of this chapter) must be met for any offerings of an asset-backed security (as defined in 17 CFR 229.1101(c)) registered in reliance on this paragraph (a)(1)(vii).

* * * * *

(ix) Securities, other than asset-backed securities (as defined in 17 CFR 229.1101(c)), the offering of which will be commenced promptly, will be made on a continuous basis and may continue for a period in excess of 30 days from the date of initial effectiveness;

* * * * *

(xii) Asset-backed securities (as defined in 17 CFR 229.1101(c)) that are to be offered and sold on a continuous basis if the offering is commenced promptly and being conducted on the condition that the consideration paid for such securities will be promptly refunded to the purchaser unless:

(A) All of the securities being offered are sold at a specified price within a specified time; and

(B) The total amount due to the seller is received by him by a specified date.

* * * * *

30. Amend § 230.424 by:

a. Adding in paragraph (b)(2) the phrase “or, in the case of asset-backed securities, Rule 430D (§ 230.430D)” after the phrase “in reliance on Rule 430B (§ 230.430B),”;

b. Redesignating the Instruction following the note to paragraph (b)(8) as "Instruction to paragraph (b):" and in that newly redesignated instruction removing the phrase "mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) or asset-backed securities on a delayed basis under § 230.415(a)(1)(x)" and adding in its place "asset-backed securities under § 230.415(a)(1)(vii) or 230.415(a)(1)(xii)"; and

c. Adding paragraph (h).

The addition reads as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(h)(1) Three copies of a form of prospectus relating to an offering of asset-backed securities pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(xii) disclosing information previously omitted from the prospectus filed as part of an effective registration statement in reliance on § 230.430D shall be filed with the Commission at least three business days before the date of the first sale in the offering, or if used earlier, the earlier of:

- (i) The applicable number of business days before the date of the first sale; or
- (ii) The second business day after first use.

(2) Three copies of a prospectus supplement relating to an offering of asset-backed securities pursuant to § 230.415(a)(vii) or § 230.415(a)(1)(xii) that reflects any material change from the information contained in a prospectus filed in accordance with § 230.424(h)(1) shall be

filed with the Commission at least forty-eight hours before the date and time of the first sale in the offering. The prospectus supplement must clearly delineate what material information has changed and how the information has changed from the prospectus filed in accordance with § 230.424(h)(1).

Instruction to paragraph (h): The filing requirements of this paragraph (h) do not apply if a filing is made solely to add fees pursuant to § 230.457 and for no other purpose.

§ 230.430B [Amended]

31. Amend § 230.430B, paragraph (a), first sentence by removing the phrase “Rule 415(a)(1)(vii) or (a)(1)(x) (§ 230.415(a)(1)(vii) or (a)(1)(x))” and adding in its place “Rule 415(a)(1)(x) (§ 230.415(a)(1)(x))”; and in the second sentence removing the phrase “(vii) or ”.

§ 230.430C [Amended]

32. Amend § 230.430C, paragraph (a), by adding the phrase “or Rule 430D (§ 230.430D)” after the phrase “in reliance on Rule 430B (§ 230.430B)”.

33. Add § 230.430D to read as follows:

§ 230.430D Prospectus in a registration statement after effective date for asset-backed securities offerings.

(a) A form of prospectus filed as part of a registration statement for primary offerings of asset-backed securities pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(xii) may omit from

the information required by the form to be in the prospectus information that is unknown or not reasonably available to the issuer pursuant to § 230.409.

(b) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section (other than information with respect to offering price, underwriting syndicate (including any material relationships between the registrant and underwriters not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price to the extent such information is unknown or not reasonably available to the issuer pursuant to § 230.409) shall be disclosed in a form of prospectus required to be filed with the Commission pursuant to § 230.424(h). Each such form of prospectus shall be deemed to have been filed as part of the registration statement for the purpose of section 7 of the Act (15 U.S.C. 77g).

(c) A form of prospectus filed as part of a registration statement that omits information in reliance upon paragraph (a) of this section meets the requirements of section 10 of the Act (15 U.S.C. 77j) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)). This provision shall not limit the information required to be contained in a form of prospectus in order to meet the requirements of section 10(a) of the Act for the purposes of section 5(b)(2) (15 U.S.C. 77e(b)(2)) or exception (a) of section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)(a)).

(d)(1) Except as provided in paragraph (b) or (d)(2) of this section, information omitted from a form of prospectus that is part of an effective registration statement in reliance on

paragraph (a) of this section may be included subsequently in the prospectus that is part of a registration statement by:

- (i) A post-effective amendment to the registration statement;
- (ii) A prospectus filed pursuant to § 230.424(b); or
- (iii) If the applicable form permits, including the information in the issuer's periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement in accordance with the applicable requirements, subject to the provisions of paragraph (h) of this section.

(2) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section that adds a new structural feature or credit enhancement must be included subsequently in the prospectus that is part of a registration statement by a post-effective amendment to the registration statement.

(e)(1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to § 230.424(b), other than as provided in paragraph (f) of this section, shall be deemed part of and included in the registration statement as of the date such form of filed prospectus is first used after effectiveness.

(2) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to § 230.424(h) shall be deemed part of and

included in the registration statement the earlier of the date such form of filed prospectus is filed with the Commission pursuant to § 230.424(h) or, if used earlier than the date of filing, the date it is first used after effectiveness.

(f)(1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section, and is contained in a form of prospectus required to be filed with the Commission pursuant to § 230.424(b)(2) or (b)(5), shall be deemed to be part of and included in the registration statement on the earlier of the date such subsequent form of prospectus is first used or the date and time of the first contract of sale of securities in the offering to which such subsequent form of prospectus relates.

(2) The date on which a form of prospectus is deemed to be part of and included in the registration statement pursuant to paragraph (f)(1) of this section shall be deemed, for purposes of liability under section 11 of the Act (15 U.S.C. 77k) of the issuer and any underwriter at the time only, to be a new effective date of the part of such registration statement relating to the securities to which such form of prospectus relates, such part of the registration statement consisting of all information included in the registration statement and any prospectus relating to the offering of such securities (including information relating to the offering in a prospectus already included in the registration statement) as of such date and all information relating to the offering included in reports and materials incorporated by reference into such registration statement and prospectus as of such date, and in each case not modified or superseded pursuant to § 230.412. The offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) If a registration statement is amended to include or is deemed to include, through incorporation by reference or otherwise, except as otherwise provided in § 230.436, a report or opinion of any person made on such person's authority as an expert whose consent would be required under section 7 of the Act (15 U.S.C. 77g) because of being named as having prepared or certified part of the registration statement, then for purposes of this section and for liability purposes under section 11 of the Act (15 U.S.C. 77k), the part of the registration statement for which liability against such person is asserted shall be considered as having become effective with respect to such person as of the time the report or opinion is deemed to be part of the registration statement and a consent required pursuant to section 7 of the Act has been provided as contemplated by section 11 of the Act.

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)) or pursuant to Item 512(a)(1)(ii) of Regulation S-K (§ 229.512(a)(1)(ii) of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any director (or person acting in such capacity) of the issuer;

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)) or pursuant to Item 512(a)(1)(ii) of Regulation S-K (§ 229.512(a)(1)(ii) of this chapter) (such

person except for such reports being deemed not to be a person who signed the registration statement within the meaning of section 11(a) of the Act (15 U.S.C. 77k(a)).

(5) The date a form of prospectus is deemed part of and included in the registration statement pursuant to paragraph (f)(2) of this section shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any accountant with respect to financial statements or other financial information contained in the registration statement as of a prior effective date and for which the accountant previously provided a consent to be named as required by section 7 of the Act (15 U.S.C. 77g), unless the form of prospectus contains new audited financial statements or other financial information as to which the accountant is an expert and for which a new consent is required pursuant to section 7 of the Act or § 230.436; and

(ii) Any other person whose report or opinion as an expert or counsel has, with their consent, previously been included in the registration statement as of a prior effective date, unless the form of prospectus contains a new report or opinion for which a new consent is required pursuant to section 7 of the Act (15 U.S.C. 77g) or § 230.436.

(g) Notwithstanding paragraph (e) or (f) of this section or § 230.412(a), no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement after the effective date of such registration statement or portion thereof in respect of an offering determined pursuant to this section will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify

any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(h) Where a form of prospectus filed pursuant to § 230.424(b) relating to an offering does not include disclosure of omitted information regarding the terms of the offering, the securities or the plan of distribution for the securities that are the subject of the form of prospectus, because such omitted information has been included in periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) incorporated or deemed incorporated by reference into the prospectus, the issuer shall file a form of prospectus identifying the periodic or current reports that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement that contain such omitted information. Such form of prospectus shall be required to be filed, depending on the nature of the incorporated information, pursuant to § 230.424(b)(2) or (b)(5).

(i) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S-K (§ 229.512(a) of this chapter).

34. Amend § 230.433 by:

a. In paragraph (b)(1)(i) removing the phrase “I.B.5, I.C., or I.D. thereof” and adding in its place “I.C., or I.D. thereof or on Form SF-3 (§ 239.45 of this chapter)”;

b. In paragraph (c)(1)(i) removing the phrase “Rule 430B or Rule 430C (§ 230.430B or § 230.430C)” and adding in its place “Rule 430B (§ 230.430B), Rule 430C (§ 230.430C) or Rule 430D (§ 230.430D”); and

c. Removing paragraph (d)(6)(iii).

35. Amend § 230.456 by adding paragraph (c) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(c)(1) Notwithstanding paragraph (a) of this section, an asset-backed issuer that registers asset-backed securities offerings on Form SF-3 (§ 239.45 of this chapter), may, but is not required to, defer payment of all or any part of the registration fee to the Commission required by section 6(b)(1) of the Act (15 U.S.C. 77f(b)(1)) on the following conditions:

(i) If the issuer elects to defer payment of the registration fee, it shall pay the registration fees (pay-as-you-go registration fees) calculated in accordance with § 230.457(s) in advance of or in connection with an offering of securities from the registration statement at the time of filing the prospectus pursuant to § 230.424(h) for the offering; and

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (c)(1)(i) of this section by updating the “Calculation of Registration Fee” table to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings on the cover page of a prospectus filed pursuant to § 230.424(h).

(2) A registration statement filed relying on the pay-as-you-go registration fee payment provisions of paragraph (c)(1) of this section will be considered filed as to the securities or classes of securities identified in the registration statement for purposes of this section and section 5 of the Act (15 U.S.C. 77e) when it is received by the Commission, if it complies with all other requirements of the Act and the rules with respect to it.

(3) The securities sold pursuant to a registration statement will be considered registered, for purpose of section 6(a) of the Act (15 U.S.C. 77f(a)), if the pay-as-you-go registration fee has been paid and the post-effective amendment or prospectus including the amended "Calculation of Registration Fee" table is filed pursuant to paragraph (c)(1) of this section.

36. Amend § 230.457 by adding paragraphs (s) and (t) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(s) Where securities are asset-backed securities being offered pursuant to a registration statement on Form SF-3 (§ 239.45 of this chapter), the registration fee is to be calculated in accordance with this section. When the issuer elects to defer payment of the fees pursuant to § 230.456(c), the "Calculation of Registration Fee" table in the registration statement must indicate that the issuer is relying on § 230.456(c) but does not need to include the number of units of securities or the maximum aggregate offering price of any securities until the issuer updates the "Calculation of Registration Fee" table to reflect payment of the registration fee, including a pay-as-you-go registration fee in accordance with § 230.456(c). The registration fee shall be calculated based on the fee payment rate in effect on the date of the fee payment.

(t) Where the security to be offered is a collateral certificate or is a special unit of beneficial interest, underlying asset-backed securities (as defined in § 229.1101(c) of this chapter) which are being registered concurrently, no separate fee for the certificate or the special unit of beneficial interest shall be payable.

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

37. The authority citation for Part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C. 1350.

38. Amend § 232.11 by adding a definition for “Asset Data File” in alphabetical order to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Asset Data File. The term Asset Data File means the machine-readable computer code that presents information in eXtensible Markup Language (XML) electronic format pursuant to § 229.1111(h) of this chapter.

* * * * *

39. Amend § 232.101 by:

a. In paragraph (a)(1)(xii) removing “and” after the semicolon;

b. Adding paragraph (a)(1)(xiv); and

c. Redesignating the note following paragraph (a)(3) as "Note to paragraph (a)(3)" and in the newly redesignated Note to paragraph (a)(3) removing the phrase "F-2 and F-3 (see §§ 239.12, 239.13, 239.16b, 239.32 and 239.33)" and adding in its "SF-3, F-2 and F-3 (see §§ 239.12, 239.13, 239.16b, 239.32, 239.33 and 239.45)".

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xiv) Form ABS-EE (§ 249.1401 of this chapter); and

* * * * *

40. Amend § 232.201 by:

a. Revising paragraph (a) introductory text;

b. In Note 1 to paragraph (b) removing the phrase "and F-3 (see §§ 239.12, 239.13, 239.16b, 239.32 and 239.33 of this section)" and adding in its place ", F-3 and SF-3 (see §§ 239.12, 239.13, 239.16b, 239.32, 239.33 and 239.45 of this chapter"; and

c. Adding paragraph (d).

The revision and addition read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA-1 (§ 249.100 of this chapter), a Form TA-2 (§ 249.102 of this chapter), a Form TA-W (§ 249.101 of this chapter), a Form D (§ 239.500 of this chapter), an Interactive Data File (§ 232.11 of this chapter), or an Asset Data File (as defined in § 232.11 of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

(d) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File (as defined in § 232.11) and any asset related document pursuant to Items 601(b)(102) and 601(b)(103) (§§ 229.601(b)(102) and 229.601(b)(103) of this chapter) the electronic filer still can timely satisfy the requirement to submit the Asset Data File or any asset related document in the following manner by:

(1) Posting on a Web site the Asset Data File and any asset related documents unrestricted as to access and free of charge;

(2) Substituting for the Asset Data File and any asset related documents in the required Form ABS-EE (§ 249.1401 of this chapter), a statement specifying the Web site address and that sets forth the following legend; and

IN ACCORDANCE WITH THE TEMPORARY HARDSHIP EXEMPTION PROVIDED BY RULE 201 OF REGULATION S-T, THE DATE BY WHICH THE ASSET DATA FILE IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED BY SIX BUSINESS DAYS.

(3) Submitting the required Asset Data File and asset related documents no later than six business days after the Asset Data File originally was required to be submitted.

§ 232.202 [Amended]

41. Amend § 232.202, paragraph (a) introductory text, by removing the phrase “or a Form D (§ 239.500 of this chapter)” and adding in its place “, a Form D (§ 239.500 of this chapter), or an Asset Data File (§ 232.11)”.

42. Amend § 232.305 by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

* * * * *

(b) Paragraph (a) of this section does not apply to HTML documents, Interactive Data Files (as defined in § 232.11) or XBRL-Related Documents (as defined in § 232.11).

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

43. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o-7, 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-

13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, and Pub. L. No. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

44. Revise § 239.11 to read as follows:

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.

This Form shall be used for the registration under the Securities Act of 1933 of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 229.1101(c).

45. Amend Form S-1 (referenced in § 239.11) by revising General Instruction I. to read as follows:

Note: The text of Form S-1 does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM S-1

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form S-1

This Form shall be used for the registration under the Securities Act of 1933 ("Securities Act") of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 229.1101(c).

* * * * *

46. Amend § 239.13 by:

- a. Removing paragraph (a)(4);
- b. Redesignating paragraphs (a)(5), (a)(6), (a)(7) and (a)(8) as paragraphs (a)(4), (a)(5), (a)(6), and (a)(7), respectively;
- c. Revising paragraph (b)(5); and
- d. In paragraph (e) introductory text removing the phrase "(a)(2), (a)(3) and (a)(4)" and adding in its place "(a)(2) and (a)(3)".

The revision reads as follows:

§ 239.13 Form S-3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(b) * * *

(5) This Form shall not be used to register offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

* * * * *

47. Amend Form S-3 (referenced in § 239.13) by:

- a. Removing General Instruction I.A.4;
- b. Redesignating General Instructions I.A.5, I.A.6, I.A.7, and I.A.8 as General Instructions I.A.4, I.A.5, I.A.6, and I.A.7, respectively;
- c. Revising General Instruction I.B.5;
- d. Removing "I.B.5," in General Instruction II.F; and
- e. Removing General Instruction V.

The revision reads as follows:

Note: The text of Form S-3 does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM S-3

* * * * *

GENERAL INSTRUCTIONS

I. * * *

B. * * *

5. This Form shall not be used to register offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

* * * * *

48. Add § 239.44 to read as follows:

§ 239.44 Form SF-1, registration statement under the Securities Act of 1933 for offerings of asset-backed securities.

This Form shall be used for registration under the Securities Act of 1933 of all offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

49. Add Form SF-1 (referenced in § 239.44) to read as follows:

Note: The text of Form SF-1 does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM SF-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Exact name of registrant as specified in its charter)

Commission File Number of depositor: _____

Central Index Key Number of depositor: _____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

(Exact name of sponsor as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

(Address, including zip code, and telephone number, including area code, of registrant's
principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for
service)

(Approximate date of commencement of proposed sale to the public)

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: []

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: []

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: []

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings

and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF-1

This Form shall be used for the registration under the Securities Act of 1933 ("Securities Act") of asset-backed securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof.

II. Application of General Rules and Regulations

- A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.499) thereunder. That Regulation contains general requirements regarding the preparation and filing of the registration statement.
- B. Attention is directed to Regulation S-K and Regulation AB (17 CFR Part 229) for the requirements applicable to the content of registration statements under the Securities Act.
- C. Terms used in this Form have the same meaning as in Item 1101 of Regulation AB.

III. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of

the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number and CIK number of the issuer, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

IV. Incorporation of Certain Information by Reference

A. With respect to all registrants required to provide asset-level information pursuant to Item 1111(h) of Regulation AB (17 CFR 229.1111(h)):

1. The disclosures filed as exhibits to Form ABS-EE in accordance with Items 601(b)(102) and 601(b)(103) of Regulation S-K (17 CFR 229.601(b)(102) and 601(b)(103)) must be incorporated by reference into the prospectus that is part of the registration statement.
2. If the pool assets include asset-backed securities of a third-party, registrants may reference the third-party's filings of asset-level data pursuant to Item 1100(c)(2) of Regulation AB (17 CFR 229.1100(c)(2)), except that the third-party is not

required to meet the definition of significant obligor in Item 1101(k) of Regulation AB (17 CFR 229.1101(k)).

3. Incorporation by reference must comply with Item 10 of this Form.

B. Registrants may elect to file the information required by Item 1105 of Regulation AB (17 CFR 229.1105), Static Pool, pursuant to Item 6.06 of Form 8-K (17 CFR 249.308), provided that the information is incorporated by reference into the prospectus that is part of the registration statement. Incorporation by reference must comply with Item 10 of this Form.

PART I INFORMATION REQUIRED IN PROSPECTUS

Item 1. Forepart of the Registration Statement and Outside Front Cover Pages of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (17 CFR 229.501) and Item 1102 of Regulation AB (17 CFR 229.1102).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors.

Furnish the information required by Item 503 of Regulation S-K (17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

Item 4. Use of Proceeds.

Furnish the information required by Item 504 of Regulation S-K (17 CFR 229.504).

Item 5. Plan of Distribution.

Furnish the information required by Item 508 of Regulation S-K (17 CFR 229.508).

Item 6. Information with Respect to the Transaction Parties.

Furnish the following information:

- (a) Information required by Item 1104 of Regulation AB (17 CFR 229.1104),
Sponsors;
- (b) Information required by Item 1106 of Regulation AB (17 CFR 229.1106),
Depositors;
- (c) Information required by Item 1107 of Regulation AB (17 CFR 229.1107), Issuing
entities;
- (d) Information required by Item 1108 of Regulation AB (17 CFR 229.1108),
Servicers;
- (e) Information required by Item 1109 of Regulation AB (17 CFR 229.1109),
Trustees;
- (f) Information required by Item 1110 of Regulation AB (17 CFR 229.1110),
Originators;
- (g) Information required by Item 1112 of Regulation AB (17 CFR 229.1112),
Significant obligors of pool assets;
- (h) Information required by Item 1117 of Regulation AB (17 CFR 229.1117), Legal
Proceedings; and

- (i) Information required by Item 1119 of Regulation AB (17 CFR 229.1119), Affiliations and certain relationships and related transactions.

Item 7. Information with Respect to the Transaction.

Furnish the following information:

- (a) Information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1125 of Regulation AB (17 CFR 229.1125), Schedule AL – Asset-level information;
- (b) Information required by Item 202 of Regulation S-K (17 CFR 229.202), Description of Securities Registered and Item 1113 of Regulation AB (17 CFR 229.1113), Structure of the Transaction;
- (c) Information required by Item 1114 of Regulation AB (17 CFR 229.1114), Credit Enhancement and Other Support;
- (d) Information required by Item 1115 of Regulation AB (17 CFR 229.1115), Certain Derivatives Instruments;
- (e) Information required by Item 1116 of Regulation AB (17 CFR 229.1116), Tax Matters;
- (f) Information required by Item 1118 of Regulation AB (17 CFR 229.1118), Reports and additional information; and
- (g) Information required by Item 1120 of Regulation AB (17 CFR 229.1120), Ratings.

Item 8. Static Pool.

Furnish the information required by Item 1105 of Regulation AB (17 CFR 229.1105).

Item 9. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S-K (17 CFR 229.509).

Item 10. Incorporation of Certain Information by Reference.

(a). The prospectus shall provide a statement that the following documents filed at or prior to the time of effectiveness shall be deemed incorporated by reference into the prospectus:

(1) any disclosures pursuant to Item 1111(h) (17 CFR 229.1111(h)) and filed as exhibits to Form ABS-EE in accordance with Items 601(b)(102) or 601(b)(103) of Regulation S-K (17 CFR 229.601(b)(102) or 601(b)(103)); and

(2) all current reports filed pursuant to Item 6.06 of Form 8-K (17 CFR 249.308) pursuant to Sections 13(a), 13(c), or 15(d) of the Exchange Act.

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

(b)(1) You must state:

- (i) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;
- (ii) that you will provide this information upon written or oral request;
- (iii) that you will provide this information at no cost to the requester;
- (iv) the name, address, and telephone number to which the request for this information must be made; and

- (v) the registrant's Web site address, including the uniform resource locator (URL) where the incorporated information and other documents may be accessed.

Note to Item 10(b)(1). If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(b)(2) You must:

- (i) Identify the reports and other information that you file with the SEC.
- (ii) State that any materials you file with the SEC will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available.

Item 11. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S-K (17 CFR 229.510).

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 12. Other Expenses of Issuance and Distribution.

Furnish the information required by Item 511 of Regulation S-K (17 CFR 229.511).

Item 13. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S-K (17 CFR 229.702).

Item 14. Exhibits.

Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S-K (17 CFR 229.601).

Item 15. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S-K (17 CFR 229.512).

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SF-1 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 20____.

(Registrant)

By

(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Title)

(Date)

Instructions.

1. The registration statement shall be signed by the depositor, the depositor's principal executive officer or officers, its principal financial officer, and controller or principal accounting officer and by at least a majority of its board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.
2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

50. Add § 239.45 to read as follows:

§ 239.45 Form SF-3, for registration under the Securities Act of 1933 for offerings of asset-backed issuers offered pursuant to certain types of transactions.

This Form may be used for registration under the Securities Act of 1933 ("Securities Act") of offerings of asset-backed securities, as defined in 17 CFR 229.1101(c). Any registrant which meets the requirements of paragraph (a) of this section may use this Form for the

registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act which are offered in any transaction specified in paragraph (b) of this section provided that the requirements applicable to the specified transaction are met. Terms used have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

(a) Registrant requirements. Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of asset-backed securities offered in the transactions specified in paragraph (b) of this section:

(1) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in paragraphs (b)(1)(i) through (iv) of this section with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements shall apply:

(i) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by this paragraph (b)(1)(i); and

(ii) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provisions that are required by paragraphs (b)(1)(ii) through (iv) of this section.

(iii) If such depositor or issuing entity fails to meet the requirements of paragraphs (a)(1)(i) and (ii) of this section, such depositor or issuing entity will be deemed to

satisfy such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii) of this section; provided however that if the information is filed within 90 days of evaluating compliance with this paragraph (a) such depositor and issuing entity will be deemed to have been in compliance with such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii) of this section.

Instruction to paragraph (a)(1). The registrant must provide disclosure in a prospectus that is part of the registration statement that it has met the registrant requirements of paragraph (a)(1) of this section.

(2) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8-K (17 CFR 249.308). If § 240.12b-25(b) of this chapter was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually

been filed within the time period prescribed by § 240.12b-25(b) of this chapter. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of "affiliate" in § 230.405 of this chapter.

(b) Transaction Requirements. If the registrant meets the registrant requirements specified in paragraph (a) of this section, an offering meeting the following conditions may be registered on this Form SF-3:

(1) Asset-backed securities (as defined in § 229.1101(c) of this chapter) to be offered for cash where the following have been satisfied:

(i) Certification. The registrant files a certification in accordance with Item 601(b)(36) of Regulation S-K (§ 229.601(b)(36) of this chapter) signed by the chief executive officer of the depositor with respect to each offering of securities that is registered on this Form.

(ii) Asset review provision. With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) The selection and appointment of an asset representations reviewer that is not:

(1) Affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates; or

(2) The same party or an affiliate of any party hired by the sponsor or the underwriter to perform pre-closing due diligence work on the pool assets;

(B) The asset representations reviewer shall have authority to access copies of any underlying documents related to performing a review of the pool assets;

(C) The asset representations reviewer shall be responsible for reviewing the underlying assets for compliance with the representations and warranties on the pool assets, and shall not otherwise be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. Reviews shall be required under the transaction documents, at a minimum, when the following conditions are met:

(1) A threshold of delinquent assets, as specified in the transaction agreements, has been reached or exceeded; and

(2) An investor vote to direct a review, pursuant to the processes specified in the transaction agreements, provided that the agreement not require more than:

(i) 5% of the total interest in the pool in order to initiate a vote and

(ii) A simple majority of those interests casting a vote to direct a review by the asset representations reviewer;

(D) The asset representations reviewer shall perform, at a minimum, reviews of all assets 60 days or more delinquent when the conditions specified in paragraph (b)(1)(ii)(C) of this section are met; and

(E) The asset representations reviewer shall provide a report to the trustee of the findings and conclusions of the review of the assets.

Instruction to paragraph (b)(1)(ii). The threshold of delinquent assets shall be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period. If the transaction has multiple sub-pools, the transaction agreements must provide that:

1. The delinquency threshold shall be calculated with respect to each sub-pool; and
2. The investor vote calculation shall be measured as a percentage of investors' interest in each sub-pool.

(iii) Dispute resolution provision. With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) If an asset subject to a repurchase request, pursuant to the terms of the transaction agreements, is not resolved by the end of a 180-day period beginning when notice of the request is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

(B) If the party submitting the request elects third-party arbitration, the arbitrator shall determine the allocation of any expenses. If the party submitting the request elects mediation, the parties shall mutually determine the allocation of any expenses.

(iv) Investor communication provision. With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must contain a provision requiring that the party responsible for making

periodic filings on Form 10-D (§ 249.312 of this chapter) include in the Form 10-D any request received during the reporting period from an investor to communicate with other investors related to investors exercising their rights under the terms of the transaction agreements. The disclosure regarding the request to communicate is required to include no more than the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10-D has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method other investors may use to contact the requesting investor.

Instruction to paragraph (b)(1)(iv). If an underlying transaction agreement contains procedures in order to verify that an investor is, in fact, a beneficial owner for purposes of invoking the investor communication provision, the verification procedures may require no more than the following:

1. If the investor is a record holder of the securities at the time of a request to communicate, then the investor will not have to provide verification of ownership, and
2. If the investor is not the record holder of the securities, then the person obligated to make the disclosure may require no more than a written certification from the investor that it is a beneficial owner and one other form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document.

(v) Delinquent assets. Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(vi) Residual value for certain securities. With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(2) Securities relating to an offering of asset-backed securities registered in accordance with paragraph (b)(1) of this section where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of § 230.190(c)(1) through (4) of this chapter.

51. Add Form SF-3 (referenced in § 239.45) to read as follows:

Note: The text of Form SF-3 does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM SF-3

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF
1933**

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

Commission File Number of depositor: _____

Central Index Key Number of depositor: _____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

(Exact name of sponsor as specified in its charter)

(Address, including zip code, and telephone number, including area code, of registrant's
principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for
service)

(Approximate date of commencement of proposed sale to the public)

If any of the securities being registered on this Form SF-3 are to be offered pursuant to Rule 415
under the Securities Act of 1933, check the following box: []

If this Form SF-3 is filed to register additional securities for an offering pursuant to Rule 462(b)
under the Securities Act, please check the following box and list the Securities Act registration
statement number of the earlier effective registration statement for the same offering: []

If this Form SF-3 is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: []

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the "Calculation of Registration Fee" Table ("Fee Table"):

1. Specific details relating to the fee calculation shall be furnished in notes to the Fee Table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the Fee Table.

2. If the filing fee is calculated pursuant to Rule 457(s) under the Securities Act, the Fee Table must state that it registers an unspecified amount of securities of each identified class of securities and must provide that the issuer is relying on Rule 456(c) and Rule

457(s). If the Fee Table is amended in a post-effective amendment to the registration statement or in a prospectus filed in accordance with Rule 456(c)(1)(ii) (§ 230.456(c)(1)(ii) of this chapter), the Fee Table must specify the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee.

3. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 457 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF-3.

This instruction sets forth registrant requirements and transaction requirements for the use of Form SF-3. Any registrant which meets the requirements of I.A. below ("Registrant Requirements") may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in I.B. below ("Transaction Requirements") provided that the requirements applicable to the specified transaction are met. Terms used in this Form have the same meaning as in Item 1101 of Regulation AB.

A. Registrant Requirements. Registrants must meet the following conditions in order to use this Form SF-3 for registration under the Securities Act of asset-backed securities offered in the transactions specified in I.B. below:

1. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101

of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in General Instructions I.B.1(a), I.B.1(b), I.B.1(c), and I.B.1(d) of this Form with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements shall apply:

- (a) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by I.B.1(a);
- (b) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provisions that are required by I.B.1(b), I.B.1(c), and I.B.1(d); and
- (c) If such depositor or issuing entity fails to meet the requirements of I.A.1(a) and I.A.1(b), such depositor or issuing entity will be deemed to satisfy such requirements for purposes of this Form SF-3 90 days after the date it files the information required by I.A.1(a) and I.A.1(b).

Instruction to General Instruction I.A.1: The registrant must provide disclosure in a prospectus that is part of the registration statement that it has met the registrant requirements of I.A.1.

2. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the

registration statement on this Form SF-3 subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8-K (17 CFR 249.308). If Rule 12b-25(b) (17 CFR 240.12b-25(b)) under the Exchange Act was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of "affiliate" in Securities Act Rule 405 (17 CFR 230.405).

B. Transaction Requirements. If the registrant meets the Registrant Requirements specified in I.A. above, an offering meeting the following conditions may be registered on Form SF-3:

1. Asset-backed securities (as defined in 17 CFR 229.1101(c)) to be offered for cash where the following have been satisfied:

- (a) **Certification.** The registrant files a certification in accordance with Item 601(b)(36) of Regulation S-K (§ 229.601(b)(36)) signed by the chief executive officer of the depositor with respect to each offering of securities that is registered on this Form.

- (b) **Asset Review Provision.** With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

- (A) The selection and appointment of an asset representations reviewer that is not (i) affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates, or (ii) the same party or an affiliate of any party hired by the sponsor or the underwriter to perform pre-closing due diligence work on the pool assets;

- (B) The asset representations reviewer shall have authority to access copies of any underlying documents related to performing a review of the pool assets;

- (C) The asset representations reviewer shall be responsible for reviewing the underlying assets for compliance with the representations and warranties on the pool assets, and shall not

otherwise be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. Reviews shall be required under the transaction documents, at a minimum, when the following conditions are met:

- (1) a threshold of delinquent assets, as specified in the transaction agreements, has been reached or exceeded; and
- (2) an investor vote to direct a review, pursuant to the processes specified in the transaction agreements, provided that the agreement not require more than: (a) 5% of the total interest in the pool in order to initiate a vote and (b) a simple majority of those interests casting a vote to direct a review by the asset representations reviewer;

(D) The asset representations reviewer shall perform, at a minimum, reviews of all assets 60 days or more delinquent when the conditions specified in paragraph C are met; and

(E) The asset representations reviewer shall provide a report to the trustee of the findings and conclusions of the review of the assets.

Instruction to I.B.1(b).

The threshold of delinquent assets shall be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to

the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period. If the transaction has multiple sub-pools, the transaction agreements must provide that (i) the delinquency threshold shall be calculated with respect to each sub-pool and (ii) the investor vote calculation shall be measured as a percentage of investors' interest in each sub-pool.

(c) **Dispute Resolution Provision.** With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) If an asset subject to a repurchase request, pursuant to the terms of the transaction agreements, is not resolved by the end of a 180-day period beginning when notice of the request is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

(B) If the party submitting the request elects third-party arbitration, the arbitrator shall determine the allocation of any expenses. If the party submitting the request elects mediation, the parties shall mutually determine the allocation of any expenses.

(d) **Investor Communication Provision.** With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must contain a provision requiring that the party responsible for making periodic filings on Form 10-D (§ 249.312) include in the Form 10-D any request received during the reporting period from an investor to communicate with other investors related to investors exercising their rights under the terms of the transaction agreements. The disclosure regarding the request to communicate is required to include no more than the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10-D has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method other investors may use to contact the requesting investor.

Instruction to I.B.1(d). If an underlying transaction agreement contains procedures in order to verify that an investor is, in fact, a beneficial owner for purposes of invoking the investor communication provision, the verification procedures may require no more than the following: (1) if the investor is a record holder of the securities at the time of a request to communicate, then the investor will not have to provide verification of

ownership, and (2) if the investor is not the record holder of the securities, then the person obligated to make the disclosure may require no more than a written certification from the investor that it is a beneficial owner and one other form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document.

(e) **Delinquent assets.** Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(f) **Residual value for certain securities.** With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

2. Securities relating to an offering of asset-backed securities registered in accordance with General Instruction I.B.1. where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of Securities Act Rule 190(c)(1) through (4) (17 CFR 230.190(c)(1) through (4)).

II. Application of General Rules and Regulations.

- A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly Regulation C thereunder (17 CFR 230.400 to 230.499). That Regulation contains general requirements regarding the preparation and filing of registration statements.
- B. Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form SF-3 directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate.
- Notwithstanding Items 501 and 502 of Regulation S-K, no table of contents is required to be included in the prospectus or registration statement prepared on this Form SF-3. In addition to the information expressly required to be included in a registration statement on this Form SF-3, registrants also may provide such other information as they deem appropriate.
- C. Where securities are being registered on this Form SF-3, Rule 456(c) permits, but does not require, the registrant to pay the registration fee on a pay-as-you-go basis and Rule 457(s) permits, but does not require, the registration fee to be calculated on the basis of the aggregate offering price of the securities to be offered in an offering or offerings off the registration statement. If a registrant elects to pay all or a portion of the registration fee on a deferred basis, the Fee Table in the initial filing must identify the classes of securities being registered and provide that the registrant elects to rely on Rule 456(c) and Rule 457(s), but the Fee Table does not need to specify

any other information. When the registrant amends the Fee Table in accordance with Rule 456(c)(1)(ii), the amended Fee Table must include either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities referenced in the offerings and the applicable registration fee.

- D.** Information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430D. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430D, a post-effective amendment to the registration statement, or a periodic or current report under the Exchange Act incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430D, pursuant to Rule 424(h) or Rule 424(b) (§ 230.424(h) or § 230.424(b) of this chapter).

III. Registration of Additional Securities Pursuant to Rule 462(b).

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a

part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

IV. Registration Statement Requirements.

Include only one form of prospectus for the asset class that may be securitized in a takedown of asset-backed securities under the registration statement. A separate form of prospectus and registration statement must be presented for each country of origin or country of property securing pool assets that may be securitized in a discrete pool in a takedown of asset-backed securities. For both separate asset classes and jurisdictions of origin or property, a separate form of prospectus is not required for transactions that principally consist of a particular asset class or jurisdiction which also describe one or more potential additional asset classes or jurisdictions, so long as the pool assets for the additional classes or jurisdictions in the aggregate are below 10% of the pool, as measured by dollar volume, for any particular takedown.

PART I INFORMATION REQUIRED IN PROSPECTUS

Item 1. Forepart of the Registration Statement and Outside Front Cover Pages of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (17 CFR 229.501) and Item 1102 of Regulation AB (17 CFR 229.1102).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors.

Furnish the information required by Item 503 of Regulation S-K (17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

Item 4. Use of Proceeds.

Furnish the information required by Item 504 of Regulation S-K (17 CFR 229.504).

Item 5. Plan of Distribution.

Furnish the information required by Item 508 of Regulation S-K (17 CFR 229.508).

Item 6. Information with Respect to the Transaction Parties.

Furnish the following information:

- (a) Information required by Item 1104 of Regulation AB (17 CFR 229.1104),
Sponsors;
- (b) Information required by Item 1106 of Regulation AB (17 CFR 229.1106),
Depositors;

- (c) Information required by Item 1107 of Regulation AB (17 CFR 229.1107), Issuing entities;
- (d) Information required by Item 1108 of Regulation AB (17 CFR 229.1108), Servicers;
- (e) Information required by Item 1109 of Regulation AB (17 CFR 229.1109), Trustees and other transaction parties;
- (f) Information required by Item 1110 of Regulation AB (17 CFR 229.1110), Originators;
- (g) Information required by Item 1112 of Regulation AB (17 CFR 229.1112), Significant obligors of pool assets;
- (h) Information required by Item 1117 of Regulation AB (17 CFR 229.1117), Legal Proceedings; and
- (i) Information required by Item 1119 of Regulation AB (17 CFR 229.1119), Affiliations and certain relationships and related transactions.

Item 7. Information with Respect to the Transaction.

Furnish the following information:

- (a) Information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1125 of Regulation AB (17 CFR 229.1125), Schedule AL – Asset-level information;
- (b) Information required by Item 202 of Regulation S-K (17 CFR 229.202), Description of Securities Registered and Item 1113 of Regulation AB (17 CFR 229.1113), Structure of the Transaction;

- (c) Information required by Item 1114 of Regulation AB (17 CFR 229.1114), Credit Enhancement and Other Support;
- (d) Information required by Item 1115 of Regulation AB (17 CFR 229.1115), Certain Derivatives Instruments;
- (e) Information required by Item 1116 of Regulation AB (17 CFR 229.1116), Tax Matters;
- (f) Information required by Item 1118 of Regulation AB (17 CFR 229.1118), Reports and additional information; and
- (g) Information required by Item 1120 of Regulation AB (17 CFR 229.1120), Ratings.

Item 8. Static Pool.

Furnish the information required by Item 1105 of Regulation AB (17 CFR 229.1105).

Instruction: Registrants may elect to file the information required by this item pursuant to Item 6.06 of Form 8-K (17 CFR 249.308). Incorporation by reference must comply with Item 10 of this Form.

Item 9. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S-K (17 CFR 229.509).

Item 10. Incorporation of Certain Information by Reference.

- (a) The prospectus shall provide a statement that the following documents filed by the date of the filing of a preliminary prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(b)) or a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) filed in accordance with

Rule 424(b) (17 CFR 230.424(b)) are incorporated by reference into the prospectus that is part of the registration statement:

- (1) the disclosures filed as exhibits to Form ABS-EE in accordance with Items 601(b)(102) and Item 601(b)(103) of Regulation S-K (17 CFR 601(b)(102) and 601(b)(103)); and
- (2) except that if the pool assets include asset-backed securities of a third-party, then registrants may reference the third-party's filings of asset-level data pursuant to Item 1100(c)(2) of Regulation AB (17 CFR 229.1100(c)(2)). The third-party is not required to meet the definition of significant obligor in Item 1101(k) of Regulation AB (17 CFR 229.1101(k)).

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

- (b) Registrants may elect to file the information required by Item 1105 of Regulation AB (17 CFR 229.1105), Static Pool, pursuant to Item 6.06 of Form 8-K (17 CFR 249.308), provided that the information is incorporated by reference into the prospectus that is part of the registration statement.
- (c) If the registrant is structured as a revolving asset master trust, the documents listed in (1) and (2) below shall be specifically incorporated by reference into the prospectus by means of a statement to that effect in the prospectus listing all such documents:

- (1) the registrant's latest annual report on Form 10-K (17 CFR 249.310) filed pursuant to Section 13(a) or 15(d) of the Exchange Act that contains financial statements for the registrant's latest fiscal year for which a Form 10-K was required to be filed;
 - (2) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (1) above.
- (d) The prospectus shall also provide a statement regarding the incorporation of reference of Exchange Act reports prior to the termination of the offering pursuant to one of the following two ways:
- (1) a statement that all reports subsequently filed by the registrant pursuant to Sections 13(a), 13(c) or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus; or
 - (2) a statement that all current reports on Form 8-K filed by the registrant pursuant to Sections 13(a), 13(c) or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

- (e)(1) You must state:

- (i) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;
- (ii) that you will provide this information upon written or oral request;
- (iii) that you will provide this information at no cost to the requester;
- (iv) the name, address, and telephone number to which the request for this information must be made; and
- (v) the registrant's Web site address, including the uniform resource locator (URL) where the incorporated information and other documents may be accessed.

Note to Item 10(d)(1). If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must:

- (i) Identify the reports and other information that you file with the SEC.
- (ii) State that any materials you file with the SEC will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. State that the public may obtain information on the operation of the Public Reference Room by

calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available.

Item 11. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S-K (17 CFR 229.510).

**PART II
INFORMATION NOT REQUIRED IN PROSPECTUS**

Item 12. Other Expenses of Issuance and Distribution.

Furnish the information required by Item 511 of Regulation S-K (17 CFR 229.511).

Item 13. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S-K (17 CFR 229.702).

Item 14. Exhibits.

Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S-K (17 CFR 229.601).

Item 15. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S-K (17 CFR 229.512).

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SF-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 20____.

(Registrant)

By

(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Title)

(Date)

Instructions.

1. The registration statement shall be signed by the depositor, the depositor's principal executive officer or officers, its principal financial officer, and controller or principal accounting officer and by at least a majority of its board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by

its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

52. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 et seq.; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

* * * * *

§ 240.3a68-1a [Amended]

53. Amend § 240.3a68-1a, paragraphs (a)(1)(iv)(D), (a)(1)(iv)(G), (a)(1)(iv)(H)(I) through (3), (c)(1), (c)(3)(ii), (c)(4), and (c)(5) by removing references to “3(a)(77) of the Act (15 U.S.C. 78c(a)(77)))” and adding in their place “3(a)(79) of the Act (15 U.S.C. 78c(a)(79)))”.

§ 240.3a68-1b [Amended]

54. Amend § 240.3a68-1b, paragraphs (a)(1)(iv)(D), (a)(1)(iv)(G), (a)(1)(iv)(H)(I) through (3), (c)(1), (c)(3)(ii), (c)(4), and (c)(5) by removing references to “3(a)(77) of the Act (15 U.S.C. 78c(a)(77))” and adding in their place “3(a)(79) of the Act (15 U.S.C. 78c(a)(79))”.

55. Amend § 240.15c2-8 by:

- a. In paragraph (b) revising the last sentence; and
- b. Removing paragraph (j).

The revisions read as follows:

§ 240.15c2-8 Delivery of prospectus.

* * * * *

(b) * * * Provided, however, this paragraph (b) shall apply to all issuances of asset-backed securities (as defined in § 229.1101(c) of this chapter) regardless of whether the issuer has previously been required to file reports pursuant to sections 13(a) or 15(d) of the Securities Exchange Act of 1934, or exempted from the requirement to file reports thereunder pursuant to section 12(h) of the Act (15 U.S.C. 78l).

* * * * *

§ 240.15d-22 [Amended]

56. Amend § 240.15d-22, paragraphs (a) introductory text and (b)(1) by removing the reference “415(a)(1)(x)” and adding in its place “415(a)(1)(xii)”.

* * * * *

§ 240.15Ga-1 [Amended]

57. Amend § 240.15Ga-1, paragraph (a) by removing the reference to “Section 3(a)(77) of the Securities Exchange Act of 1934)” and adding in its place “Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))”.

§ 240.17g-7 [Amended]

58. Amend § 240.17g-7, introductory text by removing the reference to “Section 3(a)(77) of the Securities Exchange Act of 1934)” and adding in its place “Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))”.

PART 243 -- REGULATION FD

59. The authority citation for Part 243 continues to read as follows:

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a-29, unless otherwise noted.

§ 243.103 [Amended]

60. Amend § 243.103, paragraph (a) by removing the phrase “and S-8 (17 CFR 239.16b)” and adding in its place “, S-8 (17 CFR 239.16b) and SF-3 (17 CFR 239.45)”.

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

61. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; 12 U.S.C. 5461 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

62. Amend Form 8-K (referenced in § 249.308) by:

a. Adding a checkbox to the end of the cover page;

b. Revising General Instruction G.2.; and

c. Adding Item 6.06.

The revision and addition read as follows:

Note: The text of Form 8-K does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

G. Use of this Form by Asset-Backed Issuers. * * *

2. Additional Disclosure for the Form 8-K Cover Page. Immediately after the name of the issuing entity on the cover page of the Form 8-K, as separate line items, identify the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 6.06 Static Pool

Regarding an offering of asset-backed securities registered on Form SF-1 (17 CFR 239.44) or Form SF-3 (17 CFR 239.45), in lieu of providing the static pool information as required by Item 1105 of Regulation AB (17 CFR 229.1105) in a form of prospectus or prospectus, an issuer may file the required information in this report or as an exhibit to this report. The static pool disclosure must be filed by the time of effectiveness of a registration statement on Form SF-1, by the same date of the filing of a form of prospectus, as required by Rule 424(h) (17 CFR 230.424(h)), and by the same date of the filing of a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).

Instructions.

1. Refer to Item 601(b)(106) of Regulation S-K (17 CFR 229.601(b)(106)) regarding the filing of exhibits to this Item 6.06.
2. Refer to Item 10 of Form SF-1 (17 CFR 239.44) or Item 10 of Form SF-3 (17 CFR 239.45) regarding incorporation by reference.

* * * * *

63. Amend Form 10-K (referenced in § 249.310) by:

- a. Adding a checkbox on the cover page before the paragraph that starts "Indicate by check mark whether the registrant (1) has filed all reports ..."; and
- b. Revising General Instruction J(2)(a).

The revision reads as follows:

Note: The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

J. Use of this Form by Asset-Backed Issuers.

(2) * * *

(a) Immediately after the name of the issuing entity on the cover page of the Form 10-K, as separate line items, the exact name of the depositor as specified in its charter and the

exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

* * * * *

FORM 10-K

* * * * *

64. Amend Form 10-D (referenced in § 249.312) by:
- a. Revising General Instruction C(3);
 - b. Revising the beginning of the cover page above the line that reads “(State or other jurisdiction of incorporation or organization of the issuing entity)”;
 - c. Adding a checkbox to the cover page before the paragraph that starts “Indicate by check mark whether the registrant (1) has filed...”;
 - d. Revising General Instruction D;
 - e. Revising Item 1 in Part I;
 - f. Adding Item 1A in Part I;
 - g. Adding Item 1B in Part I;
 - h. Redesignating Items 7, 8, and 9 as Items 8, 9, and 10 in Part II; and
 - i. Adding new Item 7 in Part II.

The revisions and additions read as follows:

Note: The text of Form 10-D does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-D

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of Report. * * *

(3) Any item which is inapplicable or to which the answer is negative may be omitted and no reference need be made in the report. If substantially the same information has been previously reported by the asset-backed issuer, an additional report of the information on this Form need not be made. Identify the form or report on which the previously reported information was filed. Identifying information should include a Central Index Key number, file number and date of the previously reported information. The term "previously reported" is defined in Rule 12b-2 (17 CFR 240.12b-2).

D. Incorporation by Reference. * * *

(3) With respect to all registrants required to provide asset-level information pursuant to Item 1111(h) of Regulation AB (17 CFR 229.1111(h)):

(a) The disclosures filed as exhibits to Form ABS-EE in accordance with Item 601(b)(102) and Item 601(b)(103) of Regulation S-K (17 CFR 229.601(b)(102) and 601(b)(103)) must be incorporated by reference into the Form 10-D.

(b) If the pool assets include asset-backed securities of a third-party, registrants may reference the third-party's filings of asset-level data pursuant to Item 1100(c)(2) of Regulation AB (17 CFR 232.1100(c)(2)), except that the third-party is not required to meet the definition of significant obligor in Item 1101(k) of Regulation AB (17 CFR 232.1101(k)).

* * * * *

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-D

**ASSET-BACKED ISSUER
DISTRIBUTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934**

For the [identify distribution frequency (e.g., monthly/quarterly)] distribution period from _____, 20__ to _____, 20__

Commission File Number of issuing entity: _____

Central Index Key Number of issuing entity: _____

(Exact name of issuing entity as specified in its charter)

Commission File Number of depositor: _____

Central Index Key Number of depositor: _____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

(Exact name of sponsor as specified in its charter)

(Name and telephone number, including area code, of the person to contact in connection with this filing)

* * * * *

PART I – DISTRIBUTION INFORMATION

Item 1. Distribution and Pool Performance Information.

Provide the information required by Item 1121(a) and (b) of Regulation AB (17 CFR 229.1121(a) and (b)), and attach as an exhibit to this report the distribution report delivered to the trustee or security holders, as the case may be, pursuant to the transaction agreements for the distribution period covered by this report. Any information required by Item 1121(a) and (b) of Regulation AB that is provided in the attached distribution report need not be repeated in this report. However, taken together, the attached distribution report and the information provided under this Item must contain the information required by Item 1121(a) and (b) of Regulation AB.

Item 1A. Asset-Level Information.

Provide the information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1125 of Regulation AB (17 CFR 229.1125), Schedule AL – Asset-level information.

Item 1B. Asset Representations Reviewer and Investor Communication.

For any transaction that included the provisions required by General Instructions I.B.1(b) and I.B.1(d) on Form SF-3 (referenced in §239.45), provide the information required by Item 1121(d) and (e) of Regulation AB (17 CFR 229.1121(d) and (e)), as applicable.

* * * * *

PART II – OTHER INFORMATION

* * * * *

Item 7. Change in Sponsor Interest in the Securities.

Provide the information required by Item 1124 of Regulation AB (17 CFR 229.1124) with respect to the reporting period covered by this report.

* * * * *

65. Amend Subpart O of Part 249 by:

a. Revising the heading; and

b. Adding § 249.1401.

The revision and addition read as follows:

Subpart O—Forms for Asset-Backed Securities

* * * * *

§ 249.1401 Form ABS-EE, for submission of the asset-data file exhibits and related documents.

This Form shall be used by an electronic filer for the submission of information required by Item 1111(h) (§ 229.1111(h) of this chapter).

66. Add Form ABS-EE (referenced in § 249.1401) to read as follows:

Note: The text of Form ABS-EE does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM FOR SUBMISSION OF ELECTRONIC EXHIBITS FOR
ASSET-BACKED SECURITIES**

Commission File Number of the issuing entity: _____

Central Index Key Number of the issuing entity: _____

(Exact name of issuing entity as specified in its charter)

Commission File Number of the depositor: _____

Central Index Key Number of the depositor: _____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

(Exact name of sponsor as specified in its charter)

(Name and telephone number, including area code, of the person to contact in connection with this filing)

INFORMATION TO BE INCLUDED WITH THIS FORM

Item 1. File an Asset Data File in accordance with Exhibit 601(b)(102) (17 CFR 229.601(b)(102)).

Item 2. File an Asset Related Document in accordance with Exhibit 601(b)(103) (17 CFR 229.601(b)(103)).

SIGNATURES

The depositor has duly caused this Form to be signed on its behalf by the undersigned hereunto duly authorized.

(Depositor)

Date: _____

(Signature)*

[OR]

(Issuing Entity)

Date: _____

By: _____

(Servicer)*

(Signature)*

*Print name and title of the signing officer under his signature.

Instruction. The report on this Form must be signed by the depositor. In the alternative, if the form is being filed to satisfy the disclosure requirements of Form 10-D (17 CFR 249.312) this Form may be signed on behalf of the issuing entity by a duly authorized representative of the servicer.

Commissioner Gallagher
Commissioner Steiner
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 9642 / September 5, 2014

SECURITIES EXCHANGE ACT OF 1934

Release No. 73016 / September 5, 2014

INVESTMENT COMPANY ACT OF 1940

Release No. 31243 / September 5, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16056

In the Matter of

MARK CROSBY NEVDAHL

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 15(b)
OF THE SECURITIES EXCHANGE ACT OF
1934, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Section 9(b) of the Investment Company Act of 1940 against Mark Crosby Nevdahl ("Nevdahl" or Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, and Section 9(b) of the Investment

Company Act of 1940, Making Findings, Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

These proceedings arise out of Respondent's role as a registered representative and a trustee for certain of his former clients who held the majority of stock in Heart Tronics, Inc. The clients enlisted Nevdahl to act as trustee for a number of purportedly blind trusts to create the façade that the shares were under his control, as an independent trustee. However, the trusts were blind in name only, and Nevdahl met his clients' regular demands for cash by continually selling Heart Tronics stock through the trusts. The trusts were further designed to avoid the required regular public disclosures under the federal securities laws of his clients' stock sales.

Respondent

1. Respondent, 52 years old, is a resident of Spokane, Washington. From November 1984 through December 2011, Respondent was a registered representative associated with broker-dealers registered with the Commission. Respondent participated in an offering of Heart Tronics, Inc. stock, which was a penny stock.

Other Relevant Persons and Entities

2. Heart Tronics, Inc. (formerly known as Signalife, Inc.) is a Delaware corporation now headquartered in Van Nuys, California. Between 2002 and 2011, Heart Tronics maintained its principal places of business in Studio City, California and Greenville, South Carolina. During the same period, its stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act, and it filed reports with the Commission pursuant to Section 13 of the Exchange Act.

3. ARC Finance Group, LLC ("ARC Finance") is a Delaware limited liability company formed in 2002 that became the majority shareholder of Heart Tronics in 2002.

4. Mitchell Jay Stein ("Stein") is the husband of the sole managing member of ARC Finance. From at least 2002 to 2011, Stein held himself out as the outside legal counsel to Heart Tronics. In May 2013, Stein was found guilty of 14 felony counts for misconduct related to Heart Tronics. Stein is presently incarcerated in the custody of the U.S. Department of Justice, Bureau of

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Prisons. In January 2012, the California Bar ordered Stein's law license inactive, and in October 2013 his law license was suspended after his conviction.

Background

5. In approximately September 2002, one of Respondent Nevdahl's brokerage clients, ARC Finance, became the majority shareholder of Heart Tronics, when it acquired 23.4 million shares (approximately 85% of the company's outstanding equity) in exchange for consideration valued at \$78,023. In June 2005, Heart Tronics registered the resale of 3.5 million shares of the stock held by ARC Finance. From July 2005 to October 2005, ARC Finance directly sold 344,200 shares pursuant to the registration statement.

6. Beginning in 2005, Stein devised a scheme to sell ARC Finance's shares without publicly registering or reporting the sales, as required under the federal securities laws. The scheme created the appearance that ARC Finance was not selling the previously-registered shares but, rather, holding them as a long-term investment.

7. Beginning in approximately December 2005, ARC Finance transferred a portion of its holdings to two purportedly blind trust accounts, established for the benefit of ARC Finance and Stein. Respondent Nevdahl was appointed trustee for each trust and served as the securities broker for each trust. This created the appearance that the stock was held by independent legal entities controlled by Nevdahl and that neither ARC Finance nor Stein had control over the disposition of the trusts' assets.

8. Notwithstanding the fact that the trusts were purportedly blind, ARC Finance, through Stein and his wife, retained control over the shares that were transferred to these trusts. At Stein's direction, Nevdahl did not re-title the securities in the name of the trusts. In addition, although the trusts were purportedly "blind," Nevdahl took explicit instructions from Stein over the trusts' corpus. Among other things, Stein (1) told Nevdahl to generate enough cash (necessitating the sale of stock) each month to meet the Steins' lifestyle demands; (2) told Nevdahl how to vote shares on proxy ballots; and (3) negotiated "private placements" to sell shares held by one of the trusts in off-the-market transactions. Stein also directed Nevdahl to wire the proceeds generated by Nevdahl's share sales to bank accounts in the name of Stein and ARC Finance.

9. Although the trust indentures placed the obligation on Nevdahl (as trustee) to file reports of any transactions in the trusts required by the federal securities laws, Stein informed Nevdahl that the sales in the trusts were exempt from the reporting requirements under the federal securities laws because the trusts were "blind" and held less than 10% of Heart Tronics' equity. Nevdahl performed no independent analysis of this and other issues pertaining to the propriety of the trusts' stock sales, nor did he seek express approval from his firm regarding these sales.

10. Between approximately December 2005 and September 2008, the Steins, through transactions executed by Nevdahl, secretly directed the sale of more than three million shares of Heart Tronics stock through the trusts, for gross proceeds of more than \$5.8 million.

11. Neither Stein, ARC Finance, nor any of the trusts managed by Nevdahl filed any reports with the Commission on Forms 3, 4 or 5 during this period.

12. Nevdahl was paid brokerage commissions and trustee fees for his work as trustee and broker for the purportedly blind trusts.

13. As a result of the conduct described above, Nevdahl willfully² violated Section 17(a)(3) of the Securities Act, which makes it unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of mails, directly or indirectly, to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Undertakings

Respondent has undertaken to provide the Commission, within thirty (30) days after the end of the six month suspension period described herein, an affidavit that he has complied with the sanctions described in Section IV below.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Nevdahl's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act, and Section 9(b) of the Investment Company Act of 1940, it is hereby ORDERED that:

A. Respondent Nevdahl cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act.

B. Respondent be, and hereby is, for a period of six (6) months, effective on the second Monday following the entry of this Order:

suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

suspended from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for the purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

- C. Respondent shall comply with the undertaking enumerated in Section III above.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 9641 / September 5, 2014

SECURITIES EXCHANGE ACT OF 1934

Release No. 73015 / September 5, 2014

INVESTMENT COMPANY ACT OF 1940

Release No. 31242 / September 5, 2014

Admin. Proc. File No. 3-15613

In the Matter of

JULIEANN PALMER MARTIN

ORDER EXTENDING
DEADLINE FOR FILING
INITIAL DECISION

Chief Administrative Law Judge Brenda P. Murray has moved, pursuant to Commission Rule of Practice 360(a)(3),¹ for an extension of one-hundred and sixty days to file the initial decision in this proceeding. For the reasons set forth below, we grant her motion.

We issued an Order Instituting Administrative and Cease-and-Desist Proceedings ("OIP") against Julieann Palmer Martin, an employee of National Note of Utah, LC ("National Note"), a limited liability company.² In a separate district court action, the Commission filed a complaint alleging that National Note and its principal, Wayne Palmer, engaged in a widespread real estate offering fraud and Ponzi scheme from 2004 through 2012.³ In connection with that conduct, the OIP alleges that Martin willfully violated the antifraud provisions of the federal securities laws by, among other things, falsely telling investors that National Note's purported 12% return was guaranteed and that National Note was paying investors returns from its real estate investments, and concealing National Note's inability to pay investors because of its declining financial

¹ 17 C.F.R. § 201.360(a)(3).

² *Julieann Palmer Martin*, Exchange Act Release No. 70868, 2013 WL 6017545 (Nov. 13, 2013).

³ *SEC v. Nat'l Note of Utah, LC*, Civil Action No. 2:12-cv-00591 (D. Utah, June 25, 2012). The matter is still pending.

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condition.⁴ The OIP further alleges that Martin willfully violated Exchange Act Section 15(a)(1) by soliciting investors, providing copies of National Note's private placement memorandum and other substantive information relating to the investment, facilitating IRA transfers, and receiving transaction-based compensation.⁵ The OIP also alleges that Martin willfully violated Securities Act Section 5(a) and 5(c) by participating in the sale and the offer for sale of National Note's securities when no registration statement was filed or in effect with respect to those securities, and no exemption from the registration requirements applied.⁶

The OIP directs the presiding law judge to file an initial decision within 300 days of the date of service of the OIP. Chief Judge Murray asserts that an extension is necessary because of the delay caused by unsuccessful settlement negotiations between the parties. Judge Murray explains that, although she had determined a date for a hearing early in the proceeding, she subsequently stayed the proceeding "based on the parties' representation that they had reached an agreement in principle to a settlement on all major terms." When those settlement negotiations failed and the stay lapsed, Judge Murray rescheduled the hearing. Judge Murray asserts that "it will not be possible to issue the initial decision in the time specified" due to the limited amount of time remaining after the hearing is held.

We adopted Rule of Practice 360(a) to enhance the timely and efficient adjudication and disposition of Commission administrative proceedings by setting deadlines for filing an initial decision.⁷ That rule provides for deadline extensions under certain circumstances if supported by a motion from the Chief Administrative Law Judge and if it appears, as here, that "additional time is necessary or appropriate in the public interest."⁸

Accordingly, IT IS ORDERED that the deadline for filing the initial decision in this proceeding is extended to March 11, 2015.

By the Commission.


Jill M. Peterson
Assistant Secretary

⁴ The OIP specifically alleges violations of Securities Act Section 17(a), 15 U.S.C. § 77q(a); Exchange Act Section 10(b), 15 U.S.C. § 78j(b); and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

⁵ 15 U.S.C. § 78o(a)(1).

⁶ 15 U.S.C. §§ 77e(a), 77e(c).

⁷ See *Adopting Release*, Exchange Act Release No. 48018, 2003 WL 21354791, at *2 (June 11, 2003) ("[T]he Commission has determined that timely completion of proceedings can be achieved more successfully through the adoption of mandatory deadlines and procedures designed to meet these deadlines.").

⁸ 17 C.F.R. § 201.360(a)(3).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3912 / September 5, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16057

In the Matter of

JOHN THOMAS PAPPAS,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
203(f) OF THE INVESTMENT ADVISERS ACT
OF 1940 AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against John Thomas Pappas ("Respondent" or "Pappas").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. John Thomas Pappas, age 39, is a resident of Helena, Alabama. From November 2000 through June 2003, he was a registered representative and an investment adviser representative with Prudential Securities Inc., a registered investment adviser and broker-dealer located in New York, New York. From approximately June 2003 through March 2010, he was employed as a registered representative and an investment adviser representative with Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), a registered investment adviser and broker-dealer located in Birmingham, Alabama.

B. ENTRY OF FINAL STATE ORDER

2. On February 1, 2012, a final administrative order was entered against Pappas, barring him "from registration and from engaging in any securities activities into, within or from the State of Alabama, indefinitely," in a proceeding by the Alabama Securities Commission entitled, In the Matter of John Thomas Pappas, Administrative Order No. OB-2012-

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0005 (the "Alabama Order"). On July 7, 2011, prior to the entry of the Alabama Order, Pappas executed a Letter of Acceptance, Waiver and Consent (the "AWC") with The Financial Industry Regulatory Authority ("FINRA"), by which he agreed to a permanent bar from associating in any capacity with any FINRA member as a result of his violation of FINRA Rules 2150(a), 2010, 8210, and NASD Rule IM-2310-2.

3. According to the Alabama Order and the AWC, between 2007 and 2010, while employed at Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), Pappas converted \$157,564 from three of his customers. He misappropriated the funds by accessing the bill payment feature in three separate customer accounts and directing payments to his personal credit card accounts. He also attempted to convert an additional \$14,260.00 from a fourth customer account, but his attempts were halted by Merrill Lynch, which terminated Pappas' employment on February 4, 2010. Pappas made the payments to his credit card accounts without the knowledge or consent of his customers.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9640 / September 5, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 73014 / September 5, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3911 / September 5, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31241 / September 5, 2014

Admin. Proc. File No. 3-15617

In the Matter of

LARRY C. GROSSMAN and
GREGORY J. ADAMS

ORDER EXTENDING
DEADLINE FOR FILING
INITIAL DECISION

Chief Administrative Law Judge Brenda P. Murray has moved, pursuant to Commission Rule of Practice 360(a)(3),¹ for a ninety-day extension of time to file the initial decision in this proceeding. For the reasons set forth below, we grant the motion.

On November 20, 2013, we issued an Order Instituting Administrative and Cease-and-Desist Proceedings ("OIP") against Larry C. Grossman and Gregory J. Adams, two investment advisers located in the Tampa, Florida area.² The OIP alleges, among other things, that Grossman and Adams willfully violated antifraud provisions of the securities laws by failing to truthfully inform clients, most of whom were retirees, about compensation received from offshore funds they were recommending as safe investments despite substantial risks and red flags. The OIP also alleges that Grossman and Adams aided and abetted their investment firm Sovereign International Asset Management, Inc.'s violations of the "custody rule" under the

¹ 17 C.F.R. § 201.360(a)(3).

² *Larry C. Grossman and Gregory J. Adams*, Securities Act Release No. 9481, 2013 WL 6087353 (Nov. 20, 2013).

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Investment Advisers Act of 1940,³ which requires investment advisory firms to establish specific procedures to safeguard and to account for client assets.

The OIP directs the presiding law judge to file an initial decision within 300 days of the date of service of the OIP, or by September 29, 2014. Chief Judge Murray seeks an extension of this deadline. She notes that she "is scheduled to preside at two hearings in August and one in September" 2014, and that she has "an Initial Decision in another 300-day case due September 29, 2014." Chief Judge Murray asserts that "[a]nother administrative law judge will arrive, hopefully, by late September, and [she] will reassign cases to him as soon as possible."

We adopted Rule of Practice 360(a) to enhance the timely and efficient adjudication and disposition of Commission administrative proceedings by setting deadlines for filing an initial decision.⁴ That rule provides, however, for deadline extensions under certain circumstances if supported by a motion from the Chief Administrative Law Judge and if it appears, as here, that "additional time is necessary or appropriate in the public interest."⁵

Accordingly, IT IS ORDERED that the deadline for filing the initial decision in this proceeding is extended to December 29, 2014.

By the Commission.


Jill M. Peterson
Assistant Secretary

³ 17 C.F.R. § 275.206(4)-2.

⁴ See *Adopting Release*, Exchange Act Release No. 48018, 2003 WL 21354791, at *2 (June 11, 2003) ("[T]he Commission has determined that timely completion of proceedings can be achieved more successfully through the adoption of mandatory deadlines and procedures designed to meet these deadlines.").

⁵ 17 C.F.R. § 201.360(a)(3).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73001 / September 5, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16054

In the Matter of

**AJ Acquisition Corp. I, Inc.,
AJ Acquisition Corp. II, Inc.,
Alpine Alpha 1, Ltd.,
Deca Investments, Inc.,
Trident Acquisitions, Inc., and
VitaminSpice,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents AJ Acquisition Corp. I, Inc., AJ Acquisition Corp. II, Inc., Alpine Alpha 1, Ltd., Deca Investments, Inc., Trident Acquisitions, Inc., and VitaminSpice.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. AJ Acquisition Corp. I, Inc. (CIK No. 1483053) is a revoked Nevada corporation located in Manalapan, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AJ Acquisition Corp I is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended April 30, 2011, which reported a net loss of \$11,854 from the company's January 29, 2010 inception to April 30, 2011.

2. AJ Acquisition Corp. II, Inc. (CIK No. 1483055) is a revoked Nevada corporation located in Manalapan, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AJ Acquisition Corp. II is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended April 30, 2011, which reported a net loss of \$11,813 from the company's January 29, 2010 inception to April 30, 2011.

3. Alpine Alpha 1, Ltd. (CIK No. 1444090) is a dissolved Delaware corporation located in Alpine, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Alpine Alpha 1 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2011, which reported a net loss of \$515,226 from the company's October 29, 2007 inception to June 30, 2011.

4. Deca Investments, Inc. (CIK No. 1511081) is a revoked Nevada corporation located in Pennington, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Deca Investments is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 2011, which reported a net loss of \$3,277 for the prior nine months. Moreover, the company has never filed a Form 10-K since its registration on January 26, 2011.

5. Trident Acquisitions, Inc. (CIK No. 1511079) is a revoked Nevada corporation located in Lake Hopatcong, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Trident Acquisitions is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 2011, which reported a net loss of \$3,277 from the company's February 6, 2007 inception to July 31, 2011. Moreover, the company has never filed a Form 10-K since it was registered on January 26, 2011.

6. VitaminSpice (CIK No. 1382056) is a dissolved Wyoming corporation located in Wayne, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). VitaminSpice is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011. As of August 12, 2014, the company's stock (symbol "VTMS") was traded on the over-the-counter markets. On August 5, 2011, the company filed a Chapter 11 petition, subsequently converted to Chapter 7, in the U.S. Bankruptcy Court for the District of Eastern Pennsylvania, but the case was dismissed on July 17, 2013.

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73002 / September 5, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16055

In the Matter of

**Bethesda C0801, Inc.,
Isdera North America, Inc.,
Kangye International Holdings, Inc.,
Quality Alliance Group, Inc.,
Quantum Assets, Inc.,
Remuda Investment Corp. (f/k/a
Accelerated Acquisitions II, Inc.),
Source Rock, Inc., and
UnionTown Energy Inc.,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Bethesda C0801, Inc., Isdera North America, Inc., Kangye International Holdings, Inc., Quality Alliance Group, Inc., Quantum Assets, Inc., Remuda Investment Corp. (f/k/a Accelerated Acquisitions II, Inc.), Source Rock, Inc., and UnionTown Energy Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Bethesda C0801, Inc. (CIK No. 1435947) is a revoked Nevada corporation located in Clearwater, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bethesda C0801 is delinquent in its periodic

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filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended June 30, 2011, which reported a net loss of \$11,064 for the prior twelve months.

2. Isdera North America, Inc. (CIK No. 1375911) is a revoked Nevada corporation located in Shenzhen, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(b). Isdera North America is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2011.

3. Kangye International Holdings, Inc. (CIK No. 1497030) is a revoked Nevada corporation located in Shenzhen, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Kangye International Holdings is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of over \$10,248 from the company's June 30, 2010 inception to March 31, 2011. Moreover, the company has never filed a Form 10-K since it was registered on July 20, 2010.

4. Quality Alliance Group, Inc. (CIK No. 1441066) is a dissolved Nevada corporation located in Chesterfield, Virginia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quality Alliance Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of \$30,999 from the company's May 7, 2008 inception to March 31, 2011.

5. Quantum Assets, Inc. (CIK No. 1467560) is a revoked Nevada corporation located in Statesville, North Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quantum Assets is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2011, which reported a net loss of \$31,039 from the company's December 17, 2008 inception to June 30, 2011.

6. Remuda Investment Corp. (f/k/a Accelerated Acquisitions II, Inc.) (CIK No. 1430175) is a void Delaware corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Remuda Investment is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of \$31,923 from the company's February 15, 2008 inception to March 31, 2011.

7. Source Rock, Inc. (CIK No. 1494473) is a dissolved Nevada corporation located in Tulsa, Oklahoma with a class of securities registered with the Commission pursuant to Exchange Act Section 12(b) and 12(g). Source Rock is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011, which reported a net loss of \$24,845 from the company's June 3, 2010 inception to September 30, 2011.

8. UnionTown Energy Inc. (CIK No. 1310482) is a revoked Nevada corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). UnionTown Energy is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 2011, which reported a net loss of \$1,051,935 from the company's November 22, 2004 inception to July 31, 2011. As of August 12, 2014, the company's stock (symbol "UTOG") was traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further

order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative Proceedings and Notice of Hearing Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

The Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F St., N.E.
Washington, DC 20549-2557

Neil J. Welch, Jr., Esq.
Division of Enforcement
Securities and Exchange Commission
100 F St., N.E.
Washington, DC 20549-6010

By Priority Mail Express:
Bethesda C0801, Inc.
2519 McMullen Booth Rd., Suite 510-308
Clearwater, FL 33761

By Hague Convention Service:
Isdera North America, Inc.
7-F, Xinghe Building, Central Road
Shajing, Baoan District
Shenzhen, China 518100

By Process Server:
Kangye International Holdings, Inc.
c/o CSC Services of Nevada, Inc.
Registered Agent
2215-B Renaissance Dr.
Las Vegas, NV 89119

By Priority Mail Express:
Quality Alliance Group, Inc.
13406 Sir Britton Ct.
Chesterfield, VA 28832

By Priority Mail Express:
Quantum Assets, Inc.
P.O. Box 6592
Statesville, NC 28687

By Priority Mail Express:
Remuda Investment Corp.
(f/k/a Accelerated Acquisitions II, Inc.)
1330 Post Oak Blvd., Suite 1600
Houston, TX 77056

By Priority Mail Express:
Source Rock, Inc.
6528 E. 101 St., Suite 380
Tulsa, OK 74133

By Priority Mail Express:
UnionTown Energy, Inc.
999 Canada Place
Vancouver, BC V6C 3E2
Canada

美利坚合众国
之
证券交易监督委员会

《1934 年证券交易法》

发行号

行政程序

备案号

就以下相对人之事项:

Bethesda C0801, Inc.、
Isdera North America, Inc.、
Kangye International Holdings, Inc.、
Quality Alliance Group, Inc.、
Quantum Assets, Inc.、
Remuda Investment Corp.
(原 Accelerated Acquisition II, Inc.)、
Source Rock, Inc., 以及
UnionTown Energy Inc.

依据《1934 年证券交易法》第 12(j)
条,
送达行政程序启动
暨听证通知令

I.

证券交易监督委员会(“委员会”)认为,依据《1934 年证券交易法》(“证券法”)第 12(j) 条对相对人 Bethesda C0801, Inc.、Isdera North America, Inc.、Kangye International Holdings, Inc.、Quality Alliance Group, Inc.、Quantum Assets, Inc.、Remuda Investment Corp. (原 Accelerated Acquisition II, Inc.)、Source Rock, Inc. 和 UnionTown Energy Inc. 特此提起公共行政程序,对保护投资者是必要且适当的。

II.

经调查,执行部诉称:

A. 相对人

1. Bethesda C0801, Inc. (CIK 号 1435947) 是佛罗里达州克利尔沃特市一家已被撤销的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。Bethesda C0801 未按规定向委员会提交定期报告。自提交截至 2011 年 6 月 30 日的 10-K 表 (称过去十二个月净亏损 11,064 美元) 后, Bethesda C0801 再未提交任何定期报告。

2. Isdera North America, Inc. (CIK 号 1375911) 是中国深圳市一家已被撤销的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。Isdera North America 未按规定向委员会提交定期报告。自提交截至 2011 年 6 月 30 日的 10-Q 表后, Isdera North America 再未提交任何定期报告。

3. Kangye International Holdings, Inc. (CIK 号 1497030) 是中国深圳市一家已被撤销的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。Kangye International Holdings 未按规定向委员会提交定期报告。自提交截至 2011 年 3 月 31 日的 10-Q 表 (称其自 2010 年 6 月 30 日发起至 2011 年 3 月 31 日期间净亏损超过 10,248 美元) 后, Kangye International Holdings 再未提交任何定期报告。此外, 该公司自 2010 年 7 月 20 日注册以来未提交 10-K 表。

4. Quality Alliance Group, Inc. (CIK 号 1441066) 是弗吉尼亚州切斯特菲尔德县一家已解散的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。Quality Alliance Group 未按规定向委员会提交定期报告。自提交截至 2011 年 3 月 31 日的 10-Q 表 (称其自 2008 年 5 月 7 日发起至 2011 年 3 月 31 日期间净亏损 30,999 美元) 后, Quality Alliance Group 再未提交任何定期报告。

5. Quantum Assets, Inc. (CIK 号 1467560) 是北卡罗来纳州斯泰茨维尔一家已被撤销的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。Quantum Assets 未按规定向委员会提交定期报告。自提交截至 2011 年 6 月 30 日的 10-Q 表 (称其自 2008 年 12 月 17 日发起至 2011 年 6 月 30 日期间净亏损 31,039 美元) 后, Quantum Assets 再未提交任何定期报告。

6. Remuda Investment Corp. (原 Accelerated Acquisitions II, Inc.) (CIK 号 1430175) 是位于德克萨斯州休斯顿一家空头的特拉华州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。Remuda Investment 未按规定向委员会提交定期报告。自提交截至 2011 年 3 月 31 日的 10-Q 表 (称其自 2008 年 2 月 15 日发起至 2011 年 3 月 31 日期间净亏损 31,923 美元) 后, Remuda Investment 再未提交任何定期报告。

7. Source Rock, Inc. (CIK 号 1494473) 是俄克拉荷马州塔尔萨一家已解散的内华达州公司, 依据证券法第 12(b) 条和第 12(g) 条在委员会注册了一类证券。Source Rock 未按规定向委员会提交定期报告。自提交截至 2011 年 9 月 30 日的 10-Q 表 (称其自 2010 年 6 月 3 日发起至 2011 年 9 月 30 日期间净亏损 24,845 美元) 后, Source Rock 再未提交任何定期报告。

8. UnionTown Energy Inc. (CIK 号 1310482) 是加拿大不列颠哥伦比亚省温哥华市一家已被撤销的内华达州公司，依据证券法第 12(g) 条在委员会注册了一类证券。UnionTown Energy 未按规定向委员会提交定期报告。自提交截至 2011 年 7 月 31 日的 10-Q 表（称其自 2004 年 11 月 22 日发起至 2011 年 7 月 31 日期间净亏损 1,051,935 美元）后，UnionTown Energy 再未提交任何定期报告。截至 2014 年 8 月 12 日，该公司股票（代码 "UTOG"）仍在场外交易市场交易。

B. 未按规定提交定期报告

9. 正如上文详述，所有相对人均未按规定向委员会提交定期报告，屡次不履行按时提交定期报告的义务，且在收到企业金融部发出的催告函，要求其遵守定期申报义务后，仍不予理会，或因未按证监会的规定在证监会维护有效备案地址，从而未收到该等催告函。

10. 根据证券法第 13(a) 条及其发布的规定，依据证券法第 12 条注册的证券发行者，即使是根据第 12(g) 条自愿注册，亦应以定期报告的方式向委员会提交最新且准确之信息。具体而言，第 13a-1 条规定要求发行者提交年报，第 13a-13 条规定要求国内发行者提交季报。

11. 由于上述原因，相对人未遵守证券法第 13(a) 条和根据该法发布的第 13a-1 条和/或 13a-13 条之规定。

III.

鉴于执行部提出的诉称，委员会认为提起公共行政程序确定以下事项对保护投资者是有必要且适当的：

A. 本命令第 II 部分所包含的诉称是否属实，就该诉称而言，给予相对人对该等诉称进行抗辩的机会；以及

B. 就保护投资者而言，对本命令第 II 部分所指定相对人、证券法第 12b-2 条或第 12g-3 条规定下的任何继承人、采用新公司名称的相对人采取以下行为是否有必要且适当——暂停（不超过十二个月）或撤销其依据证券法第 12 条注册各类证券；

IV.

特此命令，为对第 III 部分所述问题进行取证，应在待定的时间和地点召开公开听证，并由《美国证监会行为规范》第 110 条规定的进一步命令所指定的行政法法官主持[《美国联邦法规》第 17 编第 201.110 节]。

进一步命令，相对人应在本命令送达后十 (10) 日内，按《美国证监会行为规范》第 220(b) 条规定 [《美国联邦法规》第 17 编第 201.220(b) 节] 对本命令中所包含的诉称提交答辩状。

若相对人未提交所规定的答辩状，或在收到通知后未出席听证，则相对人及《美国证监会行为规范》第 12b-2 条或第 12g-3 条规定下的任何继承人，以及拥有新公司名称的相对人，将被视为缺席，且将针对其就命令中的事项确定相应程序，根据《美国证监会行为规范》第 155(a)、220(f)、221(f) 和 310 条规定 [《美国联邦法规》第 17 编第 201.155(a)、201.220(f)、201.221(f) 和 201.310 节]，命令中的诉称将被视为属实。

本命令应以直接送达的方式或通过特快专递或《美国证监会行为规范》允许的其它方式，立即送达相对人。

进一步命令，行政法官应依据《美国证监会行为规范》第 360(a)(2) 条规定 [《美国联邦法规》第 17 编第 201.360(a)(2) 节]，在不晚于本命令送达之日起的 120 天内做出初始裁决。

如缺少相关弃权，则委员会在本程序或任何事实上相关的程序中从事调查或起诉职能的任何官员或雇员，均不得参加本事项的决策或对本事项的决策提出建议，但依据通知在诉讼中担任证人或律师的除外。因本程序并非《行政诉讼法》第 551 节定义的“法规制定”，因此不受第 553 条规定的限制，无须推迟委员会任何最终决议的实行日期。

委员会。

助理秘书
Jill M. Peterson

送达清单

《美国证监会行为规范》第141条规定 秘书或经正式授权的委员会官员 应依据 1934年证券交易法》第12(j)

条 向相对人及其法定代理人送达行政程序启动通知书(“命令”)的副本。

所附命令已送至以下当事人及有权收到通知的其他人:

Brenda P. Murray 法官
首席行政法官
证券交易监督委员会
100 F St., N.E.
Washington, DC 20549-2557

Neil J. Welch, Jr., Esq.
执行部
证券交易监督委员会
100 F St., N.E.
Washington, DC 20549-6010

通过Priority Mail Express 送达:
Bethesda C0801, Inc.
2519 McMullen Booth Rd., Suite 510-308
Clearwater, FL 33761

通过《海牙送达公约》送达:
Isdera North America, Inc.
中国广东省深圳市
宝安区沙井街道力中心路星河大厦7楼
邮政编码518100

通过Process Server 送达:
Kangye International Holdings, Inc.
c/o CSC Services of Nevada, Inc.
注册代理人
2215-B Renaissance Dr.
Las Vegas, NV 89119

通过Priority Mail Express 送达:
Quality Alliance Group, Inc.
13406 Sir Britton Ct.
Chesterfield, VA 28832

通过Priority Mail Express 送达:
Quantum Assets, Inc.

P.O. Box 6592
Statesville, NC 28687

通过Priority Mail Express 送达
Remuda Investment Corp.
(原Accelerated Acquisitions II, Inc.)
1330 Post Oak Blvd., Suite 1600
Houston, TX 77056

通过Priority Mail Express 送达
Source Rock, Inc.
6528 E. 101 St., Suite 380
Tulsa, OK 74133

通过Priority Mail Express 送达
UnionTown Energy, Inc.
999 Canada Place
Vancouver, BC V6C 3E2
Canada

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3913 / September 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16058

In the Matter of

DOUGLAS E. COWGILL,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Douglas E. Cowgill ("Cowgill" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2, below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Cowgill, age 58, is a resident of Columbus, Ohio. Since July 2013, Cowgill has been the sole owner and President of Professional Investment Management, Inc. ("PIM"), an Ohio-based investment adviser that was registered with the Commission from 1978 until September 30, 2013. He also has been PIM's Chief Compliance Officer since September 2004.

2. On August 21, 2014, a judgment was entered by consent against Cowgill, permanently restraining and enjoining him from violating and/or aiding and abetting violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, Sections 203(a), 204(a), 206(1), (2), and (4), and 207 of the Advisers Act, and Rules 204-2, 206(4)-2, and 206(4)-7 thereunder, in the civil action entitled Securities and Exchange Commission v. Douglas E. Cowgill, et al., Case No. 2:14-CV-396, in the United States District Court for the Southern District of Ohio.

3. The Commission's First Amended Complaint alleged, among other things, that, since at least December 31, 2010, PIM reported in account statements sent to clients that clients held a total of approximately \$7.7 million in a money market fund when, in fact, the clients held a total of approximately \$6.9 million in the fund. The SEC further alleged that Cowgill attempted to disguise this shortfall from SEC examiners by entering a fake trade in PIM's account records, and that, to avoid detection, Cowgill provided additional falsified reports to SEC staff and moved money from a cash account holding client funds to the money market fund.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 203(f) of the Advisers Act, that Respondent be, and hereby is, barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order;

and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.


Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-9643; File No. S7-09-14]

RIN 3235-AL41

Treatment of Certain Communications Involving Security-Based Swaps That May Be Purchased Only By Eligible Contract Participants

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing a rule under the Securities Act of 1933 to provide that certain communications involving security-based swaps that may be purchased only by eligible contract participants will not be deemed for purposes of Section 5 of the Securities Act to constitute offers of such security-based swaps or any guarantees of such security-based swaps that are securities. Under the proposed rule, the publication or distribution of price quotes relating to security-based swaps that may be purchased only by persons who are eligible contract participants and are traded or processed on or through a facility that either is registered as a national securities exchange or as a security-based swap execution facility, or is exempt from registration as a security-based swap execution facility pursuant to a rule, regulation, or order of the Commission, would not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase such security-based swaps or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act.

DATES: Comments should be received on or before [insert date 60 days after publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

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- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>);
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-09-14 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-09-14. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/proposed.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551-3860, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are proposing Rule 135d under the Securities Act of 1933 ("Securities Act").¹

I. BACKGROUND

On July 21, 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")² into law. Title VII of the Dodd-Frank Act ("Title VII") provides the Securities and Exchange Commission ("SEC" or the "Commission") and the Commodity Futures Trading Commission ("CFTC") with the authority to regulate over-the-counter derivatives. Under Title VII, the CFTC regulates "swaps," the SEC regulates "security-based swaps," and the CFTC and SEC jointly regulate "mixed swaps."³

Title VII amended the Securities Act and the Securities Exchange Act of 1934 ("Exchange Act")⁴ to include "security-based swaps" in the definition of "security" for purposes of those statutes.⁵ As a result, "security-based swaps" are subject to the provisions of the

¹ 15 U.S.C. 77a *et seq.*

² Pub. L. No. 111-203, 124 Stat. 1376 (2010).

³ Section 712(d) of the Dodd-Frank Act provides that the SEC and the CFTC, in consultation with the Board of Governors of the Federal Reserve System, shall jointly further define the terms "swap," "security-based swap," "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant," "eligible contract participant," and "security-based swap agreement." These terms are defined in Sections 721 and 761 of the Dodd-Frank Act and, with respect to the term "eligible contract participant," in Section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)], as re-designated and amended by Section 721 of the Dodd-Frank Act. The SEC and the CFTC adopted final rules further defining these terms. See Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," Release No. 34-66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012), and Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Release No. 33-9338 (Jul. 18, 2012), 77 FR 48208 (Aug. 13, 2012) ("Product Definitions Adopting Release").

⁴ 15 U.S.C. 78a *et seq.*

⁵ See Sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending Section 3(a)(10) of the Exchange Act [15 U.S.C. 78c(a)(10)] and Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)], respectively).

Securities Act and the Exchange Act and the rules and regulations thereunder applicable to securities. The Securities Act requires that any offer and sale of a security must either be registered under the Securities Act or be made pursuant to an exemption from registration.⁶ As a result, counterparties entering into security-based swap transactions need either to rely on an available exemption from the registration requirements of the Securities Act or register such transactions. Title VII amended the Securities Act to require that security-based swap transactions involving persons who are not eligible contract participants⁷ must be registered under the Securities Act.⁸

Transactions in security-based swaps historically have occurred through bilateral trades in the over-the-counter market.⁹ Currently, security-based swap dealers can locate counterparties

⁶ See 15 U.S.C. 77e.

⁷ The term “eligible contract participant” is defined in Section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)]. The definition of the term “eligible contract participant” in the Securities Act refers to the definition of “eligible contract participant” in the Commodity Exchange Act. See Section 5(e) of the Securities Act [15 U.S.C. 77e(e)]. The eligible contract participant definition includes several categories of persons: financial institutions; insurance companies; investment companies; commodity pools; business entities, such as corporations, partnerships, and trusts; employee benefit plans; government entities, such as the United States, a State or local municipality, a foreign government, a multinational or supranational government entity, or an instrumentality, agency or department of such entities; market professionals, such as broker dealers, futures commission merchants, floor brokers, and investment advisors; and natural persons with a specified dollar amount invested on a discretionary basis. The SEC and the CFTC adopted final rules further defining the term “eligible contract participant.” See footnote 3 above.

⁸ See Section 768(b) of the Dodd-Frank Act (adding new Section 5(d) of the Securities Act [15 U.S.C. 77e(d)]) (Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)).). Section 105(c)(1) of the Jumpstart Our Business Startups Act (the “JOBS Act”) redesignated paragraph (d) of Section 5 of the Securities Act as paragraph (e). See Pub. L. No. 112-106, 126 Stat. 306 (2012).

⁹ See letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, The Securities Industry and Financial Markets Association (“SIFMA”), and Robert Pickel, Chief

for transactions in security-based swaps by using various methods, including electronic trading platforms.¹⁰ Security-based swap dealers may solicit transactions in security-based swaps from their institutional client base via phone calls, email, and in-person meetings. Clients sometimes contact security-based swap dealers who are well known in the market to request a quote for a particular transaction. In addition, security-based swap dealers may opt to locate counterparties by engaging the services of an inter-dealer broker. According to a commenter, security-based swap dealers also disseminate trading interest in security-based swaps by sending messages via on-line information services such as Bloomberg.¹¹ These electronic messages are sent only to accounts with whom security-based swap dealers and brokers have pre-existing relationships.¹² Security-based swap dealers also may communicate pricing information or quotes for security-based swaps through electronic trading platforms that require pre-clearance for access and are accessible only to approved customers. These platforms include single-dealer request for quote platforms, aggregator-type platforms, multi-dealer request for quote platforms, limit order book systems, and electronic brokering platforms.¹³ Certain of these platforms may become security-

Executive Officer, International Swaps and Derivatives Association ("ISDA"), dated Apr. 20, 2012 ("SIFMA/ISDA Letter"). The SIFMA/ISDA letter was submitted in response to the request for comment in Exemptions for Security-Based Swaps, Release No. 33-9231 (Jul. 1, 2011), 76 FR 40605 (Jul. 11, 2011) ("Interim Final Exemptions Adopting Release"). In considering whether the exemptions adopted in the Interim Final Exemptions Adopting Release were necessary or appropriate, the Commission requested information about how security-based swaps are currently transacted and will be transacted following the full implementation of Title VII. In response to the request for comment, the SIFMA/ISDA Letter provided a description of how the security-based swaps market functions and how it may function following the full implementation of Title VII. See SIFMA/ISDA Letter.

¹⁰ See SIFMA/ISDA Letter.

¹¹ Id.

¹² Id.

¹³ Id.

based swap execution facilities (“security-based SEFs”)¹⁴ upon the full implementation of Title VII, but the particular characteristics of trading platforms that security-based SEFs will be permitted to operate will not be known until we adopt final rules implementing the statutory provisions of Title VII governing the registration and regulation of security-based SEFs.¹⁵

Title VII has added a requirement that security-based swaps be traded on regulated trading platforms or exchanges in certain situations. Title VII contains a mandatory clearing provision that requires security-based swap transactions to be submitted for clearing to a clearing agency if such security-based swap is one that the Commission has determined is required to be cleared, unless an exception from mandatory clearing applies (“mandatory clearing requirement”).¹⁶ This section of Title VII further provides that for security-based swaps that are subject to the mandatory clearing requirement, transactions in such security-based swaps must be executed on an exchange or on a registered or exempt security-based SEF, unless no exchange or security-based SEF makes such security-based swap available for trading (“mandatory trade execution requirement”).¹⁷ If a security-based swap transaction is not subject to the mandatory clearing requirement, the transaction may still be cleared on a voluntary basis by a clearing agency if the clearing agency has rules that permit it to clear the security-based swap.¹⁸

¹⁴ See Section 761 of the Dodd-Frank Act (adding Section 3(a)(77) of the Exchange Act [15 U.S.C. 78c(a)(77)] (defining the term “security-based swap execution facility”)), and Registration and Regulation of Security-Based Swap Execution Facilities, Release No. 34-63825 (Feb. 2, 2011) 76 FR 10948 (Feb. 28, 2011) (“Security-Based SEF Proposing Release”).

¹⁵ See Security-Based SEF Proposing Release.

¹⁶ See Section 763(a) of the Dodd-Frank Act (adding Section 3C of the Exchange Act [15 U.S.C. 78c-3]).

¹⁷ Id.

¹⁸ See Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies, Release No. 33-9308 (Mar. 30, 2012), 77 FR 20536 (Apr. 5, 2012) (“Cleared SBS Exemptions Adopting Release”).

Security-based swap transactions, whether or not subsequently cleared, may be executed on a security-based SEF.¹⁹

Any facility for trading or processing security-based swaps, including some of the electronic trading platforms currently used by security-based swap dealers to disseminate quotes to their clients, must be registered as a security-based SEF or as a national securities exchange.²⁰ Once registered, a security-based SEF may make security-based swaps available for trading and facilitate trade processing of security-based swaps. We believe that security-based SEFs, as well as exchanges that post or trade security-based swaps, should help to provide greater transparency and a more competitive environment for the trading of security-based swaps by providing venues for multiple parties to execute trades in security-based swaps and also by serving as conduits for information regarding trading interest in security-based swaps.²¹ While security-based swap transactions currently are effected through the over-the-counter market, rather than on regulated markets, with the full implementation of Title VII, such transactions will occur both through regulated markets, such as registered or exempt security-based SEFs and national securities exchanges, and through over-the-counter transactions under certain circumstances.

Title VII amends the Exchange Act to add various new statutory provisions to govern the regulation of security-based SEFs, including provisions relating to who may access such trading platforms (known as an “impartial access requirement”) and the availability of bid, offer, or other

¹⁹ Id.

²⁰ See Section 763(c) of the Dodd-Frank Act (adding Section 3D(a)(1) of the Exchange Act [15 U.S.C. 78c-4(a)(1)]). We view this requirement as applying only to a facility that meets the definition of “security-based swap execution facility” in Section 3(a)(77) of the Exchange Act. Under the Dodd-Frank Act, security-based swaps that are not subject to the mandatory trade execution requirement would not have to be traded on a registered security-based SEF and could continue to be traded in the over-the-counter market for security-based swaps. See Security-Based SEF Proposing Release.

²¹ See Security-Based SEF Proposing Release.

price information regarding security-based swaps.²² The impartial access requirement would require a security-based SEF to establish objective standards for granting impartial access to trading on the security-based SEF. The proposed rules for regulating security-based SEFs would impose an affirmative requirement for security-based SEFs to admit as participants all eligible persons that meet those standards for becoming a participant.²³ Further, the proposed rules for regulating security-based SEFs would require security-based SEFs to provide at least a basic functionality to allow any participant on a security-based SEF the ability to make and display executable bids or offers accessible to all other participants on the security-based SEF, if the participant chooses to do so.²⁴ Consequently, registered security-based SEFs may be unable to limit the number or types of persons that have access to quotes on their trading platforms. For example, following the full implementation of Title VII, the rules of security-based SEFs and national securities exchanges may require the publication or distribution of quotes for security-

²² See Section 763 of the Dodd-Frank Act (adding Sections 3C and 3D of the Exchange Act [15 U.S.C. 78c-3 and 78c-4]). We have proposed rules to implement the statutory provisions regarding the regulation of security-based SEFs. See Security-Based SEF Proposing Release. To be registered as a security-based SEF a trading platform must comply with certain enumerated core principles, one of which is that a security-based SEF must provide market participants with impartial access to become participants in the security-based SEF. See Section 3D(d) of the Exchange Act [15 U.S.C. 78c-4(d)]. We have proposed rules to implement the impartial access requirement that would set forth the categories of persons that would be permitted to have direct access to trading on a security-based SEF as a participant and also the terms and conditions that the security-based SEF would need to adopt for granting such access. See Security-Based SEF Proposing Release. The impartial access requirement is analogous to the fair access requirement for national securities exchanges under Section 6(b)(2) of the Exchange Act, which also imposes an affirmative duty to admit qualified broker-dealers as members. See 15 U.S.C. 78f(b)(2) (“[T]he rules of the exchange [must] provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange...”).

²³ See Security-Based SEF Proposing Release. This proposed requirement is in contrast to the current structure of security-based swap trading platforms, as noted above, in which the trading platform operators and the security-based swap dealers have discretion over authorizing participants to access the platform and to see quotes for security-based swaps from the security-based swap dealers.

²⁴ See Security-Based SEF Proposing Release.

based swaps to be available to all participants in these platforms. As is the case today, participants in these platforms may be able to further disseminate such quotes, including through on-line information services, without restriction depending on the particular rules of these platforms. As a result, such quotes may be available to any person on an unrestricted basis.

The operation of security-based SEFs and national securities exchanges that post bids, offers, or prices or that operate as trading platforms for security-based swaps, whether currently or following full implementation of Title VII, could affect the availability of exemptions from the registration requirements of the Securities Act for security-based swaps whose quotes are publicly available on or through such trading platforms or national securities exchanges.²⁵ Currently, quote or price information on security-based swaps on or through trading platforms used by security-based swap dealers may be available to the dealers' clients or others at the dealer's discretion. Certain of these trading platforms, as well as others, may become registered security-based SEFs, which may affect the platform's ability to limit participant access to the trading platforms and, therefore, may enable a variety of individuals or entities to view quotes on such platforms.

We have previously taken action with respect to security-based swap transactions under the Securities Act, the Exchange Act, and the Trust Indenture Act of 1939 ("Trust Indenture Act")²⁶ while we sought input on the ways in which security-based swaps were transacted prior to the enactment of Title VII and could be transacted following the full implementation of Title VII, including through the use of trading platforms for security-based swaps. In July 2011, as a

²⁵ See, e.g., Section 4(a)(2) of the Securities Act (formerly Section 4(2)) exempts transactions by an issuer not involving any public offering from the registration requirements of Section 5 of the Securities Act. 15 U.S.C. 77d(a)(2).

²⁶ 15 U.S.C. 77aaa *et seq.*

result of security-based swaps being included in the definition of “security” under the Securities Act and the Exchange Act and thereby becoming subject to the provisions of those statutes and the rules and regulations thereunder applicable to securities, we adopted interim final rules to provide exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for those security-based swaps that prior to July 16, 2011 (“Title VII effective date”)²⁷ were “security-based swap agreements” and are defined as “securities” under the Securities Act and the Exchange Act as of the Title VII effective date due solely to the provisions of Title VII (collectively, the “interim final exemptions”).²⁸ The interim final exemptions exempt offers and sales of security-based swap agreements that became security-based swaps on the Title VII effective date from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as from the Exchange Act registration requirements and from the provisions

²⁷ The provisions of Title VII generally were effective on July 16, 2011 (360 days after enactment of the Dodd-Frank Act), unless a provision requires a rulemaking. If a Title VII provision requires a rulemaking, it will go into effect not less than 60 days after publication of the related final rule or on July 16, 2011, whichever is later. See Section 774 of the Dodd-Frank Act.

²⁸ See Rule 240 under the Securities Act [17 CFR 230.240], Rules 12a-11 and Rule 12h-1(i) under the Exchange Act [17 CFR 240.12a-11 and 17 CFR 240.12h-1], and Rule 4d-12 under the Trust Indenture Act of 1939 (“Trust Indenture Act”) [17 CFR 260.4d-12]. See also Interim Final Exemptions Adopting Release. The category of security-based swaps covered by the interim final exemptions involves those that would have been defined as “security-based swap agreements” prior to the enactment of Title VII. See Section 2A of the Securities Act [15 U.S.C. 77b(b)-1]] and Section 3A of the Exchange Act [15 U.S.C. 78c-1], each as in effect prior to the Title VII effective date. For example, the vast majority of security-based swap transactions involve single-name credit default swaps, which would have been “security-based swap agreements” prior to the Title VII effective date. In contrast, the definition of “security-based swap agreement” did not include security-based swaps that are based on or reference only loans and indexes only of loans. The Division of Corporation Finance issued a no-action letter that addressed the availability of the interim final exemptions to offers and sales of security-based swaps that are based on or reference only loans or indexes only of loans. See Cleary Gottlieb Steen & Hamilton LLP (Jul. 15, 2011). This no-action letter will remain in effect for so long as the interim final exemptions remain in effect.

of the Trust Indenture Act, provided certain conditions are met.²⁹ We adopted amendments to the interim final exemptions to extend the expiration dates in the interim final exemptions to February 11, 2017.³⁰ If we adopt rules under this proposal, we may determine to alter the expiration dates in the interim final exemptions as part of that rulemaking, including possibly shortening the expiration dates in the interim final exemptions.³¹

We adopted the interim final exemptions because, among other things, we were concerned about disrupting the operation of the security-based swaps market while we evaluated the implications for security-based swaps under the Securities Act and the Exchange Act as a result of the inclusion of the term “security-based swap” in the definition of “security” for purposes of those statutes.³²

At the time of adoption of the interim final exemptions in July 2011, we requested comment on various aspects of the interim final exemptions.³³ In response to the request for

²⁹ The security-based swap that is exempt must be a security-based swap agreement (as defined prior to the Title VII effective date) and entered into between eligible contract participants (as defined prior to the Title VII effective date). See Rule 240 under the Securities Act [17 CFR 230.240]. See also Interim Final Exemptions Adopting Release.

³⁰ See Extension of Exemptions for Security-Based Swaps, Release No. 33-9545 (Feb. 5, 2014), 79 FR 7570 (Feb. 10, 2014).

³¹ We are requesting comment on whether to shorten or further extend the expiration dates in the interim final exemptions.

³² Id. Prior to the Title VII effective date, security-based swap agreements that became security-based swaps on the Title VII effective date were outside the scope of the federal securities laws, other than the anti-fraud and certain other provisions. See Section 2A of the Securities Act [15 U.S.C. 77b(b)-1]] and Section 3A of the Exchange Act [15 U.S.C. 78c-1], each as in effect prior to the Title VII effective date. Some market participants were concerned that because of the different types of trading platforms being used to effect transactions in security-based swaps there could be questions regarding the availability of exemptions under the Securities Act and the Exchange Act.

³³ See Interim Final Exemptions Adopting Release. The Commission also requested comment on certain of these matters in an earlier proposing release regarding exemptions for security-based swap transactions involving an eligible clearing agency. See Exemptions For Security-Based

comment, commenters expressed concerns regarding the availability of exemptions from the registration requirements of the Securities Act, including the exemption in Section 4(a)(2), for security-based swap transactions entered into solely between eligible contract participants due to the operation of certain trading platforms and the publication or distribution of other information regarding security-based swaps.³⁴ Commenters indicated that certain communications involving security-based swaps, such as the publication or distribution of price quotes, may be available on or through trading platforms on an unrestricted basis following the full implementation of Title VII.³⁵ They were concerned that this unrestricted access could affect the availability of exemptions from the registration requirements of the Securities Act, such as the exemption in Section 4(a)(2), for such security-based swap transactions.³⁶ As we understand, currently such communications generally are not available on the trading platforms on an unrestricted basis because the trading platform operators and the security-based swap dealers have discretion over authorizing participants to access trading platforms and to see quotes for security-based swaps from the security-based swap dealers using such trading platforms.³⁷

Swaps Issued By Certain Clearing Agencies, Release No. 33-9222 (Jun. 9, 2011), 76 FR 34920 (Jun. 15, 2011) ("Cleared SBS Exemptions Proposing Release").

³⁴ See SIFMA/ISDA Letter and letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, dated Dec. 21, 2012 ("SIFMA Letter"). See also letter from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable, Robert Pickel, Chief Executive Officer, ISDA, and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, dated Jan. 31, 2012 ("FSR/ISDA/SIFMA Letter"), and letter from Scott Pintoff, General Counsel, GFI Group Inc., dated Jul. 25, 2011 ("GFI Letter"). The FSR/ISDA/SIFMA Letter and GFI Letter were submitted in response to our request for comment in the Cleared SBS Exemptions Proposing Release.

³⁵ Id.

³⁶ Id.

³⁷ See SIFMA/ISDA Letter.

The publication or distribution of price quotes for security-based swaps that are traded or processed on or through trading platforms could be viewed as offers of those security-based swaps within the meaning of Section 2(3) of the Securities Act,³⁸ and such communications would require compliance with the registration provisions of Section 5 of the Securities Act unless there is an available exemption from such registration requirements. Further, such communications also may be considered offers to persons who are not eligible contract participants, even if such persons are not permitted to purchase the security-based swaps. Under Section 5(e) of the Securities Act, it is unlawful to make offers or sales of security-based swaps to persons who are not eligible contract participants unless the security-based swaps are registered under the Securities Act.³⁹

The rule proposed in this release is intended to further the goal of Title VII to bring the trading of security-based swaps onto regulated trading platforms and avoid unintended consequences arising from the operation of security-based swap trading platforms, including security-based SEFs and national securities exchanges, following the full implementation of Title VII by permitting market participants to effect security-based swap transactions without concern that price quotes on trading platforms made with respect to such security-based swap transactions may implicate the registration requirements of the Securities Act. If there are no Securities Act exemptions available with respect to a security-based swap transaction because the publication or distribution of price quotes for the security-based swaps that are traded or processed on or through trading platforms is viewed as an offer of such security-based swap, including to persons who are not eligible contract participants, the required registration of such

³⁸ See 15 U.S.C. 77b(3).

³⁹ See footnote 8 above and accompanying text.

transactions could impede the operation of, and the trading of security-based swaps on or through, these trading platforms. This, in turn, could potentially impede price discovery of security-based swap transactions. Accordingly, we believe that the rule proposed in this release is necessary to enable market participants to effect security-based swap transactions with eligible contract participants in reliance on available exemptions from the registration requirements of the Securities Act and avoid potential Securities Act violations for unregistered offers to persons who are not eligible contract participants, and to assure that there are not unintended consequences for the operation of security-based swap trading platforms following the full implementation of Title VII.

In proposing this rule, we have considered comment letters received to date on the interim final exemptions, including comment letters we received in response to the request for comment in an earlier proposing release regarding exemptions for security-based swap transactions involving an eligible clearing agency.⁴⁰ As noted above, some commenters expressed concerns regarding the availability of exemptions from the registration requirements of the Securities Act arising from the publication or distribution of price quotes for security-based swaps that are traded on or processed on or through trading platforms. Some commenters also expressed concern about the effect on the availability of Securities Act exemptions arising from other published communications that they characterized as research,⁴¹ but the comment letters did not provide detail regarding the types of research materials that are distributed, the manner in which such research materials are distributed, or the basis for characterizing such

⁴⁰ See footnote 34 above and accompanying text.

⁴¹ See SIFMA/ISDA Letter and SIFMA Letter. These communications are discussed further below in Section II in the discussion of the comments the Commission has received on the interim final exemptions.

communications as research. We are requesting further comment regarding these matters. In addition, while some commenters suggested broader exemptions for security-based swap transactions entered into solely between eligible contract participants under the Securities Act, the Exchange Act, and the Trust Indenture Act, they did not provide any specific examples of why broader exemptions are necessary. Thus, at this time, we are proposing a Securities Act rule that is tailored to address commenters' identified concerns regarding the publication or distribution of price quotes arising from the operation of trading platforms, rather than broader exemptions under the Securities Act, the Exchange Act, or the Trust Indenture Act. We are requesting comment on whether or not we should take a different approach.

II. DISCUSSION OF THE PROPOSED RULE

We are proposing Rule 135d under the Securities Act to provide that certain communications involving security-based swaps that may be purchased only by eligible contract participants will not be deemed for purposes of Section 5 of the Securities Act to constitute offers of such security-based swaps or any guarantees of such security-based swaps that are securities. Under the proposed rule, the publication or distribution of price quotes ("SBS price quotes") relating to security-based swaps⁴² that may be purchased only by persons who are eligible contract participants and are traded or processed on or through a facility that either is

⁴² The term "security-based swap" includes mixed swaps. A mixed swap is defined as a security-based swap that also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer). See Section 3(a)(68)(D) of the Exchange Act [15 U.S.C. 78c(a)(68)(D)]. See also Section IV of the Product Definitions Adopting Release.

registered as a national securities exchange or as a security-based SEF, or is exempt from registration as a security-based SEF pursuant to a rule, regulation, or order of the Commission (an "eligible trading platform"), would not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase such security-based swaps or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act.

The publication or distribution of SBS price quotes otherwise could be considered offers of those securities within the meaning of Sections 2(3) and 5 of the Securities Act, including to persons who are not eligible contract participants, if the SBS price quotes are available on an unrestricted basis. If considered offers, the publication or distribution of SBS price quotes may affect the availability of exemptions from the registration requirements of the Securities Act, including the exemption in Section 4(a)(2), and may be offers of security-based swaps to non-eligible contract participants. The proposed rule would allow such communications to be made without being considered to be an offer for purposes of Section 5 of the Securities Act.

The proposed rule would apply to the initial publication or distribution of the SBS price quotes on eligible trading platforms, as well as any subsequent republication or redistribution of the SBS price quotes on or through mediums other than eligible trading platforms, including on-line information services. It is possible that participants in eligible trading platforms that receive SBS price quotes could further disseminate the SBS price quotes without restriction. Because we do not believe that the SBS price quotes should be considered offers for purposes of Section 5 of the Securities Act under the conditions in the proposed rule, we do not believe that the treatment of such SBS price quotes under the proposed rule should depend on who publishes or distributes the SBS price quotes or where the SBS price quotes are published or distributed, so

long as only persons who are eligible contract participants may purchase the securities that are the subject of the SBS price quotes.

The proposed rule would apply to the publication or distribution of price quotes of security-based swaps, including any guarantees of such security-based swaps that are securities. Security-based swaps may be guaranteed to provide protection against a counterparty's default. A guarantee of a security is itself a security for purposes of the Securities Act.⁴³ As a result, the publication or distribution of SBS price quotes also may be viewed as offers of any guarantees of the security-based swaps that are the subject of the SBS price quotes. We believe that the proposed rule should apply with respect to any guarantee of a security-based swap provided as part of the security-based swap transaction. Because we believe that a guarantee of a security-based swap is part of the security-based swap transaction, the proposed rule also would deem the publication or distribution of SBS price quotes to not constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase any guarantees of the security-based swaps that are the subject of the SBS price quotes.

The proposed rule would apply with respect to SBS price quotes, which could take a number of forms depending on the type of trading platform model, including indicative quotes, executable quotes, bids and offers, and other pricing information and other types of quote information that may develop in the future. We are not proposing to define the specific type of SBS price quotes with respect to which the proposed rule would apply because we do not want to limit the types of trading platform models that currently or may in the future exist.⁴⁴ This

⁴³ See Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)].

⁴⁴ According to commenters, the five trading platforms models discussed below represent broadly the various types of models for the trading of security-based swaps in existence today. See SIFMA/ISDA Letter. These examples may not represent every single method in existence today,

approach is intended to allow flexibility in the proposed rule as organized markets for the trading of security-based swaps continue to develop, including following the full implementation of Title VII.

The security-based swaps market currently is characterized by bilateral negotiation in the over-the-counter market, is largely decentralized, and many instruments are not standardized.⁴⁵ The lack of uniform rules concerning the trading of security-based swaps and the one-to-one nature of trade negotiation in the security-based swaps market has resulted in the formation of distinct types of venues for the trading of these securities, such as single-dealer request for quote platforms, aggregator-type platforms, multi-dealer request for quote platforms, limit order book systems, and electronic brokering platforms. According to commenters, a single-dealer request for quote platform is a trading platform on which a security-based swap dealer may post quotes for security-based swaps transactions in various asset classes that the security-based swap dealer is willing to trade.⁴⁶ These trading platforms currently require pre-clearance for access and are accessible exclusively by the security-based swap dealers' approved customers. When a customer wishes to effect a security-based swap transaction, the customer requests a quote, the security-based swap dealer provides one, and if the customer accepts the security-based swap dealer's quote, the transaction is executed electronically.⁴⁷

and the discussion below is intended to give an overview of the models without providing the nuances of each particular type. As noted above, certain of these trading platforms may become security-based SEFs following the full implementation of Title VII, but the particular characteristics of trading platforms that security-based SEFs will be permitted to operate will not be known until we adopt final rules implementing the statutory provisions of Title VII governing the registration and regulation of security-based SEFs. See footnote 15 above and accompanying text.

⁴⁵ See SIFMA/ISDA Letter.

⁴⁶ Id.

⁴⁷ Id.

Commenters describe an aggregator-type platform as a trading platform that combines two or more single-dealer request for quote platforms.⁴⁸ In these trading platforms, both the aggregator and the security-based swap dealers currently must authorize participants to access the platform and see quotes from the security-based swap dealers. Although a participant can simultaneously view quotes from multiple security-based swap dealers, the participant can request a quote from only one security-based swap dealer at a time.⁴⁹

Further, commenters describe a multi-dealer request for quote platform as a trading platform on which participants can request a quote for a security-based swap transaction from multiple security-based swap dealers at the same time.⁵⁰ The security-based swap dealers then send quotes back to the participant, which the participant may choose to accept and execute. Participants currently must be authorized by both the system operator and the security-based swap dealers in order to request quotes from security-based swap dealers through a multiple dealer request for quote platform.⁵¹

According to commenters, a limit order book system is a trading platform on which firm bids and offers are posted, on an anonymous basis, for all participants in the platform to see, and bids and offers are then matched on price-time priority and other established parameters and trades are executed accordingly.⁵² The identities of the parties currently are withheld until a transaction occurs. The bid and offers in a limit order book system are firm and all participants

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Id. We understand that limit order book systems are not yet in operation for the trading of security-based swaps in the United States but exist for the trading of security-based swaps in Europe. Id.

in the platform currently can view these bids and offers before placing their own bids and offers.⁵³

Finally, commenters described an electronic brokering platform as a trading platform on which bids and offers are displayed.⁵⁴ All participants in the platform currently can enter bids and offers, and observe others entering bids and offers. Unlike exchanges, security-based swap electronic brokering platforms do not automatically match bids and offers in order to execute trades.⁵⁵ Typically, once a buyer and seller express interest in a trade at the price posted on the electronic trading platform, an inter-dealer broker would assist them in negotiating a final trade over the telephone.⁵⁶

The proposed rule addresses price quotes relating to security-based swaps that are traded or processed on or through registered or exempt security-based SEFs and national securities exchanges because the Title VII provisions applicable to these entities, as well as existing requirements applicable to national securities exchanges, require them to make their trading platforms available or price quotes on their platforms available to all participants without limitation. The proposed rule is intended to avoid unintended consequences for the operation of these trading platforms following the full implementation of Title VII and to allow market participants to continue to effect security-based swap transactions, including on or through these trading platforms, in reliance on available exemptions from the registration requirements of the Securities Act.

⁵³ See SIFMA/ISDA Letter.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

The proposed rule covers price quotes for security-based swaps and any guarantees of such security-based swaps that may be purchased only by persons who are eligible contract participants.⁵⁷ We believe that the publication or distribution of price quotes for security-based swaps that may only be purchased by eligible contract participants should not be considered offers of such security-based swaps or any guarantees of such security-based swaps that are securities, including to persons who are not eligible contract participants, for purposes of Section 5 of the Securities Act. The proposed rule is designed to permit security-based swap transactions between eligible contract participants to continue to be able to rely on available exemptions from the registration requirements of the Securities Act without unintended consequences for the operation of security-based SEFs and national securities exchanges that post or trade security-based swaps following the full implementation of Title VII. Security-based swaps that are not registered under the Securities Act are permitted to be sold only to eligible contract participants, and therefore we are limiting the proposed rule to the publication or distribution of price quotes for security-based swaps that may be purchased only by eligible contract participants.⁵⁸ The exemptions from the registration requirements of Section 5 of the Securities Act set forth in

⁵⁷ These proposed provisions are intended to identify the types of security-based swaps for which the publication or distribution of SBS price quotes would not be deemed under the proposed rule to be offers for purposes of Section 5 of the Securities Act. Any transaction in security-based swaps that are the subject of such SBS price quotes would have to be effected in compliance with the Securities Act and nothing relating to such transactions would affect whether such SBS price quotes when published or distributed were offers of such security-based swaps.

⁵⁸ See footnote 8 above and accompanying text. A comment letter submitted in connection with the SBS Cleared Exemptions Proposing Release suggested a simplified disclosure and registration scheme for those security-based swaps transactions involving clearing agencies that may involve persons who are not eligible contract participants. See letter from Bruce Bolander, Gibson, Dunn & Crutcher LLP, dated Aug. 22, 2011. Commission staff is evaluating the feasibility of a simplified disclosure and registration scheme for security-based swaps issued by registered or exempt clearing agencies that may be offered and sold to persons who are not eligible contract participants.

Sections 3 and 4 of the Securities Act are not available for security-based swap transactions that involve persons who are not eligible contract participants.⁵⁹

We note that all security-based swap transactions entered into solely between eligible contract participants will be subject to the comprehensive regulatory regime of Title VII once it has been fully implemented, including security-based swap transaction reporting requirements, trade acknowledgments and verification, and business conduct standards.⁶⁰ In particular, the business conduct standards generally require, among other things, disclosure by security-based swap dealers and major security-based swap participants to counterparties of (i) the material risks and characteristics of the security-based swap, and certain clearing rights, (ii) the material incentives or conflicts of interest that a security-based swap dealer or major security-based swap participant may have in connection with the security-based swap, and (iii) the daily mark of the security-based swap.⁶¹ The proposed business conduct rules, if adopted as proposed, also would require security-based swap dealers and major security-based swap participants to verify that a counterparty meets the eligibility requirements of an eligible contract participant.⁶² The Title VII regulatory regime will apply to security-based swaps transactions regardless of whether SBS price quotes relating to such transactions are available on an unrestricted basis. As a result of the other regulatory provisions of Title VII applicable to security-based swap transactions, we do not

⁵⁹ See footnote 8 above and accompanying text.

⁶⁰ See, e.g., Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, Release No. 63346 (Nov. 19, 2010), 75 FR 75207 (Dec. 2, 2010); Trade Acknowledgment and Verification of Security-Based Swap Transactions, Release No. 34-63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011); and Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34-64766 (Jun. 29, 2011), 76 FR 42396 (Jul. 18, 2011) (“Business Conduct Standards Proposing Release”).

⁶¹ See Section 15F(h)(3)(B) of the Exchange Act [15 U.S.C. 78o-10(h)(3)(B)]. See also Business Conduct Standards Proposing Release.

⁶² See Section 15F(h)(3)(A) of the Exchange Act [15 U.S.C. 78o-10(h)(3)(A)]. See also Business Conduct Standards Proposing Release.

believe that our approach in the proposed rule is inconsistent with the protection of investors. While these Title VII protections apply to security-based swap transactions with any participant, there are additional protections provided to non-eligible contract participants. In particular, non-eligible contract participants may only purchase security-based swaps that are subject to an effective registration statement.⁶³

We note that although the proposed rule provides that the publication or distribution of SBS price quotes would not be deemed to be an offer for purposes of Section 5 of the Securities Act, the proposed rule would not otherwise affect the provisions of any exemptions from the registration requirements of the Securities Act. As a result, market participants would still need to make a determination as to whether an exemption from the registration provisions of the Securities Act is available with respect to a security-based swap transaction, including whether such transaction complies with any applicable conditions of the exemption. Finally, we note that because the proposed rule relates solely to the treatment of certain communications involving SBS price quotes as offers for purposes of Section 5 of the Securities Act, the proposed rule does not limit in any way the scope or applicability of the antifraud or other provisions of the federal securities laws, including Section 17(a) of the Securities Act, relating to both oral and written material misstatements and omissions in the offer and sale of securities, including security-based swaps.⁶⁴

The proposed rule would apply to any communication of SBS quotes for security-based swap transactions effected bilaterally in the over-the-counter market or on or through eligible trading platforms, whether or not subsequently cleared in transactions involving an eligible

⁶³ See footnote 8 above and accompanying text.

⁶⁴ See 15 U.S.C. 77q(a).

clearing agency.⁶⁵ Following the full implementation of Title VII, security-based swap transactions will be effected either in the over-the-counter market or on eligible trading platforms, either voluntarily or because the transaction is subject to the mandatory trade execution requirement.⁶⁶ These transactions subsequently may be cleared in transactions involving an eligible clearing agency, either voluntarily or because the security-based swap is subject to the mandatory clearing requirement.⁶⁷ Regardless of whether these transactions subsequently are cleared in transactions involving an eligible clearing agency, the proposed rule is needed so that the publication or distribution of SBS price quotes will not cause unintended consequences for the operation of eligible trading platforms and the ability of market participants to rely on available exemptions from the registration requirements of the Securities Act, or require that such transactions be registered under the Securities Act because they are viewed as offers to non-eligible contract participants.

We believe that the proposed rule is a measured response to commenters' concerns and is necessary or appropriate in the public interest. One of the goals of Title VII is to bring the trading of security-based swaps onto regulated trading platforms, such as security-based SEFs and national securities exchanges. The Title VII provisions applicable to security-based SEFs and national securities exchanges, as well as existing requirements applicable to national

⁶⁵ For security-based swap transactions involving an eligible clearing agency, the exemptions we adopted under the Securities Act, the Exchange Act, and the Trust Indenture Act would continue to be available. See Rule 239 under the Securities Act [17 CFR 230.239], Rules 12a-10 and 12h-1(h) under the Exchange Act [17 CFR 240.12a-10 and 240.12h-1(h)], and Rule 4d-11 under the Trust Indenture Act of 1939 [17 CFR 260.4d-11]. See also Cleared SBS Exemptions Adopting Release. These exemptions do not apply to security-based swap transactions not involving an eligible clearing agency, even if the security-based swaps subsequently are cleared in transactions involving an eligible clearing agency. Id.

⁶⁶ See footnote 17 above and accompanying text.

⁶⁷ See footnote 16 above and accompanying text.

securities exchanges, require these trading platforms to make their platforms available or price quotes on their platforms available to all participants without limitation. If the publication or distribution of SBS price quotes is unrestricted, no Securities Act exemptions may be available with respect to transactions in the security-based swaps that are the subject of the SBS price quotes because such communications may be viewed as an offer of those security-based swaps, including to persons who are not eligible contract participants. The required registration of such transactions could have unintended consequences affecting the operation of and the trading of security-based swaps on or through these trading platforms, as well as the ability of market participants to effect security-based swap transactions bilaterally or on or through these trading platforms. For example, security-based swap dealers may not engage in security-based swap transactions if the dissemination of price quotes for security-based swaps on these trading platforms could jeopardize the availability of exemptions from the registration requirements of the Securities Act. Such action could affect the number of price quotes for and the liquidity of certain types of security-based swaps, which could have a detrimental effect on the liquidity and price discovery of security-based swap transactions. Accordingly, we believe the proposed rule is needed so that the publication or distribution of SBS price quotes will not cause unintended consequences for the operation of eligible trading platforms, affect the ability of market participants to rely on available exemptions from the registration requirements of the Securities Act, or require that such transactions be registered under the Securities Act because they are viewed as offers to non-eligible contract participants.

We also believe that the proposed rule is consistent with the protection of investors. The proposed rule covers price quotes for security-based swaps and any guarantees of such security-based swaps that may be purchased only by persons who are eligible contract participants. Title

VII provides that security-based swaps not registered under the Securities Act can only be sold to eligible contract participants.⁶⁸ In addition, the proposed rule relates solely to the treatment of certain communications involving SBS price quotes as offers for purposes of Section 5 of the Securities Act and would preserve the other protections of the federal securities laws, including our ability to pursue an antifraud action in the offer and sale of the securities under Section 17(a) of the Securities Act. Treating the publication or distribution of SBS price quotes as not being offers would not harm non-eligible contract participants because they will not be able to purchase such security-based swaps. The additional protections of the federal securities laws requiring the registration of offers and sales of security-based swaps that non-eligible contract participants may purchase would continue to apply to security-based swap transactions involving non-eligible contract participants.

Further, as a result of the regulatory provisions of Title VII applicable to security-based swap transactions, security-based swap transactions entered into solely between eligible contract participants would be subject to the comprehensive regulatory regime of Title VII once it has been fully implemented, regardless of whether SBS price quotes relating to such security-based swap transactions are available on an unrestricted basis. The proposed rule also would enable security-based swap dealers to disseminate price quotes for security-based swaps on eligible trading platforms on an unrestricted basis without concern that such dissemination could jeopardize the availability of exemptions from the registration requirements of the Securities Act. Unrestricted access to these price quotes on eligible trading platforms would provide increased market transparency by providing all investors with the same information on the pricing of security-based swap transactions. Therefore, based on the foregoing, we believe that the

⁶⁸ See footnote 8 above.

proposed rule is necessary or appropriate in the public interest, and consistent with the protection of investors.

We received three comment letters regarding the interim final exemptions.⁶⁹ One commenter opposed any exemptions for security-based swaps, including the interim final exemptions, but did not provide any explanation for the reason.⁷⁰ The other two commenters supported the interim final exemptions and stated their view that the interim final exemptions were necessary and appropriate steps to prevent disruption of the security-based swaps market and to ensure the orderly implementation of Title VII.⁷¹ These commenters stated that security-based swap dealers may publish or distribute reports that they characterize as research that may be broadly disseminated and could be available on an unrestricted basis, which these commenters believed could affect the availability of exemptions from the registration requirements of the Securities Act for transactions involving the security-based swaps that are the subject of such reports.⁷² These commenters also provided an overview of the security-based swaps market as it functions today and how it may function following the full implementation of Title VII.⁷³ These commenters indicated that the security-based swaps market currently functions as an ongoing series of bilateral trades between eligible contract participants.⁷⁴ Participants in the security-based swaps market primarily consist of security-based swap dealers, banks, large corporations,

⁶⁹ See SIFMA/ISDA Letter, SIFMA Letter, and letter from Tom Nappi, dated Jul. 14, 2011 (“Nappi Letter”).

⁷⁰ See Nappi Letter.

⁷¹ See SIFMA/ISDA Letter and SIFMA Letter.

⁷² *Id.* SIFMA believes that these communications would be within the definition of “research report” contained in Rules 137(e), 138(d), and 139(d) under the Securities Act but would not satisfy the terms of those safe harbor provisions because of the nature of the security-based swap transactions. See SIFMA Letter.

⁷³ See SIFMA/ISDA Letter.

⁷⁴ *Id.*

insurance companies, asset managers, hedge funds, and other investment vehicles.⁷⁵ Although individuals can qualify as eligible contract participants,⁷⁶ these commenters indicated that the security-based swaps market is institutional in nature and in practice only a small number of participants are natural persons (generally high net worth individuals).⁷⁷

As discussed above, some commenters expressed concerns regarding the availability of exemptions from the registration requirements of the Securities Act for security-based swap transactions entered into solely between eligible contract participants due to the operation of security-based swap trading platforms and the publication or distribution of other information regarding security-based swaps.⁷⁸ Based on these commenters' concerns regarding the availability of exemptions from the registration requirements of the Securities Act, these commenters requested that we adopt permanent relief from the registration requirements of Section 5 of the Securities Act for offers and sales of security-based swaps⁷⁹ solely between

⁷⁵ See footnote 7 above for a discussion of the eligible contract participant definition.

⁷⁶ An individual can qualify as an eligible contract participants if such individual has amounts invested on a discretionary basis, the aggregate of which is in excess of (i) \$10,000,000 or (ii) \$5,000,000, provided such individual also enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by such individual. See Section 1a(18)(A)(xi) of the Commodity Exchange Act.

⁷⁷ See SIFMA/ISDA Letter.

⁷⁸ See SIFMA/ISDA Letter and SIFMA Letter. For example, these commenters stated, "In light of the nature of the [security-based swaps] market discussed above, we request that the Commission provide for relief from the Securities Act registration requirement. Although we believe the sophisticated nature of [ECPs] in the [security-based swaps] market and the usual manner in which transactions in this market are conducted today, and will in the future be conducted on [security-based SEFs], qualify these transactions for the section 4[(a)](2) exemption from registration under the Securities Act for any transaction by an issuer 'not involving any public offering,' there may be questions as to whether the full range of [security-based swaps] transactions, as described above, qualify for this exemption." See SIFMA/ISDA Letter.

⁷⁹ The category of security-based swaps that would be covered by this request for relief is broader in some ways than the category of security-based swaps covered by the interim final exemptions. As noted in footnote 28 above, the interim final exemptions apply to security-based swaps that

eligible contract participants.⁸⁰ They believed that this relief is needed to avoid market disruption that could result from market participants having to determine whether exemptions from the registration requirements of the Securities Act are available due to the unrestricted availability of certain communications on security-based swap trading platforms following the full implementation of Title VII. Further, these commenters also requested relief under the Exchange Act for offers and sales of security-based swaps solely between eligible contract participants. They were concerned that ambiguity regarding the definition of a “class” as applied to security-based swaps could raise concerns regarding the registration requirements of Section 12(g) of the Exchange Act.⁸¹ Finally, these commenters requested relief from Section 304(d) of the Trust Indenture Act for security-based swaps entered into solely between eligible contract participants. They believed that the protections of the Trust Indenture Act are not necessary in the context of such transactions because such transactions involve contracts between two counterparties who are capable of enforcing obligations under the security-based swaps directly.⁸²

Although not submitted in connection with the interim final exemptions, we received two comment letters from four commenters regarding the proposed exemptions for security-based swap transactions involving an eligible clearing agency discussing issues arising with respect to

were defined as “security-based swap agreements” prior to the Title VII effective date. That definition of “security-based swap agreement” did not include security-based swaps that are based on or reference only loans and indexes only of loans. See footnote 28 above.

⁸⁰ See SIFMA/ISDA Letter and SIFMA Letter. These commenters limited their request for relief to security-based swap transactions not involving an eligible clearing agency. Id. As noted above, we adopted exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions involving an eligible clearing agency. See footnote 65 above.

⁸¹ See SIFMA/ISDA Letter.

⁸² Id.

security-based swap transactions not involving an eligible clearing agency.⁸³ One commenter suggested that we provide permanent exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions entered into between eligible contract participants and effected through any trading platform similar to the proposed exemptions for security-based swap transactions involving an eligible clearing agency.⁸⁴ The other commenters suggested that we provide exemptions under Section 12(g) of the Exchange Act and the Trust Indenture Act for security-based swap transactions entered into solely between eligible contract participants similar to the proposed exemptions for security-based swap transactions involving an eligible clearing agency.⁸⁵

Commenters have requested broad exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions not involving an eligible clearing agency that are entered into solely between eligible contract participants. We are not proposing such exemptions because commenters' primary concern appears to relate to the impact of certain communications involving security-based swaps made on or through trading platforms on the availability of exemptions from the registration requirements of the Securities Act, such as the exemption in Section 4(a)(2). We believe that the proposed rule under the Securities Act is appropriately tailored to address commenters' identified concerns regarding the availability of

⁸³ See FSR/ISDA/SIFMA Letter and GFI Letter. These letters were submitted in response to our request for comment in the Cleared SBS Exemptions Proposing Release.

⁸⁴ See GFI Letter. This commenter did not provide any explanation as to why such exemption was needed, including how security-based swap trading platforms operate, that would enable us to evaluate whether relief is necessary or appropriate. See Cleared SBS Exemptions Adopting Release.

⁸⁵ See FSR/ISDA/SIFMA Letter. These commenters requested relief under the Exchange Act and the Trust Indenture Act, but did not request relief under the Securities Act. However, two of these commenters subsequently submitted the SIFMA/ISDA Letter to request relief under the Securities Act. See footnote 80 above and accompanying text.

exemptions from the registration requirements of the Securities Act for offers and sales of security-based swaps solely between eligible contract participants. Therefore, we are not proposing a broad-based Securities Act exemption at this time.

With respect to the commenters that raised concerns regarding the effect of publication of communications regarding security-based swaps that they characterized as research, one of these commenters noted that security-based swap dealers and their affiliates produce these communications generally about credit default swaps and provide them to their existing and prospective clients.⁸⁶ This commenter stated that such written communications are prepared either by fundamental credit analysts, who may use credit default swaps as one expression of a particular issuer's credit risk in comparison to the outstanding debt securities of that issuer or another issuer, or credit strategists, who may also use credit default swaps to compare relative credit risk between different issuers.⁸⁷ This commenter also stated that these written communications may contain statements that could theoretically be construed as offers to sell the security-based swaps mentioned in such reports within the meaning of Section 2(3) of the Securities Act.⁸⁸

Although we are not proposing to include these other written communications involving security-based swaps within the scope of the proposed rule, we are considering whether a broader exclusion from the definition of offer than simply for SBS price quotes would be appropriate as part of this rulemaking. A commenter requested broader relief for security-based swap communications, but it did not provide us with sufficient information to understand why a

⁸⁶ See SIFMA Letter.

⁸⁷ Id.

⁸⁸ Id.

broader treatment would be necessary. For example, the commenter only addressed one type of security-based swap – credit default swaps. The commenter also did not provide sufficient information about the types and contents of such communications, the distribution methods and restrictions for such communications, or the basis for characterizing such communications as research in order for us to evaluate the appropriate treatment of such communications. Further, the commenter did not explain whether security-based swap dealers engage in security-based swap transactions with their existing or prospective clients who receive or access such communications. In this regard, we note that the examples of such communications provided by the commenter appear to include buy/sell recommendations with respect to certain security-based swaps.⁸⁹ If the security-based swap dealers are entering into transactions involving such security-based swaps, such communications may be issuer offering materials rather than research. In order for us to analyze whether a broader exclusion from the definition of offer than simply for SBS price quotes would be appropriate as part of this rulemaking, we believe that we need additional information about such communications. We are requesting additional comment below regarding such communications.

We also do not believe that a broad-based exemption from Section 12(g) of the Exchange Act is needed at this time. Commenters have identified two scenarios that could raise questions regarding whether a type of security-based swap would be a “class” for purposes of Section

⁸⁹ Id. Commenters provided the following examples: “We continue to recommend buying [XYZCo] 5-year [credit default swaps] vs. selling [ABCCo] 5 year [credit default swaps]”; “Market technicals could drive spreads tighter from here but we would consider buying protection in the low 300 bps area”; “We’d recommend buying [JKLCo]sub [credit default swaps] at 267bp and selling [TUVCo] sub at 215bp, paying 52bp”; and “We’d also recommend buying [JKLCo] senior [credit default swaps] versus [TUVCo] senior, paying just 11bp.” Id.

12(g).⁹⁰ The scenarios identified by commenters are based on several assumptions regarding how the security-based swaps market will develop following the full implementation of Title VII. Given that Title VII has not been fully implemented and we do not know how the security-based swaps market will develop following the full implementation of Title VII, we do not believe that there is sufficient information at this time to propose a broad-based exemption from Section 12(g) of the Exchange Act. In addition, it is not clear why the protections of the Exchange Act, including periodic reporting and information about the security-based swap on an ongoing basis would not be needed, especially given the counterparty risk involved in security-based swap transactions and the risks relating to the security-based swap itself. Moreover, issuers of security-based swaps that are security-based swap dealers or major security-based swap participants or their affiliates are likely to be subject to the reporting requirements of the Exchange Act and would be able to satisfy their periodic reporting obligations even if security-based swaps became subject to such reporting requirements.⁹¹

Finally, we do not believe that a broad-based exemption from Section 304(d) of the Trust Indenture Act is needed at this time. Commenters based their request for relief under the Trust

⁹⁰ Commenters identified two scenarios involving “security-based swaps that would be similar to one another as a result of the standardized ISDA documentation that may set the majority of terms of the security-based swap. First, although a type of security-based swap may be cleared by a derivatives clearing agency generally, a particular security-based swap would not be cleared in the event that one of the counterparties to the security-based swap qualifies for, and elects to take advantage of, the end user exception to mandatory clearing. Second, it is theoretically possible that the Commission could designate a security-based swap for mandatory clearing because of its level of standardization, but the security-based swap may not be cleared because there is not a clearing agency that is willing to accept the security-based swap for clearing.” See FSR/ISDA/SIFMA Letter.

⁹¹ For an issuer of security-based swaps that is not subject to the reporting requirements of the Exchange Act, the JOBS Act’s increase in the threshold number of record holders triggering registration of a class of equity security under Section 12(g) of the Exchange Act to 2,000 persons or 500 persons who are not accredited investors at the end of the relevant fiscal year reduces the likelihood of such issuer triggering such registration requirements. See Section 12(g)(1)(A) of the Exchange Act [15 U.S.C. 78l(g)(1)(A)].

Indenture Act on the rationale we provided in the Interim Final Exemptions Adopting Release to support our determination to adopt an interim final rule providing an exemption from Section 304(d) of the Trust Indenture Act. However, we note that the Trust Indenture Act provides an exemption for any security offered and sold in a transaction that is exempt from the registration requirements of the Securities Act under Section 4 of the Securities Act, such as the exemption set forth in Section 4(a)(2) of the Securities Act.⁹² As a result, unregistered security-based swap transactions effected in reliance on the exemption in Section 4(a)(2) of the Securities Act generally are exempt from the indenture qualification provisions of the Trust Indenture.

Moreover, the broad exemptions requested by commenters would result in all security-based swap transactions entered into solely between eligible contract participants being exempt from most provisions of the Securities Act, the Exchange Act, and the Trust Indenture Act. Title VII included security-based swaps in the definition of "security" under the Securities Act and the Exchange Act, thereby making security-based swap transactions subject to the provisions of the Securities Act and the Exchange Act, including the rules and regulations thereunder, applicable to "securities." Further, no other derivative securities that are traded in the over-the-counter market, including derivative securities that are entered into bilaterally and then subsequently cleared, have broad-based exemptions from those provisions.⁹³ We currently are not persuaded that we should treat security-based swaps differently from other derivative securities.

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⁹² See Section 304 of the Trust Indenture Act [15 U.S.C. 77ddd].

⁹³ Unlike other derivative securities, Title VII amended Section 5 of the Securities Act to prohibit offers or sales of security-based swaps to persons who are not eligible contract participants unless the security-based swaps are registered under the Securities Act. See footnote 8 above.

1. Should we provide that the publication or distribution of SBS price quotes will not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase the security-based swaps that are the subject of the SBS price quotes or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act? Why or why not? Should we take a different approach?
2. The proposed rule would apply to the initial publication or distribution of SBS price quotes on eligible trading platforms, as well as any subsequent republication or redistribution of the SBS price quotes on or through mediums other than eligible trading platforms, including on-line information services. Should the proposed rule cover the subsequent dissemination of SBS price quotes on mediums other than eligible trading platforms or by any participant through any means? Or should the proposed rule be limited in any way with respect to such subsequent dissemination? Why or why not?
3. The proposed rule would apply to the security-based swaps that are the subject of the SBS price quotes and any guarantees of such security-based swaps that are securities. Should the proposed rule apply to guarantees of such security-based swaps? Why or why not? Are there other securities that are part of a security-based swap transaction to which the proposed rule also should apply?
4. What types of price quotes for security-based swaps are disseminated on or through eligible trading platforms and how are they disseminated? Would the proposed rule facilitate the dissemination of quotes for security-based swaps on eligible trading platforms? Would the proposed rule need to be modified in any way to facilitate the dissemination of such quotes? How do eligible trading platform participants receive or gain access to such quotes?

5. The proposed rule covers price quotes for security-based swaps and any guarantees of such security-based swaps that may be purchased only by persons who are eligible contract participants. This proposed provision is intended to identify the types of security-based swaps for which the publication or distribution of SBS price quotes would not be deemed under the proposed rule to be offers for purposes of Section 5 of the Securities Act. Is this identifying characteristic appropriate? Why or why not? Do we need to provide more specificity about this identifying characteristic? Are there additional or different identifying characteristics that we should consider? If so, why?
6. The proposed rule addresses price quotes relating to security-based swaps that are traded or processed on or through security-based SEFs and national securities exchanges. Should the types of trading platforms covered by the proposed rule be limited to security-based SEFs and national securities exchanges? Why or why not? Are there other security-based swap trading platforms that should be covered by the proposed rule? If so, why? For example, will security-based swaps, such as mixed swaps, be traded or processed on or through swap execution facilities that are not registered either as a national securities exchange or as a security-based swap execution facility, or are not exempt from such registration?
7. Are price quotes for security-based swaps initially published or distributed through mediums other than eligible trading platforms? For example, we understand that currently some security-based swap dealers disseminate price quotes for security-based swaps by sending messages via Bloomberg. If so, how are those price quotes disseminated through these other mediums? How do market participants receive or gain access to those price quotes? Are those price quotes available on an unrestricted basis?

Should the proposed rule also apply to those price quotes or similar communications?

Why or why not?

8. The proposed rule would apply to SBS price quotes. Should the proposed rule apply to these types of communications? Why or why not? We are not proposing to include a definition of SBS price quotes in order to allow flexibility in the proposed rule as trading platforms for the trading of security-based swaps continue to develop. Should we define these types of communications? If so, how?
9. (a) Should we specify that other types of written communications, such as communications that have been called research, regarding security-based swaps, would not be considered offers for purposes of Section 5 of the Securities Act? If so, why? Please describe in detail what other types of communications should be covered by the rule. What characteristics do such communications have that would distinguish them from being offers of the security-based swaps that are discussed in such communications? If we should not treat such communications as offers for purposes of Section 5 of the Securities Act, what conditions should apply to the use of such communications?
- (b) What specific types of information, opinions, and recommendations are included in such communications regarding the security-based swaps and the underlying reference issuers and/or securities? Do such communications include strategies for buying or selling security-based swaps? Are such communications related to industries, entities, or particular offerings of security-based swaps? Do such communications involve security-based swaps other than credit default swaps? Do such communications include information, opinions, or recommendations with

respect to securities other than security-based swaps or an analysis of securities other than security-based swaps? Are such communications similar to or different from the research reports contemplated by Rules 137, 138 and 139 of the Securities Act?

Please explain in detail. If different or if such communications regarding the security-based swaps and the underlying reference issuers and/or securities do not satisfy the conditions of Rules 137, 138 or 139 of the Securities Act, please explain in detail why such communications should be treated differently from other communications under the Securities Act.

- (c) With respect to communications that some commenters call research, what is the basis for characterizing those communications as research? Do security-based swap dealers enter into transactions involving the security-based swaps that are the subject of the communications they publish or distribute? If so, why would the security-based swap dealers not be the issuers of such security-based swaps for purposes of the Securities Act? If security-based swap dealers are the issuers of such security-based swaps, why should the offering communications contained in those communications not be considered issuer offering materials?

- (d) How are the communications disseminated and to whom are they made available?

Are there any restrictions on who may access these communications? Can non-eligible contract participants access these communications?

- (e) Should we consider alternative approaches to address the commenters' concerns regarding the use of communications that the commenters characterize as research? For example, should we consider a rule that would provide as follows: A security-based swap dealer's publication or distribution of a written communication that

includes information, opinions, or recommendations with respect to security-based swaps or an analysis of security-based swaps would be considered for purposes of Section 5 of the Securities Act not to constitute an offer of such security-based swaps or any guarantees of such security-based swaps that are securities if such written communication (i) does not include strategies for buying or selling security-based swaps and (ii) is included in an issuer-specific or industry research report that also includes information, opinions, or recommendations with respect to or an analysis of different types of securities other than only security-based swaps? Are there other alternative approaches that we should consider that may address the commenters' concerns regarding the effect that the publication or distribution of the communication may have on the availability of an exemption from the registration requirements of the Securities Act? If so, please provide detailed explanations.

10. Are there other types of communications involving security-based swaps to which the proposed rule also should apply? If so, explain in detail the types of communications, how are they disseminated, who publishes or distributes the communications, whether any person enters into a security-based swap transaction as a result of such communication, and why the proposed rule should apply.
11. We are not proposing broad-based exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions entered into solely between eligible contract participants. Rather, to address commenters concerns regarding the availability of exemptions from the registration requirements of the Securities Act, we are proposing a rule under the Securities Act to provide that certain communications involving SBS price quotes would not be deemed to constitute offers of the security-

based swaps that are the subject of the SBS price quotes or any guarantees of such security-based swaps that are securities. Would the proposed rule address commenters' concerns regarding the availability of exemptions from the registration requirements of the Securities Act? Why or why not? Should we take a different approach such as providing a broad-based exemption as suggested by some commenters? Would the broad-based exemptions requested by commenters be necessary or appropriate if the proposed rule were adopted? Would such a broad-based exemption materially affect the type and level of disclosures available to eligible contract participants entering into security-based swap transactions? Are there any other impediments arising from the application of the registration provisions of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act to security-based swap transactions following the expiration or withdrawal of the interim final exemptions? How should we address those impediments and what are the economic implications? Would it be appropriate, in light of the inclusion of security-based swaps in the definition of security, to treat security-based swaps differently, including with respect to disclosures, from other derivative securities traded in the over-the-counter market, which do not have broad-based exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act?

12. Which counterparty in a non-cleared security-based swap transaction should be considered to have the obligation to comply with the registration requirements of the Exchange Act applicable to classes of securities? Should we address this issue at this time? Why or why not?

13. If we adopt the rule under this proposal, we may also determine to alter the expiration dates in the interim final exemptions as part of that rulemaking. If we make such a determination, should we consider whether to shorten or further extend beyond the effective date of the rule that we may adopt under this proposal the expiration dates of the exemptions in the interim final exemptions? If so, why?

III. GENERAL REQUEST FOR COMMENT

We request and encourage any interested person to submit comments regarding the proposed rule, specific issues discussed in this release, and other matters that may have an effect on the proposed rule. With regard to any comments, we note that such comments are of particular assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. ECONOMIC ANALYSIS

We are proposing a rule under the Securities Act to provide that certain communications involving security-based swaps that may be purchased only by eligible contract participants would not be deemed for purposes of Section 5 of the Securities Act to constitute offers of such security-based swaps or any guarantees of such security-based swaps that are securities. Under the proposed rule, the publication or distribution of SBS price quotes related to securities-based swaps that may be purchased only by persons who are eligible contract participants and are traded or processed on or through a trading system or platform that is registered either as a national securities exchange or a security-based SEF, or is exempt from registration as a security-based SEF, would not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase the security-based swaps that are the subject of the SBS price

quotes or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act.

We are sensitive to the economic consequences and effects, including costs and benefits, of our rules. The discussion below addresses the potential economic consequences and effects of the proposed rule and alternatives, including the costs and benefits, as well as the potential effects on efficiency, competition, and capital formation.⁹⁴

The proposed rule does not itself establish the scope or nature of the substantive requirements that will be imposed on security-based swaps following the full implementation of Title VII or their related costs and benefits. We anticipate that the rules implementing the substantive requirements under Title VII, including the requirements relating to the registration and regulation of security-based SEFs and external business conduct standards for security-based swap dealers and major security-based swap participants, will be subject to their own economic analysis,⁹⁵ and we have not yet adopted final rules that would fully implement Title VII and subject security-based swaps to such substantive requirements. The costs and benefits described below therefore are those that may arise in connection with the proposed rule.

A. Baseline

To assess the economic impact of the proposed rule, we are using as our baseline the regulation of security-based swaps as it exists at the time of this proposal, taking into account applicable rules adopted by the Commission, including interim final exemptions affecting security-based swaps under the Securities Act and the Exchange Act. Our analysis incorporates

⁹⁴ Section 2(b) of the Securities Act requires that the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 77b(b). We have integrated our consideration of these issues into this economic analysis.

⁹⁵ See footnotes 15 and 60 above and accompanying text.

the statutory and regulatory provisions that currently govern security-based swaps under the federal securities laws.

As part of the economic analysis of the cross-border adopting release, we provided an extensive description of the current security-based swaps market, including a detailed analysis of the participants in the security-based swaps market and the levels of security-based swap trading activity.⁹⁶ While the proposing release here addresses only a narrow piece of the security-based swaps market, and we discuss the specific baseline for this proposal below, we note that the additional information about the overall security-based swaps market in the cross-border adopting release may provide additional context for the discussion below. In particular, we noted in the cross-border adopting release that the participation in one significant part of the security-based swaps market – single-name credit default swaps – entailed thousands of counterparties to transactions, but with much of the activity concentrated among a relatively small number of dealer entities. The notional size of the single-name credit default swaps market is in the trillions of dollars annually, corresponding to hundreds of thousands of individual transactions, and with approximately 80% of transactions between dealers. Among the non-dealer market participants, private funds are the largest constituent group followed by Dodd-Frank Act-defined special entities and investment companies registered under the Investment Company Act of 1940. More broadly, the analysis shows that although the dollar volume of transactions in security-based swaps market is large, it does not span a large set of market participants as compared to other securities markets.

⁹⁶ See Application of “Security-Based Swap Dealer” and “Major Security-Based Swap Participant” Definitions to Cross-Border Security-Based Swap Activities, Release No. 34-72472 (June 25, 2014), 79 FR 47277 (Aug. 12, 2014) (“Cross-Border Adopting Release”).

Prior to the enactment of Title VII, certain security-based swaps – specifically those security-based swaps that are within the definition of “security-based swap agreement” as in effect prior to the Title VII effective date – were outside the scope of the federal securities laws, other than the anti-fraud and certain other provisions.⁹⁷ Up until that time, transactions involving these types of security-based swaps were effected without concerns about complying with the registration requirements of the Securities Act and the Exchange Act, or the indenture provisions of the Trust Indenture Act.

Title VII amended the Securities Act and the Exchange Act to include “security-based swaps” in the definition of “security” for purposes of those statutes.⁹⁸ As a result, on the Title VII effective date “security-based swaps” became subject to the provisions of the Securities Act and the Exchange Act and the rules thereunder applicable to “securities.” The Securities Act requires that any offer and sale of a security must be either registered under the Securities Act or made pursuant to an exemption from registration.⁹⁹ As a result, market participants entering into security-based swap transactions must either be able to rely on an available exemption from the registration requirements of the Securities Act or register such transactions under the Securities Act. In addition, certain provisions of the Exchange Act relating to the registration of classes of securities and the indenture qualification provisions of the Trust Indenture Act also may apply to certain types of security-based swaps. The provisions of Section 12 of the Exchange Act,

⁹⁷ See Section 2A of the Securities Act [15 U.S.C. 77b(b)-1]] and Section 3A of the Exchange Act [15 U.S.C. 78c-1], each as in effect prior to the Title VII effective date. The definition of “security-based swap agreement” included the definition of “swap agreement,” which required that the agreement, contract or transaction be “subject to individual negotiation” and be between eligible contract participants.

⁹⁸ See Sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending Section 3(a)(10) of the Exchange Act [15 U.S.C. 78c(a)(10)] and Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)], respectively).

⁹⁹ See Section 5 of the Securities Act [15 U.S.C. 77e].

without an exemption, require that security-based swaps be registered before a transaction could be effected on a national securities exchange.¹⁰⁰ In addition, registration of a class of security-based swaps under Section 12(g) of the Exchange Act could be required if the security-based swap is considered an equity security and held of record by either 2,000 persons or 500 persons who are not accredited investors at the end of the relevant fiscal year.¹⁰¹ Further, without an exemption, the Trust Indenture Act could require qualification of an indenture for security-based swaps considered to be debt.¹⁰²

As noted above,¹⁰³ we adopted interim final exemptions that provide exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for those security-based swaps that would have been defined as “security-based swap agreements” prior to the Title VII effective date provided certain conditions are met. The interim final exemptions exempt offers and sales of security-based swap agreements that became security-based swaps on the Title VII effective date from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as from the Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided that the transactions are entered into solely between eligible contract participants. Currently, certain market participants may rely on the interim final exemptions to continue to enter into security-based swap transactions as they did prior to the Title VII effective date without concern they would have to comply with the provisions of the

¹⁰⁰ See Section 12(a) of the Exchange Act [15 U.S.C. 78l(a)].

¹⁰¹ See Section 12(g)(1)(A) of the Exchange Act [15 U.S.C. 78l(g)(1)(A)].

¹⁰² See 15 U.S.C. 77aaa et seq.

¹⁰³ See footnote 28 above and accompanying text. See also footnote 30 above and accompanying text.

Securities Act, the registration provisions of the Exchange Act applicable to a class of security-based swaps, or the indenture provisions of the Trust Indenture Act.

The interim final exemptions are not available, however, for transactions involving all security-based swaps. The security-based swaps covered by the interim final exemptions are only those that would have been “security-based swap agreements” prior to the Title VII effective date, which is a narrower category of security-based swaps than under Title VII.¹⁰⁴ In addition, the persons who may enter into security-based swaps covered by the interim final exemptions may be different from those entering into “security-based swap agreements” prior to the Title VII effective date because the definition of “eligible contract participant” under Title VII is narrower than the pre-Title VII definition.¹⁰⁵ Any security-based swap transaction that cannot rely on the interim final exemptions would have to rely on another available exemption from the registration requirements of the Securities Act, such as the exemption in Section 4(a)(2), or would have to be registered under the Securities Act. However, no Securities Act exemptions are available with respect to security-based swap transactions involving persons who are not eligible contract participants because Title VII amended the Securities Act to require that all offers and sales of security-based swaps to non-eligible contract participants must be registered under the Securities Act.¹⁰⁶

¹⁰⁴ See Section 3(a)(68) of the Exchange Act for the definition of “security-based swap.” 15 U.S.C. 78c(a)(68). See footnote 28 above regarding the definition of “security-based swap agreement.”

¹⁰⁵ The amendments to the definition of “eligible contract participant” increased the dollar threshold for certain persons and, with respect to natural persons, replaced a “total assets” test with an “amounts invested on a discretionary basis” test. See Section 1a(12) of the Commodity Exchange Act [7 U.S.C. 1a(12)], as in effect prior to the Title VII effective date, and Section 1(a)(18) of the Commodity Exchange Act, as re-designated and amended by Section 721 of the Dodd-Frank Act. The definition of the term “eligible contract participant” in the Securities Act and in the Exchange Act refers to the definition of “eligible contract participant” in the Commodity Exchange Act. See footnote 7 above.

¹⁰⁶ See footnote 8 above and accompanying text.

The interim final exemptions are self-executing and as such are available without any action by the Commission or its staff. As a result, market participants must make their own determinations as to whether such exemptions are available with respect to a particular security-based swap transaction. Given that such exemptions are self-executing, we do not have any data or other quantifiable information regarding the use of such exemptions, including which market participants are effecting transactions in reliance on such exemptions or the number of transactions effected in reliance on such exemptions.

We adopted the interim final exemptions because, among other things, we were concerned about disrupting the operation of the security-based swaps market while we evaluated the implications for security-based swaps under the Securities Act and the Exchange Act as a result of the inclusion of the term “security-based swap” in the definition of “security” for purposes of those statutes.¹⁰⁷ At the time of the adoption of the interim final exemptions, we requested comment on various aspects of the interim final exemptions. In response, commenters raised concerns regarding the effect that certain communications involving security-based swaps, such as the publication or distribution of SBS price quotes, that may be available on or through trading platforms on an unrestricted basis, could have on the availability of exemptions under the Securities Act, including the exemption in Section 4(a)(2).¹⁰⁸ We subsequently extended the expiration date of the interim final exemptions to February 11, 2017.¹⁰⁹

If we do not adopt the proposed rule or take other action, the interim final rules will expire on February 11, 2017, and the baseline at that stage would be different from the current

¹⁰⁷ See footnote 32 above and accompanying text.

¹⁰⁸ See footnote 34 above and accompanying text.

¹⁰⁹ See footnote 30 above and accompanying text.

baseline. Rather than attempt to define an additional, speculative, baseline for that scenario, we have addressed and analyzed it in the discussion of alternatives below.

B. Analysis of the Proposed Rule

We have considered the comments we received and engaged in an initial evaluation of the implications for security-based swaps as securities under the Securities Act and the Exchange Act. Based on these actions, we are proposing a rule under the Securities Act so that market participants may effect security-based swap transactions with eligible contract participants in reliance on available exemptions from the registration requirements of the Securities Act and avoid potential Securities Act violations for unregistered offers to persons who are not eligible contract participants, and so that there are not unintended consequences for the operation of security-based swap trading platforms following the full implementation of Title VII. Under the proposed rule, certain communications involving security-based swaps would not be considered “offers” for purposes of Section 5 of the Securities Act. However, unlike the current interim final exemptions, the proposed rule is not itself an exemption from the registration requirements of the Securities Act; the proposed rule would deem certain communications as not constituting offers. As a result, while the types of communications covered by the proposed rule would not be considered offers, market participants engaging in any security-based swap transaction would have to either satisfy the conditions of existing exemptions under the Securities Act, such as the exemption in Section 4(a)(2), or register such transactions under the Securities Act.

The proposed rule would apply to all security-based swaps and not only those defined as “security-based swap agreements.” As we previously noted, security-based swaps are transacted through hundreds of thousands of individual transactions annually, but because the available registration exemptions are self-executing, we do not know what fraction of market participants that engage in these transactions currently rely on the interim final exemptions when entering

into security-based swap transactions as opposed to other exemptions from registration under the Securities Act, such as the exemption in Section 4(a)(2).¹¹⁰ For transactions involving security-based swaps that do not satisfy the conditions of the interim final exemptions, the proposed rule would assist market participants in evaluating how they should analyze certain communications that may affect their transactions. In particular, market participants would be able to conduct their analysis regarding the availability of exemptions from the registration requirements of the Securities Act without concern that certain communications would impact the availability of such exemptions.

The proposed rule would be self-executing in that the publication or distribution of SBS price quotes would be treated as not constituting an offer to buy or purchase the security-based swaps that are the subject of the SBS price quotes or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act without any action by the Commission or its staff. Because the proposed rule would be self-executing, the only cost of being able to rely on the proposed rule would be to determine its applicability. In addition, the proposed rule would not create any new filing, reporting, recordkeeping, or disclosure reporting requirements for any market participants.

Treating the types of communications covered by the proposed rule as not constituting offers would have minimal economic consequences or effects on the ability of market

¹¹⁰ Given that these exemptions, including the exemption in Section 4(a)(2) of the Securities Act are self-executing, we do not have any data or other quantifiable information regarding the number of market participants that may be effecting security-based swap transactions in reliance on these exemptions, including the exemption in Section 4(a)(2). However, we believe that a significant portion of market participants engaging in these transactions are eligible to rely on the interim final exemptions because the vast majority of security-based swap transactions involve single-name credit default swaps, which would have been "security-based swap agreements" prior to the Title VII effective date. See footnotes 103 and 104 above and accompanying text.

participants to enter into security-based swap transactions compared with the baseline.¹¹¹ For example, as compared to the baseline, the proposed rule would not affect the ability of market participants to enter into security-based swap transactions in reliance on available exemptions under the Securities Act, such as the exemption in Section 4(a)(2). While the interim final exemptions have limited conditions,¹¹² which differ from the conditions of the exemption under Section 4(a)(2) (including with respect to the communications that are the subject of the proposed rule), some security-based swap transactions engaged in after the Title VII effective date may have been effected in reliance on Section 4(a)(2) rather than the interim final exemptions. Further, the protections that currently exist under the interim final exemptions and under Section 4(a)(2) would still apply. For example, the interim final exemptions do not apply to the antifraud provisions of the federal securities laws, including Section 17(a) of the Securities Act.

The proposed rule would not impose new requirements on market participants. Further, because the proposed rule would be available with respect to any security-based swap transaction involving an eligible contract participant, we do not believe that the proposed rule would impair competition between the different types of trading venues and methods that differ in their level and existence of public SBS price quotes. Moreover, we believe that the proposed rule would further the goal of Title VII to bring the trading of security-based swaps onto regulated trading

¹¹¹ The economic consequences and effects of the proposed rule are deemed minimal because of the baseline, which takes into account the interim final exemptions and the fact that Title VII has not been fully implemented. Once the interim final rules expire or otherwise terminate, the economic consequences and effects of the proposed rule would be as discussed under “Alternatives Considered” below.

¹¹² See footnotes 104 and 105 above and accompanying text. In that regard we note, for example, that security-based swaps based on single loans would not be within the definition of “security-based swap agreement” in effect prior to the Title VII effective date.

platforms, which should help further the objective of greater transparency and a more competitive environment for the trading of security-based swaps. As a result, we believe that increased transparency and competitiveness in the security-based swaps market could help lower transactions costs associated with market participant hedging (risk mitigating) strategies and thereby lower the cost of capital and facilitate the capital formation process.

We believe that the costs associated with providing that the publication or distribution of SBS price quotes are not deemed to be offers to persons who are not eligible contract participants are minimal. The proposed rule would not impose additional costs on market participants to determine the eligible contract participant status of a person.¹¹³ In addition, persons who are not eligible contract participants would not be permitted to purchase any security-based swaps whose price quotes are within the scope of the proposed rule and the Securities Act registration requirements would continue to apply to security-based swaps transactions involving such non-eligible contract participants. As a result of these limitations, the exclusion of the SBS price quotes from being deemed offers should not increase the potential for unlawful sales of security-based swaps to non-eligible contract participants.

We recognize that a consequence of the proposed rule may be that fewer offers and sales of security-based swaps may be registered under the Securities Act (with the consequent unavailability of certain remedies) to the extent that parties enter into such transactions in reliance on exemptions that may not otherwise be available if the publication or distribution of SBS price quotes were considered to be an offer for purposes of Section 5 of the Securities Act.

¹¹³ The determination of whether a person is an eligible contract participant is part of the proposed Title VII business conduct rules that, if adopted as proposed, would require that security-based swap dealers and major security-based swap participants verify the eligible contract participant eligibility of their security-based swap counterparties. See footnote 62 above and accompanying text.

A registration statement or prospectus supplement covering the offer and sale of the securities in security-based swap transactions may provide certain information about the market participants, the security-based swap contract terms, and the identification of the particular reference securities, issuers, or loans underlying the security-based swaps. Further, while an investor would be able to pursue an antifraud action in connection with the purchase and sale of the securities in these security-based swap transactions under Section 10(b) of the Exchange Act, an investor would not be able to pursue civil remedies under Section 11 or 12(a)(2) of the Securities Act because the offer and sale of the securities in these security-based swap transactions would not be registered under the Securities Act. In addition, an investor may be limited in its ability to pursue civil remedies under Section 12(a)(1) of the Securities Act because the publication or distribution of quotes for security-based swaps would not be deemed to be an offer for purposes of Section 5 of the Securities Act. We could still pursue an antifraud action in the offer and sale of the securities in these security-based swap transactions under Section 17(a) of the Securities Act.

We note, however, that although the proposed rule would mean that a registration statement under the Securities Act may not be required for these transactions, the business conduct standards provisions of the Dodd-Frank Act would, among other things, require, upon implementation, that certain disclosures be made to certain eligible contract participants.¹¹⁴ Those would include (i) the material risks and characteristics of the security-based swap, and certain clearing rights, (ii) the material incentives or conflicts of interest that a security-based swap dealer or major security-based swap participant may have in connection with the security-

¹¹⁴ See footnote 61 above and accompanying text.

based swap, and (iii) the daily mark of the security-based swap.¹¹⁵ The Commission has proposed rules to implement the business conduct standards provisions of the Dodd-Frank Act.¹¹⁶ For instance, under the proposed business conduct standards rules, the required disclosure of the daily mark would consist of, for a cleared security-based swap, providing counterparties with the daily end-of-day settlement price received by the security-based swap dealer or major security-based swap participant from the appropriate clearing agency, and, for an uncleared security-based swap, the midpoint between the bid and offer prices for a particular security-based swap, or the calculated equivalent of the midpoint as of the close of business.¹¹⁷ While the information proposed to be conveyed in the daily mark is not equivalent to that in a registration statement, we believe it could provide a counterparty with a useful and meaningful reference point against which to assess, among other things, the calculation of variation margin for a security-based swap or portfolio of security-based swaps, and otherwise inform the counterparty's understanding of its financial relationship with the security-based swap dealer or major security-based swap participant. Moreover, because under the proposed business conduct standards rules security-based swap dealers and major security-based swap participants would be required to provide the same valuation to all of their counterparties, and because counterparties could interact with multiple security-based swap dealers and major security-based swap participants, counterparties would have greater confidence of equal treatment as they would have the ability to observe when valuations differ among security-based swap dealers and major security-based swap participants.

¹¹⁵ Id.

¹¹⁶ See Business Conduct Standards Proposing Release.

¹¹⁷ Id.

As noted above, to the extent that a security-based swap transaction does not meet the conditions of the interim final exemptions, the counterparties to such transaction likely are effecting the transaction in reliance on an available exemption from the registration requirements of the Securities Act, such as the exemption set forth in Section 4(a)(2). The proposed rule would benefit these counterparties because they could conduct their analysis regarding the availability of an exemption from the registration requirements of the Securities Act without concern that the publication or distribution of SBS price quotes for the security-based swap that is the subject of the transaction may compromise the availability of an exemption. The proposed rule also would benefit these counterparties by providing that the publication or distribution of SBS price quotes would not be deemed to be an offer of the security-based swaps that are the subject of such SBS price quotes to persons who are not eligible contract participants. As noted above, no exemptions from the registration requirements of the Securities Act are available with respect to offers of security-based swaps to persons who are not eligible contract participants. As a result, without the proposed rule, these counterparties would be required to register the transaction and incur the costs associated with such registration if the publication or distribution of SBS price quotes were viewed as offers of the related security-based swaps to persons who are not eligible contract participants.

C. Alternatives Considered

1. Alternative of Not Proposing a Rule at This Time

One alternative to the proposed rule that we considered was to take no action at this time to address issues arising under the Securities Act for certain communications involving security-based swaps. This alternative would affect all security-based swap transactions, including those currently relying on the interim final exemptions. At this time, all security-based swap transactions either have to be registered under the Securities Act or rely on another available

exemption from registration, such as the exemption in Section 4(a)(2) or the interim final exemptions to the extent available. If we take no action at this time with respect to the treatment of certain communications involving security-based swaps, the publication or distribution of SBS price quotes could be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase the security-based swaps that are the subject of such communications or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act, including to persons who are not eligible contract participants. If considered offers, such communications could affect the availability of exemptions from the registration requirements of the Securities Act for transactions involving the security-based swaps that are the subject of such communications or any guarantees of such security-based swaps that are securities. If no Securities Act exemptions are available with respect to a security-based swap transaction because such communications are viewed as an offer of the security-based swaps that are the subject of such communications, including to persons who are not eligible contract participants, such transactions would have to be registered under the Securities Act. The economic consequences and effects of not proposing a rule under the Securities Act addressing the treatment of SBS price quotes are discussed below.

We believe that taking no action could disrupt and impose unnecessary costs on this segment of the security-based swaps market because it would mean that uncertainty may remain as to whether certain communications involving SBS price quotes would be deemed to be offers for purposes of Section 5 of the Securities Act. If considered offers, these communications could affect the availability of exemptions under the Securities Act, including the exemption in Section 4(a)(2). The proposed rule would allow SBS price quotes to be published or distributed without the risk that such communications would be considered offers for purposes of Section 5 of the

Securities Act. Without the proposed rule, the risk that the communications would be deemed offers might lead some market participants either to not engage in these security-based swap transactions, which could impede the market, or to register the offer and sale of the security-based swap transactions, which could increase costs for market participants.

We believe the proposed rule would facilitate capital formation and promote efficiency by lowering the costs of security-based swap transactions relative to what would be required without the proposed rule in the event the interim final exemptions expire. Without the proposed rule and following the expiration of the interim final exemptions, we believe that the operation of the registration provisions of the Securities Act could have unintended consequences for the operation of security-based swap trading platforms and the ability of market participants to enter into these security-based swap transactions in reliance on available exemptions from the registration requirements of the Securities Act following the full implementation of Title VII. Following the expiration of the interim final exemptions, we anticipate that the proposed rule would facilitate a more efficient market place for these security-based swap transactions.

Without the proposed rule, a market participant may choose not to continue to participate in these types of transactions if compliance with the registration requirements of the Securities Act is required. This could curtail the use of trading platforms and venues that make use of broad communications methods that involve the public dissemination of SBS price quotes. As noted above, one of the goals of Title VII is to bring the trading of security-based swaps onto regulated trading platforms. The Securities Act registration costs could limit the incentive for market participants to engage in security-based swaps transactions on regulated trading platforms if the dissemination of price quotes for security-based swaps could jeopardize the availability of exemptions from the registration requirements of the Securities Act, including the exemption in

Section 4(a)(2). In response to the lack of an available exemption from registration, some market participants may also seek to restructure their operations to minimize their transactions in, or contact with, the United States in an effort to avoid having to register these transactions under the Securities Act. If market participants were to determine not to engage in security-based swap transactions due to the lack of an available exemption from registration, or to restructure their operations and thus avoid U.S. exposure because of the lack of such an exemption, such actions could affect the number of price quotes for, and the liquidity of, certain types of security-based swaps, which could have a detrimental effect on the liquidity and price discovery of security-based swap transactions. This effect would be inconsistent with the increased transparency tenets central to Title VII.

If market participants continue to engage in these security-based swap transactions without the proposed rule and register these transactions under the Securities Act, costs would be associated with such registration. Additionally, there is unlikely to be a commensurate benefit to registration given that the investors typically in greater need of the investor protections provided by registration are likely not to be eligible contract participants, and therefore ineligible to purchase any security-based swaps whose price quotes are within the scope of the proposed rule. While the use of a shelf registration statement may be available to some participants and would lessen the costs of registration compared to the costs for participants who were not able to use a shelf registration statement, there would be costs in either scenario.¹¹⁸ Certain market

¹¹⁸ Certain market participants could reduce the registration burden by using the Form S-3 registration statement for their securities offerings. We previously have estimated that 50 or fewer entities ultimately may have to register with us as security-based swap dealers. See Cross-Border Adopting Release. These entities (or their affiliates) are likely to be seasoned or well-known seasoned issuers that are eligible to use the Form S-3 registration statement for their securities offerings. In particular, these entities (or their affiliates) are likely to have a Form S-3 shelf registration statement that is effective under the Securities Act. A shelf registration

participants that are unable to register an offering under the Securities Act using a shelf registration statement may be at a competitive disadvantage because they would not be able to realize the reduced costs of shelf registration.

2. Other Alternatives

Although at this time we are not proposing to include within the scope of the proposed rule certain other communications involving security-based swaps that commenters have indicated are included in research reports, we are considering whether a broader exclusion from the definition of offer than simply for SBS price quotes would be appropriate as part of this rulemaking. Currently, we do not have sufficient information to evaluate the appropriate treatment of such communications. For example, commenters did not define or explain the contours of what would constitute “research” and why an exclusion for such communications is necessary. We are concerned that if it were defined or applied too broadly, it would include information indistinguishable from traditional issuer offering materials and may not be the appropriate subject of an exclusion from the definition of offer. As with any other communication that may be an offer of securities subject to Section 5 of the Securities Act, we would evaluate a research report within the security-based swaps market as we would evaluate

statement covers the offer and sale of securities that are not necessarily to be sold in a single offering immediately upon effectiveness; instead, the securities are typically sold in a number of “takedowns” over a period of time or on a continuous basis. A shelf registration statement allows issuers to conduct multiple types and amounts of securities offerings using the same registration statement. If these entities (or their affiliates) are required to register the offer and sale of the securities in security-based swap transactions, they would likely use their shelf registration statements for the offerings. For takedowns off their shelf registration statements, an entity (or its affiliate) would file a prospectus supplement under the Securities Act that contains the specific terms of the offering. As a result of the shelf registration procedure, these entities (including their affiliates) would incur lower costs relating to the takedown for each security-based swap transaction than they would otherwise incur if they had to use a non-shelf registration statement for the security-based swap transactions. While the use of a shelf registration statement would reduce the registration burden for qualifying market participants, it may not be available to all market participants.

research reports in similar securities markets, including privately offered equity, debt, security options, or other security derivatives. Therefore, we are requesting additional comment regarding such communications. Based on the information we receive, we may or may not take action with respect to such communications under the Securities Act.

We are asking a number of questions regarding the treatment of communications involving security-based swaps contained in research reports. Among the questions we are asking is whether we should consider a rule that would provide as follows: A security-based swap dealer's publication or distribution of a written communication that includes information, opinions, or recommendations with respect to security-based swaps or an analysis of security-based swaps would be considered for purposes of Section 5 of the Securities Act not to constitute an offer of such security-based swaps or any guarantees of such security-based swaps that are securities if such written communication (i) does not include strategies for buying or selling security-based swaps and (ii) is included in an issuer-specific or industry research report that also includes information, opinions, or recommendations with respect to or an analysis of different types of securities other than only security-based swaps?

If we determine to treat certain communications involving security-based swaps considered to be research reports as not constituting offers, there could be economic consequences and effects, including effects on efficiency, competition, and capital formation. Some of these consequences and effects would be the same as discussed above with respect to the treatment of SBS price quotes under the proposed rule. For example, under the baseline, these communications are not taken into account in determining the availability of an exemption from Securities Act registration for those security-based swap transactions satisfying the conditions of the interim final rules. Further, upon expiration of the interim final rules, such

communications would have to be analyzed to determine if they constituted an offer of security-based swaps and, if so, whether the registration requirements of the Securities Act were implicated or if there was an available exemption from such requirements. If such communications constituted offers of security-based swaps, it may affect the availability of exemptions from the registration requirements of the Securities Act, and the dealer or its affiliate may not be able to use such communications to find customers to act as counterparties in security-based swap transactions with the dealer or its affiliate to the extent it seeks to rely on such exemptions. As a result, treating such communications as not constituting offers may promote efficiency by assisting dealers and their affiliates in finding customers and also by assisting investors in engaging in potential transactions.

However, we note that research by dealers or their affiliates on security-based swaps could be used by their clients to enter into transactions with them that differ from other types of securities transactions. In particular, and unlike an equity or debt security, a security-based swap could entail an ongoing financial commitment (economic exposure) between the dealer (or its affiliate making the recommendation) and the client, who must be an eligible contract participant, whereby a client loss could result in a dealer gain of equal measure. The dealer (or its affiliate) would, at least initially, take the opposite economic exposure as the client who is otherwise informed on their transaction decision by the dealer or its affiliate's research. In these instances, when the recommending entity also takes the opposite economic exposure of the client who is basing their investment decision on the recommendation, the research may not be considered independent.

We have requested comment regarding the costs, benefits and effects of such communications, including whether and how many security-based swap transactions are entered

into as a result of such communications, and whether such transactions are entered into with the entity publishing the research reports or its affiliate.

D. Request for Comment

We request comment on all aspects of this economic analysis, including the costs and benefits associated with the proposed rule. We also request comment on the potential effects the proposed rule may have on efficiency, competition, and capital formation. We seek estimates of these costs, benefits, and effects, as well as any costs, benefits, and effects not already identified herein. Commenters should provide analysis and empirical data to support their views on the costs, benefits, and effects associated with the proposed rule.

We also request comment on all aspects of our discussion regarding the number of entities that may be required to register as security-based swap dealers and their ability to use the shelf registration procedure to register the offer and sale of securities in a security-based swap transaction, including the costs of such registration.

Finally, we request comment on all aspects of our discussion regarding the possible approach with respect to certain communications involving security-based swaps that commenters have indicated are included in research reports, including the potential costs and benefits of such approach and the potential effects such approach may have on efficiency, competition, and capital formation. In particular, would the economic consequences and effects of such a rule, as well as the potential effects of such a rule on efficiency, competition, and capital formation, be similar to those discussed above with respect to the treatment of SBS price quotes under the proposed rule? If not, how would they differ and why? We seek estimates of these costs, benefits, and effects, as well as any costs, benefits, and effects not already identified

herein. Commenters should provide analysis and empirical data to support their views on the costs, benefits, and effects associated with such approach.

V. PAPERWORK REDUCTION ACT

The proposed rule would do not impose any new “collections of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”),¹¹⁹ nor would it create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, we are not submitting the proposed rule to the Office of Management and Budget for review in accordance with the PRA.¹²⁰ We request comment on whether our conclusion that there are no collections of information is correct.

VI. CONSIDERATION OF IMPACT ON THE ECONOMY

Under the Small Business Regulatory Enforcement Fairness Act of 1996,¹²¹ a rule is considered “major” where, if adopted, it results or is likely to result in: (i) an annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease); (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effect on competition, investment, or innovation. We request comment on the potential impact of the proposed rule on the economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VII. REGULATORY FLEXIBILITY ACT CERTIFICATION

¹¹⁹ 44 U.S.C. 3501 *et seq.*

¹²⁰ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

¹²¹ Pub. L. No. 104-121, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

The Regulatory Flexibility Act ("RFA")¹²² requires the Commission, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)¹²³ of the Administrative Procedure Act,¹²⁴ as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on "small entities." Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.¹²⁵

We are proposing a rule under the Securities Act to provide that certain communications involving security-based swaps that may be purchased only by eligible contract participants would not be deemed for purposes of Section 5 of the Securities Act to constitute offers of such security-based swaps or any guarantees of such security-based swaps that are securities. Under the proposed rule, the publication or distribution of price quotes relating to security-based swaps that may be purchased only by persons who are eligible contract participants and are traded or processed on or through a facility that either is registered as a national securities exchange or as a security-based swap execution facility, or is exempt from registration as a security-based swap execution facility pursuant to a rule, regulation, or order of the Commission, would not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase such security-based swaps or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act.

¹²² 5 U.S.C. 601 et seq.

¹²³ 5 U.S.C. 603(a).

¹²⁴ 5 U.S.C. 551 et seq.

¹²⁵ See 5 U.S.C. 605(b).

For purposes of the RFA, under our rules, an issuer, other than an investment company, is a “small business” or “small organization” if it has total assets of \$5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed \$5 million.¹²⁶ Based on our understanding of the security-based swaps market, including our existing information about participants in the security-based swaps market, we believe that the proposed rule would apply to few, if any, small entities.¹²⁷ For this reason, we do not believe that the proposed rule would have a significant economic impact on a substantial number of small entities. We encourage written comments regarding this certification.

VIII. STATUTORY AUTHORITY AND TEXT OF THE PROPOSED RULE

The rule described in this release is being proposed under the authority set forth in Sections 5, 19, and 28 of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

¹²⁶ See Rule 157 under the Securities Act [17 CFR 230.157].

¹²⁷ As noted above, we previously have estimated that 50 or fewer entities ultimately may have to register with us as security-based swap dealers. See footnote 118 above and accompanying text. We believe that these entities generally would be major banks or other large financial market participants, which would not be small entities for purposes of the RFA. See Cross-Border Adopting Release. These entities account for the vast majority of the transactions in the security-based swaps market as measured on a notional basis. For example, according to an analysis regarding the market for single-name credit default swaps performed by our Division of Economic and Risk Analysis (then Division of Risk, Strategy, and Financial Innovation), these entities account for approximately 94 percent of the transactions in the single-name credit default swaps market as measured on a notional basis. See Information regarding activities and positions of participants in the single-name credit default swap market (Mar. 15, 2012), which is available at <http://www.sec.gov/comments/s7-39-10/s73910-154.pdf>. According to data published by the Bank for International Settlements, single-name credit default swaps comprise approximately 94 percent of the total security-based swaps market as measured on a notional basis. See Semiannual OTC derivatives statistics at end-June 2012, Table 19: Amounts outstanding of over-the-counter (OTC) derivatives, which is available at <http://www.bis.org/statistics/otcder/dt1920a.pdf>.

TEXT OF THE PROPOSED RULE

For the reasons set out above, we are proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230 – GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

2. Section 230.135d is added to read as follows:

§ 230.135d Certain communications involving security-based swaps.

For the purposes only of Section 5 of the Act (15 U.S.C. 77e), the publication or distribution of quotes relating to security-based swaps that may be purchased only by persons who are eligible contract participants (as defined in Section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))) and are traded or processed on or through a trading system or platform that either is registered as a national securities exchange under Section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)) or as a security-based swap execution facility under Section 3D(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-4(a)), or is exempt from registration as a security-based swap execution facility under Section 3D(a) of the Securities

Exchange Act of 1934 pursuant to a rule, regulation, or order of the Commission, shall not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase such security-based swaps or any guarantees of such security-based swap that are securities.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

September 8, 2014

/UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73030 / September 9, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16059

In the Matter of

**Bio Oil National Corp.,
CSV International Holdings, Inc.
(f/k/a Europa Acquisition VIII, Inc.),
Greenpro Resources Corp. (f/k/a Lightwood
Acquisition Corp.),
Moxian Corp., and
Opera Jet International Ltd.,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Bio Oil National Corp., CSV International Holdings, Inc. (f/k/a Europa Acquisition VIII, Inc.), Greenpro Resources Corp. (f/k/a Lightwood Acquisition Corp.), Moxian Corp., and Opera Jet International Ltd.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Bio Oil National Corp. (CIK No. 1540700) is a delinquent Delaware corporation located in Kuala Lumpur, Malaysia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bio Oil National is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012, which reported a net loss of \$750 for the prior three months.

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2. CSV International Holdings, Inc. (f/k/a Europa Acquisitions VIII, Inc.) (CIK No. 1500367) is a revoked Nevada corporation located in Beijing, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CSV International Holdings is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended January 31, 2012, which reported a net loss of \$6,814 for the prior six months.

3. Greenpro Resources Corp. (f/k/a Lightwood Acquisition Corp.) (CIK No. 1540698) is a void Delaware corporation located in Wanchai, Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Greenpro Resources is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2012, which reported a net loss of \$1,500 for the prior six months.

4. Moxian Corp. (CIK No. 1540699) is a void Delaware corporation located in Wanchai, Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Moxian is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2012, which reported a net loss of \$750 for the prior six months.

5. Opera Jet International Ltd. (CIK No. 1435615) is a void Delaware corporation located in Bratislava, Slovakia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Opera Jet International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

SPOJENÉ ŠTÁTY AMERICKÉ
Pred
KOMISIOU PRE CENNÉ PAPIERE

ZÁKON O BURZE S CENNÝMI PAPIERMI Z ROKU 1934
Č. vydania 73030 / September 9, 2014

SPRÁVNE KONANIE
Č. spisu 3-16059

Vo veci

**Bio Oil National Corp.,
CSV International Holdings, Inc.
(f/k/a Europa Acquisition VIII, Inc.),
Greenpro Resources Corp. (f/k/a Lightwood
Acquisition Corp.),
Moxian Corp. a
Opera Jet International Ltd.,**

Odporcovia.

**UZNESENIE O ZAČATÍ
SPRÁVNEHO KONANIA
A OZNÁMENIE O ZASADANÍ PODĽA
PARAGRAFU 12(J) ZÁKONA O
BURZE S CENNÝMI PAPIERMI Z
ROKU 1934**

I.

Komisia pre cenné papiere („Komisia“) považuje za potrebné a primerané na ochranu investorov začať verejné správne konanie podľa paragrafu 12(j) Zákona o burze s cennými papiermi z roku 1934 („Zákon o burze“) proti odporcom Bio Oil National Corp., CSV International Holdings, Inc. (f/k/a Europa Acquisition VIII, Inc.), Greenpro Resources Corp. (f/k/a Lightwood Acquisition Corp.), Moxian Corp. a Opera Jet International Ltd.

II.

Divízia pre výkon rozhodnutí po vyšetrovaní tvrdí, že:

A. ODPORCOVIA

1. Bio Oil National Corp. (č. CIK 1540700) je osoba porušujúcou svoj záväzok; ide o korporáciu registrovanú v štáte Delaware so sídlom v Kuala Lumpur, Malajzia, ktorá vlastní skupinu cenných papierov registrovaných Komisiou podľa paragrafu 12(g) Zákona o cenných papieroch. Bio Oil National je osoba porušujúca svoj záväzok pravidelného plnenia povinností voči Komisii tým, že nezaslala žiadne pravidelné správy

od zaslania formulára 10-Q za obdobie končiace 31. marcom 2012, v ktorom bola vykázaná čistá strata vo výške 750 \$ za predchádzajúce tri mesiace.

2. CSV International Holdings, Inc. (f/k/a Europa Acquisitions VIII, Inc.) (č. CIK 1500367) je zrušená korporácia registrovaná v štáte Nevada so sídlom v Pekingu, Čína, ktorá vlastní skupinu cenných papierov registrovaných Komisiou podľa paragrafu 12(g) Zákona o cenných papieroch. CSV International Holdings je osoba porušujúca svoj záväzok pravidelného plnenia povinností voči Komisii tým, že nezaslala žiadne pravidelné správy od zaslania formulára 10-Q za obdobie končiace 31. januárom 2012, v ktorom bola vykázaná čistá strata vo výške 6 814 \$ za predchádzajúcich šesť mesiacov.

3. Greenpro Resources Corp. (f/k/a Lightwood Acquisition Corp.) (č. CIK 1540698) je zrušená korporácia registrovaná v štáte Delaware so sídlom vo Wanchai, Hongkong, ktorá vlastní skupinu cenných papierov registrovaných Komisiou podľa paragrafu 12(g) Zákona o cenných papieroch. Greenpro Resources je osoba porušujúca svoj záväzok pravidelného plnenia povinností voči Komisii tým, že nezaslala žiadne pravidelné správy od zaslania formulára 10-Q za obdobie končiace 30. júnom 2012, v ktorom bola vykázaná čistá strata vo výške 1 500 \$ za predchádzajúcich šesť mesiacov.

4. Moxian Corp. (č. CIK 1540699) je zrušená korporácia registrovaná v štáte Delaware so sídlom vo Wanchai, Hongkong, ktorá vlastní skupinu cenných papierov registrovaných Komisiou podľa paragrafu 12(g) Zákona o cenných papieroch. Moxian je osoba porušujúca svoj záväzok pravidelného plnenia povinností voči Komisii tým, že nezaslala žiadne pravidelné správy od zaslania formulára 10-Q za obdobie končiace 30. júnom 2012, v ktorom bola vykázaná čistá strata vo výške 750 \$ za predchádzajúcich šesť mesiacov.

5. Opera Jet International Ltd. (č. CIK 1435615) je zrušená korporácia registrovaná v štáte Delaware so sídlom v Bratislave, Slovensko, ktorá vlastní skupinu cenných papierov registrovaných Komisiou podľa paragrafu 12(g) Zákona o cenných papieroch. Opera Jet International je osoba porušujúca svoj záväzok pravidelného plnenia povinností voči Komisii tým, že nezaslala žiadne pravidelné správy od zaslania formulára 10-Q za obdobie končiace 31. marcom 2012.

B. PORUŠENIE ZÁVÄZKU PRAVIDELNÉHO PLNENIA POVINNOSTÍ

6. Ako je podrobnejšie uvedené vyššie, všetci odporcovia porušujú svoj záväzok pravidelného plnenia povinností voči Komisii tým, že opakovane nespĺnili svoju povinnosť zasielania pravidelných správ a nevšímali si listy o porušení svojich záväzkov zaslaných Divíziou pre financie korporácií, v ktorých boli žiadani o dodržiavanie svojich záväzkov zasielania správ alebo zabudli aktualizovať adresu uvádzanú v ich spise vedenom Komisiou, ktorá takéto listy nedostala.

7. Paragraf 13 Zákona o burze a uvádzané pravidlá vyžadujú, aby emitenti cenných papierov zaregistrovaní podľa paragrafu 12 Zákona o burze zasielali Komisii aktuálne a presné informácie formou pravidelných správ, a to aj ak je registrácia podľa paragrafu 12(g) dobrovoľná. Konkrétne pravidlo 13a-1 vyžaduje, aby emitenti zasielali

ročné správy a pravidlo 13a-13 vyžaduje, aby domáci emitenti zasielali štvrťročné správy.

8. Na základe uvedených skutočností odporcovia porušili paragraf 13(a) Zákona o burze a uvedené pravidlá 13a-1 alebo 13a-13.

III.

Vzhľadom na tvrdenia Divízie pre výkon rozhodnutí považuje Komisia za potrebné a primerané začať na ochranu investorov verejné správne konanie s cieľom rozhodnúť:

A. či tvrdenia uvedené v časti II. sú pravdivé a v súvislosti s tým umožniť odporcom brániť sa proti takýmto tvrdeniam; a

B. či je na ochranu investorov potrebné a primerané pozastaviť na obdobie nepresahujúce dvanásť mesiacov, alebo zrušiť registráciu pre každú skupinu cenných papierov zaregistrovaných podľa paragrafu 12 Zákona o burze, ktorých vlastníckmi sú odporcovia uvedení v časti II. tohto dokumentu a všetci nástupcovia podľa pravidiel 12b-2 alebo 12 g-3 Zákona o burze a všetky nové firemné názvy všetkých odporcov.

IV.

TÝMTO NARIAĐUJEME, aby verejné vypočutie na prevzatie dôkazov ohľadne otázok podľa uvedeného bodu III. bolo zvolané na pevne stanovený čas a na stanovenom mieste za prítomnosti sudcu v oblasti správneho práva, ktorý bude ustanovený v ďalšom rozhodnutí podľa pravidla 110 Procesných pravidiel komisie [17 C.F.R. § 201.110].

ĐALEJ NARIAĐUJEME, aby odporcovia zaslali odpoveď na tvrdenia uvedené v tomto rozhodnutí do desiatich (10) od doručenia tohto rozhodnutia, ako ustanovuje pravidlo 220(b) Procesných pravidiel komisie [17 C.F.R. § 201.220(b)].

Ak odporcovia zabudnú poslať požadované odpovede alebo sa nezúčastnia vypočúvania po riadnom oznámení, odporcovia a každý nástupca podľa pravidiel Zákona o burze 12b-2 alebo 12g-3 a všetky nové firemné názvy všetkých odporcov môžu byť považované za osoby, ktoré si nesplnili svoju povinnosť, a môže byť proti nim nariadené začatie konania vo veci tohto rozhodnutia, ktorého tvrdenia môžu byť považované za pravdivé, ako to ustanovujú pravidlá 155(a), 220(f), 221(f) a 310 Procesných pravidiel komisie [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) a 201.310].

Toto rozhodnutie bude doručené odporcom osobne, doporučenou alebo expresnou poštou alebo inými prostriedkami, ktoré povolujú Procesné pravidlá komisie.

ĎALEJ NARIAĎUJEME, aby sudca v oblasti správneho práva vydal úvodné rozhodnutie do 120 dní od doručenia tohto rozhodnutia podľa pravidla 360(a)(2) Procesných pravidiel komisie [17 C.F.R. § 201.360(a)(2)].

Ak nedôjde ku vzdaniu sa práva správnym spôsobom, žiadny úradník alebo zamestnanec Komisie zaoberajúci sa výkonom funkcie vyšetrovania alebo stíhania v tomto alebo v akomkoľvek vecne súvisiacom konaní nebude mať povolené zúčastňovať sa alebo radiť pri rozhodovaní o tejto záležitosti, okrem svedka alebo právneho poradcu v konaní podľa oznámenia. Keďže toto konanie je nie „tvorbou predpisu“ v zmysle paragrafu 551 Zákona o správnom konaní, nevzťahujú sa na neho ustanovenia paragrafu 553 o oddialení dátumu účinnosti akéhokoľvek konečného opatrenia komisie.

Za komisiu.

Jill M. Peterson
Asistent tajomníka

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73031 / September 9, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16060

In the Matter of

**Fox Petroleum, Inc.,
Nedak Ethanol, LLC,
Neptunus Ventures, Inc., and
Plaster Caster, Inc.,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Fox Petroleum, Inc., Nedak Ethanol, LLC, Neptunus Ventures, Inc., and Plaster Caster, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Fox Petroleum, Inc. (CIK No. 1326252) is a revoked Nevada corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Fox Petroleum is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended May 31, 2012, which reported a net loss of \$35,252,176 from the company's February 4, 2004 inception to May 31, 2012. As of August 22, 2014, the company's stock (symbol "FXPT") was traded on the over-the-counter markets.

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2. Nedak Ethanol, LLC (CIK No. 1337226) is an inactive Nebraska limited liability company located in Atkinson, Nebraska with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Nedak Ethanol is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012, which reported a net loss of \$3,594,944 for the prior three months.

3. Neptunus Ventures, Inc. (CIK No. 1491831) is a forfeited Delaware corporation located in Trevoise, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Neptunus Ventures is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012, which reported a net loss of \$3,139 from the company's August 12, 2010 inception through March 31, 2012.

4. Plaster Caster, Inc. (CIK No. 1498286) is a Michigan corporation located in Ann Arbor, Michigan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Plaster Caster is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q/A for the period ended June 30, 2012, which reported a net loss of \$20,654 from the company's April 19, 2007 inception through June 30, 2012.

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73032 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16061

In the Matter of

Ridgeback Capital
Management LP,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"); against Ridgeback Capital Management LP ("Ridgeback" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.

2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

3. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

4. While subject to these reporting requirements, Ridgeback violated Section 16(a) by failing to timely file multiple required Section 16(a) reports of transactions in the securities of Ironwood Pharmaceuticals, Inc. ("Ironwood") it executed on behalf of an affiliated fund it managed and violated Section 13(d) by failing to timely file an initial statement and required amendments with respect to its beneficial ownership. Ridgeback was also a cause of violations of such requirements by Ridgeback's affiliated fund, an affiliated entity serving as the fund's general partner, and Ridgeback's control person, which shared direct or indirect beneficial ownership of the relevant securities (the "Ridgeback Affiliates").

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. Ridgeback, a Delaware limited partnership headquartered in New York, provides investment management services to an affiliated private fund and had beneficial ownership of the securities held by the fund. Ridgeback and the Ridgeback Affiliates acquired beneficial ownership of more than 10% of Ironwood's Class A common stock on February 2, 2010 and were subject to Sections 13(d) and 16(a). Ridgeback and the Ridgeback Affiliates remained greater than 10% beneficial owners until February 2012 and remained greater than 5% beneficial owners until March 2012. Ridgeback took responsibility for making all beneficial ownership filings on behalf of the Ridgeback Affiliates.

Issuer

6. Ironwood is a Delaware corporation with its principal place of business in Massachusetts. At all relevant times, Ironwood's Class A common stock has been registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: IRWD).

Applicable Legal Framework

7. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer. However, as an alternative, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person "has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," and is not directly or indirectly the beneficial owner of 20% or more of the class of securities.

8. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power,

beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

9. Exchange Act Rule 13d-2(b) requires that a person filing a Schedule 13G pursuant to Rule 13d-1(c) must file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, under Exchange Act Rule 13d-2(d), such person must also amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and must thereafter promptly amend the Schedule 13G upon increasing or decreasing its beneficial ownership by more than 5% of the class. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

10. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term "beneficial owner," the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.

11. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

³ Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

12. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁴ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁵

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

13. On February 2, 2010, Ridgeback and the Ridgeback Affiliates acquired beneficial ownership of greater than 10% of Ironwood's registered Class A common stock, resulting in Ridgeback and the Ridgeback Affiliates becoming subject to the reporting requirements of Section 16(a). Ridgeback filed a timely Form 3 on February 2, 2010 and a timely Form 4 on June 23, 2011 on behalf of itself and the Ridgeback Affiliates.

14. Subsequently, Ridgeback did not file until February 2012 any required reports on Forms 4 with respect to reportable transactions executed beginning August 2011. The late reports consist of transactions executed on behalf of Ridgeback's affiliated private fund on the following dates that were required to be reported on Form 4 within two business days and primarily involved open-market sales of Ironwood stock:

⁴ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁵ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)" (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

Date of Trans.	Due Date	Date Filed
8/2/2011	8/4/2011	2/9/2012
8/3/2011	8/5/2011	2/9/2012
8/4/2011	8/8/2011	2/9/2012
8/5/2011	8/9/2011	2/9/2012
8/8/2011	8/10/2011	2/9/2012
8/9/2011	8/11/2011	2/9/2012
8/11/2011	8/15/2011	2/9/2012
8/15/2011	8/17/2011	2/9/2012
8/17/2011	8/19/2011	2/9/2012
8/18/2011	8/22/2011	2/9/2012
8/19/2011	8/23/2011	2/9/2012
8/22/2011	8/24/2011	2/9/2012
8/23/2011	8/25/2011	2/9/2012
8/25/2011	8/29/2011	2/9/2012
8/26/2011	8/30/2011	2/9/2012
8/30/2011	9/1/2011	2/9/2012
9/22/2011	9/26/2011	2/9/2012
9/23/2011	9/27/2011	2/9/2012
9/26/2011	9/28/2011	2/9/2012
9/27/2011	9/29/2011	2/9/2012
10/5/2011	10/7/2011	2/9/2012
10/6/2011	10/11/2011	2/9/2012
10/7/2011	10/12/2011	2/9/2012
10/10/2011	10/12/2011	2/9/2012
10/12/2011	10/14/2011	2/9/2012
10/13/2011	10/17/2011	2/9/2012
10/14/2011	10/18/2011	2/9/2012
10/17/2011	10/19/2011	2/9/2012

Date of Trans.	Due Date	Date Filed
10/21/2011	10/25/2011	2/9/2012
10/24/2011	10/26/2011	2/9/2012
10/25/2011	10/27/2011	2/9/2012
10/26/2011	10/28/2011	2/9/2012
10/27/2011	10/31/2011	2/9/2012
10/28/2011	11/1/2011	2/9/2012
10/31/2011	11/2/2011	2/9/2012
11/2/2011	11/4/2011	2/9/2012
11/3/2011	11/7/2011	2/9/2012
11/4/2011	11/8/2011	2/9/2012
2/2/2012	2/6/2012	2/9/2012
2/3/2012	2/7/2012	2/9/2012

15. The late-reported open-market sales had an aggregate market value of approximately \$40 million and Ridgeback did not file any of the required reports until after Ridgeback and the Ridgeback Affiliates were no longer greater than 10% beneficial owners.

16. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder and was a cause of violations by the Ridgeback Affiliates of such provisions.

Respondent Failed to Timely File Schedule 13G Statements and Amendments

17. Ridgeback and the Ridgeback Affiliates have been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of Ironwood's Class A common stock on February 2, 2010, and remained a greater than 5% beneficial owner until March 2012. The initial Schedule 13G statement that Ridgeback filed on February 15, 2011 pursuant to Exchange Act Rule 13d-1(c) on behalf of itself and the Ridgeback Affiliates did not comply with the 10-day filing deadline.

18. Subsequently, Ridgeback also failed to timely file required amendments, including to reflect:

- As of October 27, 2011, Ridgeback's and the Ridgeback Affiliates' beneficial ownership had decreased by more than 5% of the class of securities from the

amount set forth previously, which was not reflected in an amendment until February 14, 2012, in violation of Rule 13d-2(d); and

- By March 31, 2012, Ridgeback's and the Ridgeback Affiliates' beneficial ownership had decreased by more than 5% of the class of securities from the amount set forth in the February 14, 2012 amendment, which was not reflected in an amendment until February 14, 2013, in violation of Rule 13d-2(d).

19. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder and was a cause of violations by the Ridgeback Affiliates of such provisions.

Respondent's Remedial Efforts

20. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Ridgeback's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2, and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$104,500 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Ridgeback Capital Management LP as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73033 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16062

In the Matter of

Universal Electronics Inc.,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Universal Electronics Inc. ("Universal Electronics" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10 percent of such class (collectively, "insiders"), to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

3. Since 1992, Respondent has been a reporting issuer and its insiders have been required to file Section 16(a) reports. On numerous occasions, Respondent was a cause of Section 16(a) violations by its officers and directors as a result of Respondent's negligence in performing certain tasks it voluntarily agreed to undertake in connection with the filing of Section 16(a) reports on their behalf.

Respondent

4. Universal Electronics is a Delaware corporation with its principal place of business in California. Universal Electronics' common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: UEIC). Universal Electronics files annual reports on Form 10-K pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Applicable Legal Framework

5. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions). There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.²

6. Although insiders remain responsible for the timeliness and accuracy of their required Section 16(a) reports, the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing." Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003). Reporting issuers are required to disclose in the proxy statement for the issuer's annual meeting, or its annual report, Section 16 reporting delinquencies by its insiders.

Respondent Was a Cause of Certain Violations of Section 16(a) by its Insiders

7. Although the Commission encourages the practice of many issuers to assist insiders in complying with Section 16(a) filing requirements, issuers who voluntarily accept certain responsibilities and then act negligently in the performance of those tasks may be liable as a cause of Section 16(a) violations by insiders.

8. Since at least 2004, Respondent has voluntarily agreed with its officers and directors to perform certain tasks in connection with the filing of Section 16(a) reports on their behalf, including the preparation and filing of all such reports for which Respondent had timely notification of the required information concerning the transactions. However, Respondent

² See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19-20 (Jan. 19, 2001) ("[N]egligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a) . . . in cases in which a person is alleged to 'cause' a primary violation that does not require scienter.").

repeatedly failed to perform on a timely basis the tasks Respondent had agreed to perform with respect to stock option grants to its officers and directors, transactions related to restricted stock grants, and certain open-market sales of which it had timely notice. Respondent made disclosures in its annual proxy statements filed in 2009 through 2013 relating to Section 16(a) compliance during its fiscal years 2008 through 2012 that named officers and directors having late-filed reports and cited "lack of staffing" or "a change in the processing of these forms and delays caused by an email server malfunction" as a cause of certain late-filed reports. The procedures employed by Respondent were insufficient to the extent that those practices resulted in the recurrent failure to meet the two-business day filing deadline.

9. For example, between April 2011 and May 2013, Respondent's officers and directors in the aggregate filed more than 75 untimely Forms 4 to report transactions relating to stock option grants and restricted stock grants. Forms 4 were also filed late by Respondent on behalf of certain officers to report open-market sales executed on at least 10 dates between November 2010 and September 2013 for which Respondent received timely notification of all necessary information for such filings. Although Respondent had agreed to perform all tasks in connection with preparing and filing these reports, the reports were not timely filed due to Respondent's negligent procedures.

10. As a result of the conduct described above, Respondent was a cause of certain violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by Respondent's insiders.

Respondent's Remedial Efforts

11. In determining to accept the Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Universal Electronics' Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Universal Electronics Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73034 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16063

In the Matter of

Trinad Management, LLC,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Trinad Management, LLC ("Trinad" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

3. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

4. While subject to these reporting requirements, Trinad violated Section 16(a) by failing to timely file multiple required reports of holdings and transactions in the securities of Command Security Corporation ("Command") it executed on behalf of an affiliated fund it managed and violated Section 13(d) by failing to timely file required amendments to the Schedule 13D Respondent filed with respect to its beneficial ownership. Trinad was also a cause of violations of such requirements by Trinad's affiliated entities and control person, which shared beneficial ownership of the relevant securities.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. Trinad, a Delaware limited liability company with its principal place of business in Los Angeles, California, provides investment management services to an affiliated private fund and had beneficial ownership of the securities held by the fund. Trinad's control person, the affiliated fund, and an affiliated entity serving as the fund's general partner (collectively, the "Trinad Affiliates") also each shared direct or indirect beneficial ownership of the securities held by the fund. At all relevant times, Trinad and the Trinad Affiliates were subject to Section 13(d) as greater than 5% beneficial owners of Command's common stock and were subject to Section 16(a) as greater than 10% beneficial owners between 2004 and December 2010 and between November 2011 and February 2012. Trinad took responsibility for making all beneficial ownership filings on behalf of the Trinad Affiliates.

Issuers

6. Command is a New York corporation with its principal place of business in Virginia. Command's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NYSE-MKT (ticker: MOC). Trinad's control person served as director of the company until September 8, 2010.

Applicable Legal Framework

7. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

8. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the

9. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. An acquisition or disposition of 1% or more of a class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

10. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.

11. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

12. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁴ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁵

aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

³ SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

⁴ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2,

Respondent Failed To File Required Section 16(a) Reports on a Timely Basis

13. Trinad and the Trinad Affiliates have been subject to the reporting requirements of Exchange Act Section 16(a) as greater than 10% beneficial owners of Command's common stock from 2004 through December 28, 2010, and from November 30, 2011 through February 13, 2012.

14. Trinad failed to file on a timely basis multiple required Section 16(a) reports with the Commission on behalf of itself and the Trinad Affiliates. Trinad did not file until July 17, 2014 any required reports on Forms 4 with respect to reportable transactions executed on behalf of Trinad's affiliated private fund on the following dates that were required to be reported within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	8/16/2010	8/18/2010	7/17/2014
4	8/17/2010	8/19/2010	7/17/2014
4	9/21/2010	9/23/2010	7/17/2014
4	9/27/2010	9/29/2010	7/17/2014
4	10/11/2010	10/13/2010	7/17/2014
4	10/22/2010	10/26/2010	7/17/2014
4	10/25/2010	10/27/2010	7/17/2014

2002) ("No showing of scienter is required to prove violations of these reporting provisions."); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁵ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

Form Type	Date of Trans.	Due Date	Date Filed
4	10/28/2010	11/1/2010	7/17/2014
4	11/1/2010	11/3/2010	7/17/2014
4	11/3/2010	11/5/2010	7/17/2014
4	11/4/2010	11/8/2010	7/17/2014
4	11/5/2010	11/9/2010	7/17/2014
4	11/8/2010	11/10/2010	7/17/2014
4	11/9/2010	11/12/2010	7/17/2014
4	11/10/2010	11/15/2010	7/17/2014
4	11/11/2010	11/15/2010	7/17/2014
4	12/1/2010	12/3/2010	7/17/2014
4	12/7/2010	12/9/2010	7/17/2014
4	12/8/2010	12/10/2010	7/17/2014
4	12/9/2010	12/13/2010	7/17/2014
4	12/10/2010	12/14/2010	7/17/2014
4	12/14/2010	12/16/2010	7/17/2014
4	12/15/2010	12/17/2010	7/17/2014
4	12/16/2010	12/20/2010	7/17/2014
4	12/17/2010	12/21/2010	7/17/2014
4	12/21/2010	12/23/2010	7/17/2014
4	12/27/2010	12/29/2010	7/17/2014
4	12/28/2010	12/30/2010	7/17/2014

15. These transactions involved open-market purchases with an aggregate market value of approximately \$120,000 and open-market sales with an aggregate market value of approximately \$325,000 that Trinad did not report until after the Commission's enforcement staff contacted Trinad concerning its failure to file in 2014. Trinad also failed to file a required Form 5 to report these transactions in Command's securities that should have been reported on Forms 4 during Command's fiscal year 2010 but were not.

16. As of November 30, 2011, Trinad and the Trinad Affiliates again became greater than 10% beneficial owners of Command's class of common stock subject to the reporting requirements of Section 16(a). Trinad did not file until February 28, 2012 an initial statement of

beneficial ownership on Form 3 or any of the required reports on Forms 4 for reportable transactions in Command's securities. The late reports relate to transactions executed on behalf of Trinad's affiliated private fund on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	12/5/2011	12/7/2011	2/28/2012
4	12/7/2011	12/9/2011	2/28/2012
4	12/12/2011	12/14/2011	2/28/2012
4	12/13/2011	12/15/2011	2/28/2012
4	12/27/2011	12/29/2011	2/28/2012
4	12/28/2011	12/30/2011	2/28/2012
4	12/29/2011	1/3/2012	2/28/2012
4	12/30/2011	1/4/2012	2/28/2012
4	1/3/2012	1/5/2012	2/28/2012
4	1/4/2012	1/6/2012	2/28/2012
4	1/5/2012	1/9/2012	2/28/2012
4	1/6/2012	1/10/2012	2/28/2012
4	1/13/2012	1/18/2012	2/28/2012
4	1/17/2012	1/19/2012	2/28/2012
4	1/18/2012	1/20/2012	2/28/2012
4	1/24/2012	1/26/2012	2/28/2012
4	2/13/2012	2/15/2012	2/28/2012

17. These transactions involved open-market purchases with an aggregate market value of approximately \$260,000 and open-market sales with an aggregate market value of approximately \$565,000.

18. As a result of the conduct described above, Respondent Trinad violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder and was a cause of violations by the Trinad Affiliates of such provisions.

Respondent Failed to Timely File Schedule 13D Amendments

19. Trinad and the Trinad Affiliates have been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of Command common stock in 2004. Trinad filed an initial statement on Schedule 13D on September 4, 2004 on behalf of itself and the Trinad Affiliates.

20. Trinad and the Trinad Affiliates failed to timely file multiple amendments required as a result of material changes to the information set forth previously on Schedule 13D, including:

- The disposition through open-market sales of Command's common stock that constituted more than 1% of the class of outstanding Command common stock during each of the following periods, none of which were reflected in an amendment until May 4, 2011: (i) from November 5, 2010 to December 28, 2010; (ii) from December 28, 2010 to January 12, 2011; (iii) from January 13, 2011 to February 8, 2011; and (iv) from February 9, 2011 to February 25, 2011;
- The acquisition through open-market purchases that constituted more than 1% of the class of outstanding Command common stock from September 15, 2011 to October 15, 2011 and additional purchases also constituting more than 1% of the class between November 1 and 11, 2011, none of which were reflected in an amendment until November 14, 2011;
- The disposition through open-market sales that constituted more than 1% of the class of outstanding Command common stock on February 13, 2012 and on February 21, 2012, neither of which was reflected in an amendment until February 28, 2012; and
- The disposition through open-market sales of all remaining holdings of Command common stock by July 2012, including sales constituting more than 1% of the class of outstanding Command common stock from February 29, 2012 to March 30, 2012, which was not reflected in an amendment until after the Commission's enforcement staff contacted Trinad in 2014 concerning its failure to file any amendments subsequent to the February 28, 2012 amendment.

21. As a result of the conduct described above, Trinad violated Section 13(d) of the Exchange Act and Rule 13d-2 thereunder and was a cause of violations by the Trinad Affiliates of such provisions.

Respondent's Remedial Efforts

22. Trinad has represented that certain of the delinquent filings resulted from the failure of its outside counsel to timely inform it of relevant obligations or to make timely filings

on its behalf. Trinad's reliance on its outside counsel does not excuse the violations because an insider retains legal responsibility for compliance with the filing requirements.⁶ In addition, here, Trinad has not offered adequate evidence of the time period and scope of the engagements of counsel or that Trinad timely provided all relevant information to counsel for the preparation and filing of reports.

23. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Trinad's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$95,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

⁶ See SEC v. Levy, 706 F. Supp. 61, 63-69 (D.D.C. 1989) (defendant asserting that his attorney "misinformed defendant about his obligation to disclose" information on Schedule 13D held liable because scienter is not an element of such violations); see also SEC v. Savoy Indus., Inc., 665 F.2d 1310, 1315 n.28 (D.D.C. 1981) ("Compliance with federal securities laws cannot be avoided simply by retaining outside counsel to prepare required documents."); Bettina Bancroft, 53 SEC Docket 1955, 1993 WL 81744, at *3 (Mar. 23, 1993) ("Although the Commission encourages individuals to obtain professional assistance in meeting their filing obligations, Section 16 of the Exchange Act places the responsibility to report changes in securities ownership on insiders."); SEC Release 34-37260 (May 31, 1996) ("Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made.").

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Trinad Management, LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73035 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16064

In the Matter of

Gregory M. Shepard,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Gregory M. Shepard ("Shepard" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as a greater than 10% beneficial owner of the registered Class A common stock of Donegal Group, Inc. ("Donegal"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of holdings and transactions in Donegal's securities.

Respondent

3. Gregory M. Shepard, age 58, has been subject to Section 16(a) of the Exchange Act since becoming a greater than 10% beneficial owner of Donegal's Class A common stock as of March 5, 2010.

Issuer

4. Donegal is a Delaware corporation with its principal place of business in Pennsylvania. Donegal's Class A common stock and Class B common stock each are and have been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ (tickers: DGICA and DGICB). Neither the Class A common stock nor Class B common stock is convertible into the other or into any other class or security.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term "beneficial owner" is defined by reference to Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions. Under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, "beneficial owner" is defined broadly to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security.²

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year.

² Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. As an alternative, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). A person's obligation to make filings required by Section 13(d) and the rules thereunder does not alter such person's obligation to make filings required by Section 16(a) and the rules thereunder, if applicable.

and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

7. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

8. As a beneficial owner of more than 10% of Donegal's Class A common stock since March 2010, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) and remains subject to those requirements.

9. Until March 30, 2011, Respondent did not file with the Commission an initial statement of beneficial ownership on Form 3 or any of the required reports on Forms 4 or 5 for his transactions in Donegal's securities between March 5, 2010 and March 15, 2011. On March 30, 2011, Respondent filed a Form 3 and filed Forms 4 to report open-market purchases of Donegal's Class A common stock and Class B common stock on more than 100 dates that were required to be reported within two business days of the date of the transactions. Thereafter, Respondent also failed to file on a timely basis additional purchases that were also required to be reported on Form 4 within two business days. Respondent's late reports include purchases executed on the following dates:

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions"); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct").

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added).

Form Type	Date of Trans.	Due Date	Date Filed
4	7/26/2010	7/28/2010	3/30/2011
4	7/27/2010	7/29/2010	3/30/2011
4	7/28/2010	7/30/2010	3/30/2011
4	7/29/2010	8/2/2010	3/30/2011
4	7/30/2010	8/3/2010	3/30/2011
4	8/3/2010	8/5/2010	3/30/2011
4	8/4/2010	8/6/2010	3/30/2011
4	8/5/2010	8/9/2010	3/30/2011
4	8/6/2010	8/10/2010	3/30/2011
4	8/9/2010	8/11/2010	3/30/2011
4	8/10/2010	8/12/2010	3/30/2011
4	8/11/2010	8/13/2010	3/30/2011
4	8/12/2010	8/16/2010	3/30/2011
4	8/18/2010	8/20/2010	3/30/2011
4	8/19/2010	8/23/2010	3/30/2011
4	8/20/2010	8/24/2010	3/30/2011
4	9/14/2010	9/16/2010	3/30/2011
4	9/27/2010	9/29/2010	3/30/2011
4	9/28/2010	9/30/2010	3/30/2011
4	9/29/2010	10/1/2010	3/30/2011
4	10/5/2010	10/7/2010	3/30/2011
4	10/7/2010	10/12/2010	3/30/2011
4	10/8/2010	10/13/2010	3/30/2011
4	10/20/2010	10/22/2010	3/30/2011
4	10/21/2010	10/25/2010	3/30/2011
4	11/9/2010	11/12/2010	3/30/2011
4	11/19/2010	11/23/2010	3/30/2011
4	12/7/2010	12/9/2010	3/30/2011
4	1/21/2011	1/25/2011	3/30/2011

FormType	Date of Trans.	Due Date	Date Filed
4	1/24/2011	1/26/2011	3/30/2011
4	1/25/2011	1/27/2011	3/30/2011
4	2/3/2011	2/7/2011	3/30/2011
4	2/7/2011	2/9/2011	3/30/2011
4	2/9/2011	2/11/2011	3/30/2011
4	2/24/2011	2/28/2011	3/30/2011
4	2/25/2011	3/1/2011	3/30/2011
4	3/1/2011	3/3/2011	3/30/2011
4	3/2/2011	3/4/2011	3/30/2011
4	3/7/2011	3/9/2011	3/30/2011
4	3/8/2011	3/10/2011	3/30/2011
4	3/9/2011	3/11/2011	3/30/2011
4	3/10/2011	3/14/2011	3/30/2011
4	3/11/2011	3/15/2011	3/30/2011
4	3/14/2011	3/16/2011	3/30/2011
4	3/15/2011	3/17/2011	3/30/2011
4	3/25/2011	3/29/2011	3/30/2011
4	3/29/2011	3/31/2011	5/2/2011
4	3/30/2011	4/1/2011	5/2/2011
4	3/31/2011	4/4/2011	5/2/2011
4	4/1/2011	4/5/2011	5/2/2011
4	4/7/2011	4/11/2011	5/2/2011
4	4/8/2011	4/12/2011	5/2/2011
4	4/11/2011	4/13/2011	5/2/2011
4	4/12/2011	4/14/2011	5/5/2011
4	4/13/2011	4/15/2011	5/2/2011
4	4/14/2011	4/18/2011	5/2/2011
4	4/15/2011	4/19/2011	5/2/2011
4	4/18/2011	4/20/2011	5/2/2011

Form Type	Date of Trans.	Due Date	Date Filed
4	4/19/2011	4/21/2011	5/2/2011
4	4/20/2011	4/22/2011	5/2/2011
4	4/21/2011	4/25/2011	5/2/2011
4	4/25/2011	4/27/2011	5/2/2011
4	4/26/2011	4/28/2011	5/2/2011

10. These late-reported purchases of Donegal Class A common stock and Class B common stock had an aggregate market value of over \$2.5 million. Respondent also failed to file a required Form 5 to report transactions that should have been reported on Forms 4 during Donegal's fiscal year 2010 but were not.⁵

11. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

12. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Shepard's Offer.

Accordingly, pursuant to Section 21B and 21C of the Exchange Act, it is hereby ORDERED that:

⁵ Respondent was also subject to Section 13(d) of the Exchange Act and the rules thereunder as a greater than 5% beneficial owner of both Donegal's Class A common stock and Class B common stock. Respondent filed a statement on Schedule 13D on July 12, 2010, reporting his beneficial ownership of approximately 15.8% of Donegal's Class A common stock and 6.5% of the Class B common stock, and providing details of his purchases from May 12, 2010 through July 12, 2010. Respondent filed an amendment to the Schedule 13D on December 10, 2010, reporting beneficial ownership of approximately 16.3% of Donegal's Class A common stock and 6.7% of the Class B common stock, and providing details of his purchases from October 20, 2010 through December 7, 2010. Respondent's filings on Schedule 13D did not alter Respondent's obligations under Section 16(a) and were not a substitute for making the required Section 16(a) reports.

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$80,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Gregory M. Shepard as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73050 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16079

In the Matter of

Jones Lang LaSalle
Incorporated,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Jones Lang LaSalle Incorporated ("Jones Lang" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the issuer reporting requirements and beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10 percent of such class (collectively, "insiders"), to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

3. Reporting issuers are required to disclose in the proxy statement for the issuer's annual meeting, or its annual report, Section 16 reporting delinquencies by its insiders. Although insiders remain responsible for the timeliness and accuracy of their required Section 16(a) reports, the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing." Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

4. Since 1997, Respondent has been a reporting issuer and its insiders have been required to file Section 16(a) reports. On numerous occasions, Respondent's officers and directors violated Section 16(a) by failing to timely file required reports of transactions related to restricted stock unit grants. Respondent was a cause of these Section 16(a) violations by its officers and directors as a result of Respondent's negligence in performing certain tasks it voluntarily agreed to undertake in connection with the filing of Section 16(a) reports on their behalf. Respondent also failed to comply with its disclosure obligations to report such delinquencies.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. Jones Lang is a Maryland corporation with its principal place of business in Illinois. Jones Lang's common stock is and has been at all relevant times registered with the Commission under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange (ticker: JLL). Jones Lang files annual reports on Form 10-K pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Applicable Legal Framework

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions). There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.²

7. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rule 13a-1 requires such issuers to file annual reports with the Commission containing specified information. In 1991, the Commission adopted Item 405 of Regulation S-K to help address compliance with Section 16(a) by requiring reporting issuers to disclose in annual

² See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19-20 (Jan. 19, 2001) ("[N]egligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to 'cause' a primary violation that does not require scienter.").

proxy and information statements or annual reports information regarding delinquent Section 16(a) filings by insider.³

8. Item 405 requires an issuer to disclose any known late filing or failure by an insider to file a report required by Section 16(a) based on the issuer's review of Forms 3 and 4 filed during the most recent fiscal year, and Forms 5 filed with respect to the most recent fiscal year, by the issuer's insiders. Section 16(a) reports are posted on EDGAR, and thus are readily available to issuers to evaluate their timeliness. A "known" failure to file includes, but is not limited to, a failure to file a Form 3, which is required of all insiders, and a failure to file a Form 5 in the absence of a written representation that no Form 5 is required, unless the issuer otherwise knows that no Form 5 is required. The Item 405 disclosure of any late filings or known failures to file must (i) identify by name each insider who failed to file on a timely basis Forms 3, 4, or 5 during the most recent fiscal year or prior fiscal years and (ii) set forth the number of late reports, the number of late-reported transactions, and any known failure to file. An issuer does not have an obligation under Item 405 to research or make inquiry regarding delinquent Section 16(a) filings beyond the review specified in the item.

9. An issuer that files annual reports with the Commission on Form 10-K, such as Respondent, is required to include the Item 405 disclosure in its Form 10-K, or incorporate by reference to its Form 10-K the Item 405 disclosure made in the issuer's definitive proxy or information statement for its annual meeting of shareholders for the election of directors, if that definitive proxy or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. Inaccurate or incomplete Item 405 disclosures may constitute a violation of Section 13(a) of the Exchange Act and Rule 13a-1. No showing of scienter is necessary to establish a violation of Section 13(a).⁴

Respondent's Inaccurate Item 405 Disclosures

10. As an issuer required to file annual reports on Form 10-K, Respondent is and has been at all relevant times required to disclose information concerning delinquent Section 16(a) filings by its insiders to the extent required by Item 405 of Regulation S-K.

11. Respondent made misstatements and failed to disclose, as required, failures to file on a timely basis pursuant to Item 405. These failures include:

a. Respondent failed to make the required Item 405 disclosure for Respondent's 2010 fiscal year, misstating: "Based solely upon a review of such reports and amendments thereto furnished to us and upon written representations of certain of such persons

³ Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release No. 34-28869 (Feb. 21, 1991); 17 C.F.R. § 229.405.

⁴ SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978).

regarding their ownership of Common Stock, we believe that no person failed to file any such report on a timely basis during 2010, except that within the required two business day reporting requirement imposed by the SEC, the Company did not timely file one Form 4 report for Peter Roberts with respect to the sale of 55 shares for which he has indirect beneficial ownership. As our record-keeping with respect to the granting and vesting of restricted stock units may involve third-party administrators and internal processing requirements, we file related Form 4 reports promptly after the information has been completed and presented to the Corporate Secretary." (Jones Lang Definitive Proxy Statement filed on April 14, 2011, incorporated by reference into Form 10-K filed on February 25, 2011). Respondent's officers and directors were required to report restricted stock unit grants and payments of tax liability by delivering or withholding securities incident to the receipt, exercise or vesting of restricted stock units no later than the second business day following the date of the transaction. Respondent was not exempted from the requirement to review the forms filed with respect to such transactions and identify by name each such insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis. During such fiscal year, all of Jones Lang's officers and directors filed untimely Forms 4 reporting transactions related to restricted stock units that Respondent was required to disclose, which Respondent failed to do.

b. Respondent failed to make the required Item 405 disclosure for Respondent's 2011 fiscal year, misstating that: "Based solely upon a review of such reports and amendments thereto furnished to us and upon written representations of certain of such persons regarding their ownership of Common Stock, we believe that no person failed to file any such report on a timely basis during 2011. As our record-keeping with respect to the granting and vesting of restricted stock units may involve third-party administrators and internal processing requirements, we file related Form 4 reports promptly after the information has been completed and presented to the Corporate Secretary." (Jones Lang Definitive Proxy Statement filed on April 20, 2012, incorporated by reference into Form 10-K filed on February 27, 2012). During such fiscal year, all of Jones Lang's officers and directors filed untimely Forms 4 reporting transactions related to restricted stock units that Respondent was required to disclose, which Respondent failed to do.

c. Respondent failed to make the required Item 405 disclosure for Respondent's 2012 fiscal year, misstating that "For our current executive officers and Directors, the Company has taken on the administrative responsibility of filing the reports after we have received the necessary information. Based solely upon a review of such reports and amendments thereto furnished to us and upon written representations of certain of such persons regarding their ownership of Common Stock, we believe that no person failed to file any such report on a timely basis during 2012. As our record-keeping with respect to the granting and vesting of restricted stock units may involve third-party administrators and internal processing requirements, we file related Form 4 reports promptly after the information has been completed and presented to the Corporate Secretary." (Jones Lang Definitive Proxy Statement filed on April 19, 2013, incorporated by reference into Form 10-K filed on February 26, 2013). During such fiscal year, all of Jones Lang's officers and directors filed untimely Forms 4 reporting transactions related to restricted stock units that Respondent was required to disclose, which Respondent failed to do.

12. As a result of the conduct described above, Respondent failed to comply with its disclosure obligation to the extent required by Item 405 and violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Respondent Was a Cause of Certain Violations of Section 16(a) by its Insiders

13. Although the Commission encourages the practice of many issuers to assist insiders in complying with Section 16(a) filing requirements, issuers who voluntarily accept certain responsibilities and then act negligently in the performance of those tasks may be liable as a cause of Section 16(a) violations by insiders.

14. Since at least 2010, Respondent has voluntarily agreed with its officers and directors to perform certain tasks in connection with the filing of Section 16(a) reports on their behalf, including the preparation and filing of all such reports for which Respondent had timely notification of the required information concerning the transactions. However, Respondent repeatedly failed to perform on a timely basis the tasks Respondent had agreed to perform with respect to restricted stock unit transactions and was a cause of Jones Lang insiders failing to file Section 16(a) reports on a timely basis. The procedures employed by Jones Lang with respect to restricted stock unit grants were insufficient to the extent that those practices resulted in the recurrent failure to meet the two-business day filing deadline.

15. For example, between January 2011 and July 2013, Respondent's officers and directors in the aggregate filed more than 70 untimely Forms 4 to report transactions related to restricted stock units. Although Respondent had agreed to perform all tasks in connection with preparing and filing such reports, the reports were not timely filed due to Respondent's negligent procedures. Respondent and its insiders were not excused from compliance with Section 16(a)'s requirements based on the manner in which Respondent chose to process restricted stock units.

16. As a result of the conduct described above, Respondent was a cause of certain violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by Respondent's officers and directors.

Respondent's Remedial Efforts

17. In determining to accept the Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Jones Lang's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 16(a) of the Exchange Act and Rules 13a-1 and 16a-3 promulgated thereunder.

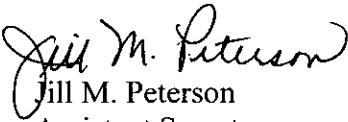
B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Jones Lang LaSalle Incorporated as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73036 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16065

In the Matter of

Sankaty Advisors, LLC,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Sankaty Advisors, LLC ("Sankaty Advisors" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

2. While subject to the reporting requirements of Section 13(d), Respondent failed to timely file initial statements or required amendments with respect to Respondent's beneficial ownership of the securities of Accuride Corporation ("Accuride"), Swift Transportation Corp. ("Swift"), and PAETEC Holding Corp. ("PAETEC") and was a cause of violations of such requirements by a reporting group of Respondent's affiliated entities and control persons (the "Sankaty Affiliates") that shared direct or indirect beneficial ownership of the relevant securities.

Respondent

3. Sankaty Advisors, a Delaware limited liability company headquartered in Boston, Massachusetts, has been registered with the Commission as an investment adviser since April 2008. The Sankaty Affiliates consist of certain private investment funds structured as limited partnerships to which Sankaty Advisors provides investment advisory services, the ultimate general partners of the private funds, and the control person of Sankaty Advisors and the funds' ultimate general partners. Sankaty Advisors and certain Sankaty Affiliates acquired direct or indirect beneficial ownership of more than 5% of (i) Accuride's common stock as of February 26, 2010; (ii) PAETEC's common stock as of September 7, 2010; and (iii) Swift's Class A common stock as of December 16, 2010.

Issuers

4. Accuride is a Delaware corporation with its principal place of business in Indiana. At all relevant times, Accuride's common stock was registered with the Commission under Section 12 of the Exchange Act and traded on the NYSE (ticker: ACW).

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. PAETEC was a Delaware corporation with its principal place of business in New York. At all relevant times, PAETEC's common stock was registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ (ticker: PAET).

6. Swift is a Delaware corporation with its principal place of business in Arizona. At all relevant times, Swift's Class A common stock was registered with the Commission under Section 12 of the Exchange Act and traded on the NYSE (ticker: SWFT).

Applicable Legal Framework

7. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

8. The term "beneficial owner" is defined broadly in Section 13(d) and Exchange Act Rule 13d-3 to encompass "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

9. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. An acquisition or disposition of 1% or more of a class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

³ SEC Release No. 34-39538, at n. 14.

10. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person "has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," and is not directly or indirectly the beneficial owner of 20% or more of the class of securities.

11. There is no state of mind requirement for violations of Section 13(d) and the rules thereunder.⁴ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁵

Respondent Failed to Timely File on Schedule 13D

12. Sankaty Advisors and certain Sankaty Affiliates have been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of Accuride's common stock as of February 26, 2010, and remained subject to those requirements until May 2, 2014. The initial Schedule 13D statement filed by certain Sankaty Affiliates on March 12, 2010 did not comply with the 10-day filing deadline imposed by Exchange Act Section 13(d)(1) and Rule 13d-1(a). That Schedule 13D statement reported

⁴ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁵ See Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); see also Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19-20 (Jan. 19, 2001) ("[N]egligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to 'cause' a primary violation that does not require scienter.").

beneficial ownership in the aggregate of approximately 21.1% of Accuride's class of common stock calculated in accordance with the requirements of Rule 13d-3(d).

13. Sankaty Advisors and the Sankaty Affiliates also failed to timely file multiple amendments required as a result of material changes to the information set forth previously on the Schedule 13D filed with respect to Accuride, including:

- The substantial decrease in Sankaty Advisors' and the Sankaty Affiliates' beneficial ownership percentages, from an aggregate of approximately 21.1% to 8.7%, that occurred on November 29, 2010, which was not reported until March 9, 2012. This decrease resulted from holders of Accuride convertible notes, including the Sankaty Affiliates, exercising the conversion of such notes into shares of common stock on that date;
- The disposition of more than 1% of the class of outstanding Accuride common stock through open-market sales by Sankaty Affiliates from June 2, 2011 to June 7, 2011, which was not reflected in an amendment until March 9, 2012;
- The disposition of more than 1% of the class of outstanding Accuride common stock through open-market sales by Sankaty Affiliates from June 8, 2011 to July 25, 2011, which was not reflected in an amendment until March 9, 2012;
- The disposition of more than 1% of the class of outstanding Accuride common stock through open-market sales by Sankaty Affiliates from July 26, 2011 to September 27, 2011, which was not reflected in an amendment until March 9, 2012; and
- The acquisition of 2,000,000 shares (constituting more than 4% of the class of outstanding Accuride common stock) through open-market purchases by Sankaty Affiliates on November 2 and 5, 2012, which was not reflected in an amendment until February 14, 2013.

14. As a result of the conduct described above, Sankaty Advisors violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder and was a cause of violations by the Sankaty Affiliates of such provisions.

Respondent Failed to Timely File Schedule 13G Statements

15. Sankaty Advisors and certain Sankaty Affiliates became subject to the reporting requirements of Exchange Act Section 13(d) after acquiring beneficial ownership of more than 5% of Swift Transportation's Class A common stock on December 16, 2010. The initial Schedule 13G statement filed by Sankaty Affiliates on June 30, 2011 pursuant to Rule 13d-1(c) did not comply with the 10-day filing deadline.

16. Sankaty Advisors and certain Sankaty Affiliates became subject to the reporting requirements of Exchange Act Section 13(d) after acquiring beneficial ownership of more than 5% of PAETEC Holding common stock on September 7, 2010. The initial Schedule 13G statement filed by Sankaty Affiliates on October 20, 2010 pursuant to Rule 13d-1(c) did not comply with the filing deadline imposed by Exchange Act Rule 13d-1(c).

17. As a result of the conduct described above, Sankaty Advisors violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder and was a cause of violations by the Sankaty Affiliates of such provisions.

Respondent's Remedial Efforts

18. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Sankaty Advisors' Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$68,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Sankaty Advisors, LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73037 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16066

In the Matter of

RIMA Senvest Management,
LLC,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against RIMA Senvest Management, LLC ("RIMA" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.
2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.
3. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.
4. RIMA failed to file on a timely basis multiple required Section 16(a) reports of holdings and transactions in the securities of Rait Financial Trust ("Rait") it executed on behalf of affiliated funds it managed and failed to timely file certain initial statements and amendments required under Section 13(d) with respect to beneficial ownership of a registered class of securities of Rait, Immersion Corporation ("Immersion"), Depomed, Inc. ("Depomed"), and Vitesse Semiconductor Corporation ("Vitesse").

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. RIMA, a Delaware limited liability company headquartered in New York, New York, provides investment management services to affiliated private funds structured as limited partnerships or other types of entities (the "RIMA Funds"). RIMA became registered with the Commission as an investment adviser as of March 30, 2012. RIMA or an affiliated entity serves as general partner of the RIMA Funds (or in a similar capacity) and had beneficial ownership of the securities held by the RIMA Funds under Section 13(d) of the Exchange Act and the rules thereunder. The RIMA Funds and RIMA's control person (collectively, the "RIMA Affiliates") also each shared direct or indirect beneficial ownership of securities held by the RIMA Funds. RIMA took responsibility for making all beneficial ownership filings on behalf of the RIMA Affiliates.

Issuers

6. Rait is a Maryland corporation with its principal place of business in Pennsylvania. Rait's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the New York Stock Exchange (ticker: RAS).

7. Immersion is a Delaware corporation with its principal place of business in California. Immersion's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NASDAQ stock market (ticker: IMMR).

8. Depomed is a California corporation with its principal place of business in California. Depomed's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NASDAQ stock market (ticker: DEPO).

9. Vitesse is a Delaware corporation with its principal place of business in California. Vitesse's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NASDAQ stock market (ticker: VTSS).

Applicable Legal Framework

10. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer. However, as an alternative, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule

13G within 10 days after the triggering acquisition if the person "has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," and is not directly or indirectly the beneficial owner of 20% or more of the class of securities.

11. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

12. Exchange Act Rule 13d-2(b) requires that a person filing a Schedule 13G pursuant to Rule 13d-1(c) must file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, under Exchange Act Rule 13d-2(d), such person must also amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and must thereafter promptly amend the Schedule 13G upon increasing or decreasing its beneficial ownership by more than 5% of the class. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

13. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.⁴

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

³ SEC Release No. 34-39538, at n. 14.

⁴ A limited exception under Rule 16a-1(a)(1) applies for certain qualified institutional investors, such as registered investment advisers and broker-dealers, to exclude any shares beneficially

14. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

15. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁵ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁶

owned that are "held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business" and "such shares are acquired ... without the purpose or effect of changing or influencing control of the issuer" (a "Qualified Institution"). A parent holding company or control person of a Qualified Institution may also exclude such shares if the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not Qualified Institutions, does not exceed 1% of the class of securities (a "Qualified Control Person").

⁵ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁶ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); see generally SEC Release No. 34-47809 (noting that an issuer's

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

16. On October 28, 2011, RIMA and certain RIMA Affiliates acquired beneficial ownership of greater than 10% of Rait's registered class of common stock, becoming subject to the reporting requirements of Exchange Act Section 16(a).⁷

17. RIMA did not file until December 9, 2011 an initial statement of beneficial ownership on Form 3 or any of the required reports on Forms 4 for reportable transactions in Rait's securities. The late reports relate to transactions executed on behalf of the RIMA Funds on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	10/31/2011	11/2/2011	12/9/2011
4	11/1/2011	11/3/2011	12/9/2011
4	11/4/2011	11/8/2011	12/9/2011
4	11/7/2011	11/9/2011	12/9/2011
4	11/8/2011	11/10/2011	12/9/2011
4	11/9/2011	11/14/2011	12/9/2011
4	11/10/2011	11/15/2011	12/9/2011
4	11/14/2011	11/16/2011	12/9/2011
4	11/15/2011	11/17/2011	12/9/2011
4	11/16/2011	11/18/2011	12/9/2011
4	11/17/2011	11/21/2011	12/9/2011
4	11/22/2011	11/25/2011	12/9/2011

eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)" (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

⁷ None of the RIMA Affiliates have been eligible at any time under Exchange Act Rule 16(a)(1) subparagraphs (i) through (xi) to exclude any securities over which they were deemed to have direct or indirect beneficial ownership under Rule 13d-3.

Form Type	Date of Trans.	Due Date	Date Filed
4	11/23/2011	11/28/2011	12/9/2011
4	11/30/2011	12/2/2011	12/9/2011
4	12/1/2011	12/5/2011	12/9/2011
4	12/2/2011	12/6/2011	12/9/2011
4	12/5/2011	12/7/2011	12/9/2011

18. The late-reported transactions primarily involved open-market purchases of Rait's common stock having an aggregate market value in excess of \$3.4 million and constituting an acquisition of more than 1% of Rait's outstanding common stock.

19. As a result of the conduct described above, Respondent RIMA violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder and was a cause of violations by the RIMA Affiliates of such provisions.

Respondent Failed to Timely File on Schedule 13G

20. RIMA and certain RIMA Affiliates became subject to the reporting requirements of Exchange Act Section 13(d) after acquiring beneficial ownership of more than 5% of Rait's registered class of common stock as of March 16, 2011. RIMA timely filed an initial statement on Schedule 13G pursuant to Exchange Act Rule 13d-1(c) on behalf of itself and RIMA's control person with respect to Rait on March 25, 2011.

21. Subsequently, RIMA failed to timely file a required amendment upon its acquisition of beneficial ownership of greater than 10% of the class of Rait securities as of October 28, 2011, which was not reflected in an amendment until December 7, 2011, in violation of Rule 13d-2(d).

22. RIMA also failed to timely file an amended joint statement on Schedule 13G (or, alternatively, a separate initial statement) on behalf of one of the RIMA Funds upon the fund's acquisition of beneficial ownership of greater than 5% of Rait's common stock as of [DATE], which was not reflected in an amendment until December 7, 2011, in violation of Rule 13d-1. RIMA similarly failed to timely file an amended joint or initial statement on behalf of one of the RIMA Funds upon its acquisition of beneficial ownership of greater than 5% of the class of common stock of Immersion, Depomed, and Vitesse, in violation of Rule 13d-1.

23. As a result of the conduct described above, RIMA violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder and was a cause of violations by the RIMA Affiliates of such provisions.

Respondent's Remedial Efforts

24. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent RIMA's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 promulgated thereunder.

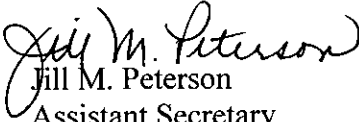
B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$68,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying RIMA Senvest Management, LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73058 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16087

In the Matter of

Paul D. Arling,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Paul D. Arling ("Arling" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as an officer and director of Universal Electronics, Inc. ("Universal Electronics"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Universal Electronics' securities.

Respondent

3. Arling, age 51, has served as the Chief Executive Officer of Universal Electronics since 2000 and was appointed Chairman of the Board in July 2001. Arling is and has been at all relevant times an officer and director of Universal Electronics subject to Section 16(a) of the Exchange Act.

Issuer

4. Universal Electronics is a Delaware corporation with its principal place of business in California. Universal Electronics' common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: UEIC).

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Exchange Act Rule 16a-1(f) defines the term "officer" to include an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function.

8. Although the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing," Section 16 places the responsibility to report changes in securities ownership on insiders.²

9. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d)

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

10. As an officer and director of Universal Electronics, Respondent was subject to the reporting requirements of Exchange Act Section 16(a) and remains subject to those requirements.

11. Respondent has failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	12/13/2010	12/15/2010	1/5/2011
4	4/6/2011	4/8/2011	4/28/2011
4	7/26/2011	7/28/2011	9/13/2011
4	12/7/2011	12/9/2011	12/14/2011
4	12/8/2011	12/12/2011	12/14/2011
4	12/20/2011	12/22/2011	1/3/2012
4	12/22/2011	12/27/2011	1/3/2012
4	2/8/2012	2/10/2012	2/25/2013
4	4/25/2012	4/27/2012	5/11/2012

or 16(a)]”); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) (“No showing of scienter is required to prove violations of these reporting provisions”); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct”).

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1–2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

Form Type	Date of Trans.	Due Date	Date Filed
4	6/11/2012	6/13/2012	7/11/2012
4	7/26/2012	7/30/2012	9/14/2012
4	8/9/2012	8/13/2012	9/14/2012
4	10/1/2012	10/3/2012	10/22/2012
4	10/5/2012	10/10/2012	10/22/2012
4	10/26/2012	10/30/2012	11/2/2012
4	11/9/2012	11/14/2012	12/18/2012
4	12/11/2012	12/13/2012	12/18/2012
4	1/4/2013	1/8/2013	1/22/2013
4	2/13/2013	2/15/2013	2/25/2013
4	4/25/2013	4/29/2013	5/8/2013
4	5/7/2013	5/9/2013	5/14/2013
4	5/8/2013	5/10/2013	5/14/2013
4	9/11/2013	9/13/2013	2/19/2014

12. Among Respondent's late-reported transactions since December 2010 are open-market sales of Universal Electronics stock, his receipt of stock option grants, and transactions related to restricted stock grants. Approximately half of Respondent's transactions during 2011 and 2012 were reported one or more days late. Respondent also failed to file a required Form 5 to report a transaction that should have been reported on a Form 4 during Universal Electronics' fiscal year 2013 but was not.

13. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

14. Respondent has represented that his delinquent filings resulted from the failure of Universal Electronics to make timely filings on his behalf. Respondent's reliance on Universal Electronics does not excuse his violations because an insider retains legal responsibility for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made.⁵ In addition, here, Universal Electronics made disclosures in its

⁵ See SEC Release No. 34-47809 ("[A]n insider is legally responsible for filing regardless of who submits a filing on the insider's behalf."); Ownership Reports and Trading by Officers,

annual proxy statements filed in 2009 through 2012 relating to Section 16(a) compliance during its fiscal years 2008 through 2012 that named Respondent as having late-filed reports and cited "lack of staffing," "late receipt of necessary information," or "a change in the processing of these forms and delays caused by an email server malfunction" as causes of Respondent's late reports. Respondent took inadequate and ineffective steps to monitor whether timely and accurate filings were made on his behalf by Universal Electronics.

15. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Arling's Offer.

Accordingly, pursuant to Section 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$60,375 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Directors and Principal Security Holders, SEC Release 34-37260 (May 31, 1996) ("Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made."); see also Bettina Bancroft, 53 SEC Docket 1955, 1993 WL 81744, at *3 (Mar. 23, 1993) ("Although the Commission encourages individuals to obtain professional assistance in meeting their filing obligations, Section 16 of the Exchange Act places the responsibility to report changes in securities ownership on insiders.").

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Paul D. Arling as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73059 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16088

In the Matter of

Bradley S. Forsyth,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Bradley S. Forsyth ("Forsyth" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as an officer of Willis Lease Finance Corporation ("Willis Lease"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Willis Lease's securities.

Respondent

3. Forsyth, age 47, has served as the Chief Financial Officer and Chief Accounting Officer of Willis Lease since January 2007. Respondent is and has been at all relevant times an officer of Willis Lease subject to Section 16(a) of the Exchange Act.

Issuer

4. Willis Lease is a Delaware corporation with its principal place of business in California. Willis Lease's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: WLFC).

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”).

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Exchange Act Rule 16a-1(f) defines the term “officer” to include an issuer’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function.

8. Although the Commission has encouraged the practice of many issuers to “help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing,” Section 16 places the responsibility to report changes in securities ownership on insiders.²

9. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17–18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d)

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

10. As an officer of Willis Lease since January 2007, Respondent was subject to the reporting requirements of Exchange Act Section 16(a) and remains subject to those requirements.

11. Respondent has failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	7/12/2011	7/14/2011	7/18/2011
4	8/11/2011	8/15/2011	8/23/2011
4	2/2/2012	2/6/2012	2/24/2012
4	2/3/2012	2/7/2012	2/24/2012
4	2/8/2012	2/10/2012	2/24/2012
4	2/9/2012	2/13/2012	2/24/2012
4	2/10/2012	2/14/2012	2/24/2012
4	2/13/2012	2/15/2012	2/24/2012
4	10/31/2012	11/2/2012	11/13/2012

or 16(a)]”); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) (“No showing of scienter is required to prove violations of these reporting provisions”); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.”).

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1–2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

Form Type	Date of Trans.	Due Date	Date Filed
4	11/1/2012	11/5/2012	11/13/2012
4	11/2/2012	11/6/2012	11/13/2012
4	1/3/2013	1/7/2013	2/6/2013
4	1/7/2013	1/9/2013	2/6/2013
4	1/9/2013	1/11/2013	2/6/2013
4	1/14/2013	1/16/2013	4/3/2014
4	1/23/2013	1/25/2013	2/6/2013
4	1/24/2013	1/28/2013	2/6/2013
4	1/25/2013	1/29/2013	2/6/2013
4	3/6/2013	3/8/2013	4/3/2014
4	4/9/2013	4/11/2013	4/17/2013

12. Among Respondent's late-reported transactions since July 2011 are sales of Willis Lease stock made pursuant to pre-arranged "10b5-1 plans" and his receipt of restricted stock grants. All of Respondent's stock sales during 2011 and 2012 were reported one or more days late.

13. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

14. Respondent has represented that his delinquent filings resulted from the failure of Willis Lease personnel to make timely filings on his behalf after Respondent provided timely notification of his transactions. Respondent's reliance on Willis Lease does not excuse his violations because an insider retains legal responsibility for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made.⁵ In

⁵ See Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003) ("[A]n insider is legally responsible for filing regardless of who submits a filing on the insider's behalf"); Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-37260 (May 31, 1996) ("Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made"); see also Bettina Bancroft, 53 SEC Docket 1955, 1993 WL 81744, at *3 (Mar. 23, 1993) ("Although the Commission encourages individuals to obtain professional assistance in meeting their filing

addition, here, Respondent took inadequate and ineffective steps to monitor whether timely and accurate filings were made on his behalf by Willis Lease.

15. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Forsyth's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

obligations, Section 16 of the Exchange Act places the responsibility to report changes in securities ownership on insiders.").

Payments by check or money order must be accompanied by a cover letter identifying Bradley S. Forsyth as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73051 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16080

In the Matter of

KMG Chemicals, Inc.,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against KMG Chemicals, Inc. ("KMG" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the issuer reporting requirements and beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10 percent of such class (collectively, "insiders"), to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

3. Reporting issuers are required to disclose in the proxy statement for the issuer's annual meeting, or its annual report, Section 16 reporting delinquencies by its insiders. Although insiders remain responsible for the timeliness and accuracy of their required Section 16(a) reports, the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing." Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

4. Respondent is a reporting issuer and its insiders are required to file Section 16(a) reports. On numerous occasions, Respondent's officers and directors violated Section 16(a) by failing to timely file required reports. Respondent failed to comply with its disclosure obligations to report such delinquencies. In addition, Respondent was a cause of numerous Section 16(a) violations by one of its directors as a result of Respondent's negligence in performing certain tasks it voluntarily agreed to undertake in connection with the filing of Section 16(a) reports on the director's behalf.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. KMG is a Texas corporation with its principal place of business in Texas. KMG's common stock is, has been at all relevant times registered with the Commission under Section 12 of the Exchange Act, and is traded on the New York Stock Exchange (ticker: KMG). KMG files annual reports on Form 10-K pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Applicable Legal Framework

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions). There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.²

7. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rule 13a-1 requires such issuers to file annual reports with the Commission containing specified information. In 1991, the Commission adopted Item 405 of Regulation S-K to help address compliance with Section 16(a) by requiring reporting issuers to disclose in annual

² See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19-20 (Jan. 19, 2001) ("[N]egligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to 'cause' a primary violation that does not require scienter.").

proxy and information statements or annual reports information regarding delinquent Section 16(a) filings by insider.³

8. Item 405 requires an issuer to disclose any known late filing or failure by an insider to file a report required by Section 16(a) based on the issuer's review of Forms 3 and 4 filed during the most recent fiscal year, and Forms 5 filed with respect to the most recent fiscal year, by the issuer's insiders. Section 16(a) reports are posted on EDGAR, and thus are readily available to issuers to evaluate their timeliness. A "known" failure to file includes, but is not limited to, a failure to file a Form 3, which is required of all insiders, and a failure to file a Form 5 in the absence of a written representation that no Form 5 is required, unless the issuer otherwise knows that no Form 5 is required. The Item 405 disclosure of any late filings or known failures to file must (i) identify by name each insider who failed to file on a timely basis Forms 3, 4, or 5 during the most recent fiscal year or prior fiscal years and (ii) set forth the number of late reports, the number of late-reported transactions, and any known failure to file. An issuer does not have an obligation under Item 405 to research or make inquiry regarding delinquent Section 16(a) filings beyond the review specified in the item.

9. An issuer that files annual reports with the Commission on Form 10-K, such as Respondent, is required to include the Item 405 disclosure in its Form 10-K, or incorporate by reference to its Form 10-K the Item 405 disclosure made in the issuer's definitive proxy or information statement for its annual meeting of shareholders for the election of directors, if that definitive proxy or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. Inaccurate or incomplete Item 405 disclosures may constitute a violation of Section 13(a) of the Exchange Act and Rule 13a-1. No showing of scienter is necessary to establish a violation of Section 13(a).⁴

Respondent's Inaccurate Item 405 Disclosures

10. As an issuer required to file annual reports on Form 10-K, Respondent is and has been at all relevant times required to disclose information concerning delinquent Section 16(a) filings by its insiders to the extent required by Item 405 of Regulation S-K.

11. Respondent made misstatements and failed to disclose, as required, failures to file on a timely basis pursuant to Item 405. These failures include:

a. Respondent failed to make the required Item 405 disclosure for Respondent's 2010 fiscal year, misstating that "[b]ased solely on a review of Forms 3, 4, and 5 and amendments thereto furnished to us, we know of no failure in Section 16(a) beneficial

³ Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-28869 (Feb. 21, 1991); 17 C.F.R. § 229.405.

⁴ SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978).

ownership reporting compliance except that through inadvertence certain directors or executives filed late.” (KMG Definitive Proxy Statement filed on October 29, 2010, incorporated by reference into Form 10-K filed on October 14, 2010). Respondent was required to review the forms filed and identify by name each such insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do. During such fiscal year, multiple KMG insiders filed one or more untimely Form 4 reports.

b. Respondent failed to make the required Item 405 disclosure for Respondent’s 2011 fiscal year, misstating that “[b]ased solely on a review of Forms 3, 4, and 5 and amendments thereto furnished to us, we know of no failure in Section 16(a) beneficial ownership reporting compliance except that through inadvertence certain directors or executives filed late.” (KMG Definitive Proxy Statement filed on October 31, 2011, incorporated by reference into Form 10-K filed on October 14, 2011). Respondent was required to review the forms filed and identify by name each such insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do. During such fiscal year, multiple KMG insiders filed one or more untimely Form 4 reports, including one director with untimely filed Forms 4 with respect to stock sale transactions that occurred on 7 dates.

c. Respondent failed to make the required Item 405 disclosure for Respondent’s 2012 fiscal year, misstating that “[b]ased solely on a review of Forms 3, 4, and 5 and amendments thereto furnished to us, we know of no failure in Section 16(a) beneficial ownership reporting compliance except that through inadvertence certain directors or executives filed late.” (KMG Definitive Proxy Statement filed on October 29, 2012, incorporated by reference into Form 10-K filed on October 15, 2012). Respondent was required to review the forms filed and identify by name each such insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do. During such fiscal year, multiple KMG insiders filed one or more untimely Form 4 reports, including one director with untimely filed Forms 4 with respect to stock sale transactions that occurred on 11 dates.

d. Respondent failed to make the required Item 405 disclosure for Respondent’s 2013 fiscal year, misstating that “[b]ased solely on a review of Forms 3, 4, and 5, and amendments thereto furnished to us, we know of no failure in Section 16(a) beneficial ownership reporting compliance, except that Mr. Urbanowski filed late for one transaction, Mr. Leonard filed late for two transactions, and Mr. Hatcher filed late for 20 transactions.” (KMG Definitive Proxy Statement filed on November 18, 2013, incorporated by reference into Form 10-K filed on October 30, 2013). However, during such fiscal year, other KMG insiders also filed untimely Form 4 reports, including untimely filed Forms 4 by Respondent’s then-CEO and then-CFO with respect to stock sale transactions that occurred on 3 dates each, which Respondent failed to disclose as required.

12. As a result of the conduct described above, Respondent failed to comply with its disclosure obligation to the extent required by Item 405 and violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Respondent Was a Cause of Certain Violations of Section 16(a) by its Insiders

13. Although the Commission encourages the practice of many issuers to assist insiders in complying with Section 16(a) filing requirements, issuers who voluntarily accept certain responsibilities and then act negligently in the performance of those tasks may be liable as a cause of Section 16(a) violations by insiders.

14. Respondent has voluntarily agreed with certain of its current and former officers and directors to perform certain tasks in connection with the filing of Section 16(a) reports on their behalf, including the preparation and filing of all such reports for which Respondent had timely notification of the required information concerning the transactions. However, on multiple occasions, Respondent acted negligently in its performance of such tasks and was a cause of KMG insiders failing to file Section 16(a) reports on a timely basis. KMG personnel responsible for tasks relating to the preparation and filing of Section 16(a) reports repeatedly failed to perform on a timely basis the tasks Respondent had agreed to perform.

15. For example, Respondent had agreed to perform all tasks relating to the preparation and filing of Forms 4 for one director who had entered into pre-arranged "10b5-1 plans" to sell KMG stock on a frequent basis. Although Respondent received timely notification of all necessary information for such filings from the director's brokerage firm, Forms 4 were filed late for sales executed on more than 40 dates between February 2011 and April 2013. The practices employed by Respondent's personnel to perform these tasks were negligent to the extent they resulted in a recurrent failure to meet the two-business day filing deadline. The fact that the majority of transactions were timely reported does not excuse Respondent's practices.

16. As a result of the conduct described above, Respondent was a cause of certain violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

17. In determining to accept the Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent KMG's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 16(a) of the Exchange Act and Rules 13a-1 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying KMG Chemicals, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73052 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16081

In the Matter of

Tel-Instrument Electronics
Corp.,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Tel-Instrument Electronics Corp. ("Tel-Instrument" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the issuer reporting requirements and beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10 percent of such class (collectively, "insiders"), to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

3. Reporting issuers are required to disclose in the proxy statement for the issuer's annual meeting, or its annual report, Section 16 reporting delinquencies by its insiders. Although insiders remain responsible for the timeliness and accuracy of their required Section 16(a) reports, the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing." Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

4. Respondent is a reporting issuer and its insiders are required to file Section 16(a) reports. On numerous occasions, Respondent's officers and directors violated Section 16(a) by failing to timely file required reports. Respondent failed to comply with its disclosure obligations to report such delinquencies. In addition, Respondent was a cause of certain Section 16(a) violations by its officers and directors as a result of Respondent's negligence in performing certain tasks it voluntarily agreed to undertake in connection with the filing of Section 16(a) reports on their behalf.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. Tel-Instrument is a New Jersey corporation with its principal place of business in New Jersey. Tel-Instrument's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NYSE MKT (ticker: TIK). Tel-Instrument files annual reports on Form 10-K pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Applicable Legal Framework

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions). There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.²

7. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rule 13a-1 requires such issuers to file annual reports with the Commission containing specified information. In 1991, the Commission adopted Item 405 of Regulation S-K to help address compliance with Section 16(a) by requiring reporting issuers to disclose in annual

² See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19-20 (Jan. 19, 2001) ("[N]egligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to 'cause' a primary violation that does not require scienter.").

proxy and information statements or annual reports information regarding delinquent Section 16(a) filings by insiders.³

8. Item 405 requires an issuer to disclose any known late filing or failure by an insider to file a report required by Section 16(a) based on the issuer's review of Forms 3 and 4 filed during the most recent fiscal year, and Forms 5 filed with respect to the most recent fiscal year, by the issuer's insiders. Section 16(a) reports are posted on EDGAR, and thus are readily available to issuers to evaluate their timeliness. A "known" failure to file includes, but is not limited to, a failure to file a Form 3, which is required of all insiders, and a failure to file a Form 5 in the absence of a written representation that no Form 5 is required, unless the issuer otherwise knows that no Form 5 is required. The Item 405 disclosure of any late filings or known failures to file must (i) identify by name each insider who failed to file on a timely basis Forms 3, 4, or 5 during the most recent fiscal year or prior fiscal years and (ii) set forth the number of late reports, the number of late-reported transactions, and any known failure to file. An issuer does not have an obligation under Item 405 to research or make inquiry regarding delinquent Section 16(a) filings beyond the review specified in the item.

9. An issuer that files annual reports with the Commission on Form 10-K, such as Respondent, is required to include the Item 405 disclosure in its Form 10-K, or incorporate by reference to its Form 10-K the Item 405 disclosure made in the issuer's definitive proxy or information statement for its annual meeting of shareholders for the election of directors, if that definitive proxy or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. Materially false or misleading Item 405 disclosures constitute a violation of Section 13(a) of the Exchange Act and Rule 13a-1. No showing of scienter is necessary to establish a violation of Section 13(a).⁴

Respondent's Inaccurate Item 405 Disclosures

10. As an issuer required to file annual reports on Form 10-K, Respondent is and has been at all relevant times required to disclose information concerning delinquent Section 16(a) filings by its insiders to the extent required by Item 405 of Regulation S-K.

11. Respondent made misstatements and failed to disclose, as required, failures to file on a timely basis pursuant to Item 405. These failures include:

a. Item 405 disclosure for Respondent's fiscal year ending March 31, 2011, misstated that "all officers, directors and 10% beneficial owners, known to the Company, had timely filed required forms reporting beneficial ownership of Company securities, based solely

³ Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-28869 (Feb. 21, 1991); 17 C.F.R. § 229.405.

⁴ SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978).

on review of Filed Forms 3 and 4 furnished to the Company.” (Tel-Instrument Form 10-K filed on June 29, 2011.) In fact, during such fiscal year, multiple Tel-Instrument insiders filed numerous untimely Section 16(a) reports that Respondent was required to disclose pursuant to Item 405. Respondent was required to review the forms filed and identify by name each such insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do.

b. Item 405 disclosure for Respondent’s fiscal year ending March 31, 2012 misstated that “all officers, directors and 10% beneficial owners, known to the Company, had timely filed required forms reporting beneficial ownership of Company securities, based solely on review of Filed Forms 3 and 4 furnished to the Company.” (Tel-Instrument Form 10-K filed on July 16, 2012). In fact, during such fiscal year, multiple Tel-Instrument insiders filed numerous untimely Section 16(a) reports that Respondent was required to disclose pursuant to Item 405. Respondent was required to review the forms filed and identify by name each such insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do.

c. Item 405 disclosure for Respondent’s fiscal year ending March 31, 2013 misstated that “all officers, directors and 10% beneficial owners, known to the Company, had timely filed required forms reporting beneficial ownership of Company securities, based solely on review of Filed Forms 3 and 4 furnished to the Company.” (Tel-Instrument Form 10-K filed on July 16, 2013.) In fact, during such fiscal year, multiple Tel-Instrument insiders filed numerous untimely Section 16(a) reports that Respondent was required to disclose pursuant to Item 405. Respondent was required to review the forms filed and identify by name each such insider who failed to file on a timely basis and set forth the number of late reports and the number of transactions that were not reported on a timely basis, which Respondent failed to do.

12. Respondent failed to comply with its disclosure obligation to the extent required by Item 405 and each of the above-referenced statements in paragraphs 11a through 11c was materially false or misleading. As a result of the conduct described above, Respondent violated Section 13(a) of the Exchange Act and Rule 13a-1 promulgated thereunder.

Respondent Was a Cause of Certain Violations of Section 16(a) by its Insiders

13. Although the Commission encourages the practice of many issuers to assist insiders in complying with Section 16(a) filing requirements, issuers who voluntarily accept certain responsibilities and then act negligently in the performance of those tasks may be liable as a cause of Section 16(a) violations by insiders.

14. Since at least 2010, Respondent has voluntarily agreed with its officers and directors to perform certain tasks in connection with the filing of Section 16(a) reports on their behalf, including the preparation and filing of all such reports for which Respondent had timely notification of the required information concerning the transactions. However, Respondent repeatedly failed to perform on a timely basis the tasks Respondent had agreed to perform. The

procedures employed by Respondent were insufficient to the extent that those practices resulted in the recurrent failure to meet the two-business day filing deadline.

15. For example, Section 16(a) reports that Respondent had agreed to file for four insiders were not filed on a timely basis for reportable transactions on more than 35 dates between August 2010 and July 2013. Although Respondent had agreed to perform all tasks in connection with preparing and filing such reports and had access to the requisite information, the reports were not timely filed due to Respondent's negligent procedures.

16. As a result of the conduct described above, Respondent was a cause of certain violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by Respondent's insiders.

Respondent's Remedial Efforts

17. In determining to accept the Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Tel-Instrument's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 16(a) of the Exchange Act and Rules 13a-1 and 16a-3 promulgated thereunder.

B. Respondent shall pay a civil money penalty in the amount of \$75,000, plus post judgment interest, to the Securities and Exchange Commission, for transmission to the United States Treasury. Payment shall be made in the following installments: (i) \$2,100 within 14 days of the entry of this Order; (ii) \$2,100 on the first day of each month, beginning the first month immediately following the initial payment; and (iii) a final payment of \$1,500, plus any remaining balance, within 36 months of the entry of this Order. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues pursuant to 31 U.S.C. § 3717 on any unpaid amounts due after 14 days of the issuance of this Order. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the additional amount due for the final payment. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in the Order are

true and admitted by Respondent, and further, any debt for civil penalty, post judgment interest, or other amounts due by Respondent under this Order is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Tel-Instrument Electronics Corp as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73053 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16082

In the Matter of

Willis Lease Finance
Corporation,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Willis Lease Finance Corporation ("Willis Lease" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the issuer reporting requirements and beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10 percent of such class (collectively, "insiders"), to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

3. Reporting issuers are required to disclose in the proxy statement for the issuer's annual meeting, or its annual report, Section 16 reporting delinquencies by its insiders. Although insiders remain responsible for the timeliness and accuracy of their required Section 16(a) reports, the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing." Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

4. Since 1996, Respondent has been a reporting issuer and its insiders have been required to file Section 16(a) reports. On numerous occasions, Respondent's officers violated Section 16(a) by failing to timely file required reports. Respondent failed to comply with its disclosure obligations to report such delinquencies. In addition, Respondent was a cause of certain Section 16(a) violations by its officers as a result of Respondent's negligence in performing certain tasks it voluntarily agreed to undertake in connection with the filing of Section 16(a) reports on their behalf.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. Willis Lease is a Delaware corporation with its principal place of business in California. Willis Lease's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: WLFC). Willis Lease files annual reports on Form 10-K pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Applicable Legal Framework

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions). There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.²

7. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rule 13a-1 requires such issuers to file annual reports with the Commission containing specified information. In 1991, the Commission adopted Item 405 of Regulation S-K to help address compliance with Section 16(a) by requiring reporting issuers to disclose in annual

² See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19-20 (Jan. 19, 2001) ("[N]egligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to 'cause' a primary violation that does not require scienter.").

proxy and information statements or annual reports information regarding delinquent Section 16(a) filings by insiders.³

8. Item 405 requires an issuer to disclose any known late filing or failure by an insider to file a report required by Section 16(a) based on the issuer's review of Forms 3 and 4 filed during the most recent fiscal year, and Forms 5 filed with respect to the most recent fiscal year, by the issuer's insiders. Section 16(a) reports are posted on EDGAR, and thus are readily available to issuers to evaluate their timeliness. A "known" failure to file includes, but is not limited to, a failure to file a Form 3, which is required of all insiders, and a failure to file a Form 5 in the absence of a written representation that no Form 5 is required, unless the issuer otherwise knows that no Form 5 is required. The Item 405 disclosure of any late filings or known failures to file must (i) identify by name each insider who failed to file on a timely basis Forms 3, 4, or 5 during the most recent fiscal year or prior fiscal years and (ii) set forth the number of late reports, the number of late-reported transactions, and any known failure to file. An issuer does not have an obligation under Item 405 to research or make inquiry regarding delinquent Section 16(a) filings beyond the review specified in the item.

9. An issuer that files annual reports with the Commission on Form 10-K, such as Respondent, is required to include the Item 405 disclosure in its Form 10-K, or incorporate by reference to its Form 10-K the Item 405 disclosure made in the issuer's definitive proxy or information statement for its annual meeting of shareholders for the election of directors, if that definitive proxy or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. Inaccurate or incomplete Item 405 disclosures may constitute a violation of Section 13(a) of the Exchange Act and Rule 13a-1. No showing of scienter is necessary to establish a violation of Section 13(a).⁴

Respondent's Inaccurate Item 405 Disclosures

10. As an issuer required to file annual reports on Form 10-K, Respondent is and has been at all relevant times required to disclose information concerning delinquent Section 16(a) filings by its insiders to the extent required by Item 405 of Regulation S-K.

11. Respondent made misstatements and failed to disclose, as required, failures to file on a timely basis pursuant to Item 405. These failures include:

a. Item 405 disclosure for Respondent's 2010 fiscal year misstated that "[d]uring the fiscal year ended December 31, 2010, our Directors, executive officers and holders of more than ten percent of our common stock complied with all applicable Section 16(a) filing

³ Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release No. 34-28869 (Feb. 21, 1991); 17 C.F.R. § 229.405.

⁴ SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978).

requirements.” (Willis Lease Definitive Proxy Statement filed on April 29, 2011, incorporated by reference into Form 10-K filed on March 15, 2011). In fact, during such fiscal year, multiple Willis Lease insiders filed numerous untimely Section 16(a) reports that Respondent was required to disclose pursuant to Item 405;

b. Item 405 disclosure for Respondent’s 2011 fiscal year misstated that “[d]uring the fiscal year ended December 31, 2011, our Directors, executive officers and holders of more than ten percent of our common stock complied with all applicable Section 16(a) filing requirements.” (Willis Lease Definitive Proxy Statement filed on April 27, 2012, incorporated by reference into Form 10-K filed on March 13, 2012). In fact, during such fiscal year, multiple Willis Lease insiders filed numerous untimely Section 16(a) reports that Respondent was required to disclose pursuant to Item 405; and

c. Item 405 disclosure for Respondent’s 2012 fiscal year misstated that “[d]uring the fiscal year ended December 31, 2012, our Directors, executive officers and holders of more than ten percent of our common stock complied with all applicable Section 16(a) filing requirements.” (Willis Lease Definitive Proxy Statement filed on April 26, 2013, incorporated by reference into Form 10-K filed on March 18, 2013). In fact, during such fiscal year, multiple Willis Lease insiders filed numerous untimely Section 16(a) reports that Respondent was required to disclose pursuant to Item 405.

12. As a result of the conduct described above, Respondent failed to comply with its disclosure obligation to the extent required by Item 405 and violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Respondent Was a Cause of Certain Violations of Section 16(a) by its Insiders

13. Although the Commission encourages the practice of many issuers to assist insiders in complying with Section 16(a) filing requirements, issuers who voluntarily accept certain responsibilities and then act negligently in the performance of those tasks may be liable as a cause of Section 16(a) violations by insiders.

14. Since at least 2003, Respondent has voluntarily agreed with its insiders to perform certain tasks in connection with the filing of Section 16(a) reports on their behalf, including the preparation and filing of all such reports for which Respondent had timely notification of the required information concerning the transactions. However, on multiple occasions, Respondent acted negligently in its performance of such tasks and was a cause of Willis Lease insiders failing to file Section 16(a) reports on a timely basis. Willis Lease personnel responsible for tasks relating to the preparation and filing of Section 16(a) reports repeatedly failed to perform on a timely basis the tasks Respondent had agreed to perform.

15. For example, Section 16(a) reports that Respondent had agreed to file for certain officers were not filed on a timely basis for open-market sales executed on more than 75 dates since December 2010. For virtually all of these late-reported transactions, Respondent had received timely notification of all necessary information for such filings from the officers’

securities brokers or otherwise but failed to prepare and file the reports within the required time frame.

16. As a result of the conduct described above, Respondent was a cause of certain violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by Respondent's insiders.

Respondent's Remedial Efforts

17. In determining to accept the Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Willis Lease's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 16(a) of the Exchange Act and Rules 13a-1 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Willis Lease Finance Corporation as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73062 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16091

In the Matter of

Justin Tang,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Justin Tang ("Tang" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as a director of ChinaCast Education Corporation ("ChinaCast"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of holdings and transactions in ChinaCast's securities.

Respondent

3. Tang, age 42, served as a director of ChinaCast from February 2007 until January 2012, during which time Tang was subject to Section 16(a) of the Exchange Act. Tang is a citizen and resident of the People's Republic of China.

Issuer

4. ChinaCast is a Delaware corporation with its principal place of business in Hong Kong. ChinaCast's common stock was registered with the Commission under Section 12(b) of the Exchange Act and traded on the NASDAQ stock market (ticker: CAST) until June 2012.

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Although the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing," Section 16 places the responsibility to report changes in securities ownership on insiders.²

8. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent,

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

9. As a director of ChinaCast from February 2007 until January 2012, Respondent was subject to the reporting requirements of Exchange Act Section 16(a). Respondent filed an untimely initial statement of beneficial ownership on Form 3 on November 26, 2008.

10. Subsequently, Respondent failed to file all required Section 16(a) reports with the Commission for his sales of ChinaCast stock between March 2009 and December 2010 until after the Commission's enforcement staff contacted him concerning his failure to file. Respondent filed Forms 4 on November 20, 2013 to report his previously unreported transactions that occurred in 2009 and 2010, which include transactions executed on the following dates:

Form Type	Date of Trans.	Due Date	Date Filed
4	8/17/2010	8/19/2010	11/20/2013
4	8/30/2010	9/1/2010	11/20/2013
4	8/31/2010	9/2/2010	11/20/2013
4	9/1/2010	9/3/2010	11/20/2013
4	9/2/2010	9/7/2010	11/20/2013
4	9/3/2010	9/8/2010	11/20/2013
4	9/7/2010	9/9/2010	11/20/2013
4	9/8/2010	9/10/2010	11/20/2013
4	9/9/2010	9/13/2010	11/20/2013
4	9/13/2010	9/15/2010	11/20/2013
4	9/14/2010	9/16/2010	11/20/2013
4	9/15/2010	9/17/2010	11/20/2013
4	9/16/2010	9/20/2010	11/20/2013
4	9/17/2010	9/21/2010	11/20/2013
4	9/20/2010	9/22/2010	11/20/2013

constitutes a willful violation.”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	11/30/2010	12/2/2010	11/20/2013
4	12/2/2010	12/6/2010	11/20/2013
4	12/7/2010	12/9/2010	11/20/2013

11. Among Respondent's late-reported transactions between August 2010 and December 2010 are sales of ChinaCast's common stock with an aggregate market value in excess of \$1 million, which constituted a disposition of a substantial portion of his holdings of ChinaCast securities. Respondent also failed to file required Forms 5 to report these transactions that should have been reported on Forms 4 during this time period but were not.

12. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

13. In determining to accept the Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Tang's Offer.

Accordingly, pursuant to Section 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Justin Tang as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73061 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16090

In the Matter of

Thomas C. Nord,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Thomas C. Nord ("Nord" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as an officer of Willis Lease Finance Corporation ("Willis Lease"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Willis Lease's securities.

Respondent

3. Nord, age 72, served as the General Counsel and Senior Vice President of Willis Lease from July 2003 until April 2013, during which time Nord was subject to Section 16(a) of the Exchange Act.

Issuer

4. Willis Lease is a Delaware corporation with its principal place of business in California. Willis Lease's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: WLFC).

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”).

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Exchange Act Rule 16a-1(f) defines the term “officer” to include an issuer’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function.

8. Although the Commission has encouraged the practice of many issuers to “help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing,” Section 16 places the responsibility to report changes in securities ownership on insiders.²

9. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17–18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d)

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

10. As an officer of Willis Lease until April 2013, Respondent was subject to the reporting requirements of Exchange Act Section 16(a).

11. During his tenure as an officer of Willis Lease, Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	5/2/2011	5/4/2011	5/26/2011
4	6/3/2011	6/7/2011	6/23/2011
4	6/15/2011	6/17/2011	6/23/2011
4	7/1/2011	7/6/2011	7/18/2011
4	8/1/2011	8/3/2011	8/24/2011
4	8/11/2011	8/15/2011	8/24/2011
4	8/15/2011	8/17/2011	8/24/2011
4	9/15/2011	9/19/2011	9/22/2011
4	1/20/2012	1/24/2012	1/26/2012

or 16(a)]]); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) (“No showing of scienter is required to prove violations of these reporting provisions.”); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.”).

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1–2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

Form Type	Date of Trans.	Due Date	Date Filed
4	2/3/2012	2/7/2012	2/24/2012
4	3/6/2012	3/8/2012	3/20/2012
4	4/9/2012	4/11/2012	4/26/2012
4	4/20/2012	4/24/2012	4/26/2012
4	5/7/2012	5/9/2012	5/22/2012
4	6/6/2012	6/8/2012	6/22/2012
4	7/6/2012	7/10/2012	7/20/2012
4	11/2/2012	11/6/2012	11/13/2012

12. Among Respondent's late-reported transactions since May 2011 are sales of Willis Lease stock made pursuant to pre-arranged "10b5-1 plans" and his receipt of restricted stock grants. More than half of Respondent's stock sales during 2011 and 2012 were reported one or more days late.

13. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

14. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Nord's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) and Rule 16a-3 promulgated thereunder.

B. Respondent shall pay a civil money penalty of \$78,750 to the Securities and Exchange Commission. Payment shall be made in the following installments: (i) \$19,687.50 within 14 days of the entry of this order, (ii) \$19,687.50 within 120 days of the entry of this order, (iii) \$19,687.50 within 240 days of the entry of this order, and (iv) \$19,687.50 within 360 days of the entry of this order. If any payment is not made by the date the payment is required

by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Thomas C. Nord as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73054 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16083

In the Matter of

Stephen Adams,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Stephen Adams ("Adams" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.

2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

3. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

4. While subject to these reporting requirements due to his beneficial ownership of the registered class of common stock of Solar Senior Capital Ltd. ("Solar Senior"), Respondent violated Section 16(a) by failing to timely file multiple reports of transactions in Solar Senior's securities and violated Section 13(d) by failing to timely file required amendments to the Schedule 13G Respondent filed with respect to his beneficial ownership in Solar Senior.

Respondent

5. Adams, 76, acquired beneficial ownership of more than 10% of Solar Senior's common stock as of March 3, 2011 and was subject to Sections 13(d) and 16(a). Adams remained a

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

greater than 10% beneficial owner until April 2012 and remained a greater than 5% beneficial owner until July 2012.

Issuer

6. Solar Senior is a Maryland corporation with its principal place of business in New York. Solar Senior's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: SUNS).

Applicable Legal Framework

7. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer. However, as an alternative, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person "has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," and is not directly or indirectly the beneficial owner of 20% or more of the class of securities.

8. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security.

9. Exchange Act Rule 13d-2(b) requires that a person filing a Schedule 13G pursuant to Rule 13d-1(c) must file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. Once an amendment has been filed reflecting beneficial ownership of 5% or less of the class of securities, no additional filings are required unless the person thereafter acquires more than 5% of the class. In addition to annual amendments, under Exchange Act Rule 13d-2(d), such person must also amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and must thereafter promptly amend the Schedule 13G upon increasing or decreasing its beneficial ownership

by more than 5% of the class. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.²

10. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.

11. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest.³ To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

12. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁴ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁵

² Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

³ Pecuniary interest is defined in Exchange Act Rule 16a-1(2)(i) as "the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities." Under Exchange Act Rule 16a-1(a)(2)(ii), the term indirect pecuniary interest is defined to include a beneficiary of a trust having or sharing investment control and a trustee of a trust for the benefit of an immediate family member.

⁴ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d)

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

13. As a greater than 10% beneficial owner of Solar Senior's common stock since March 3, 2011, Respondent was subject to the reporting requirements of Exchange Act Section 16(a). Respondent timely filed an initial statement of beneficial ownership on Form 3 on March 11, 2011.⁶

14. Subsequently, Respondent did not file until June 15, 2012 any of the required Section 16(a) reports with respect to reportable transactions executed beginning in November 2011. The late reports consist of transactions executed on the following dates that were required to be reported on Form 4 within two business days:

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	11/2/2011	11/4/2011	6/15/2012
4	11/3/2011	11/7/2011	6/15/2012
4	11/4/2011	11/8/2011	6/15/2012
4	11/8/2011	11/10/2011	6/15/2012

or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁵ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

⁶ Respondent had or is deemed to have had a pecuniary interest in shares held in a revocable trust for his benefit for which he serves as sole trustee and in shares held in trusts for the benefit of members of his immediate family for which he serves as a trustee.

Form Type	Date of Trans.	Due Date	Date Filed
4	11/14/2011	11/16/2011	6/15/2012
4	11/16/2011	11/18/2011	6/15/2012
4	11/17/2011	11/21/2011	6/15/2012
4	11/30/2011	12/2/2011	6/15/2012
4	12/29/2011	1/3/2012	6/15/2012
4	1/3/2012	1/5/2012	6/15/2012
4	1/5/2012	1/9/2012	6/15/2012
4	1/9/2012	1/11/2012	6/15/2012
4	1/17/2012	1/19/2012	6/15/2012
4	1/18/2012	1/20/2012	6/15/2012
4	1/23/2012	1/25/2012	6/15/2012
4	1/24/2012	1/26/2012	6/15/2012
4	1/30/2012	2/1/2012	6/15/2012
4	2/6/2012	2/8/2012	6/15/2012
4	2/7/2012	2/9/2012	6/15/2012
4	2/8/2012	2/10/2012	6/15/2012
4	2/9/2012	2/13/2012	6/15/2012
4	2/13/2012	2/15/2012	6/15/2012
4	2/16/2012	2/21/2012	6/15/2012
4	2/21/2012	2/23/2012	6/15/2012
4	2/23/2012	2/27/2012	6/15/2012
4	2/24/2012	2/28/2012	6/15/2012
4	2/27/2012	2/29/2012	6/15/2012
4	3/5/2012	3/7/2012	6/15/2012
4	3/13/2012	3/15/2012	6/15/2012
4	3/16/2012	3/20/2012	6/15/2012
4	3/20/2012	3/22/2012	6/15/2012
4	3/21/2012	3/23/2012	6/15/2012

Form Type	Date of Trans.	Due Date	Date Filed
4	3/22/2012	3/26/2012	6/15/2012
4	3/23/2012	3/27/2012	6/15/2012
4	3/26/2012	3/28/2012	6/15/2012
4	3/27/2012	3/29/2012	6/15/2012
4	3/29/2012	4/2/2012	6/15/2012
4	4/3/2012	4/5/2012	6/15/2012
4	4/4/2012	4/6/2012	6/15/2012
4	4/5/2012	4/9/2012	6/15/2012
4	4/9/2012	4/11/2012	6/15/2012
4	4/10/2012	4/12/2012	6/15/2012
4	4/16/2012	4/18/2012	6/15/2012

15. Respondent did not file any of the required reports until after Respondent was no longer a greater than 10% beneficial owner. Respondent's late-reported transactions in Solar Senior primarily involved open-market sales of Solar Senior common stock with an aggregate market value of approximately \$5.1 million on behalf of a revocable trust for his benefit that he controlled. Respondent's late-reported transactions in Solar Senior on 10 dates consist of or include open-market purchases of Solar Senior common stock with an aggregate market value of approximately \$220,000 on behalf of trusts for the benefit of members of his immediate family for which he serves as a trustee. Respondent also failed to file a required Form 5 to report transactions that should have been reported on Forms 4 during Solar Senior's fiscal year 2011 but were not.

16. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File Schedule 13G Amendments

17. Respondent has been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of Solar Senior's common stock on March 3, 2011, and remained a greater than 5% beneficial owner until July 2012. Respondent filed a timely initial Schedule 13G statement on March 11, 2011 pursuant to Exchange Act Rule 13d-1(c).

18. Subsequently, Respondent failed to timely file multiple required amendments, including:

- As of the end of calendar year 2011, the number of shares beneficially owned by Respondent had declined, which was not reflected in an amendment until June 15, 2012, more than 45 days after the end of the calendar year, in violation of Rule 13d-2(b);
- As of May 15, 2012, Respondent's beneficial ownership decreased by more than by more than 5% of the class of securities from the amount set forth previously, which was not reflected in an amendment until June 15, 2012, in violation of Rule 13d-2(d); and
- As of the end of calendar year 2012, Respondent's beneficial ownership had decreased to 0.1% due to his stock sales following the June 15, 2012 amendment, which was not reflected in an amendment until April 26, 2013, more than 45 days after the end of the calendar year, in violation of Rule 13d-2(b).

19. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rule 13d-2 thereunder.

Respondent's Remedial Efforts

20. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Adams's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall pay a civil money penalty of \$100,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: (i) \$25,000 within 14 days of the entry of this Order, (ii) \$25,000 within 120 days of the entry of this Order, (iii) \$25,000 within 240 days of the entry of this Order, and (iv) \$25,000 within 360 days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Stephen Adams as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73060 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16089

In the Matter of

Sidney C. Hooper,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Sidney C. Hooper ("Hooper" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as an officer of Sutron Corporation ("Sutron"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Sutron's securities.

Respondent

3. Hooper, age 55, served as Chief Financial Officer and Principal Accounting Officer of Sutron from 2003 until October 2013 and as an executive officer since 1993, during which time Hooper was subject to Section 16(a) of the Exchange Act.

Issuer

4. Sutron is Virginia corporation with its principal place of business in Virginia. Sutron's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: STRN).

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Exchange Act Rule 16a-1(f) defines the term "officer" to include an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function.

8. Although the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing," Section 16 places the responsibility to report changes in securities ownership on insiders.²

9. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions"); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

10. As an officer of Sutron until October 2013, Respondent was subject to the reporting requirements of Exchange Act Section 16(a).

11. Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	12/15/2010	12/17/2010	4/1/2011
4	12/16/2010	12/20/2010	4/1/2011
4	12/17/2010	12/21/2010	4/1/2011
4	12/20/2010	12/22/2010	4/1/2011
4	12/21/2010	12/23/2010	4/1/2011
4	12/22/2010	12/27/2010	4/1/2011
4	12/29/2010	1/3/2011	4/1/2011
4	3/28/2011	3/30/2011	4/1/2011
4	6/29/2011	7/1/2011	7/18/2011
5	11/30/2011	12/2/2011	3/27/2012
5	12/7/2011	12/9/2011	3/27/2012
5	5/9/2012	5/11/2012	7/3/2013
4	6/20/2012	6/22/2012	9/17/2012

that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.”).

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1–2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

Form Type	Date of Trans.	Due Date	Date Filed
4	6/22/2012	6/26/2012	9/17/2012
4	6/27/2012	6/29/2012	9/17/2012
4	8/22/2012	8/24/2012	9/17/2012
4	8/24/2012	8/28/2012	9/17/2012
4	8/29/2012	8/31/2012	9/17/2012
5	9/17/2012	9/19/2012	7/3/2013
5	9/18/2012	9/20/2012	7/3/2013
5	10/8/2012	10/10/2012	7/3/2013
5	12/6/2012	12/10/2012	7/3/2013
5	12/7/2012	12/11/2012	7/3/2013
5	12/10/2012	12/12/2012	7/3/2013
5	12/11/2012	12/13/2012	7/3/2013
5	12/12/2012	12/14/2012	7/3/2013
4	5/24/2013	5/29/2013	7/3/2013

12. Respondent's late-reported transactions between December 2010 and May 2013 primarily involved sales of Sutron's common stock, more than half of which were reported one or more months late. Respondent also failed to file required Forms 5 to report transactions that should have been reported on Forms 4 during Sutron's fiscal years 2010 and 2012 but were not.

13. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

14. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Hooper's Offer.

Accordingly, pursuant to Section 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

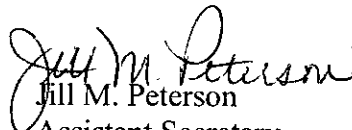
B. Respondent shall pay a civil money penalty of \$34,125 to the Securities and Exchange Commission. Payment shall be made in the following installments: (i) \$8,531.25 within 14 days of the entry of this order, (ii) \$8,531.25 within 120 days of the entry of this order, (iii) \$8,531.25 within 240 days of the entry of this order, and (iv) \$8,531.25 within 360 days of the entry of this order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Sidney C. Hooper as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Chair White
Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73055 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16084

In the Matter of

Thomas J. Edelman,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Thomas J. Edelman ("Edelman" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.
2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.
3. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.
4. While subject to these reporting requirements due to his beneficial ownership of the registered class of common stock of BioFuel Energy Corp. ("BioFuel"), Respondent violated Section 16(a) by failing to timely file multiple reports of holdings and transactions in BioFuel's securities and violated Section 13(d) by failing to timely file required amendments to the Schedule 13D Respondent filed with respect to his beneficial ownership in BioFuel.

Respondent

5. Edelman, age 62, served as BioFuel's Executive Chairman and Chairman of the Board of Directors until resigning in March 2009 and was a greater than 10% beneficial owner of

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

BioFuel's common stock. Edelman remained a greater than 10% beneficial owner subject to Sections 13(d) and 16(a) after his resignation from the company in 2009.

Issuer

6. BioFuel is a Delaware corporation with its principal place of business in Colorado. BioFuel's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: BIOF).

Applicable Legal Framework

7. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

8. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security.

9. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. An acquisition or disposition of 1% or more of a class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.²

10. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.

11. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on

² Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), at n.14.

Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

12. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

13. From June 2007 until Respondent's resignation in March 2009, Respondent was subject to Section 16(a) as an officer, director, and greater than 10% beneficial owner of BioFuel.

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

After his resignation, Respondent remained subject to Section 16(a) as a greater than 10% beneficial owner.

14. Respondent did not file until March 23, 2011 any of the required Section 16(a) reports with respect to reportable holdings and transactions executed beginning in January 2011. The late reports primarily consist of open-market sales of BioFuel common stock executed on the following dates:

Form Type	Date of Trans.	Due Date
4	1/11/2011	1/13/2011
4	1/12/2011	1/14/2011
4	1/13/2011	1/18/2011
4	1/14/2011	1/19/2011
4	1/18/2011	1/20/2011
4	1/21/2011	1/25/2011
4	2/9/2011	2/11/2011
4	2/10/2011	2/14/2011
4	2/11/2011	2/15/2011
4	2/14/2011	2/16/2011
4	2/15/2011	2/17/2011
4	2/18/2011	2/23/2011
4	3/2/2011	3/4/2011
4	3/3/2011	3/7/2011
4	3/4/2011	3/8/2011
4	3/7/2011	3/9/2011
4	3/8/2011	3/10/2011

15. Respondent's late-reported sales had an aggregate market value of approximately \$4.8 million.

16. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File Schedule 13D Amendments

17. After becoming subject to the reporting requirements of Exchange Act Section 13(d) and filing a timely initial Schedule 13D statement on June 26, 2007, Respondent remained subject to those requirements until November 2013.

18. In 2011, Respondent failed to timely file multiple amendments required as a result of material changes to the information set forth previously on Schedule 13D, including:

- Respondent's disposition through open-market sales of more than 1% of the class of outstanding BioFuel common stock during each of the following periods, none of which were reflected in an amendment until March 23, 2011: (i) from January 11 to January 12, 2011; (ii) from January 13 to January 18, 2011; (iii) from January 21 to January 24, 2011; (iv) from January 25 to January 31, 2011; (v) on February 1, 2011; and (vi) on February 2, 2011.
- Respondent's acquisition of BioFuel common stock and Class B common stock from BioFuel in a rights offering and private placement on February 4, 2011, which increased Respondent's beneficial ownership of BioFuel's class of common stock from approximately 5.04% to approximately 16.9%, which was not reflected in an amendment until March 23, 2011; and
- Respondent's disposition through open-market sales of more than 1% of the class of outstanding BioFuel common stock during each of the following periods, none of which were reflected in an amendment until March 23, 2011: (i) from February 9 to February 10, 2011; (ii) from February 11 to March 3, 2011; and (iii) from March 4 to March 7, 2011.

19. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rule 13d-2 thereunder.

Respondent's Remedial Efforts

20. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Edelman's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 promulgated thereunder.

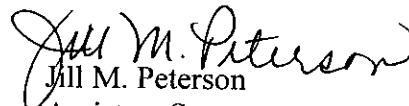
B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$64,125 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Thomas J. Edelman as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73056 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16085

In the Matter of

Stephen Gans,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Stephen Gans ("Gans" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

3. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

4. While subject to the reporting requirements of Sections 16(a) and 13(d), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in the securities of Digital Ally, Inc. ("Digital Ally"). Respondent also violated Section 13(d) on multiple occasions by failing to timely file required amendments to the Schedule 13D Respondent initially filed with respect to his beneficial ownership of Digital Ally registered common stock.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. Gans, age 41, acquired beneficial ownership of more than 5% of Digital Ally's common stock as of June 14, 2011, and has been a greater than 10% beneficial owner since August 12, 2011. He has also served as a director of Digital Ally since May 2012.

Issuer

6. Digital Ally is a Nevada corporation with its principal place of business in Kansas. Digital Ally's common stock is and has been at all relevant times registered with the Commission under Section 12(b) of the Exchange Act and traded on the NASDAQ stock market (ticker: DGLY).

Applicable Legal Framework

7. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

8. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

9. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

10. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. An acquisition or disposition of 1% or more of a class of securities is deemed material for purposes of

Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.²

11. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

12. As a greater than 10% beneficial owner of Digital Ally's common stock since June 14, 2011, and as a director of the company since May 2012, Respondent was subject to the reporting requirements of Exchange Act Section 16(a). Respondent timely filed an initial statement of beneficial ownership on Form 3 on August 17, 2011.

13. Subsequently, Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

² Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions"); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"); see generally Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003) (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)" (emphasis added)); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

Form Type	Date of Trans.	Due Date	Date Filed
4	10/3/2011	10/5/2011	4/3/2012
4	10/10/2011	10/12/2011	4/3/2012
4	10/11/2011	10/13/2011	4/3/2012
4	1/31/2012	2/2/2012	2/7/2014
4	2/23/2012	2/27/2012	4/3/2012
4	2/24/2012	2/28/2012	4/3/2012
4	3/2/2012	3/6/2012	4/3/2012
4	3/28/2012	3/30/2012	4/3/2012
4	4/10/2012	4/12/2012	4/18/2012
4	4/11/2012	4/13/2012	4/18/2012
4	4/12/2012	4/16/2012	4/18/2012
4	4/24/2012	4/26/2012	5/30/2012
4	4/26/2012	4/30/2012	5/30/2012
4	4/27/2012	5/1/2012	5/30/2012
4	4/30/2012	5/2/2012	5/30/2012
4	5/3/2012	5/7/2012	5/30/2012
4	5/4/2012	5/8/2012	5/30/2012
4	5/7/2012	5/9/2012	5/30/2012
4	5/15/2012	5/17/2012	5/30/2012
4	5/23/2012	5/25/2012	5/30/2012
4	6/22/2012	6/26/2012	2/20/2014
4	8/20/2012	8/22/2012	2/7/2014
4	8/21/2012	8/23/2012	2/7/2014
4	8/23/2012	8/27/2012	2/7/2014
4	8/24/2012	8/28/2012	2/7/2014
4	8/31/2012	9/5/2012	2/10/2014
4	5/3/2013	5/7/2013	2/7/2014

14. Among Respondent's late-reported transactions between October 2011 and May 2013 are open-market purchases, which in the aggregate constituted more than 2.5% of Digital Ally's outstanding common stock. Respondent also failed to file required Forms 5 to report transactions that should have been reported on Forms 4 during Digital Ally's fiscal years 2011 and 2012 but were not.

15. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File Schedule 13D Amendments

16. Respondent has been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of Digital Ally's common stock as of June 14, 2011, and remains subject to those requirements. Respondent filed a timely initial Schedule 13D statement on June 23, 2011.

17. Subsequently, Respondent failed to timely file multiple amendments required as a result of material changes to the information set forth previously on Schedule 13D, including:

- Respondent's acquisition through open-market purchases of Digital Ally shares constituting more than 1% of the class of securities from June 24, 2011 to July 1, 2011, which was not reported until August 17, 2011;
- Respondent's acquisition through open-market purchases of Digital Ally shares constituting more than 1% of the class of securities) from October 3, 2011 to October 11, 2011, which was not reported until July 25, 2013;
- Respondent's acquisition through open-market purchases of Digital Ally shares constituting more than 1% of the class of securities from February 23, 2012 to April 2, 2012, which was not reported until July 25, 2013; and
- Respondent's nomination for and subsequent election to Digital Ally's Board of Directors on May 25, 2012, which was not reported until July 25, 2013.

18. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rule 13d-2 promulgated thereunder.

Respondent's Remedial Efforts

19. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Gans' Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Stephen Gans as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73057 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16086

In the Matter of

Charles F. Willis IV,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Charles F. Willis IV ("Willis" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below:

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

3. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

4. While subject to the reporting requirements of Section 16(a) as an officer and director of Willis Lease Finance Corporation ("Willis Lease") and as a greater than 10% beneficial owner of Willis Lease's registered common stock, Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Willis Lease's securities. Respondent also violated Section 13(d) on multiple occasions by failing to timely file required amendments to the Schedule 13D Respondent initially filed with respect to his beneficial ownership in Willis Lease.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. Willis, age 65, is the founder of Willis Lease and serves as Chief Executive Officer and Chairman of the Board of Directors of Willis Lease. At all relevant times, Respondent is and has been a greater than 10% beneficial owner of Willis Lease's registered common stock and subject to Sections 13(d) and 16(a) of the Exchange Act.

Issuer

6. Willis Lease is a Delaware corporation with its principal place of business in California. Willis Lease's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: WLFC).

Applicable Legal Framework

7. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

8. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

9. Exchange Act Rule 16a-1(f) defines the term "officer" to include an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function.

10. Although the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and

timely filing,” Section 16 places the responsibility to report changes in securities ownership on insiders.²

11. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

12. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. An acquisition or disposition of 1% or more of a class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

13. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁴ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁵

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

⁴ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]”); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) (“No showing of scienter is required to prove violations of these reporting provisions”); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.”).

⁵ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)” (emphasis added)); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

14. As a greater than 10% beneficial owner of Willis Lease common stock, and as an officer and director of the company, Respondent was subject to the reporting requirements of Exchange Act Section 16(a).

15. Respondent has failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	8/11/2011	8/15/2011	8/24/2011
4	12/22/2011	12/27/2011	1/3/2012
4	12/23/2011	12/28/2011	1/3/2012
4	12/27/2011	12/29/2011	1/3/2012
4	12/29/2011	1/3/2012	1/5/2012
4	1/3/2012	1/5/2012	1/9/2012
4	1/5/2012	1/9/2012	1/11/2012
4	1/13/2012	1/18/2012	1/20/2012
4	1/19/2012	1/23/2012	2/2/2012
4	1/19/2012	1/23/2012	4/3/2014
4	1/20/2012	1/24/2012	2/2/2012
4	1/23/2012	1/25/2012	2/2/2012
4	1/24/2012	1/26/2012	2/2/2012
4	1/25/2012	1/27/2012	2/3/2012
4	1/26/2012	1/30/2012	2/3/2012
4	1/27/2012	1/31/2012	2/3/2012
4	1/30/2012	2/1/2012	2/3/2012
4	2/3/2012	2/7/2012	2/24/2012

*7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

Form Type	Date of Trans.	Due Date	Date Filed
4	3/28/2012	3/30/2012	4/3/2012
4	4/3/2012	4/5/2012	4/11/2012
4	4/4/2012	4/6/2012	4/11/2012
4	4/5/2012	4/9/2012	4/13/2012
4	4/9/2012	4/11/2012	4/13/2012
4	4/10/2012	4/12/2012	4/16/2012
4	4/16/2012	4/18/2012	4/26/2012
4	4/17/2012	4/19/2012	4/26/2012
4	4/18/2012	4/20/2012	4/26/2012
4	4/19/2012	4/23/2012	4/26/2012
4	4/20/2012	4/24/2012	4/26/2012
4	4/24/2012	4/26/2012	5/8/2012
4	4/25/2012	4/27/2012	5/8/2012
4	4/26/2012	4/30/2012	5/8/2012
4	4/27/2012	5/1/2012	5/8/2012
4	4/30/2012	5/2/2012	5/15/2012
4	5/1/2012	5/3/2012	5/15/2012
4	5/2/2012	5/4/2012	5/15/2012
4	5/3/2012	5/7/2012	5/15/2012
4	5/4/2012	5/8/2012	5/15/2012
4	5/7/2012	5/9/2012	5/15/2012
4	5/8/2012	5/10/2012	5/15/2012
4	5/9/2012	5/11/2012	5/15/2012
4	5/11/2012	5/15/2012	5/29/2012
4	5/14/2012	5/16/2012	5/29/2012
4	5/15/2012	5/17/2012	5/29/2012
4	5/16/2012	5/18/2012	5/29/2012
4	5/17/2012	5/21/2012	5/29/2012

Form Type	Date of Trans.	Due Date	Date Filed
4	5/18/2012	5/22/2012	5/29/2012
4	5/21/2012	5/23/2012	5/29/2012
4	5/22/2012	5/24/2012	5/29/2012
4	5/29/2012	5/31/2012	6/6/2012
4	5/30/2012	6/1/2012	6/6/2012
4	5/31/2012	6/4/2012	6/6/2012
4	6/4/2012	6/6/2012	6/13/2012
4	6/5/2012	6/7/2012	6/13/2012
4	6/13/2012	6/15/2012	6/20/2012
4	6/14/2012	6/18/2012	6/20/2012
4	6/18/2012	6/20/2012	6/28/2012
4	6/19/2012	6/21/2012	6/28/2012
4	6/20/2012	6/22/2012	6/28/2012
4	6/21/2012	6/25/2012	6/28/2012
4	6/22/2012	6/26/2012	6/28/2012
4	9/17/2012	9/19/2012	9/24/2012
4	9/18/2012	9/20/2012	9/24/2012
4	9/21/2012	9/25/2012	10/1/2012
4	9/24/2012	9/26/2012	10/1/2012
4	9/25/2012	9/27/2012	10/1/2012
4	11/7/2012	11/9/2012	4/3/2014
4	12/6/2012	12/10/2012	12/13/2012
4	4/9/2013	4/11/2013	4/17/2013
4	11/28/2013	12/2/2013	12/3/2013

16. Among Respondent's late-reported transactions since August 2011 are sales of Willis Lease stock made pursuant to pre-arranged "10b5-1 plans" and his receipt of restricted stock grants. More than half of Respondent's sales during 2011 and 2012 were reported one or more days late.

17. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File Schedule 13D Amendments

18. At all relevant times, Respondent has been subject to the reporting requirements of Exchange Act Section 13(d) as the beneficial owner of more than 5% of Willis Lease's common stock and remains subject to those requirements. Respondent filed an initial Schedule 13D statement on December 11, 2000, reporting his beneficial ownership as 58.3% of the class of Willis Lease common stock.

19. Subsequently, Respondent did not file any amendment to the Schedule 13D until May 31, 2013, at that time reporting his beneficial ownership as 31.4% of the class of Willis Lease common stock. During this more than 12 year period, Respondent failed to file multiple amendments required as a result of material changes, including:

- The sale of over 117,000 shares of Willis Lease stock from January 3, 2012 to April 19, 2012, representing a disposition equivalent to more than 1% of Willis Lease's outstanding common stock;
- The sale of over 115,000 shares of Willis Lease stock from April 20, 2012 to September 15, 2012, representing a disposition equivalent to more than 1% of Willis Lease's outstanding common stock; and
- The grant of a total of over 120,000 shares of restricted stock on December 17, 2012 and April 9, 2013, representing an acquisition equivalent to more than 1% of Willis Lease's outstanding common stock.

20. After the Commission's enforcement staff contacted Respondent in connection with his delinquent filings, Respondent filed another amendment on August 28, 2013 to, among other things, "reflect amendments to the Initial 13D that should have been made as of" numerous dates between May 30, 2003 and August 11, 2013 and "to amend and restate [the May 31, 2013 amendment] in its entirety."

21. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rule 13d-2 promulgated thereunder.

Respondent's Remedial Efforts

22. Respondent has represented that his delinquent filings resulted from the failure of Willis Lease personnel to make timely filings on his behalf after Respondent provided timely notification of his transactions. Respondent's reliance on Willis Lease does not excuse his

violations because an insider retains legal responsibility for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made.⁶ In addition, here, Respondent took inadequate and ineffective steps to monitor whether timely and accurate filings were made on his behalf by Willis Lease.

23. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Willis's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$75,500 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

⁶ See SEC Release No. 34-47809 ("[A]n insider is legally responsible for filing regardless of who submits a filing on the insider's behalf"); Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-37260 (May 31, 1996) ("Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made"); see also Bettina Bancroft, 53 SEC Docket 1955, 1993 WL 81744, at *3 (Mar. 23, 1993) ("Although the Commission encourages individuals to obtain professional assistance in meeting their filing obligations, Section 16 of the Exchange Act places the responsibility to report changes in securities ownership on insiders.").

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Charles F. Willis IV as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73065 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16094

In the Matter of

LIGANG WANG,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF
1934 AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Ligang Wang ("Respondent" or "Wang").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

Wang, 53 years old, is a resident of the People's Republic of China. Respondent is a Vice-President of China Shen Zhou Mining & Resources, Inc. ("China Shen Zhou") and the President of Qianzhen Mining, a subsidiary of China Shen Zhou, positions that Respondent has held since 2007.

B. OTHER RELEVANT ENTITIES

China Shen Zhou is a Nevada Corporation with its principal place of business in Beijing, China. China Shen Zhou's common stock was registered with the Commission until June 2014, when the Commission revoked the registration. China Shen Zhou's common stock was listed on NYSE MKT until June 2013, when the securities were delisted.

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C. RESPONDENT FAILED TO FILE REQUIRED SECTION 16(a)
REPORTS ON A TIMELY BASIS

1. As Vice-President of China Shen Zhou, President of Qianzhen Mining, and a designated executive officer of China Shen Zhou for Section 16(a) reporting purposes, Respondent was subject to the reporting requirements of Section 16(a) of the Exchange Act through June 2014. In accordance with those reporting requirements, Respondent was required to report publicly certain transactions in China Shen Zhou's common stock – including purchases and sales – by filing "Form 4" with the Commission within two business days of each such transaction. Respondent was also required to file certain annual statements with the Commission on "Form 5" concerning his transactions in China Shen Zhou's common stock.

2. Respondent, however, failed to file on a timely basis any of the reports required by Section 16(a).

3. From October 2010 through March 2011, Respondent engaged in numerous transactions in the China Shen Zhou's common stock, all of which Respondent failed to report within two business days of each transaction.

4. Respondent failed entirely to report five open-market purchases of China Shen Zhou's common stock that he made from December 2010 to March 2011. During that time period, Respondent purchased a total of 52,100 shares of China Shen Zhou's common stock on five separate dates, but never reported the purchases.

5. In addition, from October 2010 to January 2011, Respondent sold a total of over 10,000 shares of China Shen Zhou's common stock but never reported these transactions. Respondent also failed to report on a timely basis multiple open-market sales of China Shen Zhou's common stock that he executed in December 2010 and January 2011. Respondent did not report those sales until June 14, 2011.

6. The transactions in China Shen Zhou securities that Respondent failed to report within two business days include:

<u>Transaction Date</u>	<u>Reporting Due Date</u>	<u>Date Reported</u>	<u>Transaction Type</u>	<u># of Shares</u>	<u>Share Price</u>
10/21/2010	10/25/2010	Never reported	Sale	10,000	\$4.13
12/13/2010	12/15/2010	6/14/2011	Sale	20,000	\$4.16
12/15/2010	12/17/2010	6/14/2011	Sale	25,000	\$4.70
12/27/2010	12/29/2010	Never Reported	Sale	5,000	\$4.50
12/27/2010	12/29/2010	6/14/2011	Sale	5,000	\$4.50

<u>Transaction Date</u>	<u>Reporting Due Date</u>	<u>Date Reported</u>	<u>Transaction Type</u>	<u># of Shares</u>	<u>Share Price</u>
12/28/2010	12/30/2010	6/14/2011	Sale	35,000	\$5.11
12/29/2010	1/3/2011	6/14/2011	Sale	20,400	\$7.68
12/29/2010	1/3/2011	Never reported	Sale	2,000	\$7.68
12/29/2010	1/3/2011	Never reported	Purchase	22,400	\$7.71
12/30/2010	1/4/2011	Never reported	Purchase	16,000	\$8.60
1/4/2011	1/6/2011	6/14/2011	Sale	1,000	\$9.60
1/5/2011	1/7/2011	6/14/2011	Sale	2,100	\$10.50
1/13/2011	1/18/2011	Never reported	Purchase	11,000	\$8.88
2/7/2011	2/9/2011	Never reported	Purchase	2,500	\$6.53
3/30/2011	4/1/2011	Never reported	Purchase	200	\$5.04

7. Respondent also failed to file required annual statements to report transactions that he previously failed to report during fiscal years 2010 and 2011.

E. VIOLATIONS

As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, which required Respondent to report the above-referenced transactions within two business days, and to file annual statements reporting transactions that he previously failed to report.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it appropriate that cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder, and whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Chair White
Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73063 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16092

In the Matter of

Security Capital Research &
Management Incorporated,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Security Capital Research & Management Incorporated ("SCRM" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

2. SCRM failed to file on a timely basis multiple required Section 16(a) reports of transactions in the securities of Ashford Hospitality Trust, Inc. ("Ashford") it executed on behalf of an affiliated private fund it managed that held beneficial ownership of greater than 10% of Ashford's registered class of common stock.

Respondent

3. SCRM, a Delaware corporation headquartered in Illinois, has been registered with the Commission as an investment adviser since 1997 and provides investment management services focused exclusively on investments in real estate securities. SCRM serves as the investment adviser to an affiliated private fund, Security Capital Preferred Growth LLC, and its subsidiary, Security Capital Preferred Growth Incorporated (collectively "SCPG"). SCRM took responsibility for making all beneficial ownership filings on behalf of SCPG.

Issuer

4. Ashford is a Maryland corporation with its principal place of business in Texas. Ashford's common stock has been at all relevant times registered with the Commission under Section 12 and traded on the New York Stock Exchange (ticker: AHT).

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term "beneficial owner" is defined by reference to Section 13(d) of the Exchange Act and the rules thereunder.² Under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, "beneficial owner" is defined broadly to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.³

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of

² A limited exception under Rule 16a-1(a)(1) applies for certain qualified institutional investors, such as registered investment advisers and broker-dealers, to exclude any shares beneficially owned that are "held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business" and "such shares are acquired ... without the purpose or effect of changing or influencing control of the issuer" (a "Qualified Institution"). A parent holding company or control person of a Qualified Institution may also exclude such shares if the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not Qualified Institutions, does not exceed 1% of the class of securities (a "Qualified Control Person").

³ See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions). There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.⁴

Respondent Was a Cause of Violations of Section 16(a) by SCPG

7. As of December 31, 2008, SCPG had beneficial ownership of approximately 7.4% of the registered class of common stock of Ashford, as reported on an amendment to Schedule 13G filed on behalf of SCPG.⁵ SCPG became a greater 10% beneficial owner as of November 2009 solely due to share repurchases by Ashford that resulted in a decrease in the number of outstanding shares of common stock, as reported in Ashford's Form 10-Q filed on November 6, 2009.

8. SCRM did not file until April 18, 2011 any of the required Section 16(a) reports on behalf of SCPG with respect to holdings and transactions executed beginning October 2010. The late reports include transactions executed on behalf of SCPG on the following dates that were required to be reported on Form 4 within two business days and primarily involved open-market sales and short sales of Ashford common stock having an aggregate market value of more than \$21 million:

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	10/19/2010	10/21/2010	4/18/2011

⁴ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19-20 (Jan. 19, 2001) ("[N]egligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to 'cause' a primary violation that does not require scienter.").

⁵ The Schedule 13G amendment was filed pursuant to Section 13(d) of the Exchange Act and the rules promulgated thereunder, which require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership.

Form Type	Date of Trans.	Due Date	Date Filed
4	11/4/2010	11/8/2010	4/18/2011
4	11/5/2010	11/9/2010	4/18/2011
4	11/8/2010	11/10/2010	4/18/2011
4	12/2/2010	12/6/2010	4/18/2011
4	12/3/2010	12/7/2010	4/18/2011
4	12/8/2010	12/10/2010	4/18/2011
4	12/9/2010	12/13/2010	4/18/2011
4	12/10/2010	12/14/2010	4/18/2011
4	12/13/2010	12/15/2010	4/18/2011
4	12/14/2010	12/16/2010	4/18/2011
4	2/2/2011	2/4/2011	4/18/2011
4	2/3/2011	2/7/2011	4/18/2011
4	2/4/2011	2/8/2011	4/18/2011
4	2/7/2011	2/9/2011	4/18/2011
4	2/8/2011	2/10/2011	4/18/2011
4	2/9/2011	2/11/2011	4/18/2011
4	2/10/2011	2/14/2011	4/18/2011
4	2/11/2011	2/15/2011	4/18/2011
4	2/14/2011	2/16/2011	4/18/2011
4	2/15/2011	2/17/2011	4/18/2011
4	2/16/2011	2/18/2011	4/18/2011
4	2/17/2011	2/22/2011	4/18/2011
4	2/18/2011	2/23/2011	4/18/2011
4	2/25/2011	3/1/2011	4/18/2011
4	2/28/2011	3/2/2011	4/18/2011
4	3/7/2011	3/9/2011	4/18/2011
4	3/8/2011	3/10/2011	4/18/2011
4	3/22/2011	3/24/2011	4/18/2011

Form Type	Date of Trans.	Due Date	Date Filed
4	3/23/2011	3/25/2011	4/18/2011
4	3/24/2011	3/28/2011	4/18/2011
4	3/25/2011	3/29/2011	4/18/2011
4	4/11/2011	4/13/2011	4/18/2011

9. The late-filed Section 16(a) reports were not made for more than two months after SCRM filed a Schedule 13G amendment on behalf of SCPG on February 11, 2011, stating that SCPG had beneficial ownership of 11.0% of the registered class of common stock of Ashford. SCRM also did not file on behalf of SCPG by February 14, 2011 a required Form 5 to report SCPG's transactions that should have been reported on Form 4 during Ashford's fiscal year 2010 but were not.

10. As a result of the conduct described above, Respondent SCRM was a cause of violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by SCPG.

Respondent's Remedial Efforts

11. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent SCRM's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$88,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Security Capital Research & Management Incorporated as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73064 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16093

In the Matter of

Raul S. McQuivey,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Raul S. McQuivey ("McQuivey" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.
2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.
3. Section 13(g) of the Exchange Act and the rules promulgated thereunder generally require any person or group who is directly or indirectly the beneficial owner of more than 5% of a Section 12 registered equity security as of the end of a calendar year to file a statement with the Commission disclosing certain information relating to such beneficial ownership. The duty to file is not dependent on any intention by the stockholder, but on a mechanical 5% ownership test.
4. While subject to the reporting requirements of Section 16(a) as an officer and director of Sutron Corporation ("Sutron") and as a greater than 10% beneficial owner of Sutron's registered common stock, Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of holdings and transactions in Sutron's securities. Respondent also violated Section 13(g) on multiple occasions by failing to timely file required amendments to the Schedule 13G Respondent filed with respect to his beneficial ownership in Sutron.

Respondent

5. McQuivey, age 75, has been the President, Chief Executive Officer, and Chairman of the Board of Directors of Sutron since 1989 and has been an executive officer, director and greater than 10% beneficial owner of Sutron's common stock since it was registered with the

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Commission under Section 12 of the Exchange Act in 1984. At all relevant times, Respondent is and has been subject to Sections 13(g) and 16(a) of the Exchange Act.

Issuer

6. Sutron is a Virginia corporation with its principal place of business in Virginia. Sutron's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NASDAQ stock market (ticker: STRN).

Applicable Legal Framework

7. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

8. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

9. Exchange Act Rule 16a-1(f) defines the term "officer" to include an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function.

10. Although the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and

timely filing,” Section 16 places the responsibility to report changes in securities ownership on insiders.²

11. Under Section 13(g) of the Exchange Act and the operation of Rule 13d-1(d), any person who, as of the end of a calendar year, is directly or indirectly the beneficial owner of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act, and who has not made an acquisition subject to Section 13(d), must publicly file with the Commission a disclosure statement containing the information specified by Schedule 13G within 45 days after the end of the calendar year in which the obligation arises. Exchange Act Rule 13d-2(b) requires that a person filing a Schedule 13G pursuant to Rule 13d-1(d) must file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply.

12. There is no state of mind requirement for violations of Sections 16(a) and 13(g) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]”); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) (“No showing of scienter is required to prove violations of these reporting provisions”); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.”).

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation.”); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)” (emphasis added)); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

13. As an executive officer and director of Sutron and a greater than 10% beneficial owner of Sutron's common stock, Respondent is and has been since 1984 subject to the reporting requirements of Exchange Act Section 16(a).

14. Respondent failed to file since 1984 all Section 16(a) reports with the Commission for his reportable holdings and transactions in Sutron's common stock until after the Commission's enforcement staff contacted him regarding his failure to file. Respondent filed 18 Forms 4 and 11 Forms 5 on May 20, 2014 to report his previously unreported transactions dating back to 2002. These transactions primarily consist of option grants, option exercises, and gifts of common stock, and include transactions executed on the following dates:

Form Type	Date of Trans.	Due Date	Date Filed
5	12/23/2010	2/14/2011	5/20/2014
5	12/22/2011	2/14/2012	5/20/2014
4	5/9/2012	5/11/2012	5/20/2014
4	8/6/2012	8/8/2012	5/20/2014
5	12/21/2012	2/14/2013	5/20/2014
5	12/27/2013	2/14/2014	5/20/2014

15. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File Schedule 13G Amendments

16. Respondent has been subject to the reporting requirements of Exchange Act Section 13(g) and Rules 13d-1(d) and 13d-2(b) since December 31, 1984 as a beneficial owner of more than 5% of Sutron's common stock. Respondent filed an initial Schedule 13G statement in 1984 and an amendment in 1985. Respondent did not file any subsequent amendments to his Schedule 13G until after the Commission's enforcement staff contacted him regarding his failure to file.

17. Respondent was required to file annual amendments to his Schedule 13G to reflect any changes to the information previously reported. On May 20 and 30, 2014, Respondent filed 30 amendments to Schedule 13G. Respondent's failure to file required annual amendments to his Schedule 13G, included:

- an annual amendment due by February 14, 2011 due to a decrease in the number of shares he beneficially owned during 2010;

- an annual amendment due by February 14, 2012 due to a decrease in the number of shares he beneficially owned as of December 31, 2011;
- an annual amendment due by February 14, 2013 due to a decrease in the number of shares he beneficially owned as of December 31, 2012; and
- an annual amendment due by February 14, 2014 due to a decrease in the number of shares he beneficially owned as of December 31, 2013.

18. As a result of the conduct described above, Respondent violated Section 13(g) of the Exchange Act and Rule 13d-2 thereunder.

Respondent's Remedial Efforts

19. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent McQuivey's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(g) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$60,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Raul S. McQuivey as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73045 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16074

In the Matter of

The Royal Bank of Scotland
Group plc,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against The Royal Bank of Scotland Group plc ("RBS" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

2. While subject to this reporting requirement due to its beneficial ownership of more than 10% of a registered class of equity securities of LyondellBasell Industries N.V. ("LyondellBasell") and YRC Worldwide Inc. ("YRC"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of holdings and transactions in LyondellBasell's and YRC's securities.

Respondent

3. RBS is a public limited company organized under the laws of the United Kingdom with its principal place of business in Edinburgh, United Kingdom. RBS is the holding company of a global banking and financial services group of subsidiaries.

Issuers

4. LyondellBasell is a Netherlands corporation with its principal place of business in London, United Kingdom. LyondellBasell's Class A Ordinary Shares have been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on NYSE (ticker: LYB).

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. YRC is a Delaware corporation with its principal place of business in Kansas. YRC's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ Stock Market (ticker: YRCW).

Applicable Legal Framework

6. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").² For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term "beneficial owner" is defined by reference to Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions. Under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, "beneficial owner" is defined broadly to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities.

7. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on

² Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity. See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

8. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

9. RBS was subject to Section 16(a) of the Exchange Act as a beneficial owner of more than 10% of the registered class of LyondellBasell's Class A Ordinary Shares from October 13, 2010 through early December 2010. Until July 22, 2011, Respondent did not file an initial statement of beneficial ownership on Form 3 or any of the required reports on Forms 4 or 5 for its reportable transactions. The late-reported transactions include open-market sales of LyondellBasell's Class A Ordinary Shares with an aggregate market value in excess of \$180 million that were executed on the following dates:

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added).

Form Type	Date of Trans.	Due Date	Date Filed
4	11/30/2010	12/2/2010	7/22/2011
4	12/1/2010	12/3/2010	7/22/2011
4	12/2/2010	12/6/2010	7/22/2011
4	12/3/2010	12/7/2010	7/22/2011

10. The late-filed Section 16(a) reports were not made for more than eight months after Respondent filed an initial statement on Schedule 13G reporting that Respondent may be deemed to beneficially own approximately 11.7% of LyondellBasell's Class A Ordinary Shares as of October 14, 2010.⁵ Respondent also failed to file a required Form 5 to report transactions that should have been reported on Forms 4 during LyondellBasell's fiscal year 2010 but were not.

11. Subsequently, Respondent became subject to Section 16(a) of the Exchange Act as a beneficial owner of more than 10% of the registered class of YRC's common stock from September 16, 2011 through mid-October 2011. Respondent did not file until January 4, 2012 an initial statement of beneficial ownership on Form 3 or any of the required reports on Forms 4 for its reportable transactions in YRC's securities. The late-reported transactions include transactions executed on the following dates, which primarily involved open-market sales of YRC's common stock that had an aggregate market value of approximately \$2 million:

Form Type	Date of Trans.	Due Date	Date Filed
4	9/16/2011	9/20/2011	1/4/2012
4	9/19/2011	9/21/2011	1/4/2012
4	9/20/2011	9/22/2011	1/4/2012
4	9/21/2011	9/23/2011	1/4/2012
4	9/26/2011	9/28/2011	1/4/2012
4	9/27/2011	9/29/2011	1/4/2012
4	9/28/2011	9/30/2011	1/4/2012
4	9/29/2011	10/3/2011	1/4/2012

⁵ A Schedule 13G is a beneficial ownership statement filed pursuant to Sections 13(d) or (g) of the Exchange Act and the rules promulgated thereunder, which generally require any person or group who directly or indirectly acquires or holds beneficial ownership of more than 5% of a registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership.

Form Type	Date of Trans.	Due Date	Date Filed
4	9/30/2011	10/4/2011	1/4/2012
4	10/3/2011	10/5/2011	1/4/2012
4	10/4/2011	10/6/2011	1/4/2012
4	10/5/2011	10/7/2011	1/4/2012
4	10/6/2011	10/11/2011	1/4/2012
4	10/13/2011	10/17/2011	1/4/2012

12. The late-filed Section 16(a) reports were not made for more than two months after Respondent filed an initial statement on Schedule 13G stating that Respondent may be deemed to beneficially own approximately 19.3% of YRC's common stock as of September 16, 2011.

13. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

14. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent RBS's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$120,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Royal Bank of Scotland Group plc as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 9645 / September 10, 2014

SECURITIES EXCHANGE ACT OF 1934

Release No. 73067 / September 10, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16096

In the Matter of

GARY H. RABIN,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Gary H. Rabin ("Rabin" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to these reporting requirements as an officer and director of Advanced Cell Technology, Inc. ("Advanced Cell"), Rabin violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder on multiple occasions by failing to timely or accurately file reports of his transactions and holdings in Advanced Cell's securities.

3. Rabin also violated Sections 17(a)(2) and 17(a)(3) of the Securities Act by failing to timely or accurately file reports of transactions and holdings in Advanced Cell's securities and by signing Advanced Cell's Forms 10-K and proxy statements that were false in that they failed to disclose Rabin's untimely or missing Section 16(a) reports. Rabin likewise violated Section 14(a) of the Exchange Act and Rule 14a-9, and caused Advanced Cell's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

Respondent

4. **Gary H. Rabin ("Rabin" or "Respondent")**, age 48, resides in Santa Monica, California. Rabin began serving as a director of Advanced Cell in 2007; as interim CEO, CFO and chairman of the board of Advanced Cell in December 2010; and as permanent CEO, CFO and chairman of the board in July 2011. On January 21, 2014, Rabin left all of his positions with Advanced Cell when the company did not renew his contract. At all relevant times, Rabin participated in the offering of Advanced Cell stock, a penny stock. Before joining Advanced Cell,

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Rabin was employed by various investment banking firms and hedge funds. Rabin obtained a Series 7 license in 1989, a Series 63 license in 1990, and a Series 24 license in 2003.

Issuer

5. **Advanced Cell** is a Delaware corporation with its principal place of business in Marlborough, Massachusetts. Advanced Cell's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is quoted on the OTC Bulletin Board under the symbol "ACTC." On June 20, 2011, Advanced Cell filed a registration statement on Form S-8 that incorporated by reference all future annual reports and proxy statements to be filed by Advanced Cell until the filing of a post-effective amendment ending the securities offering. Advanced Cell has not yet filed such a post-effective amendment ending the securities offering.

Respondent Failed To File Required Section 16(a) Reports on a Timely Basis

6. After becoming a director of Advanced Cell in December 2007, Rabin repeatedly failed to timely file reports with the Commission required by Section 16(a) of the Exchange Act reflecting his holdings and transactions in Advanced Cell stock. Within ten days of his appointment as a director, in this case, no later than January 7, 2008, Rabin was required to file a Form 3 disclosing whether he owned any securities in Advanced Cell and, if so, how many shares he owned. Rabin never filed that required Form 3.

7. Rabin's noncompliance with Section 16(a)'s reporting requirements continued after he became Advanced Cell's interim CEO, CFO, and chairman in December 2010, and permanent CEO, CFO, and chairman effective July 1, 2011. From February 2010 to the end of June 2012, Rabin never made a timely filing of his Section 16(a) required reports. Specifically, during this period Rabin late filed Forms 4 reporting the following 11 transactions:

<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>	<u>No. of Days Late</u>	<u>Trans. Type</u>	<u>No. of Shares</u>	<u>Gross Proceeds</u>
2/4/2010	2/8/2010	5/4/2010	85	Acquisition	5,890,993	NA
12/14/2010	12/16/2010	2/8/2011	54	Acquisition	5,000,000 + Misc. Stock Options	NA
1/3/2011	1/5/2011	2/8/2011	34	Acquisition	5,000,000	NA
3/15/2011	3/17/2011	5/25/2011	69	Sale	1,196,000	\$192,415.80
3/17/2011	3/21/2011	5/25/2011	65	Sale	4,000	628.00
5/20/2011	5/24/2011	6/3/2011	10	Sale	750,000	\$150,525.00
7/1/2011	7/6/2011	8/25/2011	50	Acquisition	10,000,000 + Misc. Stock Options	NA

<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>	<u>No. of Days Late</u>	<u>Trans. Type</u>	<u>No. of Shares</u>	<u>Gross Proceeds</u>
6/11/2012	6/13/2012	6/19/2012	6	Sale	175,029	\$13,127.18
6/13/2012	6/15/2012	6/19/2012	4	Sale	300,000	\$21,240.00
6/14/2012	6/18/2012	6/19/2012	1	Sale	350,000	\$25,095.00
6/29/2012	7/3/2012	7/9/2012	6	Acquisition	1,000,000	NA

8. From February 2011 through January 2013, Rabin completely failed to file the reports he was required by Section 16(a) to file regarding his sales of Advanced Cell stock on 27 separate trading days. Indeed, even as Rabin was filing some untimely Forms 4, as noted above, those Forms 4 did not disclose all of his sales of Advanced Cell stock. These undisclosed sales included, in aggregate, the sale of 12,115,963 shares of Advanced Cell stock for proceeds of \$1,508,506.75. These sales constituted 66.9% of Rabin's holdings in Advanced Cell stock. Rabin reported the 27 sales late in a Form 4 filed on April 15, 2013:

<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>	<u>No. of Days Late</u>	<u>No. of Shares</u>	<u>Gross Proceeds</u>
2/7/2011	2/9/2011	4/15/2013	796	250,000	\$48,700.00
2/9/2011	2/11/2011	4/15/2013	794	250,000	\$47,225.00
2/28/2011	3/2/2011	4/15/2013	775	390,993	\$68,071.88
4/26/2011	4/28/2011	4/15/2013	718	733,102	\$130,125.61
5/4/2011	5/6/2011	4/15/2013	710	266,898	\$51,938.35
8/9/2011	8/11/2011	4/15/2013	613	667,000	\$110,321.80
8/10/2011	8/12/2011	4/15/2013	612	135,100	\$21,940.24
8/11/2011	8/15/2011	4/15/2013	609	707,913	\$115,956.15
8/12/2011	8/16/2011	4/15/2013	608	539,987	\$91,689.79
10/12/2011	10/14/2011	4/15/2013	549	491,650	\$71,387.58
10/13/2011	10/17/2011	4/15/2013	546	787,429	\$111,657.43
10/14/2011	10/18/2011	4/15/2013	545	720,920	\$104,389.22
1/23/2012	1/25/2012	4/15/2013	446	625,000	\$109,500.00
5/3/2012	5/7/2012	4/15/2013	343	199,910	\$16,652.50
5/7/2012	5/9/2012	4/15/2013	341	122,000	\$9,821.00
5/11/2012	5/15/2012	4/15/2013	335	290,000	\$20,793.00

<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>	<u>No. of Days Late</u>	<u>No. of Shares</u>	<u>Gross Proceeds</u>
5/14/2012	5/16/2012	4/15/2013	334	388,090	\$26,584.17
5/24/2012	5/29/2012	4/15/2013	321	95,471	\$7,666.32
5/25/2012	5/30/2012	4/15/2013	320	80,000	\$6,440.00
5/29/2012	5/31/2012	4/15/2013	319	24,500	\$1,960.00
6/15/2012	6/19/2012	4/15/2013	300	350,000	\$25,375.00
8/27/2012	8/29/2012	4/15/2013	229	1,000,000	\$78,400.00
9/5/2012	9/7/2012	4/15/2013	220	608,556	\$50,023.30
9/6/2012	9/10/2012	4/15/2013	217	391,444	\$32,098.41
10/22/2012	10/24/2012	4/15/2013	173	350,000	\$25,025.00
10/23/2012	10/25/2012	4/15/2013	172	650,000	\$45,565.00
1/10/2013	1/14/2013	4/15/2013	91	1,000,000	\$79,200.00
TOTAL				12,115,963	\$1,508,506.75

9. Rabin never filed annual Forms 5 regarding his initial holdings of Advanced Cell stock or his transactions in Advanced Cell stock in 2011 and 2012. Rabin was required to file annual Forms 5 no later than February 14, 2009, 2012, and 2013 respectively, because of his untimely and unfiled Form 3 and Forms 4.

10. Pursuant to Section 16(a), Rabin was required to timely disclose his transactions in Advanced Cell stock. There was a substantial likelihood that the disclosure of Rabin's sales of Advanced Cell stock would have been viewed by a reasonable investor as significantly altering the total mix of available information given, among other things, Rabin's position as CEO, the frequency with which he was selling Advanced Cell stock, and the number of shares and gross proceeds from his sales, particularly in relation to his holdings.

11. Notwithstanding Rabin's Section 16(a) noncompliance, Advanced Cell's fiscal year 2011 Form 10-K, filed on March 1, 2012, falsely states that:

[T]he Company believes that during its fiscal year ended December 31, 2011, all Reporting Persons timely complied with all applicable filing requirements, except that Form 3s were not timely filed for [three new directors] and have since been filed.

This statement in the fiscal year 2011 Form 10-K was false and misleading as to Rabin's compliance for at least two reasons: (1) Rabin had untimely filed three Forms 4 during 2011 disclosing his three acquisitions and three sales of Advanced Cell stock, and (2) Rabin had sold Advanced Cell stock twelve times in 2011 without filing any reports disclosing such sales which

were required under Section 16(a). Rabin nevertheless signed the fiscal year 2011 Form 10-K, and continued to sell Advanced Cell stock while these materially false and misleading statements were outstanding.

12. Rabin also signed preliminary and definitive proxy statements filed by Advanced Cell, which contained false and misleading statements identical to the above statement in the 2011 Form 10-K, on March 1, 2012 and March 12, 2012 (collectively, the "2012 Proxy Statement").

13. Advanced Cell made similar misstatements in its fiscal year 2012 Form 10-K, filed on March 7, 2013. That Form stated that during the fiscal year ended December 31, 2012: "Gary Rabin, our Chairman and Chief Executive Officer, filed Forms 4 late with respect to four transactions," but failed to disclose that Rabin had never reported selling Advanced Cell stock on fourteen other trading days in 2012. Rabin nevertheless signed the fiscal year 2012 Form 10-K.

14. Rabin's failures to timely disclose his transactions in Section 16(a) reports, and the false and misleading statements in Advanced Cell's Forms 10-K and 2012 Proxy Statement regarding Rabin's compliance with the reporting requirements of Section 16(a) were material. Item 405 of Regulation S-K requires an issuer to disclose the Section 16(a) reporting violations of its insiders in its annual proxy statement and annual report in a clearly marked section. See 17 CFR 229.405(a). Rabin's sales would have been viewed by a reasonable investor as significantly altering the total mix of available information given, among other things, his position as CEO, the frequency with which he was selling Advanced Cell stock, and the size of his sales.

15. Rabin was negligent in: (1) signing and certifying Advanced Cell's fiscal year 2011 Form 10-K and fiscal year 2012 Form 10-K, and in signing its 2012 Proxy Statement because he failed to act with reasonable care in ensuring that these filings included all material information necessary to make the filings not misleading with regard to whether he had complied with Section 16(a); and (2) failing to act with reasonable care to ensure that he timely file required reports pursuant to Section 16(a) of the Exchange Act.

16. As a result of the conduct described above, Rabin violated Section 17(a)(2) of the Securities Act, which prohibits obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in the offer or sale of securities.

17. As a result of the conduct described above, Rabin violated Section 17(a)(3) of the Securities Act, which prohibits engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit in the offer or sale of securities.

18. As a result of the conduct described above, Rabin violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, which prohibit the use of proxy statements containing false or misleading statements with respect to any material fact or which omit to state any material fact necessary in order to make the statements therein not false or misleading.

19. As a result of the conduct described above, Rabin violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, which require timely and accurate filings of Forms 3, 4, and 5 with the Commission.

20. As a result of the conduct described above, Rabin caused Advanced Cell's violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Rabin's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 14(a), and 16(a) of the Exchange Act and Rules 12b-20, 13a-1, 14a-9, and 16a-3 thereunder.

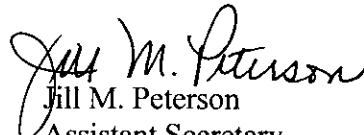
B. Respondent shall pay civil penalties of \$175,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$45,000 within five days of entry of this Order; \$32,500 within 180 days of entry of this Order; \$32,500 within 240 days of entry of this Order; \$32,500 within 300 days of entry of this Order; and \$32,500 within 360 days of entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance plus any additional interest accrued pursuant to 31 U.S.C. 3717 shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Rabin as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lorraine B. Echavarria, Associate Regional Director, Securities and Exchange Commission, 444 S. Flower St., 11th Floor, Los Angeles, CA 90071.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 9644 / September 10, 2014

SECURITIES EXCHANGE ACT OF 1934

Release No. 73066 / September 10, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16095

In the Matter of

ADVANCED CELL
TECHNOLOGY, INC.

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
8A OF THE SECURITIES ACT OF 1933
AND SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Advanced Cell Technology, Inc. ("Advanced Cell" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter involves false and misleading statements in Advanced Cell's annual reports and proxy statements regarding its former Chairman and CEO's compliance with the reporting provisions of Section 16(a) of the Exchange Act. In its fiscal year 2011 Form 10-K, and in preliminary and definitive proxy statements filed in March 2012 (collectively, "2012 Proxy Statement"), Advanced Cell stated that it was unaware of any untimely filed reports required by Section 16(a) (except as described therein), but failed to disclose that its CEO had untimely filed four of the requisite reports and failed to file another twelve reports. In its fiscal year 2012 Form 10-K, Advanced Cell stated that it was aware of certain untimely Section 16(a) reports filed by certain directors, but again failed to disclose that its CEO had not filed all required Section 16(a) reports. As a result, Advanced Cell violated Section 17(a)(2) of the Securities Act and Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, and 14a-9 thereunder as set forth below.

Respondent

2. **Advanced Cell Technology, Inc. ("Advanced Cell" or "Respondent")** is a Delaware corporation with its principal place of business in Marlborough, Massachusetts. Advanced Cell's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is quoted on the OTC Bulletin Board under the symbol "ACTC." On June 20, 2011, Advanced Cell filed a registration statement on Form S-8 that incorporated by reference all future annual reports and proxy statements to be filed by Advanced Cell until the filing of a post-effective amendment ending the securities offering. Advanced Cell has not yet filed such a post-effective amendment ending the securities offering.

3. On May 31, 2012, the Commission charged Advanced Cell with violating Sections 5(a) and 5(c) of the Securities Act and Section 13(a) of the Exchange Act and Rule 13a-11 thereunder. On December 30, 2013, the United States District Court for the Middle District of Florida approved a settlement between the Commission and Advanced Cell pursuant to which Advanced Cell was permanently enjoined from future violations of Sections 5(a) and 5(c) of the Securities Act and Section 13(a) of the Exchange Act and Rule 13a-11 thereunder and was ordered to pay \$3,500,000 in disgorgement and \$586,619 in prejudgment interest. Advanced Cell is currently paying those amounts through a payment plan, with the final payment of \$681,104.16 due on April 15, 2015.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Other Relevant Individual

4. **Gary H. Rabin**, age 48, resides in Santa Monica, California. Rabin served as a director of Advanced Cell from 2007 until January 2014. Rabin also served as CEO and Chairman of the Board of Advanced Cell from December 2010 until January 2014.

Facts

5. At least since he became Advanced Cell's CEO in December 2010, Gary Rabin failed to timely file the requisite reports pursuant to Section 16(a) of the Exchange Act reflecting his acquisitions and sales of Advanced Cell stock. During 2011, Rabin filed four Forms 4 that were each between ten and 69 days late. Likewise, in 2012, Rabin filed two Forms 4, both six days late.

6. Between February 2011 and January 2013, Rabin also failed to file the requisite Section 16(a) reports regarding the sales of Advanced Cell stock on 27 separate trading days. These sales included, in aggregate, the sale of over 12,000,000 shares of Advanced Cell stock for proceeds of over \$1,500,000. During this period, Rabin sold more than 66% of his holdings in ACT stock in undisclosed transactions. On April 15, 2013, Rabin finally reported those 27 transactions in a catch-up Form 4.

7. Notwithstanding Rabin's Section 16(a) noncompliance, in its fiscal year 2011 Form 10-K filed on March 17, 2012, Advanced Cell stated that "To the Company's knowledge, based solely on its review of the copies of such reports received or written representations from certain Reporting Persons that no other reports were required, the Company believes that during its fiscal year ended December 31, 2011, all Reporting Persons timely complied with all applicable filing requirements, except that Form 3s [sic] were not timely filed for [three new directors] and have since been filed." The statement in the fiscal year 2011 Form 10-K and the 2012 Proxy Statement was false and misleading for at least two reasons: (1) Rabin had filed four untimely Forms 4 during 2011, and (2) Rabin had sold Advanced Cell stock twelve times in 2011 without filing the reports required under Section 16(a). Further, contrary to the implication of the statement, Advanced Cell neither sought nor obtained "written representations from certain Reporting Persons that no other reports were required." Advanced Cell thus did not comply with its disclosure obligations under Item 405 of Regulation S-K, 17 CFR 229.405(a), which required Advanced Cell to disclose all of Rabin's late Forms 4 and Rabin's missing Form 5 (in the absence of a written representation by Rabin that no Form 5 was required). Rabin signed the Form 10-K. Advanced Cell filed the 2012 Proxy Statement containing identical language in March 2012. Rabin also signed the 2012 Proxy Statement.

8. Advanced Cell made similar misstatements in its fiscal year 2012 Form 10-K. On March 7, 2013, Advanced Cell filed its fiscal year 2012 Form 10-K, which stated that during the fiscal year ended December 31, 2012, "Gary Rabin, our Chairman and Chief Executive Officer, filed Forms 4 late with respect to four transactions," but did not disclose that Rabin had not reported trading in Advanced Cell stock on fourteen other trading days in 2012.

9. Advanced Cell's false and misleading statements in its Forms 10-K and 2012 Proxy Statement regarding Rabin's noncompliance with Section 16(a)'s reporting requirements were material. Item 405 of Regulation S-K requires an issuer to disclose the Section 16(a) reporting violations of its insiders in its annual proxy statement and annual report in a clearly marked section. See 17 CFR 229.405(a). There is a substantial likelihood that Rabin's trades would have significant importance to the reasonable Advanced Cell investor given, among other things, his position as CEO, the frequency with which he was selling Advanced Cell stock, and his failures to comply with reporting requirements.

Violations

10. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." No finding of scienter is required to establish a violation of Section 17(a)(2). Aaron v. SEC, 446 U.S. 680, 696-97 (1980). Negligent conduct is sufficient. SEC v. Dain Rauscher, Inc., 254 F.3d 852, 856 (9th Cir. 2001). As a result of the conduct described above, Advanced Cell violated Section 17(a)(2) of the Securities Act.

11. Section 13(a) of the Exchange Act and Rule 13a-1 thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission accurate periodic reports, including annual reports on Form 10-K. These reports must be complete and accurate in all material respects. Exchange Act Rule 12b-20 further requires that the required reports must contain any material information necessary to make the required statements made in the reports not misleading. No showing of scienter is necessary to establish a violation of Section 13(a). Ponce v. SEC, 345 F.3d 722, 737 n.10 (9th Cir. 2003). As a result of the conduct described above, Advanced Cell violated Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 thereunder.

12. Section 14(a) of the Exchange Act requires registrants that solicit any proxy or consent or authorization in connection with any security registered pursuant to Section 12 of the Exchange Act (other than an exempted security), to comply with such rules as the Commission may promulgate. Rule 14a-9 prohibits, among other things, the use of proxy statements that omit to state any material fact necessary in order to make the statements therein not false or misleading. Like Section 13(a) of the Exchange Act, no showing of scienter is required to establish a violation of Section 14(a) of the Exchange Act and Rule 14a-9 thereunder. See, e.g., Gerstle v. Gamble-Skogmo, Inc., 478 F.2d 1281, 1298-1300 (2d Cir. 1973). As a result of the conduct described above, Advanced Cell violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder.

Undertakings

Respondent has undertaken to take the following actions:

13. *Independent Compliance Consultant.* With respect to the retention of an independent compliance consultant, Respondent has agreed to the following undertakings:

- a. Advanced Cell shall retain, no later than thirty (30) days of the entry of this Order, the services of an independent compliance consultant (the "Independent Consultant") that is not unacceptable to the Commission staff. The Independent Consultant's compensation and expenses shall be borne exclusively by Advanced Cell.
- b. Advanced Cell shall require that the Independent Consultant conduct during the fourth quarter of 2014 and the fourth quarter of 2015, comprehensive reviews of Advanced Cell's policies and procedures designed to detect and prevent misstatements in Commission filings and other public statements regarding Advanced Cell's Reporting Persons' Section 16(a) compliance.
- c. Advanced Cell shall provide to the Commission staff, within sixty (60) days of entry of this Order, a copy of an engagement letter detailing the Independent Consultant's responsibilities, which shall include the reviews to be made by the Independent Consultant as described in this Order.
- d. Advanced Cell shall require that, within forty-five (45) days from the end of the applicable quarterly period, the Independent Consultant shall submit a written and dated report of its findings to Advanced Cell and to the Commission staff (the "Report"). Advanced Cell shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to Advanced Cell's policies and procedures and/or disclosures, and a procedure for implementing the recommended changes in or improvements to Advanced Cell's policies and procedures and/or disclosures.
- e. Advanced Cell shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, Advanced Cell shall in writing advise the Independent Consultant and the Commission staff of any recommendations that Advanced Cell considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Advanced Cell considers unduly burdensome, impractical or inappropriate, Advanced Cell need not adopt that recommendation at that time, but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.
- f. As to any recommendation with respect to Advanced Cell's policies and procedures on which Advanced Cell and the Independent Consultant do not agree, Advanced Cell and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen

(15) days after the conclusion of the discussion and evaluation by Advanced Cell and the Independent Consultant, Advanced Cell shall require that the Independent Consultant inform Advanced Cell and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Advanced Cell considers to be unduly burdensome, impractical, or inappropriate. Advanced Cell shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between Advanced Cell and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, Advanced Cell shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

g. Within ninety (90) days of Advanced Cell's adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Advanced Cell shall certify in writing to the Independent Consultant and the Commission staff that Advanced Cell has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to C. Dabney O'Riordan, Assistant Regional Director, Los Angeles Regional Office, Securities and Exchange Commission, 5670 Wilshire Blvd., Suite 1100, Los Angeles, California, 90036, or such other address as the Commission staff may provide.

h. Advanced Cell shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of their files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

i. To ensure the independence of the Independent Consultant, Advanced Cell: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

j. Advanced Cell shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Advanced Cell, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant,

attorney-client, auditing or other professional relationship with Advanced Cell, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

14. *Reporting Person Training.* Advanced Cell shall require each of its Section 16(a) Reporting Persons to complete at least two hours of training regarding the reporting requirements of Section 16(a) during the calendar years ending December 31, 2014, December 31, 2015, and December 31, 2016. Advanced Cell shall require each of its Section 16(a) Reporting Persons to certify in writing that he or she has completed the aforementioned training no later than thirty days following the end of the applicable calendar year. Within forty-five days following the end of the applicable calendar year, Advanced Cell shall report to the Commission staff whether all of its Section 16(a) Reporting Persons completed the required training, and if not, why not.

15. *Cooperation.* Advanced Cell undertakes to cooperate fully with the Enforcement Division and with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Advanced Cell shall:

- (a) Produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission staff, subject to any restrictions under the law of any foreign jurisdiction;
- (b) Use its best efforts to cause its officers, employees, and directors to be interviewed by the Commission staff at such time as the staff reasonably may direct;
- (c) Use its best efforts to cause its officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission staff; and
- (d) In connection with any testimony of Respondent's officers, employees, and directors to be conducted at deposition, hearing, or trial pursuant to a notice or subpoena, Respondent agrees that any such notice or subpoena for Respondent's officers', employees', and directors' appearance and testimony may be served by regular or electronic mail on: John P. Stigi, Sheppard Mullin Richter & Hampton LLP, 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067; jstigi@sheppardmullin.com.

16. *Deadlines.* For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

17. *Certification of Compliance.* Advanced Cell shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits

sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Advanced Cell agrees to provide such evidence. The certification and supporting material shall be submitted to C. Dabney O'Riordan, Assistant Regional Director, Los Angeles Regional Office, Securities and Exchange Commission, 5670 Wilshire Blvd., Suite 1100, Los Angeles, California, 90036, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

18. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Advanced Cell's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Advanced Cell cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent Advanced Cell cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, and 14a-9 thereunder.

C. Respondent shall comply with the undertakings enumerated in Sections 13, 14, and 17 above.

D. Respondent shall pay civil penalties of \$375,000 to the United States Treasury. Payment shall be made in full no later than July 15, 2015. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Advanced Cell Technology, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to C. Dabney O'Riordan, Assistant Regional Director, Los Angeles Regional Office, Securities and Exchange Commission, 5670 Wilshire Blvd., Suite 1100, Los Angeles, California, 90036.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73044 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16073

In the Matter of

Peter R. Kellogg,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Peter R. Kellogg ("Kellogg" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.

2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

3. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

4. While subject to these reporting requirements, Respondent violated Section 13(d) by failing to timely file initial statements or required amendments with respect to Respondent's beneficial ownership of the registered common stock of Mercer International Inc. ("Mercer"), TRC Companies, Inc. ("TRC"), Evans & Sutherland Computer Corporation ("Evans"), and MFC Industrial Ltd. ("MFC") and violated Section 16(a) by failing to timely file multiple reports of transactions in Mercer's, TRC's, and Evans' securities.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. Kellogg, age 71, was subject at all relevant times to Section 13(d) of the Exchange Act as an acquirer of greater than 5% beneficial ownership of registered classes of securities of Mercer, TRC, Evans, and MFC, and was subject at all relevant times to Section 16(a) of the Exchange Act as a greater than 10% beneficial owner of registered classes of securities of Mercer, TRC, and Evans.

Issuers

6. Mercer is a Washington corporation with its principal place of business in Vancouver, Canada. Mercer's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: MERC). Kellogg acquired beneficial ownership of more than 5% of Mercer's registered class of common stock in 2003, acquired greater than 10% beneficial ownership in 2004, and acquired beneficial ownership of more than 20% as of 2008. Kellogg most recently reported on July 3, 2014 beneficial ownership of approximately 27.6%.

7. TRC is a Delaware corporation with its principal place of business in Connecticut. TRC's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the New York Stock Exchange (ticker: TRR). Kellogg acquired beneficial ownership of more than 5% of TRC's registered class of common stock in 1998, acquired greater than 10% beneficial ownership in 1999, and acquired beneficial ownership of more than 20% as of December 2010. Kellogg most recently reported on September 21, 2012 beneficial ownership of approximately 20.3%.

8. Evans is a Utah corporation with its principal place of business in Utah. Evans' common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and is quoted on the OTC Bulletin Board (ticker: ESCC). Kellogg acquired beneficial ownership of more than 10% of Evans' common stock in February 2001, and acquired beneficial ownership of more than 20% as of October 26, 2011. Kellogg most recently reported on July 3, 2014 beneficial ownership of approximately 26.3%.

9. MFC is a corporation organized under the laws of the Province of British Columbia, Canada, with its principal place of business in Vancouver, Canada. MFC's Common Share Purchase Rights are and have been at all relevant times been registered with the Commission under Section 12 of the Exchange Act and traded on the New York Stock Exchange (ticker: MIL). MFC is a foreign private issuer that files annual reports on Form 20-F. Kellogg acquired more than 5% of MFC's Common Shares in 1999 and most recently reported on February 10, 2014 beneficial ownership of approximately 33.0%.

Applicable Legal Framework

10. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

11. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

12. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. An acquisition or disposition of 1% or more of a class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

13. As an alternative, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person "has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," and is not directly or indirectly the beneficial owner of 20% or more of the class of securities. Under Rule 13d-1(f)(1), a person who has filed a Schedule 13G pursuant to Rule 13d-1(c) must file a Schedule 13D within 10 days after beneficial ownership first equals or exceeds 20 percent of the

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

³ SEC Release No. 34-39538, at n. 14.

class and is prohibited from voting or acquiring additional securities of the class until 10 days after the Schedule 13D is filed.

14. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").⁴ For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest.⁵ To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

15. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁶ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁷

⁴ Exchange Act Rule 3a12-3 exempts securities registered by a foreign private issuer from Section 16 of the Exchange Act.

⁵ Pecuniary interest is defined in Exchange Act Rule 16a-1(2)(i) as "the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities." Under Exchange Act Rule 16a-1(a)(2)(ii), the term indirect pecuniary interest is defined to include securities held in trusts for the benefit of a member of a person's immediate family for which the person serves as a trustee and securities held by members of a person's immediate family sharing the same household.

⁶ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2,

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

16. Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) as a greater than 10% beneficial owner of Mercer's common stock since 2004, as a greater than 10% beneficial owner of TRC's common stock since 1999, and as a greater than 10% beneficial owner of Evans' common stock since 2001.⁸

17. Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission to reflect changes in his beneficial ownership of Mercer, TRC, and Evans, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

<u>Issuer</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Mercer	8/4/2010	8/6/2010	8/12/2010
Mercer	8/10/2010	8/12/2010	7/3/2014

2002) ("No showing of scienter is required to prove violations of these reporting provisions."); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁷ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

⁸ For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), Respondent has beneficial ownership of securities he holds directly, securities held by entities he controls, and securities held by trusts and foundations he controls. For purposes of reporting holdings and transactions under Section 16(a), Respondent has beneficial ownership of such securities to the extent of his pecuniary interest therein and is deemed to have an indirect pecuniary interest in securities held by his spouse and in trusts for the benefit of a member of his immediate family for which he serves as a trustee.

Issuer	Date of Trans.	Due Date	Date Filed
Mercer	9/16/2010	9/20/2010	10/1/2010
Mercer	9/17/2010	9/21/2010	10/1/2010
TRC	12/1/2010	12/3/2010	7/3/2014
TRC	12/23/2010	12/28/2010	7/3/2014
TRC	9/7/2011	9/9/2011	10/25/2011
Mercer	9/26/2011	9/28/2011	7/3/2014
Mercer	11/14/2011	11/16/2011	11/18/2011
Mercer	1/5/2012	1/9/2012	1/24/2012
Mercer	1/13/2012	1/18/2012	1/24/2012
Mercer	5/3/2012	5/7/2012	7/3/2014
Mercer	7/3/2012	7/6/2012	7/3/2014
Mercer	9/18/2012	9/20/2012	9/24/2012
Mercer	9/26/2012	9/28/2012	7/3/2014
Mercer	9/28/2012	10/2/2012	10/16/2012
Mercer	10/4/2012	10/9/2012	10/16/2012
Mercer	10/5/2012	10/10/2012	10/16/2012
Evans	12/6/2012	12/10/2012	5/1/2014
Mercer	12/20/2012	12/24/2012	7/3/2014
Mercer	12/21/2012	12/26/2012	7/3/2014
Evans	2/11/2013	2/13/2013	5/1/2014
Evans	6/12/2013	6/14/2013	5/1/2014

18. Respondent's late reports with respect to Mercer primarily involved open-market purchases of Mercer common stock, including purchases with an aggregate market value of \$5 million that Respondent did not file until after the Commission's enforcement staff contacted him regarding his failure to file in 2014. Respondent's late reports with respect to TRC and Evans primarily involved open-market purchases or sales.

19. Respondent also failed to file required Forms 5: (i) to report transactions in Mercer's securities that should have been reported on Forms 4 during Mercer's fiscal years 2010, 2011 and 2012, but were not; (ii) to report transactions in TRC's securities that should have been reported on Forms 4 during TRC's fiscal year 2011, but were not; and (iii) to report transactions in Evans'

securities that should have been reported on Forms 4 during Evans' fiscal years 2011, 2012, and 2013, but were not.

20. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File Schedule 13D Statements and Amendments

21. At all relevant times, Respondent is and has been subject to the reporting requirements of Exchange Act Section 13(d) as a beneficial owner of more than 5% of a class of registered equity securities of Mercer, TRC, Evans and MFC.

22. Respondent filed an initial statement on Schedule 13G pursuant to Rule 13d-1(c) on February 15, 2006 with respect to his beneficial ownership of Mercer's class of common stock. By August 2008, Respondent was no longer eligible to file on Schedule 13G because Respondent's beneficial ownership exceeded 20%. As a result, Respondent was required to file a Schedule 13D within 10 days of the date on which Respondent's beneficial ownership equaled or exceeded 20% and was prohibited from the time of the acquisition of 20% or more of the class until the expiration of the tenth day from the date of the filing of the Schedule from voting the securities or acquiring additional beneficial ownership under Rule 13d-1(f). Respondent did not file a Schedule 13D until March 25, 2010 and acquired beneficial ownership of additional Mercer securities while prohibited from doing so. Subsequently, Respondent thereafter failed to timely file multiple amendments required as a result of material changes to the information set forth previously on Schedule 13D, including:

- Respondent's acquisition through purchases of Mercer's common stock or purchases of Mercer securities convertible into shares of Mercer's common stock that constituted more than 1% of the class of outstanding Mercer common stock during each of the following periods, none of which were reflected in an amendment until December 29, 2010: (i) from August 4 to August 9, 2010; (ii) from August 10, 2010 to August 12, 2010; (iii) from August 16 to August 17, 2010; and (iv) August 20, 2010; and
- Respondent's acquisition through open market purchases of Mercer's common stock constituting more than 1% of the class of outstanding Mercer common stock between September 2011 and September 2012, which was not reflected in an amendment until February 11, 2013.

23. Respondent filed an initial statement on Schedule 13G pursuant to Rule 13d-1(c) on January 8, 1999 with respect to his beneficial ownership of TRC's class of common stock. By December 1, 2010, Respondent was no longer eligible to file on Schedule 13G because Respondent's beneficial ownership exceeded 20%. As a result, Respondent was required to file a Schedule 13D within 10 days of the date on which Respondent's beneficial ownership equaled

or exceeded 20% under Rule 13d-1(f). Respondent did not file a Schedule 13D until September 21, 2012. Respondent's transactions also triggered the requirement that Respondent file multiple amendments during this time period.

24. Respondent filed an initial statement on Schedule 13G pursuant to Rule 13d-1(c) on February 9, 2001 with respect to his beneficial ownership of Evans' class of common stock. By October 26, 2011, Respondent was no longer eligible to file on Schedule 13G because Respondent's beneficial ownership exceeded 20%. As a result, Respondent was required to file a Schedule 13D within 10 days of the date on which Respondent's beneficial ownership equaled or exceeded 20% and was prohibited from the time of the acquisition of 20% or more of the class until the expiration of the tenth day from the date of the filing of the Schedule from voting the securities or acquiring additional beneficial ownership under Rule 13d-1(f). Respondent did not file a Schedule 13D until September 21, 2012 and acquired beneficial ownership of additional Evans securities while prohibited from doing so. Subsequently, Respondent also failed to timely file amendments required as a result of material changes to the information set forth previously on the Schedule 13D, including Respondent's purchase of 1.9 million shares on February 11, 2013, constituting an acquisition of more than 10% of Evans' outstanding class of common stock, which was not reflected in an amendment until July 3, 2014.

25. Respondent filed an initial statement on Schedule 13D on October 4, 2000 with respect to his beneficial ownership of MFC's class of common shares. Respondent did not file any amendment to the Schedule 13D until January 4, 2013. During this more than 12 year period, Respondent failed to file multiple amendments required as a result of material changes to the information set forth previously on Schedule 13D, including to report numerous acquisitions through open-market purchases constituting more than 1% of the class of outstanding class of common shares. For example:

- Respondent's open market purchases constituting more than 1% of the class of MFC's outstanding common shares between October 19, 2011 and October 26, 2011;
- Respondent's open market purchases constituting more than 1% of the class of MFC's outstanding common shares between December 22, 2011 and January 5, 2012;
- Respondent's acquisition of over of over 2 million of MFC's common shares in August 2012, constituting more than 3% of the class of outstanding MFC common shares; and
- Respondent's acquisition of over of over 600,000 of MFC's common shares in October 2012, constituting more than 1% of the class of outstanding MFC common shares.

26. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 promulgated thereunder.

Respondent's Remedial Efforts

27. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Kellogg's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Peter R. Kellogg as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73042 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16071

In the Matter of

Alan M. Schnaid,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Alan M. Schnaid ("Schnaid" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as an officer of Starwood Hotels & Resorts Worldwide, Inc. ("Starwood"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of holdings and transactions in Starwood's securities.

Respondent

3. Schnaid, age 46, has served as the principal accounting officer and corporate controller of Starwood since 2005. Schnaid is and has been at all relevant times an officer of Starwood subject to Section 16(a) of the Exchange Act.

Issuer

4. Starwood is a Maryland corporation with its principal place of business in Connecticut. Starwood's common stock is and has been at all relevant times registered with the Commission under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange (ticker: HOT).

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”).

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been reported on Form 3 or 4 during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Exchange Act Rule 16a-1(f) defines the term “officer” to include an issuer’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function.

8. Although the Commission has encouraged the practice of many issuers to “help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing,” Section 16 places the responsibility to report changes in securities ownership on insiders.²

9. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17–18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)].”); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2,

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

10. As the principal accounting officer of Starwood since 2005, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) as an "officer" and remains subject to those requirements.

11. Until July 11, 2012, Respondent did not file with the Commission an initial statement of beneficial ownership on Form 3 or any of the required reports on Forms 4 and 5 for his transactions in Starwood securities between December 2005 and March 2012. On July 11, 2012, Respondent filed a Form 3 and filed Forms 4 to report previously unreported holdings and transactions, including transactions executed on the following dates:

Form Type	Date of Trans.	Due Date	Date Filed
4	8/4/2010	8/6/2010	7/11/2012
4	9/1/2010	9/3/2010	7/11/2012
4	2/18/2011	2/23/2011	7/11/2012
4	2/28/2011	3/2/2011	7/11/2012
4	3/2/2011	3/4/2011	7/11/2012
4	5/26/2011	5/31/2011	7/11/2012
4	2/27/2012	2/29/2012	7/11/2012
4	2/28/2012	3/1/2012	7/11/2012
4	3/1/2012	3/5/2012	7/11/2012

2002) ("No showing of scienter is required to prove violations of these reporting provisions."); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added).

12. Among Respondent's late-reported transactions between August 2010 and March 2012 are sales of Starwood's common stock with an aggregate market value in excess of \$5.2 million and Respondent's receipt and exercise of stock option awards. Respondent also failed to file required Forms 5 to report these transactions that should have been reported on Forms 4 during this time period but were not.

13. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

14. Respondent and Starwood have represented that because Starwood failed to inform Respondent prior to July 2012 that he was subject to the reporting requirements of Section 16 in his position as principal accounting officer, Respondent failed to timely file multiple reports during this period of over seven years. Respondent's reliance on Starwood does not excuse his violations because Respondent served in a position specifically designated in the definition of "officer" under Exchange Act Rule 16a-1(f) and an insider retains legal responsibility for compliance with the filing requirements.⁵

15. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Schnaid's Offer.

Accordingly, pursuant to Section 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

⁵ See SEC Release No. 34-47809 ("[A]n insider is legally responsible for filing regardless of who submits a filing on the insider's behalf"); Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-37260 (May 31, 1996) ("Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made").

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Alan M. Schnaid as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73047 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16076

In the Matter of

Brown Brothers Harriman &
Co.,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Brown Brothers Harriman & Co. ("BBH" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

3. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

4. BBH failed to file on a timely basis multiple required Section 16(a) reports of transactions in the securities of Deltek, Inc. ("Deltek") and Tyler Technologies, Inc. ("Tyler") it executed on behalf of an affiliated fund it managed that held greater than 10% of Deltek's and Tyler's respective registered classes of common stock. BBH also failed to file on a timely basis required amendments to the Schedules 13G it filed with respect to Deltek and Tyler.

Respondent

5. BBH is a custodian bank organized under New York law as a partnership and has its principal place of business in New York. BBH provides investment management and advisory

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

services to a private pooled investment vehicle structured as a limited partnership or other type of entity, (the "BBH Fund"), of which BBH also serves as the general partner. BBH designated certain of its partners to exercise voting and investment power over investments of the BBH Fund and to serve as directors of the BBH Fund (hereafter referred to together with the BBH Fund as the "BBH Affiliates"). BBH took responsibility for making all beneficial ownership filings on behalf of the BBH Affiliates.

Issuers

6. Deltek is a Delaware corporation with its principal place of business in Virginia. Deltek's common stock was registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: PROJ) until October 2012.

7. Tyler is a Delaware corporation with its principal place of business in Texas. Tyler's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: TYL).

Applicable Legal Framework

8. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

9. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

10. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person "has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," and is not directly or indirectly the beneficial owner of 20% or more of the class of securities (a "Passive Investor 13G Filer"). Exchange Act Rule 13d-2(b) requires that a Passive Investor 13G Filer must file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, a Passive Investor 13G Filer must also amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and must thereafter promptly amend the Schedule 13G upon increasing or decreasing its beneficial ownership by more than 5% of the class under Exchange Act Rule 13d-2(d). Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

11. Rule 13d-1(b) also provides certain qualified institutional investors, such as registered investment advisers, broker-dealers, or banks that fall within the definition in Exchange Act Section 3(a)(6), with an additional alternative by permitting a Schedule 13G to be filed in lieu of Schedule 13D within 45 days after the end of the calendar year in which they made the triggering acquisition, so long as the specified institutions acquired beneficial ownership of the securities "in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect" (a "Qualified Institution 13G Filer"). A parent holding company or control person of a Qualified Institution 13G Filer may also file on Schedule 13G under Rule 13d-1(b), provided that the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not eligible as Qualified Institution 13G Filers, does not exceed 1% of the class of securities (a "Qualified Control Person 13G Filer").⁴

³ Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

⁴ A Qualified Institution or Qualified Control Person 13G Filer must also file an annual amendment within 45 days after the end of each calendar year under Exchange Act Rule 13d-2(b) if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, Rule 13d-2(c) requires that the Schedule 13G be amended within 10 days after the end of the first month in which the 10% threshold was crossed if beneficial ownership continues to exceed 10% at month-

12. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, except that persons eligible as Qualified Institution 13G Filers or Qualified Control Person 13G Filers are not deemed the beneficial owner of any securities held by the qualified institution "for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business ... as long as such shares are acquired by such institutions or persons without the purpose or effect of changing or influencing control of the issuer."

13. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

14. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁵ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁶

end; thereafter, amendments must be filed within 10 days after any month-end at which beneficial ownership has increased or decreased by more than 5% from that previously reported.

⁵ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather,

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

15. The BBH Fund held greater than 10% of the registered class of common stock of Tyler as of October 26, 2009 and of Deltek as of November 18, 2010, resulting in the BBH Affiliates becoming subject to the reporting requirements of Section 16(a) as of such dates.⁷

16. BBH filed an untimely Form 3 on behalf of the BBH Affiliates with respect to Tyler on April 30, 2010 and did not file a Form 3 on behalf of the BBH Affiliates with respect to Deltek until September 26, 2011.

17. BBH also did not file until September 26, 2011 any of the required reports on Form 4 with respect to reportable transactions in Deltek executed beginning in November 2010 and reportable transactions in Tyler executed beginning in June 2011. The late reported-transactions consist of open-market purchases of Deltek common stock and open-market sales of Tyler common stock that were executed on behalf of the BBH Fund on the following dates:

Issuer	Date of Trans.	Due Date
Deltek	11/19/2010	11/23/2010
Deltek	11/22/2010	11/26/2010
Deltek	12/2/2010	12/6/2010
Deltek	1/10/2011	1/12/2011

appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.”).

⁶ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation.”); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

⁷ None of the BBH Affiliates were eligible under Exchange Act Rule 16(a)(1) subparagraphs (i) through (xi) to exclude any securities over which they were deemed to have direct or indirect beneficial ownership under Rule 13d-3.

Issuer	Date of Trans.	Due Date
Deltek	1/24/2011	1/26/2011
Deltek	3/2/2011	3/4/2011
Tyler	6/28/2011	6/30/2011
Tyler	6/29/2011	7/1/2011
Tyler	6/30/2011	7/5/2011
Tyler	7/1/2011	7/6/2011
Tyler	7/5/2011	7/7/2011
Tyler	7/6/2011	7/8/2011
Tyler	7/7/2011	7/11/2011
Tyler	7/8/2011	7/12/2011
Tyler	7/13/2011	7/15/2011
Tyler	7/19/2011	7/21/2011
Tyler	7/20/2011	7/22/2011

18. The purchases of Deltek common stock had an aggregate market value of more than \$18 million and the sales of Tyler common stock had an aggregate market value of more than \$3 million. BBH also failed to file a required Form 5 on behalf of the BBH Affiliates to report transactions that should have been reported on Forms 4 during Deltek's fiscal year 2010 but were not.

19. As a result of the conduct described above, Respondent BBH was a cause of violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by the BBH Affiliates.

Respondent Failed to Timely File Schedule 13G Amendments

20. BBH and the BBH Affiliates were subject to the reporting requirements of Exchange Act Section 13(d) with respect to Tyler and Deltek. BBH filed an initial statement on Schedule 13G pursuant to Exchange Act Rule 13d-1(c) on behalf of itself and the BBH Affiliates with respect to Tyler on May 18, 2007 and with respect to Deltek on February 12, 2010.

21. BBH failed to timely file multiple amendments required, including to reflect:

- As of the end of calendar year 2010, the number of shares of Deltek beneficially owned by BBH and the BBH Affiliates had increased from the amount previously set forth, which was not reflected in an amendment until December 8,

2011, more than 45 days after the end of the calendar year, in violation of Rule 13d-2(b); and

- As of the end of calendar year 2010, the number of shares of Tyler beneficially owned by BBH and the BBH Affiliates had increased from the amount previously set forth, which was not reflected in an amendment until December 8, 2011, more than 45 days after the end of the calendar year, in violation of Rules 13d-2(b).

22. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rule 13d-2 thereunder and was a cause of violations by the BBH Affiliates of such provisions.

Respondent's Remedial Efforts

23. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent BBH's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 promulgated thereunder.

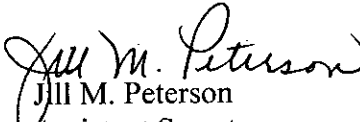
B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$120,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Brown Brothers Harriman & Co. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73046 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16075

In the Matter of

Neil Gagnon,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Neil Gagnon ("Gagnon" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.

2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

3. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

4. While subject to these reporting requirements due to his beneficial ownership of the registered common stock of General Finance Corporation ("GFN") and NTS, Inc. ("NTS"), Respondent violated Section 16(a) by failing to timely file multiple reports of transactions in GFN's and NTS's securities and violated Section 13(d) by failing to timely file a Schedule 13D and required amendments with respect to Respondent's beneficial ownership of GFN's securities.

Respondent

5. Neil Gagnon, age 73, is the managing member and principal shareholder of Gagnon Securities LLC ("GS"). GS has been registered with the Commission as an investment adviser

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

since October 2005 and as a broker-dealer since June 2000. Gagnon acquired beneficial ownership of more than 5% of GFN's common stock by June 2007, became a greater than 10% beneficial owner by September 2007, and acquired beneficial ownership of more than 20% of GFN's common stock by December 2009. Gagnon acquired beneficial ownership of more than 5% of NTS's common stock by November 2007, and became a greater than 10% beneficial owner by January 2008.

Issuers

6. GFN is a Delaware corporation with its principal place of business in California. GFN's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: GFN).

7. NTS, formerly known as XFone, Inc., is a Nevada corporation with its principal place of business in Texas. NTS's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: NTS).

Applicable Legal Framework

8. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

9. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

10. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. An acquisition or disposition of 1% or more of a class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

11. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person "has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," and is not directly or indirectly the beneficial owner of 20% or more of the class of securities (a "Passive Investor 13G Filer"). Under Rule 13d-1(f), a person who has filed a Schedule 13G pursuant to Rule 13d-1(c) must file a Schedule 13D within 10 days after beneficial ownership first equals 20% of the class and is prohibited from voting or acquiring additional securities of the class until 10 days after the Schedule 13D is filed.

12. Rule 13d-1(b) also provides certain qualified institutional investors, such as registered investment advisers and broker-dealers, with an additional alternative by permitting a Schedule 13G to be filed in lieu of Schedule 13D within 45 days after the end of the calendar year in which they made the triggering acquisition, so long as the specified institutions acquired beneficial ownership of the securities "in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect" (a "Qualified Institution 13G Filer"). A parent holding company or control person of a Qualified Institution 13G Filer may also file on Schedule 13G under Rule 13d-1(b), provided that the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not eligible as Qualified Institution 13G Filers, does not exceed 1% of the class of securities (a "Qualified Control Person 13G Filer"). Under Rule 13d-1(g), any person who has filed a Schedule 13G pursuant to Rule 13d-1(b) and thereafter ceases to be a person permitted to file under such rule must file within 10 days thereafter a Schedule 13D or an amendment to Schedule 13G if such person satisfies the requirements of Rule 13d-1(c).

13. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial

³ SEC Release No. 34-39538, at n. 14.

owner under Section 13(d) of the Exchange Act and the rules thereunder, except that persons eligible as Qualified Institution 13G Filers or Qualified Control Person 13G Filers are not deemed the beneficial owner of any securities held by the qualified institution "for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business ... as long as such shares are acquired by such institutions or persons without the purpose or effect of changing or influencing control of the issuer."

14. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

15. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁴ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁵

⁴ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁵ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

16. Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) as a greater than 10% beneficial owner of GFN's common stock since September 2007 and as a greater than 10% beneficial owner of NTS's common stock from January 2008 to July 2012.⁶ Respondent filed initial statements of beneficial ownership on Form 3 on September 27, 2007 with respect to GFN and on January 10, 2008 with respect to NTS.

17. Subsequently, Respondent did not file until May 2012 any of the required reports on Forms 4 and 5 for reportable transactions in GFN's or NTS's securities from March 2008 through March 2012. Respondent filed a total of 10 Forms 5 and 1 Form 4 on May 21 and 24, 2012, to report transactions in GFN's securities on more than 75 dates from March 2008 through March 2012 that were required to be reported on Form 4 within two business days of the date of the transactions. Respondent also filed a total of 8 Forms 5 and 1 Form 4 on May 21 and 23, 2012 to report transactions in NTS's securities on more than 100 dates from March 2008 through March 2012 that were required to be reported on Form 4 within two business days of the date of the transactions. Thereafter, Respondent also failed to file on a timely basis additional transactions required to be reported on Form 4 within two business days.

18. Respondent's late reports with respect to GFN include transactions executed on the following dates, which primarily involved open-market sales of GFN's common stock:

Date of Trans.	Due Date	Date Filed
7/22/2010	7/26/2010	5/21/2012
9/15/2010	9/17/2010	5/21/2012
9/17/2010	9/21/2010	5/21/2012

"does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)" (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

⁶ Respondent was not eligible under Exchange Act Rule 16a-1(a)(1)(vii) to exclude any securities over which he is deemed to have direct or indirect beneficial ownership under Rule 13d-3 with respect to both GFN and NTS. At all relevant times, the aggregate amount held directly by Respondent, and directly and indirectly by Respondent's affiliates other than GS, exceeded 1% of the relevant class of common stock, and at certain times exceeded 10% of the class.

Date of Trans.	Due Date	Date Filed
9/27/2010	9/29/2010	5/21/2012
10/1/2010	10/5/2010	5/21/2012
4/19/2011	4/21/2011	5/21/2012
4/20/2011	4/22/2011	5/21/2012
4/21/2011	4/25/2011	5/21/2012
4/25/2011	4/27/2011	5/21/2012
6/1/2011	6/3/2011	5/21/2012
6/3/2011	6/7/2011	5/21/2012
8/8/2011	8/10/2011	5/24/2012
9/14/2011	9/16/2011	5/24/2012
3/15/2012	3/19/2012	5/24/2012
6/1/2012	6/5/2012	1/14/2013
2/6/2013	2/8/2013	2/13/2013
2/13/2013	2/15/2013	2/20/2013
2/27/2013	3/1/2013	3/5/2013

19. Respondent's late reports with respect to NTS include transactions executed on the following dates, which primarily involved open-market sales of NTS's common stock:

Date of Trans.	Due Date	Date Filed
10/7/2010	10/12/2010	5/21/2012
10/8/2010	10/13/2010	5/21/2012
10/14/2010	10/18/2010	5/21/2012
11/4/2010	11/8/2010	5/21/2012
11/9/2010	11/12/2010	5/21/2012
11/10/2010	11/15/2010	5/21/2012
11/15/2010	11/17/2010	5/21/2012
11/16/2010	11/18/2010	5/21/2012
1/19/2011	1/21/2011	5/21/2012

Date of Trans.	Due Date	Date Filed
1/26/2011	1/28/2011	5/21/2012
1/27/2011	1/31/2011	5/21/2012
1/28/2011	2/1/2011	5/21/2012
1/31/2011	2/2/2011	5/21/2012
2/1/2011	2/3/2011	5/21/2012
9/26/2011	9/28/2011	5/21/2012
11/2/2011	11/4/2011	5/21/2012
12/19/2011	12/21/2011	5/21/2012
12/20/2011	12/22/2011	5/21/2012
12/21/2011	12/23/2011	5/21/2012
1/9/2012	1/11/2012	5/21/2012
1/27/2012	1/31/2012	5/21/2012
2/15/2012	2/17/2012	5/23/2012
2/16/2012	2/21/2012	5/23/2012
2/17/2012	2/22/2012	5/23/2012
2/21/2012	2/23/2012	5/23/2012
2/28/2012	3/1/2012	5/23/2012
3/5/2012	3/7/2012	5/23/2012
6/26/2012	6/28/2012	7/12/2012
6/27/2012	6/29/2012	7/12/2012
6/28/2012	7/2/2012	7/12/2012
7/3/2012	7/6/2012	7/12/2012
7/5/2012	7/9/2012	7/12/2012

20. Respondent also failed to timely file required Forms 5 with respect to GFN and NTS to report transactions that should have been reported on Forms 4 during this time period but were not.

21. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File Schedule 13D Statements and Amendments

22. Respondent has been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of GFN's common stock as of June 29, 2007, and remains subject to those requirements. Respondent filed a Schedule 13G as a Passive Investor 13G Filer pursuant to Rule 13d-1(c) on July 9, 2007. Respondent and GS thereafter jointly filed a Schedule 13G purportedly pursuant to Rule 13d-1(b) as a Qualified Control Person 13G Filer and a Qualified Institution 13G Filer. However, Respondent was not eligible as a Qualified Control Person 13G Filer because the aggregate amount held directly by Respondent, and directly and indirectly by Respondent's affiliates other than GS, exceeded 1% of GFN's class of common stock.

23. By December 31, 2009, Respondent was also no longer eligible to file on Schedule 13G as a Passive Investor 13G Filer because Respondent's beneficial ownership exceeded 20% of GFN's class of common stock. As a result, Respondent was required to file a Schedule 13D within 10 days of the date on which Respondent's beneficial ownership equaled or exceeded 20% and was prohibited from the time of the acquisition of 20% or more of the class until the expiration of the tenth day from the date of the filing of the Schedule from voting the securities or acquiring additional beneficial ownership under Rule 13d-1(f). From December 2009 until April 5, 2012, Respondent incorrectly filed on Schedule 13G and acquired beneficial ownership of additional GFN securities while prohibited from doing so. Respondent's transactions also triggered the requirement that Respondent file multiple amendments during this time period.

24. In addition, Respondent thereafter failed to timely file amendments required as a result a disposition of more than 1% of GFN's common stock in transactions. For example, by January 14, 2013, Respondent had disposed of more than 1% of GFN's common stock beneficially owned and between January 15, 2013 and January 22, 2013 disposed of additional GFN common stock constituting more than 1% of the class. Respondent did not file an amendment reflecting such dispositions until April 25, 2013.

25. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 promulgated thereunder.

Respondent's Remedial Efforts

26. Respondent has represented that his delinquent filings prior to May 2012 resulted from the failure of GS's outside counsel and GS personnel to correctly advise him of his obligations and to make timely filings on his behalf. Respondent's reliance on GS personnel and consultation with counsel does not excuse his violations because an insider retains legal

responsibility for compliance with the filing requirements.⁷ In addition, here, Respondent has not offered adequate evidence of the scope of the engagements of counsel, the factual circumstances upon which counsels' advice was predicated, or that Respondent and GS personnel fully complied with such advice.

27. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Gagnon's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

⁷ See SEC Release 34-37260 (May 31, 1996) ("Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made."); SEC v. Levy, 706 F. Supp. 61, 63-69 (D.D.C. 1989) (defendant asserting that his attorney "misinformed defendant about his obligation to disclose" information on Schedule 13D held liable because scienter is not an element of such violations); see also SEC v. Savoy Indus., Inc., 665 F.2d 1310, 1315 n.28 (D.D.C. 1981) ("Compliance with federal securities laws cannot be avoided simply by retaining outside counsel to prepare required documents."); Bettina Bancroft, 53 SEC Docket 1955, 1993 WL 81744, at *3 (Mar. 23, 1993) ("Although the Commission encourages individuals to obtain professional assistance in meeting their filing obligations, Section 16 of the Exchange Act places the responsibility to report changes in securities ownership on insiders.").

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Neil Gagnon as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73043 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16072

In the Matter of

Donald A. Nunemaker,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Donald A. Nunemaker ("Nunemaker" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as an officer of Willis Lease Finance Corporation ("Willis Lease"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Willis Lease's securities.

Respondent

3. Nunemaker, age 65, has served as President of Willis Lease since July 2011. Prior to his appointment as President, he served as Executive Vice President – General Manager Leasing from September 2006 to July 2011 and Chief Operating Officer from March 2001 to September 2006. Respondent is and has been at all relevant times an officer of Willis Lease subject to Section 16(a) of the Exchange Act.

Issuer

4. Willis Lease is a Delaware corporation with its principal place of business in California. Willis Lease's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: WLFC).

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Exchange Act Rule 16a-1(f) defines the term "officer" to include an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function.

8. Although the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing," Section 16 places the responsibility to report changes in securities ownership on insiders.²

9. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d)

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

10. As a designated executive officer of Willis Lease since at least March 2001, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) and remains subject to those requirements.

11. Respondent has failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	1/3/2011	1/5/2011	1/18/2011
4	1/4/2011	1/6/2011	1/18/2011
4	1/5/2011	1/7/2011	1/18/2011
4	1/7/2011	1/11/2011	1/18/2011
4	1/10/2011	1/12/2011	1/18/2011
4	1/11/2011	1/13/2011	1/18/2011
4	1/24/2011	1/26/2011	2/4/2011
4	1/28/2011	2/1/2011	2/4/2011
4	2/7/2011	2/9/2011	2/15/2011

or 16(a)]]"); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions"); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added).

Form Type	Date of Trans.	Due Date	Date Filed
4	2/18/2011	2/23/2011	2/28/2011
4	5/26/2011	5/31/2011	6/3/2011
4	8/11/2011	8/15/2011	8/24/2011
4	2/3/2012	2/7/2012	2/24/2012
4	4/17/2012	4/19/2012	4/26/2012
4	4/18/2012	4/20/2012	4/26/2012
4	4/19/2012	4/23/2012	4/26/2012
4	4/23/2012	4/25/2012	5/8/2012
4	4/24/2012	4/26/2012	5/8/2012
4	4/27/2012	5/1/2012	5/8/2012
4	4/30/2012	5/2/2012	5/16/2012
4	5/1/2012	5/3/2012	5/16/2012
4	5/2/2012	5/4/2012	5/16/2012
4	5/3/2012	5/7/2012	5/16/2012
4	5/4/2012	5/8/2012	5/16/2012
4	5/7/2012	5/9/2012	5/16/2012
4	5/8/2012	5/10/2012	5/16/2012
4	12/13/2012	12/17/2012	12/19/2012
4	1/2/2013	1/4/2013	1/17/2013
4	1/7/2013	1/9/2013	1/17/2013
4	1/9/2013	1/11/2013	2/6/2013
4	1/11/2013	1/15/2013	2/6/2013
4	1/16/2013	1/18/2013	2/6/2013
4	1/17/2013	1/22/2013	2/6/2013
4	1/23/2013	1/25/2013	2/6/2013
4	1/24/2013	1/28/2013	2/6/2013
4	1/31/2013	2/4/2013	2/6/2013
4	2/4/2013	2/6/2013	2/19/2013

Form Type	Date of Trans.	Due Date	Date Filed
4	2/27/2013	3/1/2013	3/20/2013
4	2/28/2013	3/4/2013	3/20/2013
4	3/1/2013	3/5/2013	3/20/2013
4	4/9/2013	4/11/2013	4/17/2013
4	4/24/2013	4/26/2013	5/13/2013
4	5/3/2013	5/7/2013	5/13/2013
4	5/6/2013	5/8/2013	5/13/2013

12. Among Respondent's late-reported transactions since January 2011 are sales of Willis Lease stock made pursuant to pre-arranged "10b5-1 plans" and his receipt of restricted stock grants. More than half of Respondent's stock sales during 2011 and 2012 were reported one or more days late.

13. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

14. Respondent has represented that his delinquent filings resulted from the failure of Willis Lease personnel to make timely filings on his behalf after Respondent provided timely notification of his transactions. Respondent's reliance on Willis Lease does not excuse his violations because an insider retains legal responsibility for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made.⁵ In addition, here, Respondent took inadequate and ineffective steps to monitor whether timely and accurate filings were made on his behalf by Willis Lease.

⁵ See Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003) ("[A]n insider is legally responsible for filing regardless of who submits a filing on the insider's behalf"); Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-37260 (May 31, 1996) ("Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made"); see also Bettina Bancroft, 53 SEC Docket 1955, 1993 WL 81744, at *3 (Mar. 23, 1993) ("Although the Commission encourages individuals to obtain professional assistance in meeting their filing obligations, Section 16 of the Exchange Act places the responsibility to report changes in securities ownership on insiders.").

15. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Nunemaker's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Donald A. Nunemaker as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73041 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16070

In the Matter of

Starwood Hotel & Resorts
Worldwide, Inc.,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Starwood Hotel & Resorts Worldwide, Inc. ("Starwood" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the issuer reporting requirements and beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10 percent of such class (collectively, "insiders"), to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

3. Reporting issuers are required to disclose in the proxy statement for the issuer's annual meeting, or its annual report, Section 16 reporting delinquencies by its insiders. Although insiders remain responsible for the timeliness and accuracy of their required Section 16(a) reports, the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing." Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

4. Since 1980, Respondent has been a reporting issuer and its insiders have been required to file Section 16(a) reports. Respondent's principal accounting officer failed to file numerous required reports between 2005 and 2012. Respondent failed to comply with its disclosure obligations to report such delinquencies.

Respondent

5. Starwood is a Maryland corporation with its principal place of business in Connecticut. Starwood's common stock is and has been at all relevant times registered with the Commission under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

(ticker: HOT). Starwood files annual reports on Form 10-K pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

Applicable Legal Framework

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rule 13a-1 requires such issuers to file annual reports with the Commission containing specified information. In 1991, the Commission adopted Item 405 of Regulation S-K to help address compliance with Section 16(a) by requiring reporting issuers to disclose in annual proxy and information statements or annual reports information regarding delinquent Section 16(a) filings by insider.²

8. Item 405 requires an issuer to disclose any known late filing or failure by an insider to file a report required by Section 16(a) based on the issuer's review of Forms 3 and 4 filed during the most recent fiscal year, and Forms 5 filed with respect to the most recent fiscal year, by the issuer's insiders. Section 16(a) reports are posted on EDGAR, and thus are readily available to issuers to evaluate their timeliness. A "known" failure to file includes, but is not limited to, a failure to file a Form 3, which is required of all insiders, and a failure to file a Form 5 in the absence of a written representation that no Form 5 is required, unless the issuer otherwise knows that no Form 5 is required. The Item 405 disclosure of any late filings or known failures to file must (i) identify by name each insider who failed to file on a timely basis Forms 3, 4, or 5 during the most recent fiscal year or prior fiscal years and (ii) set forth the number of late reports, the number of late-reported transactions, and any known failure to file.

² Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-28869 (Feb. 21, 1991); 17 C.F.R. § 229.405.

An issuer does not have an obligation under Item 405 to research or make inquiry regarding delinquent Section 16(a) filings beyond the review specified in the item.

9. An issuer that files annual reports with the Commission on Form 10-K, such as Respondent, is required to include the Item 405 disclosure in its Form 10-K, or incorporate by reference to its Form 10-K the Item 405 disclosure made in the issuer's definitive proxy or information statement for its annual meeting of shareholders for the election of directors, if that definitive proxy or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. Inaccurate or incomplete Item 405 disclosures may constitute a violation of Section 13(a) of the Exchange Act and Rule 13a-1. No showing of scienter is necessary to establish a violation of Section 13(a).³

Respondent's Inaccurate Item 405 Disclosures

10. As an issuer required to file annual reports on Form 10-K, Respondent is and has been at all relevant times required to disclose information concerning delinquent Section 16(a) filings by its insiders to the extent required by Item 405 of Regulation S-K.

11. Respondent made misstatements and failed to disclose, as required, failures to file on a timely basis pursuant to Item 405 by its principal accounting officer during Respondent's fiscal years 2005 through 2011. These failures include:

a. Item 405 disclosure for Respondent's 2010 fiscal year misstated that "all Section 16(a) filing requirements applicable to its Directors, executive officers and greater than 10 percent beneficial owners were complied with for the most recent fiscal year." (Starwood Definitive Proxy Statement filed on March 21, 2011, incorporated by reference into Form 10-K filed on February 18, 2011). In fact, during such fiscal year, Starwood's principal accounting officer failed to file required Section 16(a) reports, which Respondent was required to disclose pursuant to Item 405; and

b. Item 405 disclosure for Respondent's 2011 fiscal year misstated that "all Section 16(a) filing requirements applicable to its Directors, executive officers and greater than 10 percent beneficial owners were complied with for the most recent fiscal year." (Starwood Definitive Proxy Statement filed on March 21, 2012, incorporated by reference into Form 10-K filed on February 21, 2012). In fact, during such fiscal year, Starwood's principal accounting officer failed to file required Section 16(a) reports, which Respondent was required to disclose pursuant to Item 405.

12. As a result of the conduct described above, Respondent failed to comply with its disclosure obligation to the extent required by Item 405 and violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

³ SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978).

13. Starwood disclosed its prior failures to disclose the missing filings in its Item 405 disclosure for Respondent's 2012 fiscal year, stating that "because the Company failed to timely advise Alan Schnaid that he was subject to the reporting requirements of Section 16 in his position as chief accounting officer, Mr. Schnaid failed to timely file one Form 3 and 24 Form 4s with respect to 84 transactions. Once the Company informed Mr. Schnaid of his filing obligation, the Company assisted Mr. Schnaid with reporting all late transactions in July 2012." (Starwood Definitive Proxy Statement filed on April 18, 2013, incorporated by reference into Form 10-K filed on February 21, 2013).

Respondent's Remedial Efforts

14. In determining to accept the Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Starwood's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rule 13a-1 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Starwood Hotel & Resorts Worldwide, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73040 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16069

In the Matter of

Edgar W. Levin,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Edgar W. Levin ("Levin" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as a director of Dorman Products, Inc. ("Dorman"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Dorman's securities.

Respondent

3. Levin, age 81, has been a director of Dorman since 1993. Levin is and has been at all relevant times subject to Section 16(a) of the Exchange Act.

Issuer

4. Dorman is a Pennsylvania corporation with its principal place of business in Pennsylvania. Dorman's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ Global Select Market (ticker: DORM).

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Although the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing," Section 16 places the responsibility to report changes in securities ownership on insiders.²

8. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions"); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent,

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

9. As a director of Dorman since 1993, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) and remains subject to those requirements.

10. Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	9/1/2010	9/3/2010	9/21/2010
4	9/2/2010	9/7/2010	9/21/2010
4	12/10/2010	12/14/2010	4/29/2014
4	3/8/2011	3/10/2011	3/17/2011
5	4/27/2011	4/29/2011	2/9/2012
4	5/31/2011	6/2/2011	6/7/2011
4	6/14/2011	6/16/2011	6/24/2011
4	8/5/2011	8/9/2011	8/16/2011
4	9/14/2011	9/16/2011	9/28/2011
4	10/28/2011	11/1/2011	11/15/2011
4	10/31/2011	11/2/2011	11/15/2011
4	11/15/2011	11/17/2011	12/5/2011
4	11/17/2011	11/21/2011	12/5/2011
4	11/23/2011	11/28/2011	12/5/2011
4	12/5/2011	12/7/2011	12/9/2011
4	5/21/2012	5/23/2012	5/30/2012
4	6/8/2012	6/12/2012	6/18/2012

constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	8/6/2012	8/8/2012	8/10/2012
4	8/20/2012	8/22/2012	8/27/2012

11. Respondent's late-reported transactions between September 2010 and August 2012 primarily involved open-market sales of Dorman's common stock, more than half of which were reported one or more days late. Respondent also failed to file a required Form 5 to report a transaction that should have been reported on Form 4 during Dorman's fiscal year 2010 but was not.

12. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

13. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Levin's Offer.

Accordingly, pursuant to Section 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$46,300 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Edgar W. Levin as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73039 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16068

In the Matter of

Lazarus Management
Company LLC,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Lazarus Management Company LLC ("Lazarus" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

3. Lazarus failed to file on a timely basis multiple required Section 16(a) reports of transactions it executed on behalf of affiliated funds it managed in the securities of Authentidate Holding Corp. ("Authentidate"), AeroGrow International, Inc. ("AeroGrow"), Coupon Express, Inc. ("Coupon Express"), Silver Bull Resources, Inc. ("Silver Bull") and Teletouch Communications, Inc. ("Teletouch"), and failed to timely file certain statements or amendments required under Section 13(d).

Respondent

4. Lazarus, a Colorado limited liability company headquartered in Denver, Colorado, provides investment management services to affiliated private funds structured as limited partnerships or other types of entities (the "Lazarus Funds") that principally invest in

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

microcap issuers. Lazarus has been registered with the State of Colorado as an investment adviser since June 14, 2012 and was previously registered with the Commission from May 2004 to June 2012. Lazarus or an affiliated entity serves as general partner of the Lazarus Funds (or in a similar capacity) and had beneficial ownership of the securities held by the Lazarus Funds under Section 13(d) of the Exchange Act and the rules thereunder. The Lazarus Funds and Lazarus' control person (collectively, the "Lazarus Affiliates") also each shared direct or indirect beneficial ownership of securities held by the Lazarus Funds. Lazarus took responsibility for making all beneficial ownership filings on behalf of the Lazarus Affiliates.

Issuers

5. Authentidate is a Delaware corporation with its principal place of business in New Jersey. Authentidate's common stock has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NASDAQ stock market (ticker: ADAT).

6. Silver Bull is a Nevada corporation with its principal place of business in Vancouver, British Columbia, Canada. Silver Bull's common stock has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NYSE MKT (ticker: SVBL).

7. AeroGrow is a Nevada corporation with its principal place of business in Colorado. AeroGrow's common stock has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and quoted on the OTC Link ATS (ticker: AERO).

8. Coupon Express (f/k/a PSI Corporation) is a Nevada corporation with its principal place of business in New York. Coupon Express' common stock has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and quoted on the OTC Link ATS (ticker: CPXP).

9. Teletouch is a Delaware corporation with its principal place of business in Texas. At all relevant times, Teletouch's common stock was registered with the Commission under Section 12 of the Exchange Act and quoted on the OTC Link ATS (ticker: TLLEQ).

Applicable Legal Framework

10. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

11. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly,

through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

12. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. An acquisition or disposition of 1% or more of a class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

13. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person "has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," and is not directly or indirectly the beneficial owner of 20% or more of the class of securities (a "Passive Investor 13G Filer"). Exchange Act Rule 13d-2(b) requires that a Passive Investor 13G Filer must file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, a Passive Investor 13G Filer must also amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and must thereafter promptly amend the Schedule 13G upon increasing or decreasing its beneficial ownership by more than 5% of the class under Exchange Act Rule 13d-2(d). Under Rule 13d-1(f), a person who has filed a Schedule 13G pursuant to Rule 13d-1(c) must file a Schedule 13D within

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

³ SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

10 days after beneficial ownership first equals 20% of the class and is prohibited from voting or acquiring additional securities of the class until 10 days after the Schedule 13D is filed.⁴

14. Rule 13d-1(b) also provides certain qualified institutional investors, such as registered investment advisers, broker-dealers, or banks that fall within the definition in Exchange Act Section 3(a)(6), with an additional alternative by permitting a Schedule 13G to be filed in lieu of Schedule 13D within 45 days after the end of the calendar year in which they made the triggering acquisition, so long as the specified institutions acquired beneficial ownership of the securities "in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect" (a "Qualified Institution 13G Filer"). A parent holding company or control person of a Qualified Institution 13G Filer may also file on Schedule 13G under Rule 13d-1(b), provided that the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not eligible as Qualified Institution 13G Filers, does not exceed 1% of the class of securities (a "Qualified Control Person 13G Filer").⁵

15. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, except that persons eligible as Qualified Institution 13G Filers or Qualified Control Person 13G Filers are not deemed the beneficial owner of any securities held by the qualified institution "for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business ... as long as such shares are

⁴ Thereafter, if a person's beneficial ownership declines below 20%, Exchange Act Rule 13d-1(h) permits a person who has filed a Schedule 13D pursuant to Rule 13d-1(f) to again report beneficial ownership on Schedule 13G pursuant to Rule 13d-1(c), provided the person qualifies thereunder and files a Schedule 13G statement.

⁵ A Qualified Institution or Qualified Control Person 13G Filer must also file an annual amendment within 45 days after the end of each calendar year under Exchange Act Rule 13d-2(b) if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, Rule 13d-2(c) requires that the Schedule 13G be amended within 10 days after the end of the first month in which the 10% threshold was crossed if beneficial ownership continues to exceed 10% at month-end; thereafter, amendments must be filed within 10 days after any month-end at which beneficial ownership has increased or decreased by more than 5% from that previously reported.

acquired by such institutions or persons without the purpose or effect of changing or influencing control of the issuer.”

16. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

17. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁶ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁷

⁶ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)].”); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) (“No showing of scienter is required to prove violations of these reporting provisions.”); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.”).

⁷ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation.”); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is

Respondent Was a Cause of Violations of Section 16(a) by the Lazarus Affiliates

18. The Lazarus Funds held greater than 10% of the registered class of common stock of Authentidate as of February 11, 2011, of Silver Bull as of September 26, 2011, of AeroGrow as of June 30, 2009, of Coupon Express as of January 5, 2010, and of Teletouch as of June 2, 2011, resulting in the Lazarus Affiliates becoming subject to the reporting requirements of Section 16(a) as of such dates.⁸

19. Lazarus failed to file on a timely basis multiple required Section 16(a) reports with the Commission on behalf of the Lazarus Affiliates with respect to reportable transactions in the securities of Authentidate, Silver Bull, AeroGrow, Coupon Express, and Teletouch, including to report transactions Lazarus executed on behalf of the Lazarus Funds on the following dates that were required to be reported on Form 4 within two business days:

Issuer	Date of Trans.	Due Date	Date Filed
Silver Bull	9/27/2011	9/29/2011	10/6/2011
Silver Bull	9/28/2011	9/30/2011	10/6/2011
Silver Bull	9/29/2011	10/3/2011	10/6/2011
Silver Bull	9/30/2011	10/4/2011	10/6/2011
Coupon Express	10/12/2011	10/14/2011	12/22/2011
Coupon Express	10/24/2011	10/26/2011	12/22/2011
Coupon Express	10/31/2011	11/2/2011	12/22/2011
Coupon Express	11/1/2011	11/3/2011	12/22/2011
Coupon Express	11/2/2011	11/4/2011	12/22/2011
Coupon Express	11/3/2011	11/7/2011	12/22/2011
Coupon Express	11/4/2011	11/8/2011	12/22/2011
Coupon Express	11/8/2011	11/10/2011	12/22/2011
Coupon Express	11/15/2011	11/17/2011	12/22/2011
Teletouch	11/15/2011	11/17/2011	12/15/2011

irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

⁸ None of the Lazarus Affiliates were eligible under Exchange Act Rule 16(a)(1) subparagraphs (i) through (xi) to exclude any securities over which they were deemed to have direct or indirect beneficial ownership under Rule 13d-3.

Issuer	Date of Trans.	Due Date	Date Filed
Teletouch	11/16/2011	11/18/2011	12/15/2011
Coupon Express	11/17/2011	11/21/2011	12/22/2011
Silver Bull	11/21/2011	11/23/2011	12/15/2011
Silver Bull	11/22/2011	11/25/2011	12/15/2011
Silver Bull	11/25/2011	11/29/2011	12/15/2011
Authentidate	11/25/2011	11/29/2011	12/14/2011
Silver Bull	11/28/2011	11/30/2011	12/15/2011
Authentidate	11/28/2011	11/30/2011	12/14/2011
Coupon Express	11/30/2011	12/2/2011	12/22/2011
Silver Bull	11/30/2011	12/2/2011	12/15/2011
Teletouch	11/30/2011	12/2/2011	12/15/2011
Authentidate	11/30/2011	12/2/2011	12/14/2011
Silver Bull	12/1/2011	12/5/2011	12/15/2011
Authentidate	12/1/2011	12/5/2011	12/14/2011
Silver Bull	12/2/2011	12/6/2011	12/15/2011
Teletouch	12/2/2011	12/6/2011	12/15/2011
Authentidate	12/2/2011	12/6/2011	12/14/2011
Coupon Express	12/5/2011	12/7/2011	12/22/2011
Silver Bull	12/5/2011	12/7/2011	12/15/2011
Teletouch	12/5/2011	12/7/2011	12/15/2011
Authentidate	12/5/2011	12/7/2011	12/14/2011
Silver Bull	12/6/2011	12/8/2011	12/15/2011
Teletouch	12/6/2011	12/8/2011	12/15/2011
Authentidate	12/6/2011	12/8/2011	12/14/2011
Silver Bull	12/7/2011	12/9/2011	12/15/2011
Teletouch	12/7/2011	12/9/2011	12/15/2011
Authentidate	12/7/2011	12/9/2011	12/14/2011
Silver Bull	12/8/2011	12/12/2011	12/15/2011
Teletouch	12/8/2011	12/12/2011	12/15/2011

Issuer	Date of Trans.	Due Date	Date Filed
Authentidate	12/8/2011	12/12/2011	12/14/2011
Coupon Express	12/9/2011	12/13/2011	12/22/2011
Silver Bull	12/9/2011	12/13/2011	12/15/2011
Teletouch	12/9/2011	12/13/2011	12/15/2011
Coupon Express	12/13/2011	12/15/2011	12/22/2011
AeroGrow	6/1/2012	6/5/2012	6/15/2012
Coupon Express	8/8/2012	8/10/2012	11/1/2012
AeroGrow	9/18/2012	9/20/2012	9/25/2012
AeroGrow	12/31/2012	1/3/2013	5/15/2013

20. The late-reported transactions primarily involved open-market purchases required to be reported on Form 4 within two business days after the date of the transaction and small acquisitions that no longer qualified for deferred reporting on Form 5 under Exchange Act Rule 16a-6. Lazarus also failed to file until August 14, 2012 a required Form 5 due by July 15, 2012 to report small acquisitions of Teletouch's common stock eligible for deferred reporting under Rule 16a-6 during Teletouch's fiscal year ended May 31, 2012 that were not earlier reported on Form 4.

21. As a result of the conduct described above, Lazarus was a cause of violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by the Lazarus Affiliates.

Respondent Failed to Timely File on Schedule 13D and 13G

22. At all relevant times, Lazarus and the Lazarus Affiliates are and have been subject to the reporting requirements of Exchange Act Section 13(d) after having acquired beneficial ownership of more than 5% of a class of registered equity securities of Authentidate. Lazarus filed an initial statement on Schedule 13G pursuant to Rules 13d-1(b) and 13d-1(c) on October 18, 2010 on behalf of itself and the Lazarus Affiliates with respect to beneficial ownership of Authentidate's class of common stock. By June 21, 2012, the Lazarus Affiliates were no longer eligible to file on Schedule 13G because their beneficial ownership exceeded 20% due to certain warrants held by the Lazarus Funds that became exercisable upon a shareholder vote. As a result, the Lazarus Affiliates were required to file a Schedule 13D within 10 days of the date on which their beneficial ownership equaled or exceeded 20% under Rule 13d-1(f). Lazarus did not file a Schedule 13D statement until August 28, 2012, which was filed on behalf of Lazarus and the Lazarus Affiliates as joint reporting persons. Subsequently, Lazarus also failed to timely file amendments required as a result of material changes to the information set forth previously on Schedule 13D. For example, Lazarus entered into two agreements with Authentidate on behalf of the Lazarus Funds on September 24 and 25, 2012 in which additional securities were purchased and Lazarus received the right to nominate a board member and/or appoint an

observer to the board if certain conditions were met. These agreements were not reflected in an amendment until February 7, 2013, in violation of Rule 13d-2(a).

23. At all relevant times, Lazarus and the Lazarus Affiliates are and have been subject to the reporting requirements of Exchange Act Section 13(d) after having acquired beneficial ownership of more than 5% of a class of registered equity securities of AeroGrow in 2008. On July 23, 2009, Lazarus filed a Schedule 13D statement on behalf of itself and the Lazarus Affiliates reflecting beneficial ownership in excess of 20% of the class of AeroGrow common stock. Lazarus failed to timely file multiple amendments to the Schedule 13D required as a result of material changes to the information set forth previously. For example, Lazarus did not reflect a decline in beneficial ownership of AeroGrow's class of common stock from approximately 70.6% to approximately 60.1% that occurred on October 3, 2011 due to a convertible note that was held by the Lazarus Funds being repaid in full and no longer convertible into common stock, in violation of Rule 13d-2(a). In addition, after Lazarus resumed filing on Schedule 13G pursuant to Rule 13d-1(h) on May 4, 2012 reporting beneficial ownership of 16.9%, Lazarus failed to file a required annual amendment to Schedule 13G, due by February 14, 2013 pursuant to Rule 13d-2(b), which was not made until May 15, 2013.

24. At all relevant times, Lazarus and the Lazarus Affiliates are and have been subject to the reporting requirements of Exchange Act Section 13(d) after having acquired beneficial ownership of more than 5% of a class of registered equity securities of Coupon Express in 2008. On January 6, 2011, Lazarus filed a Schedule 13D statement on behalf of itself and the Lazarus Affiliates reflecting beneficial ownership in excess of 20% of the class of Coupon Express common stock. After filing an amendment to Schedule 13D on May 3, 2011 reflecting beneficial ownership of approximately 25.4%, Lazarus failed to make any Section 13(d) filings until August 27, 2013. Although Lazarus and the Lazarus Affiliates' beneficial ownership dropped below 20% as of approximately October 2011 and therefore became eligible under Rule 13d-1(h) to again file on Schedule 13G pursuant to Rule 13d-1(c), Lazarus did not file a Schedule 13G statement until August 27, 2013 (or any amendment to Schedule 13D). During this period, Lazarus was required to promptly file amendments to Schedule 13D pursuant to Rule 13d-2(a) to reflect material changes, but did not. For example, by December 30, 2011, Lazarus had purchased on behalf of the Lazarus Funds shares of Coupon Express common stock in an amount constituting in excess of 1% of the class of outstanding common stock.

25. As a result of the conduct described above, Lazarus violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder and was a cause of violations by the Lazarus Affiliates of such provisions.

Respondent's Remedial Efforts

26. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Lazarus's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall pay a civil money penalty in the amount of \$60,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: (i) \$15,000 within 14 days of the entry of this Order, (ii) \$15,000 within 120 days of the entry of this Order, (iii) \$15,000 within 240 days of the entry of this Order, and (iv) \$15,000 within 360 days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Lazarus Management Company LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73038 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16067

In the Matter of

P.A.W. Capital Partners, L.P.,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against P.A.W. Capital Partners, L.P. ("PAW" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

3. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.

4. While subject to these reporting requirements, PAW failed to file on a timely basis multiple required Section 16(a) reports of transactions in the securities of Crumbs Bake Shop, Inc. ("Crumbs") it executed on behalf of affiliated funds it managed and failed to timely file the initial statement and amendments required under Section 13(d).

Respondent

5. PAW, a Delaware limited partnership headquartered in Connecticut, provides investment management services to affiliated private funds structured as limited partnerships (the "PAW Funds"). PAW became registered with the Commission as an investment adviser as of

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

May 1, 2012. PAW or an affiliated entity serves as general partner of the PAW Funds and had beneficial ownership of the securities held by the PAW Funds under Section 13(d) of the Exchange Act and the rules thereunder. The PAW Funds, PAW's general partner, and PAW's control person (collectively, the "PAW Affiliates") also each shared direct or indirect beneficial ownership of securities held by the PAW Funds. PAW took responsibility for making all beneficial ownership filings on behalf of the PAW Affiliates.

Issuer

6. Crumbs is a Delaware corporation with its principal place of business in New York. At all relevant times, Crumbs' common stock has been registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: CRMB).

Applicable Legal Framework

7. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer. However, as an alternative, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person "has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," and is not directly or indirectly the beneficial owner of 20% or more of the class of securities.

8. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are

9. Exchange Act Rule 13d-2(b) requires that a person filing a Schedule 13G pursuant to Rule 13d-1(c) must file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, under Exchange Act Rule 13d-2(d), such person must also amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and must thereafter promptly amend the Schedule 13G upon increasing or decreasing its beneficial ownership by more than 5% of the class. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

10. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term "beneficial owner," the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.⁴

11. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of

exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

³ SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

⁴ A limited exception under Rule 16a-1(a)(1) applies for certain qualified institutional investors, such as registered investment advisers and broker-dealers, to exclude any shares beneficially owned that are "held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business" and "such shares are acquired ... without the purpose or effect of changing or influencing control of the issuer" (a "Qualified Institution"). A parent holding company or control person of a Qualified Institution may also exclude such shares if the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not Qualified Institutions, does not exceed 1% of the class of securities (a "Qualified Control Person").

transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

12. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁵ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁶

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

13. On March 2, 2012, PAW and certain PAW Affiliates acquired beneficial ownership of greater than 10% of Crumbs' registered class of common stock, becoming subject to the reporting requirements of Exchange Act Section 16(a).⁷

⁵ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."). See also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁶ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

⁷ None of the PAW Affiliates have been eligible at any time under Exchange Act Rule 16(a)(1) subparagraphs (i) through (xi) to exclude any securities over which they were deemed to have direct or indirect beneficial ownership under Rule 13d-3.

14. PAW did not file until April 25, 2012 an initial statement of beneficial ownership on Form 3 or any of the required reports on Forms 4 for reportable transactions in Crumbs' securities. The late reports relate to transactions executed on behalf of the PAW Funds on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	3/2/2012	3/6/2012	4/25/2012
4	3/5/2012	3/7/2012	4/25/2012
4	3/6/2012	3/8/2012	4/25/2012
4	3/8/2012	3/12/2012	4/25/2012
4	3/9/2012	3/13/2012	4/25/2012
4	3/12/2012	3/14/2012	4/25/2012
4	3/13/2012	3/15/2012	4/25/2012
4	3/14/2012	3/16/2012	4/25/2012
4	3/15/2012	3/19/2012	4/25/2012
4	3/16/2012	3/20/2012	4/25/2012
4	3/19/2012	3/21/2012	4/25/2012
4	3/20/2012	3/22/2012	4/25/2012
4	3/28/2012	3/30/2012	4/25/2012
4	4/4/2012	4/6/2012	4/25/2012

15. The late-reported transactions primarily involved open-market purchases of Crumbs' common stock and warrants in an aggregate amount constituting nearly 2% of Crumbs' outstanding common stock.

16. As a result of the conduct described above, Respondent PAW violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder and was a cause of violations by the PAW Affiliates of such provisions.

Respondent Failed to Timely File Schedule 13G Statements and Amendments

17. PAW and the PAW Affiliates became subject to the reporting requirements of Exchange Act Section 13(d) after acquiring beneficial ownership of more than 5% of Crumbs' registered class of common stock as of December 15, 2011. PAW did not file an initial Schedule 13G statement on behalf of itself and the PAW Affiliates until April 18, 2012, which did not comply with the 10-day filing deadline imposed by Exchange Act Rule 13d-1(c).

18. PAW also failed to timely file multiple amendments required of persons filing on Schedule 13G pursuant to Exchange Act Rule 13d-1(c), including to reflect:

- As of March 2, 2012, PAW and the PAW Affiliates had acquired greater than 10% beneficial ownership of the class of Crumbs' common stock, which was not reflected in an amendment until April 23, 2012, in violation of Rule 13d-2(d); and
- As of the end of calendar year 2012, the number of shares of Crumbs' common stock beneficially owned by PAW and the PAW Affiliates had changed from the amounts previously set forth, which was not reported in amendment within 45 days after the end of the calendar year, in violation of Rule 13d-2(b).

19. As a result of the conduct described above, Respondent PAW violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder and was a cause of violations by the PAW Affiliates of such provisions.

Respondent's Remedial Efforts

20. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent PAW's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$68,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying P.A.W. Capital Partners, L.P. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73091 / September 15, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16106

In the Matter of

Asian Dragon Group, Inc.,
Atlas Minerals, Inc.
(n/k/a Atlas Corporation),
Bluesky Systems Holdings, Inc.
(f/k/a Bluesky Systems Corp.),
CPC of America, Inc.,
Mezabay International, Inc.,
Netter Digital Entertainment, Inc., and
Power3 Medical Products, Inc.
(a/k/a Power 3 Medical Products, Inc.),

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE
ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS¹

1. Asian Dragon Group, Inc. ("AADG") (CIK No. 1314259) is a defaulted Nevada corporation located in Spokane, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AADG is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the

¹The short form of each issuer's name is also its stock symbol.

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period ended May 31, 2011, which reported a net loss of \$39,902 for the prior nine months. As of September 5, 2014, the common stock of AADG was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Atlas Minerals, Inc. (n/k/a Atlas Corporation) ("ATLR") (CIK No. 8302) is a Colorado corporation located in Tucson, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ATLR is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 2003, which reported a net loss of \$1,034,000 for the prior year. As of September 5, 2014, the common stock of ATLR was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Bluesky Systems Holdings, Inc. (f/k/a Bluesky Systems Corp.) ("BSKS") (CIK No. 1310893) is a revoked Nevada corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BSKS is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011, which reported a net loss of \$120,052 for the prior nine months. As of September 5, 2014, the common stock of BSKS was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. CPC of America, Inc. ("CPCF") (CIK No. 1042728) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CPCF is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011, which reported a net loss of \$709,277 for the prior nine months. As of September 5, 2014, the common stock of CPCF was quoted on OTC Link, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Mezabay International, Inc. ("MZBY") (CIK No. 1085113) is a revoked Nevada corporation located in Seattle, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MZBY is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2010. As of September 5, 2014, the common stock of MZBY was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Netter Digital Entertainment, Inc. ("NETT") (CIK No. 1001592) is a forfeited Delaware corporation located in North Hollywood, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NETT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2000, which reported a net loss of \$1,029,684 for the prior nine months. On July 14, 2000, Netter filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Central District of California, which was converted to a Chapter 7 proceeding on October

4, 2000, and was closed on February 28, 2008. As of September 5, 2014, the common stock of NETT was not publicly quoted or traded.

7. Power3 Medical Products, Inc. (a/k/a Power 3 Medical Products, Inc.) ("PWRM") (CIK No. 1063530) is a New York corporation located in The Woodlands, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PWRM is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011, which reported a net loss of \$62,519,978 for the period from May 18, 2004 through September 30, 2011. On March 15, 2012, PWRM filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Southern District of Texas, which was still pending as of September 5, 2014. As of September 5, 2014, the common stock of PWRM was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 15, 2014

In the Matter of

**Asian Dragon Group, Inc.,
Atlas Minerals, Inc.
(n/k/a Atlas Corporation),
Bluesky Systems Holdings, Inc.
(f/k/a Bluesky Systems Corp.),
CPC of America, Inc.,
Mezabay International, Inc., and
Power3 Medical Products, Inc.
(a/k/a Power 3 Medical Products, Inc.),**

File No. 500-1

**ORDER OF SUSPENSION OF
TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Asian Dragon Group, Inc. because it has not filed any periodic reports since the period ended May 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Atlas Minerals, Inc. (n/k/a Atlas Corporation) because it has not filed any periodic reports since the period ended December 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bluesky Systems Holdings, Inc. (f/k/a Bluesky Systems Corp.) because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CPC of America, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

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It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MezaBay International, Inc. because it has not filed any periodic reports since the period ended June 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Power3 Medical Products, Inc. (a/k/a Power 3 Medical Products, Inc.) because it has not filed any periodic reports since the period ended September 30, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 15, 2014, through 11:59 p.m. EDT on September 26, 2014.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73070 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16097

In the Matter of

Salim Ghauri,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Salim Ghauri ("Ghauri" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as an officer and director of NetSol Technologies, Inc. ("NetSol"), Respondent violated Section 16(a) on multiple occasions by failing to timely or accurately file reports of transactions and holdings in NetSol's securities.

Respondent

3. Ghauri, age 59, was a director of NetSol from 1999 through July 2012 and from July 2013 to June 2014, and was NetSol's president from 1999 through June 2012. Ghauri was during all relevant times a director and/or officer of NetSol subject to Section 16(a) of the Exchange Act.

Issuer

4. NetSol is a Nevada corporation with its principal place of business in Calabasas, California. NetSol's common stock is and has been at all relevant times registered with the Commission under Section 12(b) of the Exchange Act and traded on the NASDAQ (ticker: NTWK).

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions and holdings on Forms 4 and 5. Specifically with regard to Form 4, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been reported on Form 4 during the issuer's most recent fiscal year but were not.

7. Although the Commission has encouraged the practice of issuers assisting their officers and directors with Section 16(a) reporting compliance in order "to facilitate accurate and timely filing," Section 16 places the responsibility to report changes in securities ownership on insiders. Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

8. A showing of scienter is not required to establish violations of Sections 16(a) and the rules thereunder. SEC v. Verdiramo, 890 F. Supp. 2d 257, n.14 (S.D.N.Y. 2011); In re Lexington Resources, Inc. et al, Admin. Pro. File No. 3-13109, 2009 SEC LEXIS 2057, *50 (June 5, 2009).

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

9. As a director of NetSol from 1999 through July 2012 and from July 2013 to June 2014 and officer from 1999 through June 2012, at all relevant times Respondent was subject to the reporting requirements of Exchange Act Section 16(a) and currently remains subject to those requirements.

10. From May 10, 2011 to March 29, 2012, Ghauri engaged in 15 transactions in NetSol stock without filing with the Commission the required reports on Forms 4 for such transactions. On February 14, 2014, after the staff contacted NetSol about Ghauri's Forms 4, Respondent filed a Form 4 to report these previously unreported transactions, which includes transactions executed on the following dates:

Form Type	Date of Trans.	Due Date	Date Filed
4	5/10/2011	5/13/2011	2/14/2014
4	6/28/2011	6/30/2011	2/14/2014
4	6/30/2011	7/5/2011	2/14/2014
4	7/5/2011	7/7/2011	2/14/2014
4	7/6/2011	7/8/2011	2/14/2014

Form Type	Date of Trans.	Due Date	Date Filed
4	8/5/2011	8/9/2011	2/14/2014
4	8/8/2011	8/10/2011	2/14/2014
4	11/1/2011	11/3/2011	2/14/2014
4	11/3/2011	11/7/2011	2/14/2014
4	11/4/2011	11/8/2011	2/14/2014
4	11/9/2011	11/14/2011	2/14/2014
4	11/15/2011	11/17/2011	2/14/2014
4	11/16/2011	11/18/2011	2/14/2014
4	3/29/2012	4/2/2012	2/14/2014

11. Respondent's unreported transactions include sales of NetSol stock from May 2011 through August 2011, for gross proceeds of \$423,951, and purchases of NetSol stock from August 2011 through March 2012 for a total cost of \$377,222. Respondent's Forms 5 filed for the fiscal years ended June 30, 2011 and 2012 also failed to reflect these unreported transactions.

12. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Ghauri's Offer.

Accordingly, pursuant to Section 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$67,500 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

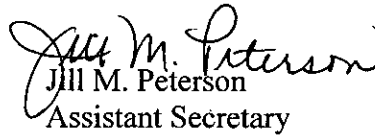
- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Salim Ghauri as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lorraine B. Echavarria, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Boulevard, 11th floor, Los Angeles, CA 90036.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Chair White
Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73049 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16078

In the Matter of

Paul C. Cronson,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Paul C. Cronson ("Cronson" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to the reporting requirements of Section 16(a) of the Exchange Act as a director of eMagin Corporation ("eMagin"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in eMagin's securities.

Respondent

3. Cronson, age 57, has been a director of eMagin since 2003. Cronson is and has been at all relevant times subject to Section 16(a) of the Exchange Act.

Issuer

4. eMagin is a Delaware corporation with its principal place of business in Washington. eMagin's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NYSE MKT (ticker: EMAN).

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

7. Although the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing," Section 16 places the responsibility to report changes in securities ownership on insiders.²

8. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003).

³ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions"); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent,

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

9. As a director of eMagin since 2003, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) and remains subject to those requirements.

10. Respondent has failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

Form Type	Date of Trans.	Due Date	Date Filed
4	10/11/2010	10/13/2010	6/14/2011
4	10/12/2010	10/14/2010	11/18/2010
4	11/18/2010	11/22/2010	1/20/2011
4	11/22/2010	11/24/2010	6/14/2011
4	12/17/2010	12/21/2010	1/20/2011
4	1/18/2011	1/20/2011	4/22/2011
4	5/31/2011	6/2/2011	6/14/2011
4	6/14/2011	6/16/2011	6/29/2011
4	11/16/2011	11/21/2011	11/23/2011
4	11/18/2011	11/22/2011	12/22/2011
4	11/28/2011	11/30/2011	12/22/2011
4	11/30/2011	12/2/2011	12/22/2011
4	12/1/2011	12/5/2011	12/22/2011
4	12/16/2011	12/20/2011	12/22/2011
4	3/16/2012	3/20/2012	4/13/2012
4	7/1/2013	7/3/2013	7/11/2013

constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

11. Among Respondent's late-reported transactions between October 2010 and July 2013 are open-market sales of eMagin common stock and his receipt and exercise of stock option awards. All of Respondent's sales from October 2010 to March 2012 were reported one or more days late. Respondent also failed to file a required Form 5 to report transactions that should have been reported on Forms 4 during eMagin's fiscal year 2010 but were not.

12. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent's Remedial Efforts

13. Respondent has represented that his delinquent filings resulted from the failure of eMagin to make timely filings on his behalf and the failure of his broker to timely notify eMagin of certain transactions. Respondent's reliance on eMagin and his broker does not excuse his violations because an insider retains legal responsibility for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made.⁵ In addition, here, Respondent took inadequate and ineffective steps to monitor whether his broker was providing timely notice to eMagin and whether timely and accurate filings were made on his behalf by eMagin.

14. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Cronson's Offer.

Accordingly, pursuant to Section 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

⁵ See SEC Release No. 34-47809 ("[A]n insider is legally responsible for filing regardless of who submits a filing on the insider's behalf."); Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-37260 (May 31, 1996) ("Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made."); see also Bettina Bancroft, 53 SEC Docket 1955, 1993 WL 81744, at *3 (Mar. 23, 1993) ("Although the Commission encourages individuals to obtain professional assistance in meeting their filing obligations, Section 16 of the Exchange Act places the responsibility to report changes in securities ownership on insiders.").

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$47,250 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Paul C. Cronson as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Keyes, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73048 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16077

In the Matter of

Del Mar Asset Management, LP,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Del Mar Asset Management, LP ("Del Mar" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

2. Del Mar failed to file on a timely basis multiple required Section 16(a) reports of transactions in the securities of ParkerVision Inc. ("ParkerVision") it executed on behalf of affiliated funds and accounts it managed that held greater than 10% of ParkerVision's registered class of common stock.

Respondent

3. Del Mar, a Delaware limited liability company headquartered in New York, has been registered with the Commission as an investment adviser since 2005 and provides investment management services to private pooled investment vehicles structured as limited partnerships or other types of entities (the "Del Mar Funds"). Affiliated entities and/or control persons of Del Mar serve as the general partner of the Del Mar Funds (or in a similar capacity) (hereafter referred to together with the Del Mar Funds as the "Del Mar Affiliates"). Del Mar took responsibility for making all beneficial ownership filings on behalf of the Del Mar Affiliates.

Issuer

4. ParkerVision is a Florida corporation with its principal place of business in Florida. At all relevant times, ParkerVision's common stock was registered with the Commission under Section 12 and traded on the NASDAQ stock market (ticker: PRKR).

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term "beneficial owner" is defined by reference to Section 13(d) of the Exchange Act and the rules thereunder.² Under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, "beneficial owner" is defined broadly to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.³

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of

² A limited exception under Rule 16a-1(a)(1) applies for certain qualified institutional investors, such as registered investment advisers and broker-dealers, to exclude any shares beneficially owned that are "held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business" and "such shares are acquired ... without the purpose or effect of changing or influencing control of the issuer" (a "Qualified Institution"). A parent holding company or control person of a Qualified Institution may also exclude such shares if the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not Qualified Institutions, does not exceed 1% of the class of securities (a "Qualified Control Person").

³ See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions). There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.⁴

Respondent Was a Cause of Violations of Section 16(a) by the Del Mar Affiliates

7. The Del Mar Funds acquired greater than 10% of the registered class of common stock of ParkerVision as of September 9, 2011, resulting in the Del Mar Affiliates becoming subject to the reporting requirements of Section 16(a).⁵ Del Mar filed a timely Form 3 on September 15, 2011 on behalf of the Del Mar Affiliates.

8. Subsequently, Del Mar did not file until July 13, 2012 any of the required reports on Forms 4 with respect to reportable transactions executed beginning January 2012. The late reports consist of transactions executed on behalf of the Del Mar Funds on the following dates that were required to be reported on Form 4 within two business days and primarily involved open-market sales of ParkerVision stock:

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	1/3/2012	1/5/2012	7/13/2012
4	1/4/2012	1/6/2012	7/13/2012
4	1/5/2012	1/9/2012	7/13/2012

⁴ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19-20 (Jan. 19, 2001) ("[N]egligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to 'cause' a primary violation that does not require scienter.").

⁵ None of the Del Mar Affiliates were eligible under Exchange Act Rule 16(a)(1) subparagraphs (i) through (xi) to exclude any securities over which they were deemed to have direct or indirect beneficial ownership under Rule 13d-3.

FormType	Date of Trans.	Due Date	Date Filed
4	1/9/2012	1/11/2012	7/13/2012
4	1/12/2012	1/17/2012	7/13/2012
4	1/13/2012	1/18/2012	7/13/2012
4	1/20/2012	1/24/2012	7/13/2012
4	1/27/2012	1/31/2012	7/13/2012
4	2/9/2012	2/13/2012	7/13/2012
4	3/5/2012	3/7/2012	7/13/2012
4	3/6/2012	3/8/2012	7/13/2012
4	3/8/2012	3/12/2012	7/13/2012
4	3/9/2012	3/13/2012	7/13/2012
4	4/10/2012	4/12/2012	7/13/2012
4	4/11/2012	4/13/2012	7/13/2012
4	4/12/2012	4/16/2012	7/13/2012
4	4/23/2012	4/25/2012	7/13/2012
4	5/11/2012	5/15/2012	8/24/2012
4	5/16/2012	5/18/2012	8/24/2012
4	5/16/2012	5/18/2012	8/24/2012
4	5/23/2012	5/25/2012	7/13/2012
4	5/24/2012	5/29/2012	7/13/2012
4	5/29/2012	5/31/2012	7/13/2012
4	5/30/2012	6/1/2012	7/13/2012
4	5/31/2012	6/4/2012	7/13/2012
4	6/5/2012	6/7/2012	7/13/2012
4	6/18/2012	6/20/2012	8/24/2012
4	6/19/2012	6/21/2012	8/24/2012
4	6/20/2012	6/22/2012	8/24/2012
4	6/21/2012	6/25/2012	8/24/2012
4	6/22/2012	6/26/2012	8/24/2012

Form Type	Date of Trans.	Due Date	Date Filed
4	6/25/2012	6/27/2012	8/24/2012
4	6/27/2012	6/29/2012	8/24/2012
4	6/28/2012	7/2/2012	8/24/2012
4	7/9/2012	7/11/2012	8/24/2012
4	7/10/2012	7/12/2012	8/24/2012

9. As a result of the conduct described above, Respondent Del Mar was a cause of violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by the Del Mar Affiliates.

Respondent's Remedial Efforts

10. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Del Mar's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$66,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Del Mar Asset Management, LP as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher.
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9646 / September 11, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 73076 / September 11, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3582 / September 11, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16098

In the Matter of

Wilmington Trust Corporation,

Respondent.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
8A OF THE SECURITIES ACT OF 1933 AND
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Wilmington Trust Corporation ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of

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the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

SUMMARY

These proceedings arise out of false and misleading disclosures by Wilmington Trust Corporation ("Wilmington Trust" or the "Bank") concerning its accruing loans past due 90 days or more over multiple quarters during 2009 and 2010, its nonaccruing loans in the third quarter of 2009, and its reserves for loan losses in the third and fourth quarters of 2009. Wilmington Trust was the public holding company for Wilmington Trust Company, a retail and commercial bank headquartered in Wilmington, Delaware. By mid-2009, many of the construction projects underlying the Bank's loans stalled or failed to sell or lease when completed. At the same time, an increasing number of the Bank's loans to these projects "matured," *i.e.*, the loan's term expired without being extended, modified or paid off, such that the principal balance of the loan was contractually due.

The Bank had deficient underwriting and loan monitoring controls and failed, for these and other reasons, to take appropriate action on many of its matured loans for protracted periods of time. As a result, the Bank had a large volume of loans that were past due, for reasons of maturity, 90 days or more. Generally Accepted Accounting Principles ("GAAP") requires that banks disclose loans that are past due 90 days or more and still accruing,² and Regulation S-K (through SEC Industry Guide 3) further indicates that banks should disclose their "accruing loans which are contractually past due 90 days or more as to principal or interest payments."³ However, rather than disclose as past due loans that were matured (but purportedly "current for interest"), the Bank negligently and routinely omitted such loans from its disclosures of past due loans, based on unwritten, informal criteria that were loosely applied and liberally adjusted.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² See Accounting Standards Codification ("ASC") 310-10-50-7(b). References to GAAP in this Order are to standards in effect at the time of the misconduct. In July 2009, the Financial Accounting Standards Board promulgated its "Accounting Standards Codification," effective for fiscal quarters ending after September 15, 2009, which changed the applicable citation standards but not the substantive GAAP requirements.

³ 17 C.F.R. § 229.303; SEC Industry Guide 3, *Statistical Disclosure by Bank Holding Companies*, 57 F.R. 36442.

As a result, the Bank omitted almost \$339 million in matured loans past due 90 days or more from its disclosures in its filings with the Commission for the third quarter of 2009. The Bank further omitted over \$330 million in matured loans past due 90 days or more from its disclosures in its filings for the year ended 2009, including its Form 10-K. The Bank then incorporated its false and misleading Form 10-K for 2009 by reference into the offering materials for a February 2010 public offering in which the Bank sold \$287 million of its common stock.

At the end of 2009, amidst increasing regulatory scrutiny, the Bank decided to address its misreporting of past due loans beginning in 2010; however, the Bank negligently implemented various practices that had the effect of avoiding full disclosure of the problems with matured loans in its portfolio. These practices included an "extension push" to extend the maturity dates of matured and maturing loans. This resulted in multiple short-term extensions for a high volume of loans even when the Bank did not have updated financial and collateral information for the loans, had not performed appropriate analysis for re-underwriting, or was engaged in difficult negotiations with borrowers concerning their matured loans. Wilmington Trust also failed to disclose in its Form 10-K, as required by Regulation S-K, that its matured, maturing and short-term extended commercial loan portfolio represented a material, but unquantified, risk to the stability of the Bank.

Despite modifications to its past due reporting practices in the first and second quarters of 2010, the Bank negligently continued to omit significant volumes of matured past due loans from its disclosures, repeated its false disclosures from prior periods, and made misleading supplemental disclosures concerning the Bank's past due reporting and matured loan extension practices.

Finally, in its Form 10-Q for the third quarter of 2009 and its Form 10-K for 2009, the Bank also negligently failed, as required by GAAP, to properly disclose significant increases in the Bank's nonaccruing loans according to its policy, and to properly account for updated collateral values and significant declines in commercial loan risk ratings in its loan loss provisions and reserves.

RESPONDENT

1. Wilmington Trust was, during the relevant period, a bank holding company based in Wilmington, Delaware and incorporated under the laws of the State of Delaware. Its securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its common stock traded on the New York Stock Exchange under the symbol "WL." On May 16, 2011, Wilmington Trust was acquired by M&T Bank Corporation ("M&T") in a stock-for-stock transaction, and Wilmington Trust's securities were removed from registration. Wilmington Trust survives as a subsidiary of M&T.

OTHER RELEVANT ENTITY

2. M&T is a bank holding company headquartered in Buffalo, New York. On May 16, 2011, M&T acquired Wilmington Trust in a stock-for-stock transaction. M&T is the

successor-in-interest to Wilmington Trust. M&T did not commit any of the misconduct that is the subject of this Order, all of which preceded M&T's acquisition of Wilmington Trust.

FACTS

Past Due Loan Disclosure Guidelines

3. Under GAAP, banks are required to disclose their past due loans. Accounting Standards Codification ("ASC") Topic 310-10-50 stipulates certain disclosure requirements for loans. Specifically, ASC 310-10-50-7(b) requires disclosure of a bank's recorded investment in loans "past due 90 days or more and still accruing."⁴

4. Regulation S-K of the Securities Act, Item 303(a), requires the Management Discussion and Analysis ("MD&A") sections of an issuer's annual filings to disclose any "information that the registrant believes to be necessary to an understanding of its financial condition [or] changes in its financial condition." Item 303(b) requires quarterly filings to discuss material changes in information described in Item 303(a).⁵ Instruction 13 to Item 303(a) directs bank holding companies to the information called for by SEC Industry Guide 3 ("Guide 3"), which is a policy of the Division of Corporation Finance; the Commission has not adopted the Guide as a rule.⁶ Among other statistical disclosures, Item III.C.1 of Guide 3 specifies disclosure of "accruing loans which are contractually past due 90 days or more as to principal or interest payments."

Background to the Bank's Past Due Loans Disclosure Violations

5. From at least 2006 through the third quarter of 2009, the Bank routinely removed, or, using the Bank's terminology, "waived" loans from certain internal reports and from its public disclosures of accruing loans past due 90 days or more if the loan was matured, current for interest and either 1) a loan managed by the Bank's Loan Recovery (*i.e.*, workout) unit; or 2) a loan that the Bank claimed its loan officers were "working on" extending. The matured workout loans were waived automatically, with no further requirements; for a non-workout loan, the loan officer was asked summarily to confirm that he or she was "working on" an extension and the loan was then waived. No documents or actual progress toward an extension were required and, in practice, loan officers could simply note that the loan was matured, current for interest and should be waived. The Bank did not have written policies or procedures governing its past due reporting process or its waiver practices.

6. On the Bank's internal "Delinquency Report," showing past due loans, the Bank's credit department indicated past due loans that would be waived. The Bank's finance department

⁴ This standard was preceded by AICPA SOP 01-06 ¶13(g), which is substantively identical.

⁵ 17 C.F.R. § 229.303.

⁶ SEC Industry Guide 3, *Statistical Disclosure by Bank Holding Companies*, 57 F.R. 36442.

then removed the indicated loans from a second internal report, the "Past Due and Nonperforming Loans Report." This report was then incorporated in the Bank's "accruing loans past due 90 days or more" table disclosure in its SEC filings. The summary past due loan amount also was disclosed in the notes to the financial statements in the Bank's Form 10-K annual reports.

7. Equities and credit ratings analysts viewed loans 90 days or more past due as nonperforming, even if the Bank maintained them as unimpaired loans. High levels of past due loans were interpreted by the market as a signal of probable increased credit deterioration.

8. As early as August 2007, the Bank recognized that it had a mounting problem with matured loans that it needed to resolve. As the real estate market softened, the Bank was concerned by the growing volume of waived matured loans and about potential scrutiny from auditors, examiners and others concerning the waivers. However, even where loan officers had not taken meaningful steps toward extension, the Bank still waived such loans and omitted them from its public reporting.

9. As the real estate market continued to decline, more loans began to mature without repayment or completion of the underlying projects. Updated appraisals and financial statements required for re-underwritten extensions were also revealing significant deterioration. Borrowers balked at providing updated information and at the more onerous terms required by re-underwritten extensions. Some loan officers, particularly those managing the Bank's Delaware Commercial Real Estate ("CRE") portfolio, were reluctant to pursue the required documents to support re-underwritten extensions because of concerns that the underwriting analysis and new terms would lead to borrower nonperformance and loan downgrades. Loan officers voiced their concerns about this, and their related inability to properly underwrite loan extensions. The Bank was aware that the volume of matured loans it claimed was "in the process of extension" rose significantly through 2008 and into 2009.

10. The Bank purported to comply with GAAP and the disclosures required by Regulation S-K and called for by Industry Guide 3, but failed to do so accurately and completely. In all relevant filings, the Bank included in its MD&A section concerning credit risk a table disclosing its purported volume of accruing loans past due 90 days or more and supplemental disclosures describing them. It also disclosed the purported volume of accruing past due loans in the notes to the financial statements in its Form 10-Ks. In each period the Bank also claimed in its filings that it mitigated credit risk by employing "rigorous loan underwriting standards," disciplined monitoring of its loan portfolio, and regular "review [of] all past due loans."

Understated Past Due Loans Disclosures in the Third Quarter of 2009

11. On or about October 7, 2009, the Bank waived \$338.9 million in matured, interest current loan balances that were accruing but past due 90 days or more from the Bank's Delinquency Report, and subsequently removed the waived loans from the Bank's Past Due and Nonperforming Loans Report. On October 23, 2009, the Bank released its earnings and filed its Form 8-K, which incorporated the past due numbers from the Past Due and Nonperforming Loans

Report, omitted the \$338.9 million in matured loans, and disclosed only \$38.7 million in accruing loans past due 90 days or more.

12. During the third quarter of 2009 and prior to the filing of the Bank's Form 10-Q, certain senior managers voiced their concerns to senior officers about the growing number of matured loans that the Bank was claiming were "in the process of extension" but had not, in reality, been extended for protracted periods of time. Certain Bank personnel were concerned about the possibility of scrutiny from the Bank's auditors and bank examiners relating to its treatment of matured loans.

13. Concerns around matured and waived loans became heightened in late October 2009, after the Bank entered into an agreement with the Federal Reserve Bank of Philadelphia ("FRB") that required Bank management to provide enhanced reporting to the FRB of loans "past due as to principal or interest more than 90 days." In response, prior to the filing of the third quarter Form 10-Q, the Bank initiated several steps, discussed below, to begin phasing out its waiving of matured loans, and to attempt to extend some of these loans by year end.

14. Nevertheless, the Bank filed its Form 10-Q on November 9, 2009, again disclosing only the \$38.7 million in accruing past due loans and improperly omitting the \$338.9 million that had been waived. The supplemental disclosures did not provide any information about the Bank's matured or waived loans.

Understated Past Due Loans Disclosures and Extension Push in the Fourth Quarter and Year End 2009

15. In the fourth quarter, the Bank decided to continue to waive matured loans if an extension was "internally approved." The new criteria purported not to allow a non-workout loan to be waived where an extension was just being "worked on," as had sufficed in earlier quarters. Accordingly, a matured past due loan would be waived from the noted internal reports and omitted from public filings if the Bank had approved a lending officer's proposal to extend the loan, regardless of whether the loan had actually been extended by the borrower. The Bank continued the automatic waiver of matured, current for interest workout loans.

16. The Bank initiated an abbreviated extension process to facilitate the "internal approval" of short-term extensions of matured loans by year end. In combination with the amended waiver practice, this allowed loans for which the Bank lacked updated appraisals or financial documentation or was still negotiating terms with the borrower either to be extended temporarily or "internally approved" and waived so that they would not be reported as past due. The Bank was aware that executing long-term extensions would be difficult particularly for its Delaware CRE loans, because poor market conditions meant the Bank needed borrowers to pay down principal or increased interest rates as a part of long-term loan modifications. Certain of the Bank's senior officers and managers were informed that these borrowers were in distressed situations that could not be quickly remedied, and they recognized that the failure to accomplish long-term modifications could result in the Bank and its "shareholders get[ting] the crap knocked out of us by analysts and regulators."

17. In early January 2010, the Bank prepared a Delinquency Report indicating that \$330.2 million in matured loans 90 days or more past due would be waived; of this amount, \$177.3 million was more than 180 days past due. Accordingly, prior to releasing its earnings, the Bank was aware that the \$330.2 million in waived past due loans would be omitted from the Bank's public disclosures. A Bank manager raised concerns that the waived loans would be "a disclosure issue" for the Bank's public reporting. The Bank knew that many of the waived loans would require significant structural modifications if they were to be extended, and that the waived loans required thorough analysis and new maturity dates commensurate with the level of risk posed by the loan. The Bank also knew that it did not expect to be complete this process until the second quarter of 2010. The Bank was aware that it had an additional \$432 million in loans that would mature in the first quarter of 2010 that would also require the same process if they were to be extended.

18. Nevertheless, the Bank released its earnings and Form 8-K on January 29, 2010, disclosing only \$30.6 million in accruing loans past due 90 days or more and omitting the \$330.2 million in matured past due loans. The Bank's Form 10-K for 2009, which was filed on February 22, 2010, again disclosed only \$30.6 million accruing loans past due 90 days or more in both the footnotes to the financial statements and in the MD&A. Neither the earnings release nor the Form 10-K disclosed the Bank's problems with its matured, maturing and temporarily extended loan portfolio.

19. In mid-January 2010, shortly before releasing its earnings, the Bank decided to attempt to raise additional capital. On February 22, 2010, the Bank announced its common stock offering; the false and misleading Form 10-K was incorporated by reference in the final Prospectus Supplement, which was filed on February 25, 2010. In the offering, which closed on March 2, 2010, the Bank sold \$287 million in common stock, netting \$274 million after costs and commissions.

Understated Past Due Loans Disclosures and Extension Push in the First Quarter of 2010

20. In the first quarter of 2010, the Bank continued to phase out the waiver practice by determining that an "internal approval" of a loan extension would no longer suffice to waive matured loans from certain of the Bank's internal reports and its public past due reporting; rather, in order to be waived, a valid extension document had to be signed by the Borrower and received by the Bank. However, the Bank decided that matured workout loans would still be waived automatically and, as a result, excluded from the Bank's public disclosures of accruing loans past due 90 days or more.

21. The Bank had uncovered significant issues in ongoing reviews of matured and maturing loans that were resulting in the Bank's continued inability to fully analyze and appropriately re-underwrite those loans. Bank staff recommended that such loans be eligible for yet additional short-term extensions on an expedited basis without full underwriting analysis.

22. As described above, a large number of Delaware CRE loans had been waived from past due reporting at the end of the fourth quarter of 2009 on the basis that the Bank had "internally approved" extension proposals; however, many of these loans were not actually extended – *i.e.*, there was no extension agreement executed between the Bank and the borrower – for most of the first quarter. In the last two days of the first quarter of 2010, the Bank "internally approved" new extension proposals for at least 117 of these loans, because the Bank needed yet more time to do appropriate analysis and gather documentation to re-underwrite the loans. The majority of these extension proposals contemplated short-term extensions of loans that had been waived from past due reporting in multiple prior quarters; some of the loans had been matured for over a year.

23. Notwithstanding the Bank's expedited extension practices, at quarter end, a significant volume of matured loans remained. Despite its purported use of stricter waiver criteria, the Bank subsequently waived at least \$48.1 million of these matured loans past due 90 days or more from certain of its internal reports. The Bank's press release reporting earnings and Form 8-K (filed on April 23, 2010) and its Form 10-Q (filed on May 10, 2010) both omitted the \$48.1 million in waived loans and disclosed only \$39.7 million in accruing loans past due 90 days or more.

24. The Bank's public filings for the first quarter also presented the materially understated accruing past due loan amounts previously reported for the fourth quarter of 2009 (and other periods) for comparison, and did not disclose that the current period's past due loans were based on materially different criteria than in prior periods. The earnings press release and Form 10-Q noted an increase in past due loans and stated that the increase was due to matured loans for which "underwriting extensions" were in progress. However, there was no disclosure to inform investors of the Bank's significant, ongoing problems with its matured and short-term extended loans. This information would have been important to investors to know, because without it they could not understand the true condition of the Bank's loan portfolio.

Understated Past Due Loans Disclosures in the Second Quarter of 2010

25. The Bank continued to adjust its criteria for waiving loans and, after the second quarter of 2010, decided that matured, interest current workout loans should no longer be waived. In effect, by this point, the Bank had changed its practices such that all matured loans that were actually past due at the end of the quarter were to be reported as past due.

26. Before the Bank filed its current and quarterly reports for the second quarter of 2010, the Bank was aware that the market was interested in banks' loan extension and restructuring practices, including the practice of extending loans multiple times. The Bank was aware that a large volume of both its matured loans that were reported as past due as well as loans that were current had not been fully analyzed or appropriately re-underwritten, but had been waived or extended multiple times.

27. Nevertheless, the Bank's disclosures of accruing loans past due 90 days or more in its press release reporting its earnings and its Form 8-K (filed on July 23, 2010) and again in its Form 10-Q (filed on August 5, 2010), omitted \$24 million in matured past due loans that had

extensions that were executed after the close of the quarter. The filings also presented the materially understated accruing past due loan amounts previously reported for the fourth quarter of 2009 (and other periods) for comparison. There were no disclosures about the high volumes of multiple extensions without re-underwriting or waivers the Bank had granted.

28. Although the Bank was aware of the effect of its changed waiver practices (*i.e.*, the phasing out of matured loan waivers) on the past due loan disclosures over time, the Bank did not disclose the changes in its practices and made no effort to analyze the impact the changed practices would have had in prior periods. In addition, during the second quarter conference call, the Bank's statements concerning its past due reporting were misleading and the Bank also omitted information necessary to make the statements not misleading. The Bank's statements and omissions, considered together, were materially misleading because they obscured the true condition of the Bank's credit portfolio.

Understated Nonaccruing Loans Disclosures in Form 10-Q for the Third Quarter of 2009

29. According to the Bank's nonaccrual policy, loans that were rated "substandard-accruing" and also had interest payments being paid by an interest reserve or a second loan to the same borrower were to be classified as nonaccruing (and therefore impaired according to the Bank's application of ASC 310). In early October 2009, after the end of the third quarter, a senior Bank manager responsible for nonaccrual recommendations identified three construction projects that had loans that fit these criteria as of the third quarter of 2009. The three loans had total outstanding balances of \$24.1 million. The manager concluded that the loans for all of these projects required nonaccrual classification, based on the Bank's nonaccrual policy and conditions that existed as of the third quarter of 2009.

30. The manager informed other senior Bank officers that these loans required nonaccrual (and thus, impaired) classification in late October 2009, and informed them that her belated identification of these loans as nonaccruing was due to the Bank's ineffective process for tracking interest reserve loans. The Bank approved the manager's nonaccrual recommendations, which totaled \$24.1 million out of \$36 million of nonaccrual classifications approved.

31. The GAAP standard governing subsequent events, ASC 855-10-25-1, states that "An entity shall recognize in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the balance sheet, including the estimates inherent in the process of preparing financial statements." The conditions underlying the nonaccrual designations – the loans' substandard ratings, and the fact that their interest was being paid via interest reserve – existed as of the date of the third quarter of 2009 balance sheet. Therefore, in accordance with GAAP, the nonaccruals should have been recognized in the third quarter financial statements.

32. On November 9, 2009, the Bank filed its Form 10-Q for the third quarter. Although the Bank stated in its Form 10-Q that it had evaluated subsequent events through the date of the filing, the Bank did not account for the three loans as nonaccruing in its Form 10-Q. The Bank reported a total of \$365.9 million in nonaccrual loans. The additional \$24.1 million in nonaccruing

loans would have represented a material 6.6% increase in the total nonaccruals for the quarter. Properly including this amount of nonaccruing loans would have caused the quarter over quarter difference in reported nonaccrual loans to increase materially, from \$67.1 million to \$91.2 million, or a difference of 35.9%.

Understated Loan Loss Provision and Reserves in Form 10-Q for the Third Quarter of 2009

33. The Bank's Form 10-Q filed on November 9, 2009 improperly failed to incorporate the information from four newly-obtained appraisals into its calculation of the Bank's loan loss provision and reserves. Significantly prior to the filing date, the Bank's appraisal department received appraisals that reflected material collateral value declines for impaired loans related to four construction projects, including two described in Paragraph 29 above.

34. However, Wilmington Trust's deficient internal controls prevented timely consideration of the effect of the updated collateral values on the Bank's reserve. Credit Risk Management staff tasked with allowance calculations did not obtain the updated appraisals in a timely fashion and there were no effective procedures to assure that Credit Risk Management staff were informed of updated collateral value information that was received after the end of the quarter, but prior to filing the periodic SEC reports. Nor did the Bank's disclosure controls assure that updated collateral values that Credit Risk Management staff received prior to period public filings were appropriately considered for subsequent events reporting according to GAAP.

35. Taken together, the updated appraisals for impaired loans received prior to the filing of the third quarter 2009 Form 10-Q required a supplemental provision to the reserve of \$12.8 million. This was a material understatement, because the additional required provision would have increased the recorded \$38.7 in provision to \$51.5 million, or 33%, and would have increased the \$16.6 million loss before income taxes and noncontrolling interest to \$29.4 million, or 77%.

Understated Loan Loss Provision and Reserves in the Fourth Quarter 2009 Earnings Release and 10-K for 2009

36. In January 2010, before the Bank issued its fourth quarter 2009 earnings press release and filed its Form 8-K, the Bank's ongoing review of its Delaware CRE projects revealed deterioration trajectories in ten highly significant borrower relationships. A senior Bank manager concluded, and informed certain senior officers, that downgrades were required for the ten relationships, which would result in an "overall provision increment ... [of] \$10.5MM." The loan reviews also resulted in the identification of 20 other loans that required downgrades which would have required an additional provision of \$1.6 million. The Bank was aware that these downgrades were not reflected in the loan loss provision and reserves that previously had been calculated for the fourth quarter.

37. The Bank represented to its Board of Directors that the loan reviews that resulted in the downgrades were rigorous and complete with respect to the relevant loans. However, a senior Bank officer directed that the downgrades not be formalized, and therefore neither the downgrades

nor the increased reserves described in Paragraph 36 above were incorporated into the Bank's quarterly earnings release and Form 8-K or its Form 10-K, which were filed on January 29, 2010 and February 22, 2010, respectively.

38. The total provision supplement associated with the downgrades was \$12.1 million. In both of its SEC filings, the Bank recognized a provision of \$82.8 million for the fourth quarter; the additional \$12.1 million in provision would have increased it materially, to \$94.9 million, or by 14.6%. The Bank recorded a loss before income taxes and noncontrolling interest of \$37.3 million; the increased provision would have deepened the loss by 30%.

VIOLATIONS

As a result of the conduct described above, Wilmington Trust violated:

- a. Section 17(a)(2) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- b. Section 17(a)(3) of the Securities Act, which prohibits any person from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities;
- c. Exchange Act Section 13(a) and Rules 13a-1, 13a-11, 13a-13 and 12b-20 thereunder, which require that every issuer of a security registered pursuant to Exchange Act Section 12 file with the Commission information, documents and annual and quarterly reports as the Commission may require and mandate that periodic reports contain such further information as may be necessary to make the required statements not misleading;
- d. Exchange Act Section 13(b)(2)(A), which requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets; and
- e. Exchange Act Section 13(b)(2)(B), which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Wilmington Trust's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Wilmington Trust shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$16,000,000.00 and prejudgment interest of \$2,545,896.16, for a total of \$18,545,896.16, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Wilmington Trust as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Michael J. Osnato, Jr., Chief, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, NY, NY 10281.

By the Commission.

Jill M. Peterson
Assistant Secretary

Kevin M. O'Neill
By: Kevin M. O'Neill
Deputy Secretary

Commissioner Gallagher
Commissioner Steiner
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73074 / September 11, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3914 / September 11, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16099

In the Matter of

ALEXANDER W. WRIGHT,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND
15B(c) OF THE SECURITIES
EXCHANGE ACT OF 1934, AND
SECTION 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 15B(c) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Alexander W. Wright ("Wright" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Sections 15(b) and 15B(c) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. From August 1995 until April 2008, Wright was an employee of J.P. Morgan Securities Inc., now known as J.P. Morgan Securities LLC ("JPMS"), then a Delaware corporation with its principal place of business in New York, New York. JPMS was registered with the Commission, pursuant to Sections 15(b) and 15B(a) of the Exchange Act, as a broker-dealer and as a municipal securities dealer as an investment adviser pursuant to Section 203(c) of the Advisers Act. During the relevant time period, Wright worked in JPMS's municipal derivatives marketing group as a vice president. In that capacity, Wright was authorized to act as an agent for J.P. Morgan Chase, N.A. ("JPMC Bank"), in marketing investment agreements and other municipal finance contracts. JPMC Bank is a federally-chartered bank, whose primary regulator is the Office of the Comptroller of the Currency. Wright, age 47, is a resident of New York, New York.

2. On July 18, 2012, Wright pled guilty to one count of conspiracy to commit wire fraud in violation of Title 18, United States Code, Section 371 before the United States District Court for the Southern District of New York in United States v. Alexander W. Wright, Criminal No. 01:12-cr-551. On October 24, 2013, a judgment in the criminal case was entered against Wright. He was sentenced to one year of probation and ordered to pay criminal monetary penalties totaling \$1,100.

3. The criminal information to which Wright pled guilty charged that, on or about June 12, 2002, until on or about June 20, 2002, Wright conspired to commit offenses against the United States, namely, to violate Title 18, United States Code, Section 1343, all in violation of Title 18, United States Code, Section 371. The information also charged that, as a part and an object of the conspiracy, Wright and others devised and intended to devise a scheme and artifice to defraud a municipal issuer and to obtain money and property from the municipal issuer by means of false and fraudulent pretenses, representations, and promises, namely a scheme to deprive the municipal issuer of money and property by manipulating in favor of a certain financial institution the bidding process for a municipal finance contract that was to be awarded to the provider submitting the lowest bid, and further to deprive the municipal issuer of the property right to control its assets causing it to make economic decisions based on false and misleading information, and for the purpose of executing such scheme and artifice, Wright and others transmitted and caused to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce writings, signs, signals, pictures or sounds, in violation of Title 18, United States Code, Section 1343.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Wright's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) and 15B(c)(4) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Wright be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.


Jill M. Peterson
Assistant Secretary

Chair White
Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73077 / September 11, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3915 / September 11, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16101

In the Matter of

GARY HARRISON LANE,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940
AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Gary Harrison Lane ("Respondent" or "Lane").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From July 1999 to October 2009, Lane was a registered representative with Banc of America Investment Services, Inc. ("BAI") and from October 2009 to March 2011, was a registered representative of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), after BAI merged into Merrill Lynch. BAI was and Merrill Lynch is a dually registered broker-dealer and investment adviser. Respondent, 61 years old, is currently incarcerated at the Federal Correctional Institution in Sheridan, Oregon.

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B. ENTRY OF RESPONDENT'S CRIMINAL CONVICTION

2. On September 3, 2013, Lane pleaded guilty to 12 counts of mail fraud in violation of 18 U.S.C. Section 1341 and five counts of attempt to evade or defeat tax in violation of 26 U.S.C. Section 7201 before the United States District Court for the District of Nevada. *U.S. v. Gary H. Lane*, 3:12-CR-00078-RCJ-VPC. On February 20, 2014, a judgment in the criminal case was entered against Lane. He was sentenced to a prison term of 120 months followed by five years of supervised release and restitution of \$2,103,226.

3. The counts of the criminal indictment to which Lane pleaded guilty alleged, among other things, that Lane with intent to defraud, devised a scheme and artifice to defraud and obtain money by materially false and fraudulent pretenses, representations, and promises. The criminal conduct to which Lane pleaded guilty occurred between May 2002 and March 2011, while he was associated with BAI and subsequently Merrill Lynch.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as

provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73089 / September 15, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16105

In the Matter of

**Adarna Energy Corporation,
Bluedata Corporation,
Brampton Crest International, Inc.,
Covenant Group of China Inc.,
Mobile Area Networks, Inc.,
Netco Investments, Inc.,
OneTravel Holdings, Inc., and
PDG Environmental, Inc.,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS¹

1. Adarna Energy Corporation ("ADRN") (CIK No. 1127242) is a Delaware corporation located in Alpharetta, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ADRN is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012. As of September 4, 2014, the common stock of ADRN was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC

¹The short form of each issuer's name is also its stock symbol.

Link”), had none market makers, and was eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3).

2. Bluedata Corporation (“Bluedata”) (CIK No. 1511863) is a delinquent Delaware corporation located in Morrisville, North Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bluedata is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of \$31,207 for the prior nine months. As of September 4, 2014, the common stock of Bluedata was not publicly quoted or traded.

3. Brampton Crest International, Inc. (“BRCI”) (CIK No. 1321002) is a revoked Nevada corporation located in Fort Lauderdale, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BRCI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011, which reported a net loss of \$241,870 for the prior nine months. As of September 5, 2014, the common stock of BRCI was quoted on OTC Link, had seven market makers, and was eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3).

4. Covenant Group of China Inc. (“CVGC”) (CIK No. 1410725) is a revoked Nevada corporation located in Bala Cynwyd, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CVGC is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2010. As of September 5, 2014, the common stock of CVGC was quoted on OTC Link, had four market makers, and was eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3).

5. Mobile Area Networks, Inc. (“MANW”) (CIK No. 1029454) is a Florida corporation located in Sanford, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MANW is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012, which reported a net loss of \$96,998 for the prior three months. As of September 5, 2014, the common stock of MANW was quoted on OTC Link, had six market makers, and was eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3).

6. Netco Investments, Inc. (“NCVT”) (CIK No. 1518510) is an involuntarily dissolved Texas corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NCVT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011, which reported a net loss of \$1,093,251 for the prior six months. On May 29, 2007, NCVT filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Western District of Texas, which was closed on May 6, 2009. As of September 5, 2014, the common stock of NCVT was quoted on OTC Link, had seven market makers, and was eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3).

7. OneTravel Holdings, Inc. ("OTVLQ") (CIK No. 722839) is a void Delaware corporation located in Atlanta, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). OTVLQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2005, which reported a net loss of \$11,137,000 for the prior nine months. On July 7, 2006, OTVLQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Western District of Texas, which was converted to a Chapter 7 proceeding on December 19, 2006, and was closed on July 22, 2009. As of September 4, 2014, the common stock of OTVLQ was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

8. PDG Environmental, Inc. ("PDGE") (CIK No. 771485) is a void Delaware corporation located in Pittsburgh, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PDGE is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended October 31, 2009, which reported a net loss of \$3,611,000 for the prior nine months. As of September 4, 2014, the common stock of PDGE was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 15, 2014

In the Matter of

**Adarna Energy Corporation,
Brampton Crest International, Inc.,
Covenant Group of China Inc.,
Mobile Area Networks, Inc.,
Netco Investments, Inc.,
OneTravel Holdings, Inc., and
PDG Environmental, Inc.,**

File No. 500-1

**ORDER OF SUSPENSION OF
TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Adarna Energy Corporation because it has not filed any periodic reports since the period ended September 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Brampton Crest International, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Covenant Group of China Inc. because it has not filed any periodic reports since the period ended December 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mobile Area Networks, Inc. because it has not filed any periodic reports since the period ended March 31, 2012.

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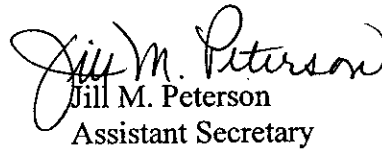
It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Netco Investments, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of OneTravel Holdings, Inc. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PDG Environmental, Inc. because it has not filed any periodic reports since the period ended October 31, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 15, 2014, through 11:59 p.m. EDT on September 26, 2014.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3918 / September 12, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16103

In the Matter of

SEAN MICHAEL MUELLER,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Sean Michael Mueller ("Mueller" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2. below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that

1. From April 2000 to December 2005, Mueller was associated with an investment adviser registered with the state of Colorado. Mueller, age 45, is a resident of Canon City, Colorado.

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2. On November 1, 2010, Mueller pled guilty to one count of securities fraud in violation of Colo. Rev. Stat. § 11-51-501(1), a class three felony, one count of theft of \$15,000 or more in violation of Colo. Rev. Stat. § 18-4-401, a class three felony, and one count of racketeering activity, in violation of the Colorado Organized Crime Control Act, Colo. Rev. Stat. §18-17-104(3), a class two felony, before the District Court, City and County of Denver, Colorado, in People v. Sean Michael Mueller, Case No. 2010CR10319 (2010). On December 6, 2010, a judgment in the criminal case was entered against Mueller. Mueller was sentenced to 40 years in prison, and ordered to pay \$74,223,803.94 in restitution.

3. The securities fraud count to which Mueller pled alleged that, between January 1, 2001 and April 26, 2010, Mueller in connection with the offer, sale, or purchase of a security, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of material fact or omitted 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. The theft count to which Mueller pled alleged that, between January 1, 2001 and June 30, 2007, Mueller unlawfully, feloniously, and knowingly obtained or exercised control over a thing of value – namely, money – with the value of \$15,000 or more, without authorization, or by threat or decision, and intended to deprive investors permanently of its use or benefit or knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive investors of its use or benefit. The racketeering count to which Mueller pled alleged that, between January 1, 2001 and April 26, 2010, Mueller, while employed by or associated with entities associated with him, unlawfully, feloniously, and knowingly conducted or participated, directly or indirectly, in the enterprise through a pattern of racketeering activity.

4. At the time of the misconduct for which he was convicted, Mueller was associated with a state-registered investment adviser.

IV.

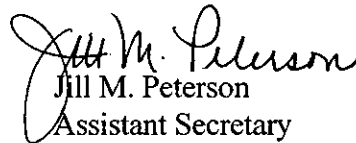
In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Mueller's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Mueller be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment

of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73087 / September 12, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 39107 / September 12, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16104

In the Matter of

MICHAEL LEE
MENDENHALL,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Michael Lee Mendenhall ("Mendenhall" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

Respondent Michael Lee Mendenhall, age 51, is a resident of Canon City, Colorado. From June 2005 to November 2009, Mendenhall was associated with a broker-dealer and investment adviser that was registered with the Commission. From January 2009 until October 2010, Mendenhall was associated with a broker-dealer registered with the Commission.

B. RESPONDENT'S CRIMINAL CONVICTION

1. On March 2, 2012, Mendenhall was convicted of 17 counts of securities fraud in violation of Colo. Rev. Stat. § 11-51-501(1), a class three felony, and eight counts of theft in

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violation of Colo. Rev. Stat. § 18-4-401, a class three felony, before the District Court, City and County of Denver, Colorado, in People v. Michael Lee Mendenhall, Case No. 2011CR10094. On April 20, 2012, a judgment in the criminal case was entered against Mendenhall. Mendenhall was sentenced to 30 years in prison, and ordered to pay \$1,408,667.77 in restitution.

2. One of the securities fraud counts on which Mendenhall was convicted alleged that, between April 2006 and November 2010, Mendenhall, in connection with the offer, sale, or purchase of a security, directly or indirectly, unlawfully, feloniously, and willfully engaged in any act, practice, or course of business which operated, or would have operated as a fraud or deceit upon any person in connection with purported residential real estate acquisition investments. The remaining sixteen securities fraud counts on which Mendenhall was convicted alleged that, at various times between April 2006 and November 2010, Mendenhall, in connection with the offer, sale, or purchase of a security, directly or indirectly, unlawfully, feloniously and willfully made an untrue statement of material fact or omitted 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, in connection with purported residential real estate investments. The theft counts on which Mendenhall was convicted alleged that, at various times between September 2005 and August 2010, Mendenhall unlawfully, feloniously, and knowingly obtained or exercised control over investors' money, without authorization, or by threat or decision, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive investors of its use or benefit.

3. At the time of the misconduct for which he was convicted, Mendenhall was associated with a broker-dealer and investment adviser registered with the Commission and/or a broker-dealer registered with the Commission.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an

Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73086 / September 12, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16102

In the Matter of

MICHAEL J. SCAGLIONE,

Respondent.

ORDER OF SUSPENSION PURSUANT
TO RULE 102(e)(2) OF THE
COMMISSION'S RULES OF PRACTICE

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Michael J. Scaglione ("Scaglione") pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. 201.102(e)(2)].¹

II.

The Commission finds that:

1. Scaglione was an attorney admitted to practice law in Florida in 1999.
2. On October 9, 2013, a judgment of conviction was entered against Scaglione in *United States v. Michael J. Scaglione*, Case No. 1:13-cr-00553-MKB (E.D.N.Y. July 5, 2013), in the United States District Court for the Eastern District of New York, finding him guilty of one count of laundering the proceeds of fraud in the sale of securities in violation of 18 U.S.C. § 1956(a)(3).
3. As a result of this conviction, Scaglione was sentenced to six months imprisonment in a federal penitentiary followed by two years of supervised release and ordered to forfeit \$31,950.
4. Also as a result of this conviction, Scaglione's license to practice law in Florida was disciplinarily revoked by the Florida Supreme Court. In Re: Petition for Disciplinary

¹ Rule 102(e)(2) provides in pertinent part: "Any ... person who has suspended or disbarred by a court of the United States or of any State; or ... person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

Revocation of Michael J. Scaglione, Case No. SC14-76 (Fla. 2014).

III.

In view of the foregoing, the Commission finds that Scaglione has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice. Also, in view of the foregoing, the Commission finds that Scaglione is an attorney who has been disbarred by a State court within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Scaglione is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73097 / September 15, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16107

In the Matter of

KEVIN P. O'BRIEN,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Kevin P. O'Brien ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that

1. From 1987 through 2009, O'Brien was a registered representative, in Cincinnati, Ohio, with The Ohio Company and R.W. Baird & Co., Inc. ("R.W. Baird"), both of which were broker-dealers and investment advisers registered with the Commission. O'Brien, 56 years old, is a resident of Anderson, Ohio.

2. On July 21, 2014, a final judgment was entered by consent against O'Brien, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in the civil action entitled Securities and Exchange Commission v. Kevin P. O'Brien, Civil Action Number 1:14-cv-00169-MRB, in the United States District Court for the Southern District of Ohio.

3. The Commission's complaint alleged that, from at least 1998 through 2008, while working as a registered representative at R.W. Baird, O'Brien misappropriated over \$298,000 from the account of a client. During that time, O'Brien had discretionary authority over the account, caused checks to be issued from the account, misappropriated the checks, and then used the funds for personal expenses unrelated to the client. Over the years, O'Brien liquidated securities from the client's account to cover the checks that O'Brien caused to be issued from that account.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent O'Brien's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent O'Brien be, and hereby is:

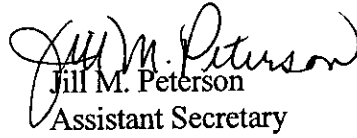
barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served

as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73104 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16108

In the Matter of

MIDWOOD CAPITAL
MANAGEMENT LLC

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Midwood Capital Management LLC ("Midwood Capital" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Midwood Capital, a Massachusetts-based registered investment adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On two occasions, from February 2010 through February 2012, Midwood Capital bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. These violations collectively resulted in profits of \$72,699.

Respondent

3. Midwood Capital Management LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Midwood Capital has been registered with the Commission since October 2013. At the time of the violations, Midwood Capital was exempt from registration, and it provided advisory services to two domestic funds, Midwood Capital Partners L.P. and Midwood Capital Partners Q.P. (which closed in 2011). As of December 31, 2013, Midwood Capital had total assets under management in excess of \$145 million.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

activity.” 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. Id.

Midwood Capital’s Violations of Rule 105 of Regulation M

6. On February 19, 2010, Midwood Capital sold short 390 shares of PMFG Inc. (“PMFG”) during the restricted period at a price of \$14.33 per share. On February 26, 2010, PMFG priced a follow-on offering of its common stock at \$11.50 per share. Midwood Capital received an allocation of 10,000 shares in that offering. The difference between Midwood Capital’s proceeds received from the restricted period short sales of PMFG shares and the price paid for the 390 shares received in the offering was \$1,103.70. Respondent also improperly obtained a benefit of \$9,463.93 by purchasing the remaining 9,610 shares at a discount from PMFG’s market price. Thus, Midwood Capital’s participation in the 2010 PMFG offering resulted in total profits of \$10,568.

7. From February 9, 2012 through February 13, 2012, Midwood Capital sold short 7,100 shares of PMFG Inc. (“PMFG”) during the restricted period at an average price of \$23.99 per share. On February 16, 2012, PMFG priced a follow-on offering of its common stock at \$16.00 per share. Midwood Capital received an allocation of 10,000 shares in that offering. The difference between Midwood Capital’s proceeds received from the restricted period short sales of PMFG shares and the price paid for the 7,100 shares received in the offering was \$58,709.04. Respondent also improperly obtained a benefit of \$3,422 by purchasing the remaining 2,900 shares at a discount from PMFG’s market price. Thus, Midwood Capital’s participation in the 2012 PMFG offering resulted in total profits of \$62,131.

8. In total, Midwood Capital’s violations of Rule 105 resulted in profits of \$72,699.

Violations

9. As a result of the conduct described above, Midwood Capital violated Rule 105 of Regulation M under the Exchange Act.

Midwood Capital’s Remedial Efforts & Cooperation

10. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Midwood Capital’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Midwood Capital cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Midwood Capital shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$72,699, prejudgment interest of \$5,248.19, and a civil money penalty in the amount of \$65,000 (for a total of \$142,947.19) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Midwood Capital as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73105 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16109

In the Matter of

RA CAPITAL
MANAGEMENT, LLC

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against RA Capital Management, LLC ("RA Capital" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by RA Capital, a Massachusetts-based registered investment adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On 17 occasions, from June 2009 through July 2013, RA Capital bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. These violations collectively resulted in profits of \$2,646,395.21.

Respondent

3. RA Capital Management, LLC is a Massachusetts limited liability company with its principal place of business in Boston, Massachusetts. RA Capital Management, LLC is a registered investment adviser that provides advisory services to one domestic fund, one offshore fund, and one separately managed account. As of March 31, 2014, RA Capital Management, LLC had total assets under management in excess of \$1.4 billion.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. *Id.*

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

RA Capital's Violations of Rule 105 of Regulation M

6. On June 17, 2009, RA Capital sold short 100,000 shares of Halozyme Therapeutics, Inc. ("HALO") during the restricted period at a price of \$7.26 per share. On June 23, 2009, HALO announced the pricing of a follow-on offering of its common stock at \$6.50 per share. RA Capital received an allocation of 75,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of HALO shares and the price for the 75,000 shares received in the offering was \$56,741.93. Thus, RA Capital's participation in the HALO offering netted total profits of \$56,741.93.

7. On July 21, 2009, RA Capital sold short 625,000 shares of CTI Biopharma Corp. (formerly known as Cell Therapeutics) ("CTIC") during the restricted period at a price of \$1.50 per share. On July 22, 2009, RA Capital sold short 500,000 shares of CTIC during the restricted period at a price of \$1.64 per share. On July 23, 2009, CTIC announced the pricing of a follow-on offering of its common stock at \$1.30 per share. RA Capital received an allocation of 1,250,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of CTIC shares and the price for the 1,250,000 shares received in the offering was \$298,450.00. Respondent also improperly obtained a benefit of \$13,675.00 by purchasing the remaining 125,000 shares at a discount from CTIC's market price. Thus, RA Capital's participation in the HALO offering netted total profits of \$312,125.00.

8. On October 6, 2009, RA Capital sold short 17,000 shares of Sangamo Biosciences, Inc. ("SGMO") during the restricted period at a price of \$8.11 per share. On October 7, 2009, SGMO announced the pricing of a follow-on offering of its common stock at \$7.20 per share. RA Capital received an allocation of 217,905 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of SGMO shares and the price for the 217,905 shares received in the offering was \$15,445.30. Respondent also improperly obtained a benefit of \$7,754.93 by purchasing the remaining 200,905 shares at a discount from SGMO's market price. Thus, RA Capital's participation in the SGMO offering netted total profits of \$23,200.23.

9. On January 5, 2010, RA Capital sold short 74,138 shares of Synta Pharmaceuticals Corp. ("SNTA") during the restricted period at a price of \$5.76 per share. On January 6, 2010, RA Capital sold short 161,278 shares of SNTA during the restricted period at a price of \$5.70 per share. On January 8, 2010, SNTA announced the pricing of a follow-on offering of its common stock at \$4.50 per share. RA Capital received an allocation of 1,111,111 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of SNTA shares and the price for the 1,111,111 shares received in the offering was \$286,437.08. Respondent also improperly obtained a benefit of \$21,979.94 by purchasing the remaining 875,695 shares at a discount from SNTA's market price. Thus, RA Capital's participation in the SNTA offering netted total profits of \$308,417.02.

10. On January 14, 2010, RA Capital sold short 7,000 shares of Achillion Pharmaceuticals, Inc. ("ACHN") during the restricted period at a price of \$3.00 per share. On January 15, 2010, RA Capital sold short 100,000 shares of ACHN during the restricted period at a price of \$2.70 per share. On January 22, 2010, ACHN announced the pricing of a follow-on

offering of its common stock at \$2.08 per share. RA Capital received an allocation of 100,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of ACHN shares and the price for the 100,000 shares received in the offering was \$64,007.00. Thus, RA Capital's participation in the ACHN offering netted total profits of \$64,007.00.

11. On March 25, 2010, RA Capital sold short 25,000 shares of Pernix Sleep, Inc. (formerly known as Somaxon Pharmaceuticals, Inc.) ("SOMX") during the restricted period at a price of \$9.36 per share. On March 25, 2010, SOMX announced the pricing of a follow-on offering of its common stock at \$8.25 per share. RA Capital received an allocation of 40,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of SOMX shares and the price for the 40,000 shares received in the offering was \$27,718.30. Respondent also improperly obtained a benefit of \$15,189.00 by purchasing the remaining 15,000 shares at a discount from SOMX's market price. Thus, RA Capital's participation in the SOMX offering netted total profits of \$42,907.30.

12. On May 3, 2010, RA Capital sold short 10,450 shares of ImmunoGen, Inc. ("IMGN") during the restricted period at a price of \$10.61 per share. On May 6, 2010, IMGN announced the pricing of a follow-on offering of its common stock at \$8.00 per share. RA Capital received an allocation of 150,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of IMGN shares and the price for the 150,000 shares received in the offering was \$27,293.50. Respondent also improperly obtained a benefit of \$9,908.05 by purchasing the remaining 139,550 shares at a discount from IMGN's market price. Thus, RA Capital's participation in the IMGN offering netted total profits of \$37,201.55.

13. On June 3, 2010, RA Capital sold short 84,732 shares of Clinical Data, Inc. ("CLDA") during the restricted period at a price of \$16.83 per share. On June 4, 2010, RA Capital sold short 14,700 shares of CLDA during the restricted period at a price of \$16.31 per share. On June 9, 2010, CLDA announced the pricing of a follow-on offering of its common stock at \$14.30 per share. RA Capital received an allocation of 15,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of CLDA shares and the price for the 15,000 shares received in the offering was \$37,941.72. Thus, RA Capital's participation in the CLDA offering netted total profits of \$37,941.72.

14. On June 25, 2010, RA Capital sold short 100,000 shares of MELA Sciences, Inc. ("MELA") during the restricted period at a price of \$9.08 per share. On June 30, 2010, MELA announced the pricing of a follow-on offering of its common stock at \$7.50 per share. RA Capital received an allocation of 400,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of MELA shares and the price for the 400,000 shares received in the offering was \$157,649.00. Thus, RA Capital's participation in the MELA offering netted total profits of \$157,649.00.

15. On October 12, 2010, RA Capital sold short 30,000 shares of OncoGenex Pharmaceuticals, Inc. ("OGXI") during the restricted period at a price of \$18.76 per share. On October 19, 2010, OGXI announced the pricing of a follow-on offering of its common stock at

\$15.75 per share. RA Capital received an allocation of 410,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of OGXI shares and the price for the 410,000 shares received in the offering was \$90,195.75. Respondent also improperly obtained a benefit of \$165,490.00 by purchasing the remaining 380,000 shares at a discount from OGXI's market price. Thus, RA Capital's participation in the OGXI offering netted total profits of \$255,685.75.

16. On October 29, 2010, RA Capital sold short 75,000 shares of Exact Sciences Corp. ("EXAS") during the restricted period at a price of \$7.35 per share. On November 4, 2010, EXAS announced the pricing of a follow-on offering of its common stock at \$6.00 per share. RA Capital received an allocation of 600,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of EXAS shares and the price for the 600,000 shares received in the offering was \$101,385.00. Respondent also improperly obtained a benefit of \$141,382.50 by purchasing the remaining 525,000 shares at a discount from EXAS's market price. Thus, RA Capital's participation in the EXAS offering netted total profits of \$242,767.50.

17. On June 20, 2011, RA Capital sold short 22,000 shares of GTx Inc. ("GTXI") during the restricted period at a price of \$5.91 per share. On June 23, 2011, GTXI announced the pricing of a follow-on offering of its common stock at \$4.75 per share. RA Capital received an allocation of 725,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of GTXI shares and the price for the 725,000 shares received in the offering was \$25,549.90. Respondent also improperly obtained a benefit of \$11,037.10 by purchasing the remaining 703,000 shares at a discount from GTXI's market price. Thus, RA Capital's participation in the GTXI offering netted total profits of \$36,587.00.

18. On December 28, 2011, RA Capital sold short 14,803 shares of Synageva BioPharma Corp. ("GEVA") during the restricted period at a price of \$25.52 per share. On January 5, 2012, GEVA announced the pricing of a follow-on offering of its common stock at \$25.18 per share. RA Capital received an allocation of 60,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of GEVA shares and the price for the 60,000 shares received in the offering was \$4,979.05. Respondent also improperly obtained a benefit of \$123,374.25 by purchasing the remaining 45,197 shares at a discount from GEVA's market price. Thus, RA Capital's participation in the GEVA offering netted total profits of \$128,353.30.

19. On February 24, 2012, RA Capital sold short 70,000 shares of VIVUS, Inc. ("VVUS") during the restricted period at a price of \$21.44 per share. On February 27, 2012, RA Capital sold short 50,000 shares of VVUS during the restricted period at a price of \$23.10 per share. On February 29, 2012, VVUS announced the pricing of a follow-on offering of its common stock at \$22.50 per share. RA Capital received an allocation of 300,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of VVUS shares and the price for the 300,000 shares received in the offering was \$30,200. Respondent also improperly obtained a benefit of \$18,837.00 by purchasing the remaining 230,000 shares at a discount from HALO's market price. Thus, RA Capital's participation in the VVUS offering netted total profits of \$49,037.00.

20. On January 17, 2013, RA Capital sold short 60,238 shares of BG Medicine, Inc. ("BGMD") during the restricted period at a price of \$2.23 per share. On January 25, 2013, BGMD announced the pricing of a follow-on offering of its common stock at \$2.00 per share. RA Capital received an allocation of 150,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of BGMD shares and the price for the 150,000 shares received in the offering was \$13,884.56. Respondent also improperly obtained a benefit of \$6,480.82 by purchasing the remaining 89,762 shares at a discount from BGMD's market price. Thus, RA Capital's participation in the BGMD offering netted total profits of \$20,365.38.

21. On January 28, 2013, RA Capital sold short 100,000 shares of Keryx Biopharmaceuticals Inc. ("KERX") during the restricted period at a price of \$5.00 per share. On January 30, 2013, RA Capital sold short 36,450 shares of KERX during the restricted period at a price of \$9.34 per share. On January 30, 2013, KERX announced the pricing of a follow-on offering of its common stock at \$8.49 per share. RA Capital received an allocation of 300,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of KERX shares and the price for the 300,000 shares received in the offering was \$30,967.88. Respondent also improperly obtained a benefit of \$207,940.95 by purchasing the remaining 263,550 shares at a discount from KERX's market price. Thus, RA Capital's participation in the KERX offering netted total profits of \$238,908.83.

22. On July 11, 2013, RA Capital sold short 40,526 shares of Insmo Incorporated ("INSM") during the restricted period at a price of \$11.07 per share. On July 15, 2013, RA Capital sold short 48,369 shares of INSM during the restricted period at a price of \$10.96 per share. On July 17, 2013, INSM announced the pricing of a follow-on offering of its common stock at \$10.40 per share. RA Capital received an allocation of 550,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of INSM shares and the price for the 550,000 shares received in the offering was \$54,567.94. Respondent also improperly obtained a benefit of \$579,931.76 by purchasing the remaining 461,105 shares at a discount from INSM's market price. Thus, RA Capital's participation in the INSM offering netted total profits of \$634,499.70.

23. In total, RA Capital's violations of Rule 105 resulted in profits of \$2,646,395.21.

Violations

24. As a result of the conduct described above, RA Capital violated Rule 105 of Regulation M under the Exchange Act.

RA Capital's Remedial Efforts & Cooperation

25. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent RA Capital's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent RA Capital cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. RA Capital shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$2,646,395.21, prejudgment interest of \$73,394.16, and a civil money penalty in the amount of \$904,570.84 (for a total of \$3,624,360.21) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

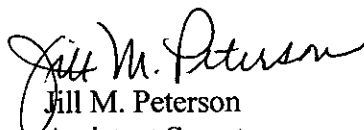
Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying RA

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

Capital as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Paul Levenson, Director, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73106 / September 16, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16110

In the Matter of

**ROCKWOOD
INVESTMENT
MANAGEMENT, INC.**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Rockwood Investment Management, Inc. ("Rockwood" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Rockwood, a Connecticut-based exempt reporting adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On six occasions, from May 2010 through July 2012, Rockwood bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. These violations collectively resulted in profits of \$156,631.

Respondent

3. Rockwood Investment Management, Inc. is a corporation incorporated in Delaware with its principal place of business in Greenwich, Connecticut. Rockwood Investment Management, Inc. was an exempt reporting adviser at the time of the violations. Rockwood Investment Management, Inc. provides advisory services to one domestic fund and has total assets under management in excess of \$121 million.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. *Id.*

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Rockwood's Violations of Rule 105 of Regulation M

6. On May 11, 2010, Rockwood sold short 9,000 shares of American Capital Agency Corp. ("AGNC") during the restricted period at a price of \$27.6914 per share. On May 14, 2010, AGNC announced the pricing of a follow-on offering of its common stock at \$25.75 per share. Rockwood received an allocation of 46,100 shares in that offering. The difference between Rockwood's proceeds from the restricted period short sales of AGNC shares and the price paid for the 9,000 shares received in the offering was \$17,472. Thus, Rockwood's participation in the 2010 AGNC offering resulted in total profits of \$17,472.

7. On January 3, 2011, Rockwood sold short 47,864 shares of Annaly Capital Management Inc. ("NLY") during the restricted period at a price of \$17.6162 per share. On January 4, 2011, NLY priced a follow-on offering of its common stock at \$17.20 per share. Rockwood received an allocation of 250,000 shares in that offering. The difference between Rockwood's proceeds received from the restricted period short sales of NLY shares and the price paid for the 47,864 shares received in the offering was \$19,920.98. Respondent also improperly obtained a benefit of \$38,062.21 by purchasing the remaining 202,136 shares at a discount from NLY's market price. Thus, Rockwood's participation in the NLY offering resulted in total profits of \$57,983.

8. From March 4, 2011 through March 8, 2011, Rockwood sold short 6,900 shares of Two Harbors Investment Co. ("TWO") during the restricted period at an average price of \$11.3263 per share. On March 11, 2011, TWO priced a follow-on offering of its common stock at \$10.25 per share. Rockwood received an allocation of 120,000 shares in that offering. The difference between Rockwood's proceeds received from the restricted period short sales of TWO shares and the price paid for the 6,900 shares received in the offering was \$7,242.92. Respondent also improperly obtained a benefit of \$12,418.38 by purchasing the remaining 113,100 shares at a discount from TWO's market price. Thus, Rockwood's participation in the TWO offering resulted in total profits of \$19,661.

9. On March 15, 2011, Rockwood sold short 13,954 shares of Hatteras Financial Corp. ("HTS") during the restricted period at a price of \$30.8666 per share. On March 18, 2011, HTS announced the pricing of a follow-on offering of its common stock at \$28.50 per share. Rockwood received an allocation of 25,000 shares in that offering. The difference between Rockwood's proceeds from the restricted period short sales of HTS shares and the price paid for the 13,954 shares received in the offering was \$33,024. Thus, Rockwood's participation in the HTS offering resulted in total profits of \$33,024.

10. From March 2, 2012 through March 5, 2012, Rockwood sold short 15,000 shares of American Capital Agency Co. ("AGNC") during the restricted period at an average price of \$30.6025 per share. On March 7, 2012, AGNC priced a follow-on offering of its common stock at \$29.35 per share. Rockwood received an allocation of 26,000 shares in that offering. The difference between Rockwood's proceeds received from the restricted period short sales of AGNC

shares and the price paid for the 15,000 shares received in the offering was \$20,725. Respondent also improperly obtained a benefit of \$1,227.60 by purchasing the remaining 11,000 shares at a discount from AGNC's market price. Thus, Rockwood's participation in the March 2012 AGNC offering resulted in total profits of \$21,953.

11. On July 17, 2012, Rockwood sold short 6,000 shares of American Capital Agency Co. ("AGNC") during the restricted period at a price of \$34.8269 per share. On July 18, 2012, AGNC priced a follow-on offering of its common stock at \$34.10 per share. Rockwood received an allocation of 30,000 shares in that offering. The difference between Rockwood's proceeds received from the restricted period short sales of AGNC shares and the price paid for the 6,000 shares received in the offering was \$4,361.20. Respondent also improperly obtained a benefit of \$2,176.80 by purchasing the remaining 24,000 shares at a discount from AGNC's market price. Thus, Rockwood's participation in the March 2012 AGNC offering resulted in total profits of \$6,538.

12. In total, Rockwood's violations of Rule 105 resulted in profits of \$156,631.

Violations

13. As a result of the conduct described above, Rockwood violated Rule 105 of Regulation M under the Exchange Act.

Rockwood's Remedial Efforts & Cooperation

14. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Rockwood's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Rockwood cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

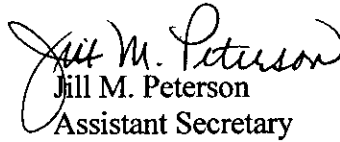
B. Rockwood shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$156,631, prejudgment interest of \$9,222.16, and a civil money penalty in the amount of \$72,135.23 (for a total of \$237,988.39) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Rockwood as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73108 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16112

In the Matter of

NOB HILL CAPITAL
MANAGEMENT, INC.

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Nob Hill Capital Management, Inc. ("Nob Hill" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Nob Hill, which, at the time of the violations, was a San Francisco-based registered investment adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On three occasions, from December 2010 through March 2012, Nob Hill bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the restricted period. These violations collectively resulted in profits of \$95,902.

Respondent

3. Nob Hill Capital Management, Inc. is a corporation organized under the laws of California with its principal place of business in San Francisco. Nob Hill, which is currently in liquidation, was a registered investment adviser at the time of the violations and had \$24.8 million in assets under management when it filed its most recent Form ADV with the Commission on September 26, 2011.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

activity.” 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. Id.

Nob Hill’s Violations of Rule 105 of Regulation M

6. On December 9, 2010, Nob Hill sold short 75,000 shares of Cypress Sharpridge Investments, Inc. (“CYS”) during the restricted period at prices ranging from \$12.64 to \$13.24 per share. On December 10, 2010, CYS priced a follow-on offering of its common stock at \$12.46 per share. Nob Hill received an allocation of 225,000 shares in that offering. The difference between Nob Hill’s proceeds received from the restricted period short sales of CYS shares and the price paid for 75,000 shares received in the offering was \$36,791. Respondent also improperly received a benefit of \$45,870 by purchasing the remaining 150,000 shares at a discount from CYS’ market price. Thus, Nob Hill’s participation in the 2010 CYS offering resulted in total profits of \$82,661.

7. From April 28, 2011 through May 4, 2011, Nob Hill sold short 18,500 shares of Whitestone REIT, Inc. (“WSR”) during the restricted period at prices ranging from \$12.80 to \$14.10 per share. On May 5, 2011, WSR priced a follow-on offering of its common stock at \$12 per share. Nob Hill received an allocation of 25,000 shares in that offering. The difference between Nob Hill’s proceeds received from the restricted period short sales of WSR shares and the price paid for 18,500 shares received in the offering was \$9,566. Respondent also improperly received a benefit of \$395 by purchasing the remaining 6,500 shares at a discount from WSR’s market price. Thus, Nob Hill’s participation in the 2011 WSR offering resulted in total profits of \$9,961.

8. From February 27, 2012 through March 1, 2012, Nob Hill sold short 97,500 shares of NetSol Technologies, Inc. (“NTWK”) during the restricted period at prices ranging from \$0.47 to \$0.56 per share. On March 1, 2012, NTWK priced a follow-on offering of its common stock at \$0.40 per share. Nob Hill received an allocation of 44,500 shares in that offering. The difference between Nob Hill’s proceeds received from the restricted period short sales of NTWK shares and the price paid for 44,500 shares received in the offering was \$3,280. Thus, Nob Hill’s participation in the 2012 NTWK offering resulted in total profits of \$3,280.

9. In total, Nob Hill’s violations of Rule 105 resulted in profits of \$95,902.

Violations

10. As a result of the conduct described above, Nob Hill violated Rule 105 of Regulation M under the Exchange Act.

Nob Hill’s Remedial Efforts & Cooperation

11. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

Disgorgement and Civil Penalties

12. Respondent has submitted a sworn Statement of Financial Condition dated July 7, 2014 and other evidence and has asserted its inability to pay disgorgement plus prejudgment interest or a civil penalty.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Nob Hill's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Nob Hill cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Respondent shall pay disgorgement of \$95,902 and prejudgment interest of \$6,662.62, but that payment of such amount is waived based upon Respondent's sworn representations in its Statement of Financial Condition dated July 7, 2014 and other documents provided to the Commission. Based upon Respondent's sworn representations in its Statement of Financial Condition dated July 7, 2014 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

C. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, pre-judgment interest and the maximum penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73107 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16111

In the Matter of

SEAWOLF CAPITAL, LLC

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Seawolf Capital, LLC ("Seawolf" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Seawolf, a New York-based investment firm. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In February 2013, Seawolf bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. This violation resulted in profits of \$192,730.

Respondent

3. Seawolf Capital, LLC is a limited liability company incorporated in Delaware with its principal place of business in New York, New York. Seawolf Capital, LLC has been registered with the SEC since January 2012 and provides advisory services to two foreign funds and one domestic fund. Seawolf Capital, LLC has total assets under management in excess of \$474 million.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Id.

Seawolf's Violation of Rule 105 of Regulation M

6. On February 27, 2013, Seawolf sold short 105,600 shares of Commonwealth REIT ("CWH") during the restricted period at a price of \$22.8546 per share. On February 27, 2013, CWH announced the pricing of a follow-on offering of its common stock at \$19.00 per share. Seawolf received an allocation of 50,000 shares in that offering. The difference between Seawolf's proceeds from the restricted period short sales of CWH shares and the price paid for the 50,000

shares received in the offering was \$192,730. Thus, Seawolf's participation in the CWH offering resulted in total profits of \$192,730.

7. In total, Seawolf's violations of Rule 105 resulted in profits of \$192,730.

Violation

8. As a result of the conduct described above, Seawolf violated Rule 105 of Regulation M under the Exchange Act.

Seawolf's Remedial Efforts & Cooperation

9. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Seawolf's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Seawolf cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Seawolf shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$192,730, prejudgment interest of \$7,842.28, and a civil money penalty in the amount of \$96,365 (for a total of \$296,937.28) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Seawolf as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73116 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16120

In the Matter of

**BLACKROCK
INSTITUTIONAL TRUST
COMPANY, N.A.**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against BlackRock Institutional Trust Company, N.A. ("BlackRock" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by BlackRock, a San Francisco-based national banking association. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On three occasions, from April 2010 through March 2011, BlackRock bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the restricted period. These violations collectively resulted in profits of \$1,122,400.

Respondent

3. BlackRock Institutional Trust Company, N.A. is a national banking association organized under the laws of the United States that operates as a limited purpose trust company. BlackRock has its principal office in San Francisco and has approximately \$1.1 trillion in assets under management as of March 31, 2014.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Id.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

BlackRock's Violations of Rule 105 of Regulation M

6. On April 21, 2010, BlackRock sold short 3,377 shares of PVH Corp. ("PVH") during the restricted period at a price of \$64.73 per share. On April 22, 2010, PVH priced a follow-on offering of its common stock at \$66.50 per share. BlackRock received an allocation of 60,000 shares in that offering. Although the offering price was greater than the price at which BlackRock sold short during the restricted period, BlackRock improperly received a benefit of \$60,711 by purchasing 56,623 shares in the offering at a discount from PVH's market price. Thus, BlackRock's participation in the 2010 PVH offering resulted in total profits of \$60,711.

7. On August 2, 2010, BlackRock sold short 15,011 shares of MetLife, Inc. ("MET") during the restricted period at a price of \$42.73 per share. On August 2, 2010, MET priced a follow-on offering of its common stock at \$42 per share. BlackRock received an allocation of 1,218,451 shares in that offering. The difference between BlackRock's proceeds received from the restricted period short sales of MET shares and the price paid for 15,011 shares received in the offering was \$10,933. Respondent also improperly received a benefit of \$297,972 by purchasing the remaining 1,203,440 shares at a discount from MET's market price. Thus, BlackRock's participation in the 2010 MET offering resulted in total profits of \$308,904.

8. On March 1, 2011, BlackRock sold short 10,715 shares of EOG Resources, Inc. ("EOG") during the restricted period at a price of \$109.05 per share. On March 1, 2011, EOG priced a follow-on offering of its common stock at \$105.50 per share. BlackRock received an allocation of 650,000 shares in that offering. The difference between BlackRock's proceeds received from the restricted period short sales of EOG shares and the price paid for 10,715 shares received in the offering was \$38,064. Respondent also improperly received a benefit of \$714,721 by purchasing the remaining 639,285 shares at a discount from EOG's market price. Thus, BlackRock's participation in the 2011 EOG offering resulted in total profits of \$752,785.

9. In total, BlackRock's violations of Rule 105 resulted in profits of \$1,122,400.

Violations

10. As a result of the conduct described above, BlackRock violated Rule 105 of Regulation M under the Exchange Act.

BlackRock's Remedial Efforts & Cooperation

11. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent BlackRock's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent BlackRock cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. BlackRock shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$1,122,400, prejudgment interest of \$22,471.13, and a civil money penalty in the amount of \$530,479 (for a total of \$1,675,350.13) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying BlackRock as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73117 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16121

In the Matter of

EAST SIDE
HOLDINGS II,
INC.

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against East Side Holdings II, Inc. ("East Side" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by East Side, a New Jersey-based privately held proprietary trading firm. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On four occasions, from November 2013 through December 2013, East Side bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. These violations collectively resulted in profits of \$26,613.

Respondent

3. East Side Holdings II, Inc. is a privately held proprietary trading firm located in Clifton, New Jersey. East Side is incorporated under the laws of the state of Delaware. It is not a registered investment adviser.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. *Id.*

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

East Side's Violations of Rule 105 of Regulation M

6. On November 13, 2013 and November 14, 2013, East Side sold short 4,000 shares of T-Mobile US, Inc. ("TMUS") during the restricted period at an average price of \$25.7650 per share. On November 14, 2013, TMUS announced the pricing of a follow-on offering of its common stock at \$25.00 per share. East Side received an allocation of 60,150 shares in that offering. The difference between East Side's proceeds from the restricted period short sales of TMUS shares and the price paid for the 4,000 shares received in the offering was \$2,490. Respondent also improperly obtained a benefit of \$19,478.44 by purchasing the remaining 56,150 shares at a discount from TMUS's market price. Thus, East Side's participation in the TMUS offering resulted in total profits of \$21,968.

7. On December 3, 2013, East Side sold short 3,000 shares of Seadrill Ltd. ("SDLP") during the restricted period at a price of \$29.5000 per share. On December 4, 2013, SDLP priced a follow-on offering of its common stock at \$29.50 per share. East Side received an allocation of 5,000 shares in that offering. Although the offering price was the same as the price at which Respondent sold short during the restricted period, Respondent improperly obtained a benefit of \$826 by purchasing the remaining 2,000 shares at a discount from SDLP's market price. Thus, East Side's participation in the SDLP offering resulted in total profits of \$826.

8. On December 4, 2013, East Side sold short 5,000 shares of GT Advanced Technologies Inc. ("GTAT") during the restricted period at a price of \$9.0400 per share. On December 5, 2013, GTAT announced the pricing of a follow-on offering of its common stock at \$8.65 per share. East Side received an allocation of 8,950 shares in that offering. The difference between East Side's proceeds from the restricted period short sales of GTAT shares and the price paid for the 5,000 shares received in the offering was \$1,950. Respondent also improperly obtained a benefit of \$1,098.50 by purchasing the remaining 3,950 shares at a discount from GTAT's market price. Thus, East Side's participation in the GTAT offering resulted in total profits of \$3,049.

9. On December 5, 2013, East Side sold short 1,000 shares of Bitauto Holdings Ltd. ("BITA") during the restricted period at a price of \$30.7700 per share. On December 6, 2013, BITA priced a follow-on offering of its common stock at \$30.00 per share. East Side received an allocation of 2,085 shares in that offering. The difference between East Side's proceeds received from the restricted period short sales of BITA shares and the price paid for the 1,000 shares received in the offering was \$770. Thus, East Side's participation in the BITA offering resulted in total profits of \$770.

10. In total, East Side's violations of Rule 105 resulted in profits of \$26,613.

Violations

11. As a result of the conduct described above, East Side violated Rule 105 of Regulation M under the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent East Side's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent East Side cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. East Side shall pay disgorgement of \$26,613, prejudgment interest of \$397.38, and a civil money penalty in the amount of \$130,000 (for a total of \$157,010.38) to the United States Treasury. Payments shall be made in the following installments:

1. \$31,402.08 on the day of entry of this Order;
2. \$31,402 within 90 days of entry of this Order;
3. \$31,402 within 180 days of entry of this Order;
4. \$31,402 within 270 days of entry of this Order;
5. \$31,402.30, plus post-judgment interest on the payments described in Section IV.B.1-4 pursuant to SEC Rule of Practice 600, within 360 days of entry of this Order.

Prior to making the payment described in Section IV.B.5, Respondent shall contact the Commission staff to ensure the inclusion of post-judgment interest. If any payment is not made by the date the payment is required by Section IV.B.1-5 of this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payments must be made in one of the following ways:

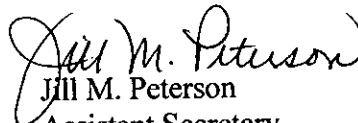
- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

Payments by check or money order must be accompanied by a cover letter identifying East Side as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73118 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16122

In the Matter of

EXPLORADOR CAPITAL
MANAGEMENT, LLC

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Explorador Capital Management, LLC ("Explorador" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by Explorador, a Brazilian investment firm. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In October 2011, Explorador bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. This violation resulted in profits of \$83,722.

Respondent

3. Explorador Capital Management, LLC is a limited liability company incorporated in Delaware with its principal place of business in Sao Paulo, Brazil. Explorador Capital Management, LLC has been registered with the SEC since March 2006 and provides advisory services to one foreign fund and four domestic funds. Explorador Capital Management, LLC has total assets under management in excess of \$106 million.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 “to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity.” 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. *Id.*

Explorador’s Violation of Rule 105 of Regulation M

6. On October 13, 2011, Explorador sold short 22,394 shares of Arcos Dorados Holdings Inc. (“ARCO”) during the restricted period at a price of \$25.5002 per share. On October 19, 2011, ARCO announced the pricing of a follow-on offering of its common stock at \$22.00 per share. Explorador received an allocation of 50,000 shares in that offering. The difference between Explorador’s proceeds received from the restricted period short sales of ARCO shares and the price paid for the 22,394 shares received in the offering was \$78,383.48. Respondent also

improperly obtained a benefit of \$5,339 by purchasing the remaining 27,606 shares at a discount from ARCO's market price. Thus, Explorador's participation in the ARCO offering resulted in total profits of \$83,722.

7. In total, Explorador's violation of Rule 105 resulted in profits of \$83,722.

Violation

8. As a result of the conduct described above, Explorador violated Rule 105 of Regulation M under the Exchange Act.

Explorador's Remedial Efforts & Cooperation

9. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Explorador's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Explorador cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Explorador shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$83,722, prejudgment interest of \$6,936.65, and a civil money penalty in the amount of \$65,000 (for a total of \$155,658.65) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Explorador as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73123 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16127

In the Matter of

JAMES C. PARSONS

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against James C. Parsons ("Parsons" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by James C. Parsons, a resident of New York. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In September 2013, Parsons bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. This violation resulted in profits of \$135,531.

Respondent

3. James C. Parsons, age 40, resides in New York, New York. During all relevant times, Parsons engaged in trading for the benefit of his personal trading accounts.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. *Id.*

Respondent's Violation of Rule 105 of Regulation M

6. On September 10, 2013, Parsons sold short 2,673 shares of Virtus Investment Partners, Inc. ("VRTS") during the restricted period at a price of \$168.8848 per share. On

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

September 11, 2013, VRTS priced a follow-on offering of its common stock at \$155 per share. Parsons received an allocation of 20,000 shares in that offering. The difference between Respondent's proceeds received from the restricted period short sales of VRTS shares and the price paid for the 2,673 shares received in the offering was \$37,114.07. Respondent also improperly obtained a benefit of \$98,417.36 by selling the remaining 17,327 shares at a premium compared to VRTS's offering price.² Thus, Parsons' participation in the VRTS offering resulted in total profits of \$135,531.

7. In total, Parsons' violation of Rule 105 resulted in profits of \$135,531.

Violation

8. As a result of the conduct described above, Parsons violated Rule 105 of Regulation M under the Exchange Act.

Parsons' Remedial Efforts & Cooperation

9. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Parsons' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Parsons cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Parsons shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$135,531, prejudgment interest of \$3,063.90, and a civil money penalty in the amount of \$67,765.72 (for a total of \$206,360.62) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;³

² Parsons sold the overage shares he purchased in the offering on September 16, 2013, two business days after the offering priced after the close on September 11, 2013. He sold all of the shares at \$160.68 per share.

³ The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Parsons as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73113 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16117

In the Matter of

WHITEBOX ADVISORS
LLC

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Whitebox Advisors LLC ("Whitebox" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

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Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Whitebox, a Minnesota-based investment firm. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On five occasions, from January 2011 through June 2012, Whitebox bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. These violations resulted in profits of \$788,779.

Respondent

3. Whitebox Advisors LLC is a limited liability company incorporated in Delaware with its principal place of business in Minneapolis, MN. Whitebox Advisors LLC has been registered with the SEC since January 2006 and provides advisory services to eleven foreign private funds and seven domestic private funds. Whitebox Advisors LLC has total assets under management in excess of \$8.4 billion.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 “to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity.” 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. *Id.*

Whitebox’s Violations of Rule 105 of Regulation M

6. From March 2, 2012 through March 7, 2012, Whitebox sold short 35,000 shares of American Capital Agency Co. (“AGNC”) during the restricted period at an average price of \$30.5485 per share. On March 7, 2012, AGNC announced the pricing of a follow-on offering of its common stock at \$29.35 per share. Whitebox received an allocation of 50,000 shares in that

offering. The difference between Whitebox's proceeds received from the restricted period short sales of AGNC shares and the price paid for the 35,000 shares received in the offering was \$39,320.50. Respondent also improperly obtained a benefit of \$1,674 by purchasing the remaining 15,000 shares at a discount from AGNC's market price. Thus, Whitebox's participation in the AGNC offering resulted in total profits of \$40,994.50.

7. On June 7, 2012, Whitebox sold short 60,000 shares of Endeavour International Corporation ("END") during the restricted period at a price of \$9.9464 per share. On June 13, 2012, END announced the pricing of a follow-on offering of its common stock at \$7.50 per share. Whitebox received an allocation of 200,000 shares in that offering. The difference between Whitebox's proceeds received from the restricted period short sales of END shares and the price paid for the 60,000 shares received in the offering was \$146,784. Respondent also improperly obtained a benefit of \$66,066 by purchasing the remaining 140,000 shares at a discount from END's market price. Thus, Whitebox's participation in the END offering resulted in total profits of \$212,850.

8. On January 3, 2011, Whitebox sold short 20,000 shares of Annaly Capital Management ("NLY") during the restricted period at a price of \$17.9401 per share. On January 4, 2011, NLY announced the pricing of a follow-on offering of its common stock at \$17.20 per share. Whitebox received an allocation of 350,000 shares in that offering. The difference between Whitebox's proceeds received from the restricted period short sales of NLY shares and the price paid for the 20,000 shares received in the offering was \$14,802. Respondent also improperly obtained a benefit of \$62,139 by purchasing the remaining 330,000 shares at a discount from NLY's market price. Thus, Whitebox's participation in the NLY offering resulted in total profits of \$76,941.

9. From February 10, 2011 through February 14, 2011, Whitebox sold short 190,000 shares of Annaly Capital Management ("NLY") during the restricted period at an average price of \$17.9431 per share. On February 15, 2011, NLY announced the pricing of a follow-on offering of its common stock at \$17.30 per share. Whitebox received an allocation of 500,000 shares in that offering. The difference between Whitebox's proceeds received from the restricted period short sales of NLY shares and the price paid for the 190,000 shares received in the offering was \$128,209. Respondent also improperly obtained a benefit of \$37,324 by purchasing the remaining 310,000 shares at a discount from NLY's market price. Thus, Whitebox's participation in the NLY offering resulted in total profits of \$165,533.

10. From July 8, 2011 through July 11, 2011, Whitebox sold short 838,200 shares of Annaly Capital Management ("NLY") during the restricted period at an average price of \$18.5107. On July 11, 2011, NLY announced the pricing of a follow-on offering of its common stock at \$17.70 per share. Whitebox received an allocation of 350,000 shares in that offering. The difference between Whitebox's proceeds from the restricted period short sales of NLY shares and the price paid for the 350,000 shares received in the offering was \$292,460. Thus, Whitebox's participation in the NLY offering resulted in total profits of \$292,460.

11. In total, Whitebox's violations of Rule 105 resulted in profits of \$788,779.

Violation

12. As a result of the conduct described above, Whitebox violated Rule 105 of Regulation M under the Exchange Act.

Whitebox's Remedial Efforts & Cooperation

13. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Whitebox's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Whitebox cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Whitebox shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$788,779, prejudgment interest of \$48,553.49, and a civil money penalty in the amount of \$365,592.83 (for a total of \$1,202,925.30) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

Payments by check or money order must be accompanied by a cover letter identifying Whitebox as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73115 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16119

In the Matter of

ANTIPODEAN ADVISORS
LLC

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Antipodean Advisors LLC ("Antipodean" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Antipodean, a New York-based registered investment adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In August 2013, Antipodean bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. This violation resulted in profits of \$27,970.

Respondent

3. Antipodean Advisors LLC is a limited liability corporation incorporated in Delaware with its principal place of business in New York, New York. Antipodean Advisors LLC has been registered with the SEC since September 2010. Antipodean Advisors LLC provides advisory services to one domestic fund and has total assets under management in excess of \$1.14 billion.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. *Id.*

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Antipodean's Violation of Rule 105 of Regulation M

6. On August 22, 2013, Antipodean sold short 152,000 shares of J.C. Penney Co. Inc. ("JCP") during the restricted period at a price of \$13.1797 per share. On August 27, 2013, JCP announced the pricing of a follow-on offering of its common stock at \$12.90 per share. Antipodean received an allocation of 100,000 shares in that offering. The difference between Antipodean's proceeds from the restricted period short sales of JCP shares and the price paid for the 100,000 shares received in the offering was \$27,970. Thus, Antipodean's participation in the JCP offering resulted in total profits of \$27,970.

7. In total, Antipodean's violations of Rule 105 resulted in profits of \$27,970.

Violation

8. As a result of the conduct described above, Antipodean violated Rule 105 of Regulation M under the Exchange Act.

Antipodean's Remedial Efforts & Cooperation

9. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Antipodean's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Antipodean cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Antipodean shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$27,970, prejudgment interest of \$702.83, and a civil money penalty in the amount of \$65,000 (for a total of \$93,672.83) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²

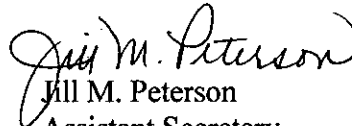
² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Antipodean as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73109 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16113

In the Matter of

SOLUS ALTERNATIVE
ASSET MANAGEMENT LP

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Solus Alternative Asset Management LP ("Solus" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by Solus, a New York, New York-based registered investment adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In September 2013, Solus bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the restricted period. This violation resulted in profits of \$39,600.

Respondent

3. Solus Alternative Asset Management LP is a limited partnership organized under the laws of Delaware with its principal place of business in New York, New York. Solus is a registered investment adviser with over \$5 billion in assets under management.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Id.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Solus' Violation of Rule 105 of Regulation M

6. From September 20, 2013 through September 26, 2013, Solus sold short 150,000 shares of J.C. Penney Company, Inc. ("JCP") during the restricted period at prices ranging from \$10.44 to \$13.25 per share. On September 27, 2013, JCP priced a follow-on offering of its common stock at \$9.65 per share. Solus received an allocation of 50,000 shares in that offering. The difference between Solus' proceeds received from the restricted period short sales of JCP shares and the price paid for the 50,000 shares received in the offering was \$39,600. Thus, Solus' participation in the 2013 JCP offering resulted in total profits of \$39,600.

Violations

7. As a result of the conduct described above, Solus violated Rule 105 of Regulation M under the Exchange Act.

Solus' Remedial Efforts & Cooperation

8. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Solus' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Solus cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Solus shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$39,600, prejudgment interest of \$895.22, and a civil money penalty in the amount of \$65,000 (for a total of \$105,495.22) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Solus as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participation*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73110 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16114

In the Matter of

SUTTONBROOK CAPITAL
MANAGEMENT LP

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against SuttonBrook Capital Management LP ("SuttonBrook" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by SuttonBrook, which, at the time of the violations, was a New York, New York-based registered investment adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In May 2009, SuttonBrook bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the restricted period. This violation resulted in profits of \$2,635,642.

Respondent

3. SuttonBrook Capital Management LP is a limited partnership organized under the laws of Delaware with its principal place of business in New York, New York. SuttonBrook, which is currently winding down, was a registered investment adviser at the time of the violations and had approximately \$46 million in assets under management when it filed its most recent Form ADV with the Commission on March 14, 2013.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. *Id.*

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

SuttonBrook's Violation of Rule 105 of Regulation M

6. From May 11, 2009 through May 13, 2009, SuttonBrook sold short 625,000 shares of MGM Mirage ("MGM") during the restricted period at prices ranging from \$10.02 to \$13.70 per share. On May 13, 2009, MGM priced a follow-on offering of its common stock at \$7 per share. SuttonBrook received an allocation of 615,000 shares in that offering. The difference between SuttonBrook's proceeds received from the restricted period short sales of MGM shares and the price paid for 615,000 shares received in the offering was \$2,635,642. Thus, SuttonBrook's participation in the 2009 MGM offering resulted in total profits of \$2,635,642.

Violations

7. As a result of the conduct described above, SuttonBrook violated Rule 105 of Regulation M under the Exchange Act.

SuttonBrook's Remedial Efforts & Cooperation

8. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

Disgorgement and Civil Penalties

9. Respondent has submitted a sworn Statement of Financial Condition dated July 9, 2014 and other evidence and has asserted its inability to pay disgorgement plus prejudgment interest or a civil penalty.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent SuttonBrook's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent SuttonBrook cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Respondent shall pay disgorgement of \$2,635,642, which represents profits gained as a result of the conduct described herein, and prejudgment interest of \$496,539.35, but that payment of such amount except \$70,000 is waived based upon Respondent's sworn representations in its Statement of Financial Condition dated July 9, 2014 and other documents provided to the Commission. Based upon Respondent's sworn representations in its Statement of Financial Condition dated July 9, 2014 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent. The payment required by this Order shall be made

to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying SuttonBrook as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, pre-judgment interest and the maximum penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Chair White
Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73112 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16116

In the Matter of

VINCI PARTNERS
INVESTIMENTOS LTDA.

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Vinci Partners Investimentos Ltda. ("Vinci" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by Vinci, a Brazilian alternative investment and asset management firm. Vinci owns Vinci Equities Gestora de Recursos Ltda. and Vinci Gestora de Recursos Ltda. (the "Vinci Hedge Fund Managers"). The Vinci Hedge Fund Managers' funds (the "Vinci funds") engaged in the violative trading at issue. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In October 2011, the Vinci funds bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. This violation resulted in profits of \$283,480.

Respondent

3. Vinci Partners Investimentos Ltda. is a Brazilian alternative investment and asset management firm that owns the Vinci Hedge Fund Managers whose funds engaged in the violative trading at issue. Vinci Partners Investimentos Ltda. offers investment management, wealth management, and financial advisory services to investors and has total assets under management in excess of \$7 billion.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Id.

Vinci's Violation of Rule 105 of Regulation M

6. On October 19, 2011, Vinci sold short 521,224 shares of Arcos Dorados Holdings Inc. ("ARCO") during the restricted period at a price of \$22.7087 per share. On October 19, 2011, ARCO announced the pricing of a follow-on offering of its common stock at \$22.00 per share.

Vinci received an allocation of 400,000 shares in that offering. The difference between Vinci's proceeds from the restricted period short sales of ARCO shares and the price paid for the 400,000 shares received in the offering was \$283,480. Thus, Vinci's participation in the ARCO offering resulted in total profits of \$283,480.

7. In total, Vinci's violation of Rule 105 resulted in profits of \$283,480.

Violation

8. As a result of the conduct described above, Vinci violated Rule 105 of Regulation M under the Exchange Act.

Vinci's Remedial Efforts & Cooperation

9. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Vinci's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Vinci cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Vinci shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$283,480, prejudgment interest of \$23,487.08, and a civil money penalty in the amount of \$141,740 (for a total of \$448,707.08) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Vinci as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73114 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16118

In the Matter of

**ADVENT CAPITAL
MANAGEMENT, LLC**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Advent Capital Management, LLC ("Advent Capital" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Advent Capital, a New York-based registered investment adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On two occasions, from February 2012 through October 2012, Advent Capital bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. These violations collectively resulted in profits of \$75,292.

Respondent

3. **Advent Capital Management, LLC** ("Advent") is a Delaware limited liability company with its principal place of business in New York, New York. Advent Capital Management, LLC has been registered with the Commission since May 2001, and manages investment advisory accounts for individuals, pension and profit sharing plans, trusts, insurance companies, private funds and other businesses and institutions. Advent Capital Management, LLC has total assets under management in excess of \$8.3 billion as of June 30, 2014.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Id.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Advent Capital's Violations of Rule 105 of Regulation M

6. On February 15, 2012, Advent Capital sold short 24,400 shares of Health Care REIT Inc. ("HCN") during the restricted period at a price of \$56.3700 per share. On February 21, HCN priced a follow-on offering of its common stock at \$53.50 per share. Advent Capital received an allocation of 35,000 shares in that offering. The difference between Advent Capital's proceeds received from the restricted period short sales of HCN shares and the price paid for the 24,400 shares received in the offering was \$70,028. Respondent also improperly obtained a benefit of \$517.28 by purchasing the remaining 10,600 shares at a discount from HCN's market price. Thus, Advent Capital's participation in the HCN offering resulted in total profits of \$70,545.

7. On October 10, 2012, Advent Capital sold short 700 shares of Royal Gold, Inc. ("RGLD") during the restricted period at a price of \$95.4300 per share. On October 11, 2012, RGLD priced a follow-on offering of its common stock at \$91.00 per share. Advent Capital received an allocation of 10,000 shares in that offering. The difference between Advent Capital's proceeds received from the restricted period short sales of RGLD shares and the price paid for the 700 shares received in the offering was \$3,101. Respondent also improperly obtained a benefit of \$1,646.10 by purchasing the remaining 9,300 shares at a discount from RGLD's market price. Thus, Advent Capital's participation in the RGLD offering resulted in total profits of \$4,747.

8. In total, Advent Capital's violations of Rule 105 resulted in profits of \$75,292.

Violations

9. As a result of the conduct described above, Advent Capital violated Rule 105 of Regulation M under the Exchange Act.

Advent Capital's Remedial Efforts & Cooperation

10. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Advent Capital's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Advent Capital cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Advent Capital shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$75,292, prejudgment interest of \$3,836.36, and a civil money penalty in the amount of \$65,000 (for a total of \$144,128.36) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Advent Capital as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73111 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16115

In the Matter of

TROUBH PARTNERS LP

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Troubh Partners LP ("Troubh" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Troubh, a New York-based investment firm. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On four occasions, from May 2009 through March 2010, Troubh bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. These violations collectively resulted in profits of \$262,744.

Respondent

3. Troubh Partners LP is a limited partnership with its principal place of business in New York, New York and is not registered with the SEC. Troubh Partners LP has been in existence since 1997 and has approximately \$23 million in assets under management.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Id.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Troubh's Violations of Rule 105 of Regulation M

6. On May 12, 2009, Troubh sold short 25,000 shares of MGM Resorts International ("MGM") during the restricted period at a price of \$13.2138 per share. On May 13, 2009, MGM announced the pricing of a follow-on offering of its common stock at \$7.00 per share. Troubh received an allocation of 5,000 shares in that offering. The difference between Troubh's proceeds from the restricted period short sales of MGM shares and the price paid for the 5,000 shares received in the offering was \$31,069. Thus, Troubh's participation in the MGM offering resulted in total profits of \$31,069.

7. On June 1, 2009, Troubh sold short 60,000 shares of JP Morgan Chase & Co. ("JPM") during the restricted period at a price of \$37.2040 per share. On June 2, 2009, JPM announced the pricing of a follow-on offering of its common stock at \$35.25 per share. Troubh received an allocation of 10,000 shares in that offering. The difference between Troubh's proceeds from the restricted period short sales of JPM shares and the price paid for the 10,000 shares received in the offering was \$19,540. Thus, Troubh's participation in the JPM offering resulted in total profits of \$19,540.

8. From December 10, 2009 through December 14, 2009, Troubh sold short 267,800 shares of Citigroup Inc. ("C") during the restricted period at an average price of \$3.8509 per share. On December 16, 2009, C priced a follow-on offering of its common stock at \$3.15 per share. Troubh received an allocation of 1,000,000 shares in that offering. The difference between Troubh's proceeds received from the restricted period short sales of C shares and the price paid for the 267,800 shares received in the offering was \$185,592.26. Respondent also improperly obtained a benefit of \$25,553.78 by purchasing the remaining 732,200 shares at a discount from C's market price. Thus, Troubh's participation in the C offering resulted in total profits of \$211,146.

9. On March 17, 2010, Troubh sold short 10,000 shares of the Hartford Financial Services Group, Inc. ("HIG") during the restricted period at a price of \$28.7392 per share. On March 17, 2010, HIG priced a follow-on offering of its common stock at \$27.75 per share. Troubh received an allocation of 1,000 shares in that offering. The difference between Troubh's proceeds received from the restricted period short sales of HIG shares and the price paid for the 1,000 shares received in the offering was \$989. Thus, Troubh's participation in the HIG offering resulted in total profits of \$989.

10. In total, Troubh's violations of Rule 105 resulted in profits of \$262,744.

Violations

11. As a result of the conduct described above, Troubh violated Rule 105 of Regulation M under the Exchange Act.

Troubh's Remedial Efforts & Cooperation

12. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Troubh's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Troubh cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Troubh shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$262,744, prejudgment interest of \$39,315.13, and a civil money penalty in the amount of \$106,651.15 (for a total of \$408,710.28) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Troubh as a Respondent in these proceedings, and the file number of these proceedings; a copy of

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73119 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16123

In the Matter of

FORMULA GROWTH,
LTD.

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Formula Growth, Ltd. ("Formula Growth" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

III.

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On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by Formula Growth, a Montréal-based exempt reporting adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In May 2011, Formula Growth bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the restricted period. This violation resulted in profits of \$42,488.

Respondent

3. Formula Growth, Ltd. is a corporation organized under the laws of Canada with its principal place of business in Montréal and is registered with the Autorité des Marchés Financiers in Québec. Formula Growth is an exempt reporting adviser with less than \$150 million in assets under management in the U.S.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Id.

Formula Growth's Violation of Rule 105 of Regulation M

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. From May 19, 2011 through May 24, 2011, Formula Growth sold short 59,132 shares of American International Group, Inc. ("AIG") during the restricted period at prices ranging from \$29.63 to \$30.95 per share. On May 24, 2011, AIG priced a follow-on offering of its common stock at \$29 per share. Formula Growth received an allocation of 25,000 shares in that offering. The difference between Formula Growth's proceeds received from the restricted period short sales of AIG shares and the price paid for the 25,000 shares received in the offering was \$42,488. Thus, Formula Growth's participation in the 2011 AIG offering resulted in total profits of \$42,488.

Violations

7. As a result of the conduct described above, Formula Growth violated Rule 105 of Regulation M under the Exchange Act.

Formula Growth's Remedial Efforts & Cooperation

8. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Formula Growth's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Formula Growth cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Formula Growth shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$42,488, prejudgment interest of \$4,255.15; and a civil money penalty in the amount of \$65,000 (for a total of \$111,743.15) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

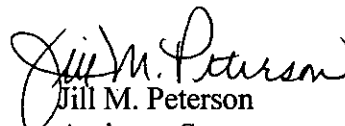
- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Formula Growth as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73120 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16124

In the Matter of

GREAT POINT
PARTNERS, LLC

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Great Point Partners, LLC. ("GPP" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by GPP, a Connecticut-based investment firm. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In April 2013, GPP bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. This violation resulted in profits of \$43,068.

Respondent

3. Great Point Partners, LLC is a limited liability company incorporated in Delaware with its principal place of business in Greenwich, Connecticut. Great Point Partners, LLC has been registered with the SEC since March 2012 and provides advisory services to two foreign funds and nine domestic funds. Great Point Partners, LLC has total assets under management in excess of \$935 million.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 “to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity.” 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. Id.

GPP’s Violation of Rule 105 of Regulation M

6. On April 19, 2013, GPP sold short 15,000 shares of Anacor Pharmaceuticals, Inc. (“ANAC”) during the restricted period at a price of \$7.3736 per share. On April 26, 2013, ANAC announced the pricing of a follow-on offering of its common stock at \$6.39 per share. GPP received an allocation of 75,000 shares in that offering. The difference between GPP’s proceeds received from the restricted period short sales of ANAC shares and the price paid for the 15,000

shares received in the offering was \$14,754. Respondent also improperly obtained a benefit of \$28,314 by purchasing the remaining 60,000 shares at a discount from ANAC's market price. Thus, GPP's participation in the ANAC offering resulted in total profits of \$43,068.

7. In total, GPP's violation of Rule 105 resulted in profits of \$43,068.

Violation

8. As a result of the conduct described above, GPP violated Rule 105 of Regulation M under the Exchange Act.

GPP's Remedial Efforts & Cooperation

9. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent GPP's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent GPP cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. GPP shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$43,068, prejudgment interest of \$1,529.13, and a civil money penalty in the amount of \$65,000 (for a total of \$109,597.13) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

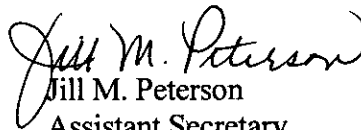
Enterprise Services Center
Accounts Receivable Branch

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying GPP as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73122 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16126

In the Matter of

IRONMAN CAPITAL
MANAGEMENT, LLC

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Ironman Capital Management, LLC ("Ironman Capital" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by Ironman Capital, a Houston-based registered investment adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In November 2013, Ironman Capital bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the restricted period. This violation resulted in profits of \$21,844.

Respondent

3. Ironman Capital Management, LLC is a limited liability company organized under the laws of Texas with its principal place of business in Houston. Ironman Capital has been registered with the Commission for over a decade and has over \$78 million in assets under management.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Id.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Ironman Capital's Violation of Rule 105 of Regulation M

6. On November 6, 2013, Ironman Capital sold short 9,100 shares of Gulfport Energy Corporation ("GPOR") during the restricted period at a price of \$62.21 per share. On November 6, 2013, GPOR priced a follow-on offering of its common stock at \$56.75 per share. Ironman Capital received an allocation of 4,000 shares in that offering. The difference between Ironman Capital's proceeds received from the restricted period short sales of GPOR shares and the price paid for the 4,000 shares received in the offering was \$21,844. Thus, Ironman Capital's participation in the 2013 GPOR offering resulted in total profits of \$21,844.

Violations

7. As a result of the conduct described above, Ironman Capital violated Rule 105 of Regulation M under the Exchange Act.

Ironman Capital's Remedial Efforts & Cooperation

8. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Ironman Capital's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Ironman Capital cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Ironman Capital shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$21,844, prejudgment interest of \$382.66, and a civil money penalty in the amount of \$65,000 (for a total of \$87,226.66) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Ironman Capital as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73121 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16125

In the Matter of

INDABA CAPITAL
MANAGEMENT, L.P.

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Indaba Capital Management, L.P. ("Indaba" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

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Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by Indaba, a California-based investment firm. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. In June 2012, Indaba bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. This violation resulted in profits of \$194,797.

Respondent

3. Indaba Capital Management, L.P. is a limited partnership organized in Delaware with its principal place of business in San Francisco, California. Indaba Capital Management, L.P. has been registered with the SEC since March 2012 and provides advisory services to one foreign master fund and one domestic and two foreign feeder funds. Indaba Capital Management, L.P. has total assets under management in excess of \$864 million.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. The Commission adopted Rule 105 “to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity.” 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. *Id.*

Indaba’s Violation of Rule 105 of Regulation M

6. On June 6, 2012, Indaba sold short 50,906 shares of Endeavour International Corporation (“END”) during the restricted period at a price of \$9.9445 per share. On June 13, 2012, END announced the pricing of a follow-on offering of its common stock at \$7.50 per share. Indaba received an allocation of 200,000 shares in that offering. The difference between Indaba’s proceeds received from the restricted period short sales of END shares and the price paid for the

50,906 shares received in the offering was \$124,439.71. Respondent also improperly obtained a benefit of \$70,357.46 by purchasing the remaining 149,094 shares at a discount from END's market price. Thus, Indaba's participation in the END offering resulted in total profits of \$194,797.

7. In total, Indaba's violation of Rule 105 resulted in profits of \$194,797.

Violation

8. As a result of the conduct described above, Indaba violated Rule 105 of Regulation M under the Exchange Act.

Indaba's Remedial Efforts & Cooperation

9. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Indaba's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Indaba cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Indaba shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$194,797, prejudgment interest of \$11,990.79, and a civil money penalty in the amount of \$97,398.59 (for a total of \$304,186.38) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payments must be made in one of the following ways:

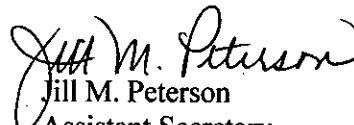
- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Indaba as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.


Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 73124 / September 16, 2014

Admin. Proc. File No. 3-14810r

In the Matter of the Application of

JOHN JOSEPH PLUNKETT
476 16th Street
Brooklyn, NY 11215

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY
PROCEEDINGS

Sanctions Imposed by Registered Securities Association on Remand

On remand, registered securities association modified the sanctions imposed on an individual who was a former president, chief compliance officer, general securities principal, and general securities representative of a member firm for failing to respond fully to requests for information made pursuant to the association's Rule 8210. *Held*, association's modification of sanctions *sustained*.

APPEARANCES:

John Joseph Plunkett, pro se.

Alan Lawhead and Colleen E. Durbin, for FINRA.

Appeal filed: January 22, 2014

Last brief received: May 7, 2014

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John Joseph Plunkett, a former president, chief compliance officer, general securities principal, and general securities representative of Lempert Brothers International USA, Inc., seeks review of a decision by FINRA's National Adjudicatory Council ("NAC"), in which FINRA reconsidered and modified sanctions following our remand of the matter. In our prior opinion,¹ we sustained FINRA's findings that Plunkett violated: (i) NASD Rule 2110 by removing Lempert's books and records at the time he resigned from the firm,² and (ii) FINRA Rules 8210 and 2010 by failing to respond to requests by FINRA for information.³ We sustained the imposition of a bar for the first cause of action but set aside the imposition of a bar for the second cause of action and remanded to FINRA for reconsideration of the appropriate sanction to be imposed for the Rule 8210 violation.⁴ On remand, the NAC modified the sanctions for Plunkett's violation of Rule 8210, ordering a \$20,000 fine and a six-month suspension in all capacities instead of a bar.

Plunkett argues that FINRA "should have eliminated all penalties" against him on remand for the Rule 8210 violation, insisting that he had valid reasons for his failure to promptly respond to FINRA's Rule 8210 requests. He also challenges all other aspects of FINRA's disciplinary action. Following our independent view of the record, we conclude that the modified sanctions are consistent with FINRA's Sanction Guidelines and are neither excessive nor oppressive. Accordingly, we sustain FINRA's modified sanctions. We also reject Plunkett's attempt to improperly expand the scope of this appeal beyond the narrow issue that we remanded to FINRA.

¹ *John Joseph Plunkett*, Securities Exchange Act Release No. 69766, 2013 WL 2898033 (June 14, 2013).

² NASD Conduct Rule 2110, which applies to both FINRA members and their associated persons (*see* NASD Rule 0115(a); FINRA Rule 0140(a)), states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." On December 15, 2008, NASD Rule 2110 was superseded by FINRA Rule 2010, though its contents remained the same. As discussed in our prior opinion, with regard to the first cause of action, Plunkett was found to have violated NASD Rule 2110 because that was the rule that was in place at the time of Plunkett's misconduct.

³ NASD Rule 8210 was superseded by FINRA Rule 8210 as part of FINRA's rulebook consolidation process. Because the conduct for the second cause of action occurred after this consolidation took place, FINRA Rule 8210 applies. A violation of FINRA rules constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of FINRA Rule 2010. *See William J. Murphy*, Exchange Act Release No. 69923, 2013 WL 3327752, at *8 n.29 (July 2, 2013).

⁴ *Plunkett*, 2013 WL 2898033, at *1.

I. Background

A. Plunkett removed Lempert's books and records and FINRA began an investigation.

Plunkett joined Lempert in August 2003 and helped establish the firm, working as its president and chief compliance officer. Plunkett's relationship with the foreign owners of the firm soured in 2005 when the owners stopped paying the employees' salaries and other expenses. Plunkett warned the owners and their nephew who acted as their surrogate in the United States that Plunkett and several others would leave if the firm's financial situation did not improve. But Plunkett did not inform the owners that he and other Lempert employees had taken concrete steps to establish their own broker-dealer—Emerald Investments, Inc.—to which they intended to bring Lempert's customers.

In March 2006, Plunkett received an e-mail from an individual alleging that Lempert's owners and entities related to them had defrauded European investors. On March 23, 2006, Plunkett faxed and e-mailed a letter to the owners expressing concerns about these allegations and requesting a response from them in writing. Although they did not respond, Plunkett learned around this time that the owners intended to fire him.

On April 3, 2006, Plunkett and those who had agreed to join the new firm re-entered Lempert's offices after the close of business and, at Plunkett's direction, removed all of Lempert's books and records, except those that were in the offices of three Lempert employees who were not joining the new firm. In addition to removing Lempert's paper records, Plunkett and the others copied the firm's electronic records and then erased the originals and removed the firm's back-up computer tapes. The records were not returned to Lempert for several months, which severely hindered Lempert's ability to run its business and comply with regulatory requirements.

Plunkett contacted FINRA and met with a FINRA representative shortly after resigning from Lempert and taking its records. He explained that he took the records to protect himself, fellow employees, and investors from potential misconduct by Lempert's owners. According to Plunkett, he suspected that the owners were going to forge documents in a scheme to defraud investors and believed that by removing Lempert's records he was preventing any such forgery. After meeting with Plunkett, FINRA began an investigation into the matter. As part of the investigation, FINRA sent Plunkett several requests between May and October 2006 for information pursuant to Rule 8210. Plunkett responded to these requests but, as we noted in our prior opinion, "typically not promptly."

In May 2009, FINRA notified Plunkett of a potential disciplinary action against him and gave him an opportunity to respond. On June 29, 2009, Plunkett responded by reasserting that he had taken Lempert's records to prevent the owners of the firm from perpetrating a fraud on the investing public. He also asserted that documents and individuals could substantiate his claims. After Plunkett's submission, FINRA sent him another Rule 8210 request on July 15, 2009, requiring him to answer twenty sets of interrogatories concerning his representations and to supply supporting documentation by July 27. On the deadline, Plunkett requested more time to respond, and FINRA set a new deadline of August 10. On August 11, without having produced

any information, Plunkett sought another extension and said he would provide the information "as soon as possible." When Plunkett failed to respond by August 20, FINRA sent a second Rule 8210 request, directing him to respond by September 3, 2009. Plunkett failed to respond.

B. FINRA found that Plunkett violated NASD Rule 2110 and FINRA Rule 8210 and barred him for each violation.

FINRA instituted a disciplinary proceeding on December 1, 2009, alleging that: (i) Plunkett's removal of Lempert's books and records violated NASD Rule 2110, and (ii) Plunkett's failure to respond to the July and August 2009 requests for information violated FINRA Rules 8210 and 2010. On April 29, 2010, Plunkett provided a written response to the requests for information, but he failed to provide any supporting documents and instead offered a variety of excuses about why he could not find them.

Following a two-day hearing, a FINRA hearing panel issued a decision finding violations on both causes of action charged in the complaint. For the NASD Rule 2110 violation based on the removal of Lempert's books and records, the hearing panel fined Plunkett \$20,000 and suspended him in all capacities for two years; for the Rule 8210 violation, the hearing panel fined him \$5,000 and suspended him for six months.

Although neither party appealed, a Review Subcommittee of the NAC called the matter for discretionary review to examine the sanctions imposed by the hearing panel. On February 12, 2012, the NAC issued a decision that increased the sanctions imposed by the hearing panel. Citing the seriousness of Plunkett's misconduct, the NAC barred him for the violation based on the removal of Lempert's books and records. With regard to the Rule 8210 violation, the NAC treated Plunkett's failure to respond to the July and August 2009 requests as a complete failure to respond pursuant to FINRA's Sanction Guidelines and barred Plunkett for this violation as well.

C. The Commission sustained all but the sanctions for the Rule 8210 violation and ordered a limited remand to FINRA.

Plunkett appealed FINRA's disciplinary action to the Commission. As noted, in a June 14, 2013 opinion and order we sustained FINRA's findings of violations. We found "that Plunkett's actions, which put Lempert's customers at risk and crippled its business, were inconsistent with high standards of commercial honor and just and equitable principles of trade" and thus violated NASD Rule 2110.⁵ We also found that by failing to respond to FINRA's July and August 2009 requests for information until months after FINRA brought this disciplinary action (and even then failing to provide the requested supporting documents) Plunkett violated FINRA Rules 8210 and 2010.⁶ We sustained FINRA's imposition of a bar for Plunkett's Rule

⁵ *Plunkett*, 2013 WL 2898033, at *7.

⁶ *Id.* at *9.

2110 violation, concluding that the bar "serves a remedial purpose" and is not excessive or oppressive.⁷

We disagreed, however, with FINRA's analysis in support of its imposition of a bar for the Rule 8210 violation. Although the NAC treated Plunkett's failure to respond as a complete failure (for which a bar would be a standard sanction under the Sanction Guidelines), we found that "Plunkett's conduct is closer to [a] partial failure to respond," and therefore his conduct should be evaluated under the Sanction Guideline "for a partial response."⁸ Accordingly, we remanded to FINRA to reevaluate the sanction for the Rule 8210 violation under the proper standard and noted the need for FINRA "to explain why any sanction it imposes will serve a remedial purpose in light of the particular facts of this case."⁹ On remand, the NAC concluded that in lieu of a bar a \$20,000 fine and a six-month suspension were appropriate sanctions for the Rule 8210 violation.¹⁰

II. Analysis

A. Standard of Review

Because we previously sustained FINRA's findings of violations and remanded to FINRA only the sanctions for the Rule 8210 violation, our review in this appeal, which is governed by Exchange Act Section 19(e)(2), is limited to FINRA's modified sanctions. Pursuant to that section, we will sustain a FINRA sanction unless we find, "having due regard for the public interest and the protection of investors," that the sanction is excessive or oppressive or imposes an unnecessary or inappropriate burden on competition.¹¹ As part of this review, we consider any aggravating or mitigating factors¹² and whether the sanctions imposed by FINRA are remedial and not punitive.¹³ Though not bound by FINRA's Sanction Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2).¹⁴

⁷ *Id.* at *11-13.

⁸ *Id.* at *14.

⁹ *Id.*

¹⁰ According to its decision on remand, the NAC "decline[d] to impose the fine and suspension," in light of the bar that was already in place and upheld by the Commission for Plunkett's misconduct related to removing Lempert's books and records.

¹¹ 15 U.S.C. § 78s(e)(2). Plunkett does not claim, and the record does not show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

¹² See *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1064-65 (D.C. Cir. 2007).

¹³ See *Paz Sec.*, 494 F.3d at 1065 ("The purpose of the order [must be] remedial, not penal.") (quoting *Wright v. SEC*, 112 F.2d 89, 94 (2d Cir. 1940)).

¹⁴ *Plunkett*, 2013 WL 2898033, at *11.

According to the Sanction Guidelines, a bar is standard "[i]f the individual did not respond [to a Rule 8210 request] in any manner" as well as "where an individual has provided a partial but incomplete response" to a Rule 8210 request "unless the person can demonstrate that the information provided substantially complied with all aspects of the request."¹⁵ But "where mitigation exists," the Sanction Guidelines provide that an adjudicator should "consider suspending the individual in any or all capacities for up to two years."¹⁶ The Sanction Guidelines also recommend a fine of \$10,000 to \$50,000 for providing a partial but incomplete response.¹⁷

The Sanction Guidelines identify three "principal considerations" for determining sanctions where an individual has provided a partial but incomplete response to a Rule 8210 request: (i) the "[i]mportance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive"; (ii) the "[n]umber of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response"; and (iii) "[w]hether the respondent thoroughly explains valid reason(s) for the deficiencies in the response."¹⁸

B. The modified sanctions are consistent with FINRA's Sanction Guidelines.

On remand, the NAC "analyze[d] Plunkett's violation of FINRA Rule 8210 as a partial response under the Guidelines" and modified the sanctions for this violation to a six-month suspension and a \$20,000 fine. We find that these sanctions are consistent with the Sanction Guidelines, in particular the Guideline's three relevant principal considerations. The information sought by FINRA was important, Plunkett's response was untimely and was only obtained after FINRA applied a high degree of regulatory pressure, and Plunkett failed to provide valid reasons for the deficiencies in his response.

First, as we noted in our prior opinion, the information and documents sought by the July and August 2009 requests were important to FINRA "not only . . . for it to determine whether it should proceed with a formal disciplinary action against Plunkett, but also [because they] could have assisted its investigation of others in the industry."¹⁹ By failing to respond for many months to FINRA's requests "for specific information about documents and the identities of individuals to whom [Plunkett] had referred generally in his [June 29] submission," Plunkett

¹⁵ FINRA Sanction Guidelines at 33.

¹⁶ *Id.* at 33. The Sanction Guidelines include a list of non-exhaustive aggravating and mitigating factors. *See id.* at 6-7.

¹⁷ *See id.* at 33. A higher range of \$25,000 to \$50,000 is recommended for "[f]ailure to [r]espond" in any manner. *Id.* And a lower range of \$2,500 to \$25,000 is recommended for "[f]ailure to [r]espond in a [t]imely [m]anner." *Id.*

¹⁸ *Id.*

¹⁹ *Plunkett*, 2013 WL 2898033, at *9.

hindered FINRA's investigation and severely limited its ability to "test the accuracy of the assertions Plunkett made."²⁰

Second, Plunkett responded only after multiple requests, extensions, and ultimately a disciplinary complaint. As the NAC noted, FINRA "had to exert a great deal of regulatory pressure to elicit a response from Plunkett." After granting Plunkett an extension and sending a second request that further extended the deadline, Plunkett still did not respond. Only after FINRA filed a complaint—the highest level of regulatory pressure available—did Plunkett finally respond to the requests. We agree that Plunkett's delay in responding combined with the amount of effort exerted by FINRA to compel his response constitutes an aggravating factor.²¹

Finally, Plunkett did not thoroughly explain valid reasons for the deficiencies in his response. Plunkett contends in his brief that he was unable to respond to the July and August 2009 requests because he "had been locked out of [his] office by the landlord and the records needed to review could not be accessed" and that when he finally did gain access "the files had been destroyed and thrashed by the demolition team tearing apart the office." But as FINRA notes, the record shows that Plunkett received the requests well in advance of the eviction by the landlord, which Plunkett says occurred around Labor Day 2009. Plunkett also contends in his reply that FINRA's "several overlapping requests caused confusion and misunderstanding on [his] part since [he] previously submitted the requested information." But Plunkett's confusion does not excuse his failure to respond to the July and August 2009 requests until April 2010. As the NAC pointed out in its decision on remand, "[b]ecause Plunkett did not initially provide the documents or identifying information in his [June 29] response, FINRA could not ascertain whether Plunkett was referring to documents he had already produced or to other documents FINRA had not yet seen." Thus, FINRA's request for information following Plunkett's June 29 submission was entirely proper and required a response. Moreover, Plunkett's claim of "confusion and misunderstanding" is undermined by his July 27 and August 11 requests for extensions, which demonstrate an understanding that a response was required. For these reasons, we agree that Plunkett has "fail[ed] to provide satisfactory justification for the delay and deficiencies in his responses."

C. The sanctions are remedial and not punitive.

In addition to being consistent with the Sanction Guidelines, we find that the sanctions are remedial and not punitive. We have stressed that Rule 8210 is vitally important in

²⁰ *Id.*

²¹ Although the April 2010 response did not include supporting documents, the NAC noted on remand that it did include (i) Plunkett's representation that the documents referred to in his June 29 submission "were ones that he either had already provided to FINRA or did not have," and (ii) the names of the individuals referenced in his June 29 submission. Thus, although Plunkett's response was untimely and did not provide everything FINRA had requested, Plunkett "ultimately provided information that complied with the requests," as the NAC's decision on remand acknowledged.

connection with "FINRA's 'obligation to police the activities of its members and associated persons.'" ²² Because FINRA does not have subpoena power, it "must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate." ²³ Thus, "[f]ailures to comply [with Rule 8210 requests] are serious violations because they subvert [FINRA's] ability to carry out its regulatory responsibilities," ²⁴ and impede FINRA's "ability to detect misconduct that threatens investors and markets." ²⁵ Therefore, it is critically important that members and associated persons comply with rules requiring them to provide timely and complete responses to FINRA Rule 8210 requests. ²⁶ Accordingly, Plunkett's misconduct was serious, and FINRA's sanctions on remand will protect the public by encouraging others to respond to Rule 8210 requests completely and in a timely manner. ²⁷ For these reasons, we find that FINRA's sanctions are neither excessive nor oppressive within the meaning of Exchange Act Section 19(e). ²⁸

D. Plunkett's remaining arguments are without merit.

In his current application for review, Plunkett urges us to reverse our prior finding that he violated NASD Rule 2110 when he removed Lempert's books and records and to lift the bar FINRA imposed for that violation. But these issues, along with the finding that Plunkett violated FINRA Rules 8210 and 2010, were conclusively decided in our prior opinion, "were not remanded to [FINRA], are not now before the Commission, and are not within the scope of the remand." ²⁹ Accordingly, "[w]e will not revisit those findings." ³⁰

²² *Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 WL 1494527, at *12 (Apr. 17, 2014) (quoting *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 WL 223617, at *5 (Jan. 30, 2009)).

²³ *Id.* (quoting *CMG Institutional Trading*, 2009 WL 223617, at *5).

²⁴ *Joseph Patrick Hannan*, Exchange Act Release No. 40438, 1998 WL 611732, at *3 (Sept. 14, 1998).

²⁵ *Goldstein*, 2014 WL 1494527, at *12 (quoting *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 WL 4899010, at *4 (Nov. 14, 2008), *petition denied*, 347 F. App'x 692 (2d Cir. 2009)).

²⁶ *See id.*

²⁷ *See Siegel v. SEC*, 592 F.3d 147, 158 (D.C. Cir. 2010) (noting that deterrence may be considered as part of the overall remedial inquiry in determining sanctions).

²⁸ FINRA's decision not to impose the suspension and fine in light of the existing bar further supports our determination that the sanctions are not excessive or oppressive. *See supra* note 10.

²⁹ *Ko Sec., Inc.*, Exchange Act Release No. 52106, 2005 WL 1713434, at *3 (July 22, 2005).

³⁰ *Id.*; *see also Nicholas Avello*, Exchange Act Release No. 51633, 2005 WL 1006827, at *2 (Apr. 29, 2005) (declining to revisit conclusive findings in a prior Commission opinion that were beyond the scope of the remand to the NASD); *Donald R. Gates*, Exchange Act Release No.

Plunkett points to documents he has attached to his brief showing that the nephew of Lempert's owners was indicted and convicted of wire fraud in connection with his involvement with Lempert. We agree with FINRA that Plunkett has failed to make a proper motion to introduce these documents pursuant to our Rule of Practice 452.³¹ But even if Plunkett had made a proper motion pursuant to Rule 452 to introduce additional evidence, we conclude that the proposed evidence is immaterial. The additional evidence is not relevant to the issue currently before us—whether FINRA's modified sanctions on remand for the Rule 8210 violation are excessive or oppressive. Even if the scope of our review were expanded to include the issues we conclusively decided in our prior opinion, the new evidence of the nephew's misconduct does not disturb our prior finding that Plunkett violated NASD Rule 2110 by removing Lempert's books and records. As we stated in our prior opinion, determining "the accuracy of [Plunkett's] allegations against [third parties]" was "unnecessary for the issue at hand," and Plunkett "was required to ensure that his own conduct was consistent with high standards of commercial honor and just and equitable principles of trade regardless of whether others engaged in misbehavior."³² Therefore, we reject Plunkett's attempt to introduce new evidence.

(...continued)

41777, 1999 WL 636405, at *4 (Aug. 23, 1999) (precluding an applicant from relitigating a determination following remand to the NASD that was final in the Commission's prior order); *William Jackson Blalock*, Exchange Act Release No. 37955, 1996 WL 662504, at *2 (Nov. 15, 1996) ("[I]n our prior decision, we determined that the remaining sanctions imposed by the NASD were neither excessive nor oppressive, and we will not revisit that determination. We remanded this proceeding solely for the purpose of determining the amount of restitution . . ."); *Bruce Martin Zipper*, Exchange Act Release No. 35606, 1995 WL 237226, at *2 n.7 (Apr. 17, 1995) (declining to revisit a finding of violation found in prior appeal and not within the scope of the remand to the NASD).

Relatedly, in his current application for review, Plunkett contends that FINRA improperly relied upon his disciplinary record in imposing sanctions. But FINRA's decision on remand did not rely on Plunkett's disciplinary record in determining the appropriate sanction for his Rule 8210 violation. In its February 2012 decision, FINRA considered Plunkett's disciplinary history in determining that a bar was appropriate for his NASD Rule 2110 violation, and our prior opinion specifically rejected Plunkett's argument that his disciplinary history could not be considered in FINRA's sanctions determination. See *Plunkett*, 2013 WL 2898033, at *12. We will not revisit that conclusion.

³¹ 17 C.F.R. §201.452 ("A party may file a motion for leave to adduce additional evidence at any time prior to issuance of a decision by the Commission. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously.")

³² *Plunkett*, 2013 WL 2898033, at *2 n.6, *8. Because the truth of Plunkett's allegations of misconduct by the nephew was not relevant to our prior decision, the new evidence of the indictment and conviction does not provide a compelling reason to revisit our prior decision under the law of the case doctrine. See *Shomo v. City of New York*, 579 F.3d 176, 186 (2d Cir. 2009) (noting that an appellate court will not revisit a prior ruling "absent 'cogent' or 'compelling' reasons"); *Weidner v. Thieret*, 932 F.2d 626, 630-31 (7th Cir. 1991) (under the "new evidence"

(continued...)

Finally, Plunkett requests a variety of remedies from the Commission, including overturning arbitration verdicts and awards against him and Emerald Investments and ordering "a monetary payment to [him] from FINRA of \$10,000,000 (ten million US dollars) due to their actions against [him]." We deny these requests because, as FINRA correctly points out, such remedies are beyond the scope of our authority in a proceeding to review FINRA disciplinary action pursuant to Exchange Act Section 19(e).³³

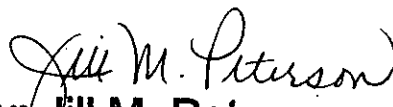
III. Conclusion

For all of these reasons, we sustain FINRA's sanctions on remand for Plunkett's violations of FINRA Rules 8210 and 2010.

An appropriate order will issue.³⁴

By the Commission (Chair WHITE and Commissioners AGUILAR, GALLAGHER, STEIN, and PIWOWAR).

Lynn M. Powalski
Deputy Secretary


By: **Jill M. Peterson**
Assistant Secretary

(...continued)

exception to the law of the case doctrine "for an appellate court to reconsider its past decision, the evidence on remand must not only be different from the evidence presented in the initial trial, but so different and so central to the decision of the case as to leave the second appellate panel with 'substantial doubt as to the correctness' of the prior decision" (quoting *Evans v. City of Chicago*, 873 F.2d 1007, 1014 (7th Cir. 1989)).

³³ 15 U.S.C. § 78s(e)(1)(A) (providing after finding a violation the Commission shall "affirm the sanction imposed by the self-regulatory organization, modify the sanction . . . , or remand to the self-regulatory organization for further proceedings"); *id.* § 78s(e)(1)(B) (providing if the Commission does not find a violation it shall "set aside the sanction imposed by the self-regulatory organization and, if appropriate, remand to the self-regulatory organization for further proceedings"); *see also* *MFS Sec. Corp.*, Exchange Act Release No. 47626, 2003 WL 1751581, at *6 n.33 (Apr. 3, 2003) ("MFS asks for damages, but we do not have the power to make such an award.").

³⁴ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 73124 / September 16, 2014

Admin. Proc. File No. 3-14810r

In the Matter of the Application of

JOHN JOSEPH PLUNKETT
476 16th Street
Brooklyn, NY 11215

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that the sanctions imposed by FINRA on John Joseph Plunkett are sustained.

By the Commission.

Lynn M. Powalski
Deputy Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73125 / September 17, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16128

In the Matter of

**LATOUR TRADING LLC and
NICOLAS NIQUET,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Latour Trading LLC ("Latour") and Nicolas Niquet ("Niquet") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Introduction

1. These proceedings arise out of extensive failures to maintain minimum net capital by Latour Trading LLC, a high-frequency trading firm and registered broker-dealer. Latour engages in proprietary trading in exchange-traded funds ("ETFs") and the component securities of the ETFs. Latour trades equity securities in significant volumes. In 2011, for example, Latour often accounted for 4%, and at times as much as 9%, of the trading volume in equity securities for the entire U.S. market. On numerous occasions, Latour ended the trading day holding very large positions while maintaining insufficient levels of capital.

2. Exchange Act Rule 15c3-1, known as the net capital rule, generally requires that every broker-dealer maintain a specified minimum level of net liquid assets, or net capital. From its inception, the net capital rule has been a cornerstone of the Commission's broker-dealer financial responsibility program. The rule requires that broker-dealers at all times have and maintain minimum net capital as specified in the rule. Accordingly, high-frequency trading firms that are registered as broker-dealers must have and maintain the required minimum net capital to support the dollar volume of both their end-of-day and intra-day positions; the speed with which these broker-dealers trade in and out of positions does not change this requirement.

3. As part of its net capital calculations, a broker-dealer is required to make prescribed percentage deductions from the market value of its proprietary securities and other positions. In general, these deductions, referred to as haircuts, are designed to account for the market risk inherent in these positions and create a buffer of liquidity to protect against other risks associated with the securities business. Failure to calculate proper haircut deductions may have the effect of improperly inflating a broker-dealer's net capital, resulting in an inaccurate net capital calculation.

4. From at least January 2010 through at least December 2011 (the "relevant period"), Latour consistently conducted a securities business while miscalculating the amount of net capital it had and thereby failing to maintain the required minimum net capital by millions of dollars. The firm operated without maintaining its required minimum net capital on 19 of 24 reporting dates during the relevant period. At end of day on those 19 reporting dates, the firm maintained net capital deficiencies in amounts ranging from approximately \$2 million to as much as \$28 million. As described below, Latour's net capital violations resulted from multiple flaws and errors in the firm's haircut calculations, including the use of hypothetical positions (positions the firm did not actually hold) to create hedges for certain positions and a computer programming error. As a result of these flaws and errors, Latour regularly understated its required haircut deductions in its net

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

capital computations by tens of millions of dollars. On one occasion, Latour understated its haircuts by nearly \$40 million. Because of these understatements, Latour's net capital violations also resulted in violations of the broker-dealer books and records and financial reporting rules.

Respondents

5. Latour Trading LLC, located in New York, New York, has been registered with the Commission as a broker-dealer since July 2009. The firm uses algorithmic high-frequency trading strategies to engage in proprietary trading in ETFs. Latour seeks to hedge its ETF positions by trading futures and the component securities of the ETFs. The firm does not have customers. Throughout the relevant period, Latour was wholly owned by Tower Research Capital Investments LLC and its managing member was Tower Research Capital LLC, a firm that engages in quantitative trading and investment strategies through affiliates around the world. At the end of January 2014, Tower Research Capital Investments LLC assigned all of the issued and outstanding interests of Latour to Tower Research Capital LLC.

6. Nicolas Niquet was associated with Latour from approximately June 2009 until August 5, 2010. During most of that period, he served as Latour's chief operating officer and held, among others, a Series 27 (Financial and Operations Principal or FINOP) license. Niquet designed and implemented a processing code that facilitated Latour's haircut calculations, which the firm reported as part of its net capital computation in monthly Financial and Operational Combined Uniform Single (FOCUS) Reports. Latour used that processing code in calculating the firm's haircuts throughout the relevant period.

Facts

A. The Net Capital Rule

7. Section 15(c)(3) of the Exchange Act [15 U.S.C. § 78o(c)(3)] and Rule 15c3-1 thereunder [17 CFR 240.15c3-1] require that broker-dealers generally effecting transactions in securities "at all times have and maintain net capital" no less than the highest minimum requirement applicable to its business. The net capital rule requires different minimum amounts of net capital based on the nature of a firm's business (for example, whether the firm holds customer funds or securities), and the method a firm uses in computing its net capital. The rule is designed to require a broker-dealer to maintain sufficient liquid assets to meet all obligations to customers and counterparties and have adequate additional resources to wind down its business in an orderly manner without the need for a formal proceeding if the firm fails financially.

8. In particular, the net capital rule requires that a broker-dealer perform two calculations: (i) a computation of the minimum amount of net capital the broker-dealer must maintain; and (ii) a computation of the amount of net capital the broker-dealer is maintaining. The minimum net capital requirement is the greater of a fixed-dollar amount specified in the rule or an amount determined by applying one of two financial ratios.

9. To compute its net capital, a broker-dealer first calculates its net worth, computed in accordance with generally accepted accounting principles, deducts the value of certain illiquid assets, and also deducts certain specified percentages, or haircuts, from the market value of the securities it holds in its proprietary accounts or other inventory, and then adds back certain qualifying subordinated loans to arrive at its net capital. The resulting figure must be above the firm's required minimum net capital to comply with the net capital rule.

10. An accurate calculation of a broker-dealer's haircuts is crucial in determining its minimum net capital. Rule 15c3-1 prescribes differing haircut amounts for a variety of classes of securities. Appendix A to Rule 15c3-1 [17 CFR 240.15c3-1a] ("Appendix A") permits broker-dealers to employ a standardized theoretical option pricing model to determine a potential loss for a portfolio of listed options positions and related positions that hedge those options to compute a single haircut for the group of positions. Appendix A allows broker-dealers to group positions into specified "portfolio types," and within each portfolio type, offset a position's gain at any one valuation point with another position's loss at the same valuation point. Appendix A also permits certain index products to be offset by qualified stock baskets. This, in effect, permits a broker-dealer to use a risk-based approach that may result in lower haircuts for certain risk offsetting positions in comparison to the specific haircut percentages otherwise prescribed under the net capital rule.

11. Appendix A imposes a capitalization requirement for qualified stock baskets. Appendix A states:

the term qualified stock basket shall mean a set or basket of stock positions which represents no less than 50% of the capitalization for a high-capitalization or non-high-capitalization diversified market index, or, in the case of a narrow-based index, no less than 95% of the capitalization for such narrow-based index.²

The purpose of the basket capitalization requirement "is to ensure that a broker-dealer has a sufficient number of stocks that match those in the index so that the stocks correlate with the index."

12. Unhedged positions generally are subject to a capital charge set forth in "Paragraph J" of the net capital rule [17 CFR 240.15c3-1(c)(2)(vi)(J)].

13. Appendix A also sets forth a minimum net capital charge based on the number of options or futures contracts in a portfolio that applies if the minimum charge is greater than the largest stress point charge. The minimum charge is designed to account for particular risks such as

² By way of example, on a hypothetical diversified market index, if the index's composition included four securities, A, B, C, and D, each comprising 25% of the index, a broker-dealer would need to capitalize a qualified stock basket with at least two of the four component securities, or 50% of the index's composition, to meet the capitalization requirement.

leverage and liquidity risk that may exist in those instances in which application of the theoretical pricing model results in little or no net capital requirement as a result of closely-correlated hedging.

B. Latour's Erroneous Haircut Calculations

14. Throughout 2010 and 2011, Latour used the risk-based approach under Appendix A to calculate certain haircuts to determine its net capital requirements. Before correcting its method for calculating haircuts in 2012, Latour inaccurately calculated its haircuts in multiple respects, including by, among other things: (i) using hypothetical positions³ the firm did not actually hold to offset certain proprietary positions; (ii) using incorrect index composition data for ETFs tracking international indexes; (iii) failing to calculate minimum charges on each of the firm's futures positions included in its risk-based haircut calculations; and (iv) failing to take a haircut on some of the firm's positions as a result of a computer programming error.

15. Latour's failings in calculating its haircuts resulted in inaccurate and reduced haircuts and, thus, overstated net capital. Latour's failings therefore caused the firm to report inaccurate net capital for every month during 2010 and 2011 and caused it to operate while failing to maintain the required net capital on 19 of 24 reporting dates.

16. Latour's bonus structure was tied to, among other components, the amount of capital Latour used. Latour typically operated with a relatively small capital cushion during the relevant period. Because the firm operated with little excess net capital, errors in its haircut calculations generally had a material impact in overstating its overall net capital position.

17. Latour used a commercially available program to calculate its haircuts. The program is designed to help broker-dealers calculate risk-based haircuts pursuant to Appendix A. The version of the commercial haircut program that Latour used (the "commercial haircut program") requires a number of "input" files to perform the haircut calculations. These input files generally include (i) a firm's position file, broken down by basket, or hedged, positions and unhedged positions; (ii) theoretical profit and loss calculations;⁴ and (iii) composition files that provide information about the composition of certain indexes (such as the S&P 500 and its component securities) and certain products related to those indexes. As a general matter, firms using the commercial haircut program must generate their own position files, and some firms also generate their own index composition files. Along with theoretical profit and loss calculations, users feed these input files into the program, which ultimately calculates haircuts on a broker-dealer's proprietary securities and other positions. The results of the program's calculations appear in multiple "output" files, including a "detail" file that shows all hedged positions, and a "naked" file showing all unhedged positions.

³ According to Latour, the hypothetical positions were based on the firm's view of the market risk of its actual positions.

⁴ Using approved pricing models, the Options Clearing Corporation provides, for a fee, required theoretical profit and loss calculations for use in calculating risk-based haircuts.

i. *Latour incorrectly used hypothetical positions to capitalize qualified stock baskets.*

18. Respondent Niquet, Latour's former chief operating officer, was primarily responsible for devising the approach that Latour used to calculate its haircuts in at least 2010 and 2011. Notwithstanding that he had no prior experience in calculating net capital, Niquet designed and implemented the processing code that Latour used in conjunction with the commercial haircut program to calculate its haircuts. He designed the processing code to reflect that the firm generally employed hedged trading strategies. The processing code created certain input files by pulling position and index composition data from Latour's internal database and converting the data into a format that could be read by the commercial haircut program. In addition, the processing code created qualified stock baskets to offset certain positions. In doing so, the processing code allocated hypothetical long and short positions that the firm did not actually hold to create qualified stock baskets as defined in Appendix A to the net capital rule.

19. Despite his inexperience with net capital calculations, Niquet did not seek guidance from someone with expertise to ensure that the processing code complied with the net capital rule.

20. Latour's haircut methodology began by placing offsetting positions in the appropriate number of component stocks – whether or not Latour actually held such positions – into multiple stock baskets to offset certain proprietary positions. The processing code then added up the number of shares of a particular security – long and short – allocated to all baskets, and compared the resulting net number to Latour's actual position in the security reflected on the books of its clearing firm. Latour believed that its approach was appropriate because it generally employed hedged trading strategies and any difference between the amount of a particular security allocated to all qualified stock baskets and the firm's actual inventory in that security was supposed to be subject to the standardized haircut provisions of the net capital rule. Under Appendix A, however, a broker-dealer is not permitted to offset an index with a stock basket unless the stock basket is a "qualified stock basket" as that term is defined in Appendix A. Because Latour's stock baskets generally were not "qualified stock baskets" as that term is defined in Appendix A, Latour understated the required haircuts for some positions which should have been subject to standardized haircuts under the net capital rule.

21. The haircut methodology that Latour adopted had been rejected by the Commission when Appendix A was amended to permit risk-based haircuts. At the time of the amendments, one commenter suggested that "the rule should permit a broker-dealer to convert every basket into a qualified stock basket by taking a haircut on the missing or excess stocks, depending on whether too little or too much of a stock was in the basket." The Commission declined to adopt this methodology.

22. Latour's methodology used millions of dollars in hypothetical positions to create qualified stock baskets. In other words, Latour improperly used positions that the firm did not actually hold to create qualified stock baskets for purposes of calculating risk-based haircuts under

Appendix A. As a result, the commercial haircut program calculated haircuts for Latour that were generally far too low.⁵

ii. Latour also used inaccurate index composition data resulting in qualified stock baskets that were undercapitalized.

23. Latour's haircut calculations were also incorrect because the firm used incorrect index composition data for certain international ETFs. Index composition data provides information necessary to create qualified stock baskets. Composition data fed into the commercial haircut program includes, among other things, the component securities that make up an index and the component securities' weightings as of a particular date. The weightings determine how much of a component security is permitted and/or required to create a sufficiently capitalized, or qualified stock basket under Appendix A to the net capital rule. Use of inaccurate composition data can thus result in the creation of improper stock baskets and inaccurate haircut calculations.

24. Latour learned early on the importance of index composition data for computing haircuts under Appendix A. When he was developing Latour's processing code, Niquet emailed an individual providing support to users of the commercial haircut program asking, "[h]ow are the index composition weightings used?" In response, he was told that, "[a] stock may not comprise more than its % in a perfect basket in your basket. Plus the stocks in your basket must represent at least 50 or 95% of the capitalization of a perfect basket"

25. Latour failed to ensure that the firm used actual index composition data for certain international ETFs when calculating the firm's haircuts as part of its net capital calculation. The processing code instead pulled index composition data from Latour's trading programs. In other words, Latour used for net capital purposes the same composition data the firm used for hedging purposes. For domestic ETFs, Latour's trading programs used the actual composition of the relevant index. However, Latour did not modify its code when it began trading certain international ETFs. Because Latour did not trade many of the components of these international ETFs, this resulted in the inclusion of certain securities that were not components of the ETF (such as other international ETFs) and insufficient amounts of the securities that were in fact components of the ETF in Latour's baskets. Latour thus created more stock baskets than it could have had it used accurate composition data. For example, on February 26, 2010, Latour's composition data for one international ETF consisted of nine component securities purportedly comprising 100% of the index, with one of the nine securities purportedly constituting roughly 49% of the index. In fact, however, there were over 40 component securities for this ETF, with the largest holding constituting roughly 23% of the ETF's holdings.

26. Latour failed to test its processing code to ensure that it used correct index composition data. Latour's use of inaccurate composition data for certain international ETFs

⁵ The effect of Latour's flawed methodology for creating qualified stock baskets was compounded because, as a result of an error in its processing code, *see infra*, Latour sometimes failed to take the Paragraph J standardized haircut on the missing positions.

resulted in baskets that were not properly capitalized and at times caused Latour's haircuts on some of its positions to be understated – and thus its net capital overstated – by millions of dollars.

iii. Latour failed to calculate minimum capital charges on all of its futures positions included in its Appendix A calculation.

27. A broker-dealer availing itself of the risk-based haircut approach when calculating haircuts is required to compute a minimum capital charge on each of its futures contracts. The amount of the charge depends on the multiplier for the futures contract. Instead of calculating minimum charges on each separate futures contract it held, Latour computed charges on its net positions. Specifically, Latour netted certain "big" and "mini" contracts (e.g., S&P 500 Futures Contract (ticker SP) and E-mini S&P 500 Futures Contract (ticker ES)) when creating its position files input into the commercial haircut program. This practice reduced the number of futures positions that Latour included in the firm's haircut calculations and altered the notional value of Latour's futures positions within a particular portfolio.

28. Niquet learned in February 2010 that the commercial haircut program calculated higher net capital charges when all of the firm's futures positions, rather than just the net positions, were input as part of the Appendix A calculation. Latour nonetheless continued to calculate haircut charges on its futures positions after netting certain contracts. For example, at the end of February 2010, Latour held large positions in certain futures, including 333,251 long ES contracts and 66,421 short SP contracts. As a result of the netting, however, the firm's haircut calculations erroneously included much smaller positions subject to minimum capital charges, as set forth in the chart below.

Feb. 2010	# of Contracts Held Per Latour	Approximate Notional Value	Approximate Minimum Charge per Appendix A	Futures Listed in Latour's Calculations	Minimum Charge as Calculated by Latour
ES	333,251	\$18,385,457,670	\$4,165,637.50	1,146 ⁶	\$14,325 ⁷
SP	-66,421	(\$18,322,232,850)	\$4,151,312.50	0	\$0
			Total \$8,316,950		Total \$14,325

⁶ "Big" contracts (e.g., SP) are generally five times larger than "mini" contracts (e.g., ES). Through Latour's netting process, the firm calculated that it in effect held 332,105 short ES contracts ($-66,421 \times 5 = -332,105$). The firm netted that amount against the 333,251 original long ES contracts, for a total of 1,146 ES contracts listed in the firm's haircut calculations.

⁷ Based on the contract's multiplier, the commercial haircut program applies a \$12.50 per contract minimum charge for ES contracts, and a \$62.50 per contract minimum charge for SP contracts.

29. Latour's approach resulted in reduced minimum net capital charges and, at times, also resulted in a net capital deficiency for Latour.

iv. Latour failed to take any haircut on some proprietary positions as a result of a computer programming error.

30. Latour failed to take any prescribed haircut on some of its proprietary positions. As a result of a programming error in the processing code, the firm excluded some positions from its haircut calculations. By not including all of the firm's positions in its haircut calculations, Latour consistently understated its overall haircut charges in amounts ranging from several hundred thousand dollars to over a million dollars. The firm also thus overstated its net capital throughout the relevant period.

31. After it began trading, Latour did not adequately test its processing code (which pulled position data used to create the firm's position file) to ensure that the code extracted all of the firm's positions. As broker-dealers increasingly rely on computer programs as part of regulatory compliance, it is expected that such firms perform appropriate testing to confirm that any computer program is working properly in fulfilling regulatory requirements.

C. Latour's Creation/Redemption of ETFs

32. In addition to the errors in the firm's haircut calculations discussed above, Latour's treatment of orders to create and/or redeem ETFs resulted in significant errors in its net capital calculations.

33. Latour often held very large positions in ETFs, particularly during the trading day; on several days, the firm held billions of dollars in intra-day ETF positions. Latour managed its ETF positions through the creation/redemption process.⁸ For net capital purposes, Latour treated its orders for ETF creations and redemptions as executed trades without waiting for execution of such orders.

34. In 2010 and 2011, Latour did not have a written agreement in place with its clearing firm, which was also its AP, governing the handling of its ETF creation and redemption orders. As a result, there was no formal written agreement governing when Latour could adjust its books and records to reflect the impact of a creation/redemption order. In practice, Latour asked its AP not to

⁸ To create an ETF for a client, a broker-dealer acting as an Authorized Participant, or "AP," typically takes the basket of underlying securities that comprise the ETF and delivers that basket to the issuer. In return, the AP receives newly-created shares of the ETF for delivery to its client (creation). Conversely, if the client decides it no longer wants the ETF shares, it can redeem the shares through the AP. To redeem the shares, the AP typically returns the ETF shares to the issuer and receives the underlying basket of securities for delivery to its client (redemption).

execute trades until end of day, which allowed executions to occur on a net basis at less cost to Latour. Nonetheless, Latour frequently booked intra-day creation/redemption orders as executed trades even though it knew or should have known that the trades had not been, and would not be, executed until late in the trading day. The firm's practice of booking creation/redemption orders as executed trades, at times, substantially impacted the firm's intra-day net capital. For example, on August 10, 2011, Latour entered intra-day orders to redeem at least 1,667 units of the SPDR S&P 500 ETF Trust (ticker SPY), or 83,350,000 shares of SPY, worth approximately \$9,359,371,500. After applying an approximate haircut of \$467 million to this position, the firm would have been roughly \$388 million out of net capital intra-day on August 10, 2011, before the actual SPY redemption had been executed.

35. Latour also improperly treated after-hours orders to create or redeem as executed trades. For instance, on Friday September 30, 2011, Latour emailed its clearing firm/AP at 6:38 p.m. to redeem 28 units or 1.4 million shares (worth approximately \$158 million) of SPY. The clearing firm responded at 6:45 p.m. that it would enter the order on Monday morning. Latour calculated its September 30th haircuts, however, as if its after-hours order had been executed that day. Specifically, on that date, the firm's end-of-day inventory, as reflected in its clearing firm's books, included 1,383,857 shares of SPY at a closing price of \$113.12 (worth approximately \$156.5 million). Treating the after-hours order (1,383,857 shares held - 1,400,000 shares redeemed) as if it was executed, however, Latour's position file reflected an end-of-day position of 16,143 short shares of SPY (worth approximately \$1.8 million).

36. Although the balance sheet in the firm's FOCUS Report for September 30, 2011 accurately reflected its position in SPY, because the firm's haircut calculations were based on the firm's position file, the report understated the required haircuts by almost \$12 million, and therefore was inaccurate. Because the firm understated its haircuts, Latour's net capital fell below its minimum net capital requirement on September 30, 2011.

37. Latour followed this same practice on seven other dates in 2010 and 2011, in at least one instance treating as executed a creation/redemption order communicated to Latour's AP on a Saturday. On Saturday February 27, 2010, Niquet emailed an ETF creation and redemption to Latour's AP at 8:56 pm. Although Niquet knew that the order would not be communicated to the ETF issuer until Monday, March 1st, Latour treated the order for net capital purposes as if the trade had been executed on Saturday, February 27th. Latour's net capital treatment of such after-hours orders consistently reduced the firm's haircuts.

D. Latour Operated While Out of Net Capital by Millions of Dollars.

38. Latour used the flawed haircut methodology described above throughout 2010 and 2011. As a result of Latour's erroneous and inaccurate haircut calculations, the firm operated with significant net capital deficiencies on at least 19 reporting dates in 2010 and 2011 as estimated below.

Date	Net Capital Before Haircuts	Original Haircuts	Revised Haircuts	Net Capital Deficiency
1/29/2010	\$32,912,460	\$30,349,787	\$39,435,702	(\$7,119,777)
2/26/2010	\$32,887,760	\$31,101,634	\$45,063,670	(\$12,702,831)
3/31/2010	\$33,899,425	\$29,028,283	\$31,365,823	NA
4/30/2010	\$36,487,308	\$35,223,056	\$63,943,397	(\$27,850,096)
5/28/2010	\$44,542,682	\$34,043,735	\$48,103,807	(\$4,638,250)
6/30/2010	\$50,339,330	\$39,924,928	\$51,898,758	(\$2,402,854)
7/30/2010	\$53,166,793	\$43,634,147	\$45,875,611	NA
8/31/2010	\$50,462,828	\$43,811,746	\$53,992,083	(\$4,099,122)
9/30/2010	\$52,674,694	\$48,433,611	\$47,830,526	NA
10/29/2010	\$52,048,470	\$46,323,425	\$62,016,445	(\$10,651,251)
11/30/2010	\$54,993,099	\$42,105,545	\$71,638,472	(\$17,294,948)
12/31/2010	\$56,504,248	\$42,136,334	\$45,989,808	NA
1/31/2011	\$43,683,541	\$38,288,755	\$51,333,367	(\$8,219,985)
2/28/2011	\$44,082,466	\$42,277,478	\$60,036,135	(\$16,413,984)
3/31/2011	\$48,912,828	\$44,652,810	\$58,975,612	(\$10,750,427)
4/29/2011	\$44,731,226	\$42,241,834	\$54,133,949	(\$9,799,290)
5/31/2011	\$47,244,775	\$43,890,925	\$64,187,194	(\$17,390,923)
6/30/2011	\$51,891,786	\$44,419,858	\$70,798,911	(\$19,381,120)
7/29/2011	\$64,786,135	\$58,856,021	\$89,734,708	(\$25,948,573)
8/31/2011	\$73,685,697	\$53,703,090	\$73,889,271	(\$1,993,615)
9/30/2011	\$63,623,980	\$54,030,378	\$89,895,140	(\$27,503,066)
10/31/2011	\$64,693,202	\$59,382,437	\$82,172,462	(\$18,271,231)
11/30/2011	\$78,582,707	\$65,027,736	\$102,055,579	(\$24,469,872)
12/30/2011	\$85,772,374	\$50,668,923	\$76,564,916	NA

E. Books-and-Records and Financial Reporting Failures

39. Latour failed to correctly calculate its net capital for at least every reporting date in 2010 and 2011. These inaccurate net capital calculations also caused Latour to make and keep inaccurate records of its net capital calculation. As a result, Latour failed to make and maintain accurate books and records throughout 2010 and 2011. Latour also filed twenty-four FOCUS Reports during the period that contained its inaccurate haircut and net capital computations.

40. In addition, during 2010 and 2011 at least, Latour failed to maintain some electronic communications in non-rewriteable, non-erasable format. For example, certain emails sent or received via blind carbon copy were archived but not retained in non-rewriteable, non-erasable format. Similarly, although retained in other formats, some instant messages were not retained in non-rewriteable, non-erasable format.

Violations

41. A broker-dealer violates Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder when it uses the mails, or any means or instrumentality of interstate commerce, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than exempt securities) while not maintaining its required minimum net capital. A broker-dealer violates Section 17(a)(1) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder when it fails to make and keep current, and preserve, certain books and records and when those records are not accurate. *See In the Matter of the Application of PennMont Securities*, Exchange Act Release No. 54434 (Sept. 13, 2006). Rule 17a-3(a)(11) requires that every broker-dealer, among other things, make and keep a record of the computation of aggregate indebtedness and net capital, as of the trial balance date. The rule requires that such computations shall be prepared currently at least once a month. Rule 17a-4 requires every broker-dealer to preserve certain records for specified periods of time, including communications related to a broker-dealer's business as such under paragraph (b)(4). Rule 17a-4(f) requires that a broker-dealer preserve certain records in non-rewriteable, non-erasable format if the firm employs electronic storage media. Rule 17a-5(a) requires that certain broker-dealers file FOCUS Reports, which contain a net capital computation.

42. As a result of the conduct described above, Latour willfully⁹ violated Sections 15(c)(3) and 17(a)(1) of the Exchange Act and Rules 15c3-1, 17a-3(a)(11), 17a-4(f), and 17a-5(a) thereunder.

43. A person is a cause of a securities violation if there is an underlying primary violation to which an act or omission of the person contributed and the person knew or should have known that his or her conduct would contribute to the violation. As a result of the conduct described above, Niquet caused Latour's violations of Sections 15(c)(3) of the Exchange Act and Rule 15c3-1, which require that broker-dealers maintain minimum net capital, and Section 17(a)(1) of the Exchange Act and Rules 17a-3(a)(11), and 17a-5(a) thereunder, which require broker-dealers to make and keep current and preserve books and records, and to make certain reports and filings with the Commission.

Undertakings

44. Respondents Latour and Niquet undertake to cooperate fully with the staff of the Commission in any and all investigations, litigation, or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Respondents have agreed (a) to produce promptly, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;

⁹ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

(b) Respondent Latour agrees to use its best efforts to cause its employees to be interviewed, and Respondent Niquet agrees to be interviewed, by the Commission's staff at such times as the Commission may reasonably request; and (c) Respondent Latour agrees to use its best efforts to cause its employees to appear, and Respondent Niquet agrees to appear, and testify truthfully and completely, without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and Respondents further agree that (i) any such notice or subpoena for Respondents' appearance and testimony may be served by regular mail, electronic mail, or facsimile on their counsel, Harry Weiss, Esq., Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue NW, Washington, DC 20006; and (ii) any such notice or subpoena for Respondents' appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedures.

In determining whether to accept the Offers, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors, to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. Respondent Latour cease and desist from committing or causing any violations and any future violations of Sections 15(c)(3) and 17(a)(1) of the Exchange Act and Rules 15c3-1, 17a-3(a)(11), 17a-4(f), and 17a-5(a) thereunder.
- B. Respondent Niquet cease and desist from committing or causing any violations and any future violations of Sections 15(c)(3) and 17(a)(1) of the Exchange Act and Rules 15c3-1, 17a-3(a)(11), and 17a-5(a) thereunder.
- C. Respondent Latour is censured.
- D. Respondent Latour shall, within 10 days of the entry of this Order, pay a civil monetary penalty in the amount of \$16,000,000 to the Securities and Exchange Commission. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. § 3717.
- E. Respondent Niquet shall, within 10 days of entry of this Order, pay a civil monetary penalty in the amount of \$150,000 to the Securities and Exchange Commission. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. § 3717.

F. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Latour Trading LLC or Nicolas Niquet as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew M. Calamari, Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3920 / September 17, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31252 / September 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16130

In the Matter of

SEAN C. COOPER,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS ACT
OF 1940, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF
1940

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Sean C. Cooper ("Respondent" or "Cooper").

II.

After an investigation, the Division of Enforcement alleges that:

Summary

1. This proceeding involves fraud and breaches of fiduciary duty by Sean C. Cooper from 2010 to 2012. During that period, Cooper was a managing member of WestEnd Capital Management, LLC ("WestEnd"), a San Francisco-based registered investment adviser, and also the portfolio manager for WestEnd Partners L.P. ("Fund"), a hedge fund advised by WestEnd.

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2. The Fund's governing documents provided that WestEnd was entitled to annual management fees of 1.5% payable quarterly in advance at the beginning of each fiscal quarter. However, beginning in March 2010 and continuing through February 2012, Cooper began indiscriminately withdrawing money from the Fund. Cooper routed the money first through WestEnd, and then to his personal bank accounts. Although Cooper characterized the withdrawals in WestEnd's books and records as management fees, the withdrawals bore no relation to the fees WestEnd actually had earned. In reality, Cooper was using the Fund to line his own pockets. In total he misappropriated approximately \$320,000 from the Fund.

3. Cooper was primarily responsible for WestEnd's compliance program, which was deficient with regards to, among other things, monitoring, reviewing, and approving his withdrawals from the Fund. Cooper also signed a false Form ADV filed with the Commission by WestEnd in 2011.

Respondent

4. **Sean Cooper**, age 48, of New Orleans, Louisiana, served as one of WestEnd's managing members since its inception in 2002 through his expulsion from the firm in 2012. Cooper was the primary portfolio manager and made almost all the investment decisions for the Fund. He also served as WestEnd's chief compliance employee until 2007, when he nominally delegated that function to another employee. In 2003, he formed the Fund to invest primarily in securities traded on domestic exchanges. Cooper controlled the Fund's operations and paid himself 100% of the management fee WestEnd collected from the Fund.

Other Relevant Entities

5. **WestEnd Capital Management, LLC** ("WestEnd") is a California limited liability corporation based in San Francisco, CA and has been registered with the Commission as an investment adviser since May 2002. WestEnd provides investment advice to individuals and is also the investment adviser to WestEnd Partners, L.P., a hedge fund. As of December 31, 2013, WestEnd's total assets under management were \$105 million.

6. **WestEnd Partners, L.P.** (the "Fund") is a California limited partnership formed in 2003, with WestEnd as its General Partner and adviser. During the relevant period WestEnd Partners invested primarily in securities traded on domestic and foreign exchanges and had approximately 20 investors and net assets of approximately \$38 million.

Background

7. Formed in 2002, WestEnd is an investment advisory firm registered with the Commission that provides advisory and financial planning services to high net-worth individuals through separately managed accounts and the Fund.

8. Sean Cooper and two other members (the "Other Members") owned and operated WestEnd. Cooper was responsible for WestEnd's back office financial operations and compliance matters, as well as managing the Fund's investment portfolio. The Other Members were responsible for managing WestEnd's other client portfolios as well as client relations and marketing, and performed their roles remotely. As a result, the Other Members oversaw very little of WestEnd's day-to-day operations during the relevant time period. Cooper hired most of WestEnd's employees, ran WestEnd's day-to-day operations, purported to supervise WestEnd's compliance policies and procedures, served as the primary portfolio manager for the Fund, made almost all of the investment decisions for the Fund, and coordinated the preparation of the Fund's financial statements. He also had sole control over the Fund's bank accounts and operations and collected the fees WestEnd earned from the Fund. Cooper operated the Fund and managed WestEnd's back office operations with little to no supervision from WestEnd's Other Members.

Cooper Misappropriated Fund Assets

9. The Fund's offering circular stated that WestEnd was entitled to annual management fees of 1.5% of each investors' capital account balance, payable quarterly in advance at the beginning of each fiscal quarter. The Fund's limited partnership agreement similarly stated that WestEnd was entitled to a management fee of 0.375 % of the balance of each limited partner's capital account on the first day of each fiscal quarter.

10. WestEnd operated its fiscal calendar on a calendar year basis, such that WestEnd could withdraw quarterly management fees starting on January 1, April 1, July 1, and September 1 of each year. WestEnd provided each prospective investor in the Fund with a copy of the Fund's confidential offering circular and limited partnership agreement. Cooper knew investors received copies of these documents.

11. In March 2010, however, Cooper began indiscriminately withdrawing money from the Fund. Whereas the Fund's confidential offering circular and limited partnership agreement stated that there would be 4 quarterly management fee payments, Cooper withdrew fees 11 times in various amounts during 2010 that in total exceeded the 1.5% level, causing WestEnd's financial statements to state that it owed investors in the Fund \$128,950 by the end of that year. Cooper continued to collect excess fees from the Fund in 2011 and by February 2012, WestEnd's financial statements reflected that it owed the Fund \$320,779. Cooper did not stop misappropriating the Fund's assets until the Commission's examination staff began an onsite examination in April 2012. Cooper characterized the withdrawals in the Fund's books and records as management fees – but the withdrawals bore no relation to the fees WestEnd actually had earned. In reality, Cooper simply was using the Fund as his own private bank.

12. Cooper had sole authority to transfer money out of the Fund and there were no controls in place to prevent him from improperly withdrawing funds. Cooper routed the money first through WestEnd, and then to his personal bank account where he spent the money on his lavish lifestyle, including remodeling his multi-million dollar Marin County home and purchasing a \$187,000 Porsche. In June 2012, the Fund's independent auditors

determined that WestEnd's lack of internal control over monitoring and approval of Cooper's withdrawals in excess of the amounts permitted by the Fund's governing documents was a significant deficiency in internal controls.

13. Cooper did not disclose WestEnd's excess fee withdrawals to Fund investors. Although Cooper reviewed and approved the quarterly account statements WestEnd sent to Fund investors, these statements, which reflected quarterly and year-to-date performance of the Fund, did not disclose the fact that Cooper caused WestEnd to take more in management fees than WestEnd was entitled to take under the terms of the Fund's offering and governing documents. Cooper also reviewed and approved the Fund's 2010 financial statements, which WestEnd sent to investors in July 2011, well after Cooper had misappropriated most of the funds. These financial statements described Cooper's withdrawals as "Prepaid management fees." This was false and misleading because Cooper's withdrawals bore no relation to the fees he and WestEnd actually earned.

False Statement in Form ADV

14. On April 1 2011, Cooper signed and filed on behalf of WestEnd Part 2A of WestEnd's Form ADV. Item 5 of Part 2A stated that WestEnd charged a quarterly management fee, payable on the first day of each quarter, equal to 0.375% of the capital balance of each limited partner for its services to the Fund. As discussed above, this statement was false, because Cooper indiscriminately withdrew purported management fees in excess of the annual 1.5% in 2010, 2011, and 2012.

Cooper Aided and Abetted and Caused WestEnd's Compliance Violations

15. The Advisers Act requires that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations of the statute. WestEnd failed to adopt, implement or comply with written policies and procedures designed to prevent violations of the Advisers Act. Cooper, while acting as WestEnd's chief compliance employee, failed to adopt, implement, or direct WestEnd's employees to adopt, implement, or comply with written policies and procedures designed to prevent violations of the Advisers Act.

16. As noted above, WestEnd – at Cooper's direction as principal of WestEnd and chief compliance officer ("Compliance Officer") – did not adopt policies or procedures that placed restrictions on Cooper's ability to withdraw money from the Fund. Additionally, WestEnd's policies and procedures that were adopted required that employees on an annual basis review and certify that they had received, read, and complied with the policies and procedures. WestEnd did not, however, provide its employees with the policies and procedures on an annual basis. Moreover, none of WestEnd's managing members, including Cooper, reviewed and certified that they had complied with WestEnd's policies and procedures for a more than five-year period between 2006 and 2013.

17. The Advisers Act also requires that registered investment advisers review, no less frequently than annually, the adequacy of their compliance policies and the

effectiveness of their implementation. Similarly, WestEnd's policies and procedures required Cooper to conduct an annual review of the adequacy and effectiveness of the firm's policies and procedures, including considering any compliance matters that arose during the previous year, any changes in WestEnd's activities and any changes in the Advisers Act or other applicable regulations. From 2006 through 2012, WestEnd and Cooper failed to conduct an annual review of the policies and procedures as required under the Advisers Act.

Violations

18. As a result of the conduct described above, Cooper willfully violated Sections 206(1) and 206(2) of the Advisers Act by employing devices, schemes or artifices to defraud clients or engaging in transactions, practices or courses of business that defrauded clients or prospective clients.

19. As a result of the conduct described above, Cooper willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit any fraudulent, deceptive, or manipulative act, practice, or course of business by an investment adviser to a pooled investment vehicle.

20. As a result of the conduct described above, Cooper willfully aided and abetted and caused WestEnd's violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser: (a) adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; and (b) review at least annually its written policies and procedures and the effectiveness of their implementation.

21. As a result of the conduct described above, Cooper willfully violated Section 207 of the Advisers Act which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

D. Whether, pursuant to Section 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations and any future violations of Sections 206(1), 206(2), 206(4), and 207 and Rules 206(4)-7 and 206(4)-8 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 203(i) of the Advisers Act, and whether Respondent should be ordered to pay disgorgement pursuant to Section 203 of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is

not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3919 / September 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16129

In the Matter of

**WESTEND CAPITAL
MANAGEMENT, LLC**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against WestEnd Capital Management, LLC ("Respondent" or "WestEnd").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

Summary

From March 2010 through February 2012, Sean Cooper ("Cooper"), a managing member of WestEnd, directed WestEnd to collect fees from the fund it managed, WestEnd Partners, L.P. (the "Fund"), that exceeded what it earned during the period. By February 2012, Cooper had misappropriated approximately \$320,000 from the Fund for his own personal use. Although the other WestEnd members were unaware of Cooper's fraud, several deficiencies at WestEnd enabled Cooper to perpetrate his fraud.² First, WestEnd failed reasonably to supervise Cooper. Second, WestEnd failed to maintain several required books and records, including many related to the firm's financials. Third, WestEnd failed to adopt and implement policies and procedures reasonably designed to prevent violations of the federal securities laws and failed to annually review those policies and procedures. Finally, the Form ADV Cooper filed on WestEnd's behalf falsely described the way in which WestEnd withdrew fees from the Fund. As a result, WestEnd violated Sections 204, 206(4) and 207 of the Advisers Act and Rules 204-2 and 206(4)-7 thereunder and also failed reasonably to supervise within the meaning of Section 203(e)(6) of the Advisers Act.

Respondent

1. **WestEnd Capital Management, LLC** is a California limited liability company based in San Francisco, CA and has been registered with the Commission as an investment adviser since May 2002. WestEnd provides investment advice to individuals and is also the investment adviser to WestEnd Partners, L.P., a hedge fund. As of December 31, 2013, WestEnd's total assets under management were \$105 million.

Other Relevant Entity and Individual

2. **WestEnd Partners, L.P.** is a California limited partnership formed in 2003, with WestEnd as its General Partner and adviser. During the relevant period WestEnd Partners invested primarily in securities traded on domestic and foreign exchanges and had approximately 20 investors and net assets of approximately \$38 million.

3. **Sean Cooper**, age 48, of New Orleans, Louisiana, served as one of WestEnd's managing members since its inception in 2002 through his expulsion from the firm in 2012. Cooper was the primary portfolio manager and made almost all the investment decisions for the Fund. He also served as WestEnd's chief compliance employee from 2002 until 2007, when he delegated that

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² Cooper is contesting the Commission's allegations against him in a separate proceeding.

function to another WestEnd employee. In 2003, he formed the Fund to invest primarily in securities traded on domestic exchanges. Cooper controlled the Fund's operations and, although the Fund's operating agreement stated that WestEnd members were to share the management fees, Cooper kept 100% of the management fees WestEnd collected from the Fund.

Background

4. Formed in 2002, WestEnd is an investment advisory firm registered with the Commission that provides advisory and financial planning services to high net-worth individuals through separately managed accounts and the Fund.

5. Sean Cooper and two other members (the "Other Members") owned and operated WestEnd. Cooper was responsible for WestEnd's back office financial operations and compliance matters, as well as managing the Fund's investment portfolio. The Other Members were responsible for managing WestEnd's other client portfolios as well as client relations and marketing, and performed their roles remotely. As a result, the Other Members oversaw very little of WestEnd's day-to-day operations during the relevant time period. Cooper hired most of WestEnd's employees, ran WestEnd's day-to-day operations, purported to supervise WestEnd's compliance policies and procedures, served as the primary portfolio manager for the Fund, made almost all of the investment decisions for the Fund, and coordinated the preparation of the Fund's financial statements. He also had sole control over the Fund's bank accounts and operations and collected the fees WestEnd earned from the Fund. Cooper operated the Fund and managed WestEnd's back office operations with little to no supervision from WestEnd's Other Members.

Misappropriation of Fund Assets by Cooper

6. The Fund's offering circular stated that WestEnd was entitled to annual management fees of 1.5% of each investor's capital account balance, payable quarterly in advance at the beginning of each fiscal quarter. The Fund's limited partnership agreement similarly stated that WestEnd was entitled to a management fee of 0.375 % of the balance of each limited partner's capital account on the first day of each fiscal quarter. WestEnd operated its fiscal calendar on a calendar year basis, such that WestEnd could withdraw management fees starting on January 1, April 1, July 1, and September 1 of each year. WestEnd provided each prospective investor in the Fund with a copy of the Fund's confidential offering circular and limited partnership agreement.

7. In March 2010, however, Cooper began indiscriminately withdrawing money from the Fund on dates of his choosing. Whereas the Fund's confidential offering circular and limited partnership agreement stated that there would be 4 quarterly management fee payments, Cooper withdrew fees 11 times in various amounts during 2010 that in total exceeded the 1.5% level, causing WestEnd to owe the Fund \$128,950 by the end of that year. Cooper continued to misappropriate money from the Fund in 2011 and by February 2012, WestEnd owed the Fund \$320,779. Cooper did not stop misappropriating the Fund's assets until April 2012, by which time the Commission's staff had begun an on-site examination. Cooper characterized the withdrawals in the Fund's books and records as management fees – but the withdrawals bore no relation to the

fees WestEnd actually had earned. In reality, Cooper simply used the Fund to line his own pockets.

8. Cooper had sole authority to transfer money out of the Fund and there were no controls in place to prevent him from improperly withdrawing funds. Cooper routed the money first through WestEnd, and then to his personal bank accounts. Although WestEnd's Other Members were unaware that Cooper was misappropriating Fund assets, WestEnd failed to take any steps to monitor, review, or approve Cooper's withdrawals. In June 2012, the Fund's independent auditors determined that WestEnd's lack of monitoring and approval of Cooper's withdrawals in excess of the amounts permitted by the Fund's governing documents was a significant deficiency in internal controls.

9. In Summer 2012, after they had confirmed Cooper's misappropriation, WestEnd's Other Members expelled Cooper from WestEnd. WestEnd then elected to forgo any future management fees from the Fund until it had reimbursed the Fund, plus interest, for the money Cooper had misappropriated.

WestEnd's Deficient Compliance Program

10. The Advisers Act requires that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations of the statute. While WestEnd did adopt some written compliance policies and procedures, they were insufficient to prevent Cooper's fraud. Moreover, WestEnd and its employees did not implement nor comply with the policies and procedures that WestEnd did adopt.

11. For example, WestEnd's policies and procedures required that employees on an annual basis review and certify that they had received, read, and complied with the policies and procedures. WestEnd did not, however, provide its employees with the policies and procedures on an annual basis. Moreover, none of WestEnd's managing members, including Cooper, reviewed and certified that they had complied with WestEnd's policies and procedures for a more than five-year period between 2006 and 2013. Finally, WestEnd did not adopt any policies or procedures that imposed any controls around Cooper's ability to withdraw money from the Fund. Rather, Cooper had sole discretion to calculate and wire out money he claimed the Fund owed him.

12. WestEnd's policies and procedures also required that employees use the firm's email and instant messaging systems for all firm business in part so that required emails and instant messages could be preserved. However, one of WestEnd's Other Members used a personal email account for business correspondence, and none of the managing members' emails had properly been preserved.

13. The Advisers Act also requires that registered investment advisers review, no less frequently than annually, the adequacy of their compliance policies and the effectiveness of their implementation. Similarly, WestEnd's policies and procedures required Cooper and WestEnd's Other Members to conduct an annual review of the adequacy and effectiveness of the firm's policies and procedures, including considering any compliance matters that arose during the

previous year, any changes in WestEnd's activities and any changes in the Advisers Act or other applicable regulations. Neither Cooper nor the Other Members conducted the required annual review.

14. In December 2011, WestEnd hired a third-party consultant to evaluate its compliance policies and procedures. Since that time, the consultant has made several recommendations to improve WestEnd's compliance program, all of which WestEnd has adopted and implemented.

WestEnd Failed to Maintain Required Books and Records

15. The Advisers Act requires registered investment advisers to make and keep certain books and records relating to its advisory business. WestEnd failed to maintain several types of required records, including journals, general and auxiliary ledgers, financial statements, supporting documents for WestEnd's withdrawals of purported management fees from the Fund, and accurate records of client's wire transactions.

False Statement in WestEnd's Form ADV

16. On April 1, 2011, Cooper signed and filed WestEnd's Form ADV. Item 5 of Part 2A stated that WestEnd charged a quarterly management fee, payable on the first day of each quarter, equal to 0.375% of the capital balance of each limited partner for its services to the Fund. As discussed above, this statement was false, because Cooper indiscriminately withdrew purported management fees in excess of the annual 1.5% in 2010, 2011, and 2012.

Violations

17. As a result of the conduct described above, WestEnd failed reasonably to supervise Cooper, with a view to preventing violations of the federal securities laws, while Cooper was subject to WestEnd's supervision, within the meaning of Section 203(e)(6) of the Advisers Act.

18. As a result of the conduct described above, WestEnd willfully³ violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser: (a) adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; and (b) review at least annually its written policies and procedures and the effectiveness of their implementation.

³ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

19. As a result of the conduct described above, WestEnd willfully violated Section 204 of the Advisers Act, and Rules 204-2(a)(1), (2), (6), and (7)(ii), promulgated thereunder. Section 204 of the Advisers Act requires investment advisers to make and keep certain records as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204-2 under the Advisers Act requires investment advisers registered or required to be registered to make and keep true, accurate and current various books and records relating to their investment advisory business, including:

- A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in a ledger;
- General and auxiliary ledgers (or other comparable records) reflecting assets, liability, reserve, capital, income and expense accounts;
- All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser; and
- All written communications sent or received relating to, among other things, any receipt, disbursement or delivery of funds or securities.

WestEnd failed to make and keep these records for its advisory business.

20. As a result of the conduct described above, WestEnd willfully violated Section 207 of the Advisers Act which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

Remedial Efforts

21. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by WestEnd and cooperation afforded the Commission Staff. Specifically, WestEnd engaged an independent compliance consultant to evaluate and give guidance on WestEnd's compliance practices and procedures.

Undertakings

Respondent WestEnd has undertaken to:

22. Compliance Consultant. In December 2011, before the Commission's examination staff began an examination, WestEnd hired a compliance consultant (the "Consultant") to conduct a comprehensive review of WestEnd's compliance program. The Consultant completed its work in January 2012 and submitted reports detailing its work, findings, and recommendations to WestEnd in February 2012 and April 2012, which WestEnd has shared with the Commission staff. WestEnd has implemented all of the Consultant's recommendations. WestEnd will retain the Consultant going forward to assist WestEnd in implementing its new compliance program through 2015. The Consultant's work includes, but is not limited to:

- a. The Consultant conducted an on-site review of WestEnd's business and WestEnd's implementation of the firm's policies and procedures.
- b. The Consultant drafted a new compliance manual and code of ethics and established a protocol for undertaking various compliance-related tasks on a periodic basis.
- c. The Consultant will conduct annual compliance reviews of WestEnd, at WestEnd's expense, for the years ended December 31, 2014 and December 31, 2015. WestEnd shall adopt and implement all recommendations that result from the Consultant's annual compliance reviews.

In determining whether to accept this Offer, the Commission has considered the undertakings described in Paragraph 22.

23. Recordkeeping. Respondent shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of Respondent's compliance with the undertakings set forth in this Order.

24. Notice to Advisory Clients. Within thirty (30) days of the entry of this Order, Respondent shall provide a copy of the Order to each of the limited partners in the Fund as of the date of the Order via mail, email, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff. Furthermore, for a period of twelve (12) months from the entry of this Order, to the extent that Respondent is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 of the Advisers Act, Respondent shall also provide a copy of this Order to such client and/or prospective client at the same time that Respondent delivers the brochure.

25. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

26. Certifications of Compliance by Respondent. Respondent shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Erin E. Schneider, Assistant Regional Director, Asset Management Unit, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA, 94104, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent WestEnd cease and desist from committing or causing any violations and any future violations of Sections 204, 206(4) and 207 of the Advisers Act and Rules 204-2 and 206(4)-7 promulgated thereunder.

B. Respondent WestEnd is censured.

C. Respondent shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying WestEnd Capital Management LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Erin E. Schneider, Assistant Regional Director, Asset Management Unit, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

D. WestEnd shall comply with the undertakings enumerated in Section III, paragraphs 23 through 26 above.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3923 / September 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16134

In the Matter of

JOHN ALLAN RUSSELL,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against John Allan Russell ("Russell" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

From September 2007 to January 2010, Russell was associated with an investment adviser that was registered with the Commission. Russell, age 50, is a resident of Aurora, Colorado.

B. RESPONDENT'S CRIMINAL CONVICTION

1. On July 5, 2013, Russell pled guilty to one count of securities fraud in violation of Colo. Rev. Stat. § 11-51-501(1)(b), a class three felony, before the District Court, City and County of Denver, Colorado, in People v. John Allan Russell, No. 2009CR06137. On August 19, 2013, a judgment in the criminal case was entered against Russell. Russell was sentenced to five years of probation and ordered to pay restitution in the amount of \$441,501.53.

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2. The securities fraud count to which Russell pled guilty alleged that between August 2006 and March 2008, Russell, in connection with the offer, sale, or purchase of any security, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

3. At the time of the misconduct for which he was convicted, Russell was associated with an investment adviser registered with the Commission.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related

proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73129 / September 17, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3921 / September 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16132

In the Matter of

JEREMY MICHAEL HART,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Jeremy Michael Hart ("Hart" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that

1. From July 2004 to July 2008, Hart was associated with a broker-dealer and investment adviser that was registered with the Commission. Hart, age 40, is a resident of Delta, Colorado.
2. On November 29, 2010, Hart pled guilty to one count of securities fraud in violation of Colo. Rev. Stat. § 11-51-501(1)(c), a class three felony, and one count of theft in violation of Colo. Rev. Stat. § 18-4-401(1) and (2)(d), a class three felony, before the District Court, Larimer County, Colorado, in People v. Jeremy Michael Hart, Case No. 2010CR000752. On January 21, 2011, a judgment in the criminal case was entered against Hart. Hart was sentenced to serve nine years of incarceration and ordered to pay restitution in the amount of \$3,486,852.61.
3. The securities fraud count to which Hart pled guilty alleged that between July 2006 and May 2008, Hart and another person, in connection with the offer, sale, or purchase of any security, directly or indirectly, unlawfully, feloniously, and willfully engaged in an act, practice, or course of business which operated as a fraud or deceit upon investors. The theft count to which Hart pled guilty alleged that between July 2006 and May 2008, Hart and another person unlawfully, feloniously, and knowingly obtained investor money, with a value of twenty thousand dollars or more, without authorization, or by threat or deception, and knowingly used, concealed, or abandoned the thing of value in such a manner as to permanently deprive investors of its use or benefit.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Hart's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Hart be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

Pursuant to Section 15(b)(6) of the Exchange Act that Respondent Hart be, and hereby is barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served

as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73130 / September 17, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3922 / September 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16133

In the Matter of

ANTHONY LEON
SEMADENI,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Anthony Leon Semadeni ("Semadeni" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that

1. From April 2002 to March 2010, Semadeni was associated with a broker-dealer registered with the Commission. From January 2009 to March 2010, Semadeni was associated with an investment adviser registered with the Commission. Semadeni, age 43, is a resident of Colorado Springs, Colorado.

2. On April 10, 2012, Semadeni pled guilty to one count of attempted theft in violation of Colo. Rev. Stat. §§ 18-4-401(1) and (2)(c) and 18-2-101, a class five felony, before the District Court, El Paso County, Colorado, in People v. Anthony Leon Semadeni, Case No. 2011CR001905. On June 19, 2012, a judgment in the criminal case was entered against Semadeni. Semadeni was sentenced to three years of probation and ordered to pay restitution in the amount of \$46,000.42.

3. The attempted theft count to which Semadeni pled guilty alleged that between March 2009 and March 2011, by engaging in conduct constituting a substantial step toward the commission of theft, Semadeni unlawfully, feloniously, and knowingly attempted to obtain or exercise control over a thing of value, namely: money from individuals, with the value of one thousand dollars or more but less than twenty thousand dollars, without authorization, or by threat or deception, and intended to deprive those individuals permanently of its use or benefit.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Semadeni's Offer.

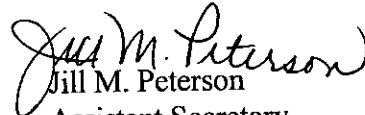
Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Semadeni be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

Pursuant to Section 15(b)(6) of the Exchange Act that Respondent Semadeni be, and hereby is barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served

as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 18, 2014

In the Matter of

**AGR Tools, Inc.,
Arcadia Resources, Inc.,
Citizens First Bancorp, Inc.,
First Capital International, Inc.,
GreenTek Corp., and
Metabolic Research, Inc.,**

File No. 500-1

**ORDER OF SUSPENSION OF
TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AGR Tools, Inc. because it has not filed any periodic reports since the period ended March 31, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Arcadia Resources, Inc. because it has not filed any periodic reports since the period ended December 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Citizens First Bancorp, Inc. because it has not filed any periodic reports since the period ended June 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of First Capital International, Inc. because it has not filed any periodic reports since the period ended March 31, 2010.

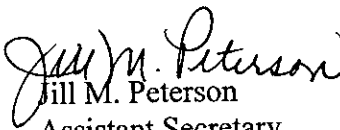
It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GreenTek Corp. because it has not filed any periodic reports since the period ended March 31, 2012.

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It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Metabolic Research, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 18, 2014, through 11:59 p.m. EDT on October 1, 2014.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73135 / September 18, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16135

In the Matter of

**AGR Tools, Inc.,
Arcadia Resources, Inc.,
Citizens First Bancorp, Inc.,
First Capital International, Inc.,
GreenTek Corp., and
Metabolic Research, Inc.**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS¹

1. AGR Tools, Inc. ("AGRT") (CIK No. 1352858) is a revoked Nevada corporation located in Dallas, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AGRT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012, which reported a net loss of \$356,976 for the prior nine months. As of September 16, 2014, the common stock of AGRT was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

¹The short form of each issuer's name is also its stock symbol.

2. Arcadia Resources, Inc. ("KADR") (CIK No. 1071941) is a revoked Nevada corporation located in Indianapolis, Indiana with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). KADR is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended December 31, 2011, which reported a net loss of \$15,762,000 for the prior nine months. As of September 16, 2014, the common stock of KADR was quoted on OTC Link, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Citizens First Bancorp, Inc. ("CTZN") (CIK No. 1127442) is a void Delaware corporation located in Port Huron, Michigan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CTZN is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2009, which reported a net loss of \$29,788,000 for the prior six months. As of September 16, 2014, the common stock of CTZN was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. First Capital International, Inc. ("FCPN") (CIK No. 1072842) is a Delaware corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). FCPN is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2010, which reported a net loss of \$224,361 for the prior three months. As of September 16, 2014, the common stock of FCPN was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. GreenTek Corp. ("GRTK") (CIK No. 1451822) is an expired Utah corporation located in Louisville, Kentucky with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GRTK is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012, which reported a net loss of \$310,577 from the company's August 21, 1978 inception through March 31, 2012 for the . As of September 16, 2014, the common stock of GRTK was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Metabolic Research, Inc. ("MTBR") (CIK No. 1081369) is a revoked Nevada corporation located in Tampa, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MTBR is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2010, which reported a net loss of \$368,704 for the prior nine months. As of September 16, 2014, the common stock of MTBR was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file

timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73138 / September 18, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16136

In the Matter of

**Corridor Ventures II Acquisition Corp.,
Dong Xin Chemical Co., Ltd.,
Silica Resources Corp.,
Sino Oil & Gas Pipe Holdings Ltd.,
SK Shasta Acquisition Corp. 1,
SK Shasta Acquisition Corp. 2,
SK Shasta Acquisition Corp. 3, and
SK Shasta Acquisition Corp. 4,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Corridor Ventures II Acquisition Corp., Dong Xin Chemical Co., Ltd., Silica Resources Corp., Sino Oil & Gas Pipe Holdings Ltd., SK Shasta Acquisition Corp. 1, SK Shasta Acquisition Corp. 2, SK Shasta Acquisition Corp. 3, and SK Shasta Acquisition Corp. 4.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Corridor Ventures II Acquisition Corp. (CIK No. 1498398) is a revoked Nevada corporation located in Beijing, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Corridor Ventures II Acquisition is delinquent in its periodic filings with the Commission, having not filed any periodic

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reports since it filed a Form 10-Q for the period ended June 30, 2011, which reported a net loss of \$8,107 from the company's February 22, 2010 inception to June 30, 2011.

2. Dong Xin Chemical Co., Ltd. (CIK No. 1475204) is a void Delaware corporation located in Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Dong Xin Chemical is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2011, which reported a net loss of \$11,740 from the company's October 8, 2008 inception to June 30, 2011.

3. Silica Resources Corp. (CIK No. 1368505) is a revoked Nevada corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Silica Resources is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended December 31, 2010, which reported a net loss of \$1,278,014 from the company's October 7, 2005 inception to December 31, 2010.

4. Sino Oil & Gas Pipe Holdings Ltd. (CIK No. 1485536) is a struck off¹ British Virgin Islands corporation located in Jin Zhong City, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Sino Oil & Gas Pipe Holdings is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended April 30, 2011.

5. SK Shasta Acquisition Corp. 1 ("SK 1") (CIK No. 1439245) is a void Delaware corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SK 1 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 2011, which reported a net loss of \$53,032 from the company's May 2, 2008 inception to July 31, 2011.

6. SK Shasta Acquisition Corp. 2 ("SK 2") (CIK No. 1439242) is a void Delaware corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SK 2 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 2011, which reported a net loss of \$52,805 from the company's May 2, 2008 inception to July 31, 2011.

7. SK Shasta Acquisition Corp. 3 ("SK 3") (CIK No. 1439241) is a void Delaware corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SK 3 is delinquent in its periodic filings with the Commission, having not filed any periodic

¹ The British Virgin Islands Business Companies Act provides that the Registrar of Companies "may strike the name of a company off the Register if (a) the company fails to appoint a registered agent . . . , or fails to file any return, notice or document required to be filed . . . , (b) he is satisfied that the company has ceased to carry on business, or the company is carrying on business for which a license, permit or authority is required under the laws of the Virgin Islands without having such license, permit or authority, or (c) the company fails to pay its annual fee or any late payment penalty by the due date." BVI Business Companies Act, 2004, Division 3, Section 213 (1).

reports since it filed a Form 10-Q for the period ended July 31, 2011, which reported a net loss of \$53,036 from the company's May 2, 2008 inception to July 31, 2011.

8. SK Shasta Acquisition Corp. 4 ("SK 4") (CIK No. 1439240) is a void Delaware corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SK 4 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 2011, which reported a net loss of \$53,010 from the company's May 2, 2008 inception to July 31, 2011.

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and

place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

美利坚合众国
之
证券交易监督委员会

《1934 年证券交易法》

发行号 73138 / September 18, 2014

行政程序

备案号 3-16136

就以下相对人之事项:

Corridor Ventures II Acquisition Corp.、
东新化工股份有限公司 (Dong Xin Chemical
Co., Ltd.)、
Silica Resources Corp.、
中国油气管道控股有限公司 (Sino Oil &
Gas Pipe Holdings Ltd.)、
SK Shasta Acquisition Corp. 1、
SK Shasta Acquisition Corp. 2、
SK Shasta Acquisition Corp. 3 和
SK Shasta Acquisition Corp. 4

依据《1934 年证券交易法》第 12(j) 条，
送达行政程序启动
暨听证通知令

I.

证券交易监督委员会（“委员会”）认为，依据《1934 年证券交易法》（“证券法”）第 12(j) 条对相对人 Corridor Ventures II Acquisition Corp.、东新化工股份有限公司 (Dong Xin Chemical Co. Ltd.)、Silica Resources Corp.、中国油气管道控股有限公司 (Sino Oil & Gas Pipe Holdings Ltd.)、SK Shasta Acquisition Corp. 1、SK Shasta Acquisition Corp. 2、SK Shasta Acquisition Corp. 3 和 SK Shasta Acquisition Corp. 4 特此提起公共行政程序，对保护投资者是必要且适当的。

II.

经调查，执行部诉称：

A. 相对人

1. Corridor Ventures II Acquisition Corp. (CIK 号 1498398) 是中国北京市一家已被撤销的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。Corridor Ventures II Acquisition 未按规定向委员会提交定期报告。自提交截至 2011 年 6 月 30 日的 10-Q 表 (称其自 2010 年 2 月 22 日发起至 2011 年 6 月 30 日期间净亏损 8,107 美元) 后, Corridor Ventures II Acquisition 再未提交任何定期报告。

2. 东新化工股份有限公司 (Dong Xin Chemical Co., Ltd.) (CIK 号 1475204) 是中国香港的一家空头的特拉华州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。东新化工股份有限公司未按规定向委员会提交定期报告。自提交截至 2011 年 6 月 30 日的 10-Q 表 (称其自 2008 年 10 月 8 日发起至 2011 年 6 月 30 日期间净亏损 11,740 美元) 后, 东新化工股份有限公司再未提交任何定期报告。

3. Silica Resources Corp. (CIK 号 1368505) 是加拿大不列颠哥伦比亚省温哥华市一家已被撤销的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。Silica Resources 未按规定向委员会提交定期报告。自提交截至 2010 年 12 月 31 日的 10-Q 表 (称其自 2005 年 10 月 7 日发起至 2010 年 12 月 31 日期间净亏损 1,278,014 美元) 后, Silica Resources 再未提交任何定期报告。

4. 中国油气管道控股有限公司 (Sino Oil & Gas Pipe Holdings Ltd.) (CIK 号 1485536) 是中国晋中一家已被注销的¹英国维尔京群岛公司, 依据证券法第 12(g) 条在委员会注册了一类证券。中国油气管道控股有限公司未按规定向委员会提交定期报告。自提交截至 2011 年 4 月 30 日的 20-F 表后, 中国油气管道控股有限公司再未提交任何定期报告。

5. SK Shasta Acquisition Corp. 1 ("SK 1") (CIK 号 1439245) 是加拿大不列颠哥伦比亚省温哥华市一家空头的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。SK 1 未按规定向委员会提交定期报告。自提交截至 2011 年 7 月 31 日的 10-Q 表 (称其自 2008 年 5 月 2 日发起至 2011 年 7 月 31 日期间净亏损 53,032 美元) 后, SK 1 再未提交任何定期报告。

6. SK Shasta Acquisition Corp. 2 ("SK 2") (CIK 号 1439242) 是加拿大不列颠哥伦比亚省温哥华市一家空头的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。SK 2 未按规定向委员会提交定期报告。自提交截至 2011 年 7 月 31 日的 10-Q 表 (称其自 2008 年 5 月 2 日发起至 2011 年 7 月 31 日期间净亏损 52,805 美元) 后, SK 2 再未提交任何定期报告。

7. SK Shasta Acquisition Corp. 3 ("SK 3") (CIK 号 1439241) 是加拿大不列颠哥伦比亚省温哥华市一家空头的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。SK 3 未按规定向委员会提交定期报告。自提交截至 2011 年 7

¹ 英国维尔京群岛的《商业公司法》规定, 公司注册官可在以下情况下将公司从“注册名单”中撤销: (a) 公司未指定注册代理人或未按规定提交回执、通知或文档时; (b) 公司注册官确认公司已经停止经营业务或在不具有维尔京群岛相关法律所规定的执照、许可或授权情况下继续经营业务时; (c) 公司逾期未能缴付年费或任何滞纳金时。《2004 BVI 商业公司法》第 3 章第 213 (1) 条。

月 31 日的 10-Q 表（称其自 2008 年 5 月 2 日发起至 2011 年 7 月 31 日期间净亏损 53,036 美元）后，SK 3 再未提交任何定期报告。

8. SK Shasta Acquisition Corp. 4 (“SK 4”)（CIK 号 1439240）是加拿大不列颠哥伦比亚省温哥华市一家空头的内华达州公司，依据证券法第 12(g) 条在委员会注册了一类证券。SK 4 未按规定向委员会提交定期报告。自提交截至 2011 年 7 月 31 日的 10-Q 表（称其自 2008 年 5 月 2 日发起至 2011 年 7 月 31 日期间净亏损 53,010 美元）后，SK 4 再未提交任何定期报告。

B. 未按规定提交定期报告

9. 正如上文详述，所有相对人均未按规定向委员会提交定期报告，屡次不履行按时提交定期报告的义务，且在收到企业金融部发出的催告函，要求其遵守定期申报义务后，仍不予理会，或因未按证监会的规定在证监会维护有效备案地址，从而未收到该等催告函。

10. 根据证券法第 13(a) 条及其发布的规定，依据证券法第 12 条注册的证券发行者，即使是根据第 12(g) 条自愿注册，亦应以定期报告的方式向委员会提交最新且准确之信息。具体而言，第 13a-1 条规定要求发行者提交年报，第 13a-13 条规定要求国内发行者提交季报。

11. 由于上述原因，相对人未遵守证券法第 13(a) 条和根据该法发布的第 13a-1 条和/或 13a-13 条之规定。

III.

鉴于执行部提出的诉称，委员会认为提起公共行政程序确定以下事项对保护投资者是有必要且适当的：

A. 本命令第 II 部分所包含的诉称是否属实，就该诉称而言，给予相对人对该等诉称进行抗辩的机会；以及

B. 就保护投资者而言，对本命令第 II 部分所指定相对人、证券法第 12b-2 条或第 12g-3 条规定下的任何继承人、采用新公司名称的相对人采取以下行为是否有必要且适当——暂停（不超过十二个月）或撤销其依据证券法第 12 条注册的各类证券；

IV.

特此命令，为对第 III 部分所述问题进行取证，应在待定的时间和地点召开公开听证，并由《美国证监会行为规范》第 110 条规定的进一步命令所指定的行政法官主持[《美国联邦法规》第 17 编第 201.110 节]。

进一步命令，相对人应在本命令送达后十(10)日内，按《美国证监会行为规范》第220(b)条规定[《美国联邦法规》第17编第201.220(b)节]对本命令中所包含的诉称提交答辩状。

若相对人未提交所规定的答辩状，或在收到通知后未出席听证，则相对人及《美国证监会行为规范》第12b-2条或第12g-3条规定下的任何继承人，以及拥有新公司名称的相对人，将被视为缺席，且将针对其就命令中的事项确定相应程序，根据《美国证监会行为规范》第155(a)、220(f)、221(f)和310条规定[《美国联邦法规》第17编第201.155(a)、201.220(f)、201.221(f)和201.310节]，命令中的诉称将被视为属实。

本命令应以直接送达的方式或通过特快专递或《美国证监会行为规范》允许的其它方式，立即送达相对人。

进一步命令，行政法法官应依据《美国证监会行为规范》第360(a)(2)条规定[《美国联邦法规》第17编第201.360(a)(2)节]，在不晚于本命令送达之日起的120天内做出初始裁决。

如缺少相关弃权，则委员会在本程序或任何事实上相关的程序中从事调查或起诉职能的任何官员或雇员，均不得参加本事项的决策或对本事项的决策提出建议，但依据通知在诉讼中担任证人或律师的除外。因本程序并非《行政诉讼法》第551节定义的“法规制定”，因此不受第553条规定的限制，无须推迟委员会任何最终决议的实行日期。

委员会。

助理秘书
Jill M. Peterson

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3924 / September 18, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16138

In the Matter of

**STRATEGIC CAPITAL
GROUP, LLC AND N. GARY
PRICE,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against Strategic Capital Group, LLC ("SCG"), and that cease-and-desist proceedings be, and hereby are, instituted pursuant to Advisers Act Section 203(k) against N. Gary Price ("Price") (Price and SCG will be referred to collectively herein as "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. Beginning May 3, 2011, registered investment adviser SCG engaged in hundreds of securities transactions with advisory clients on a principal basis through its affiliated registered broker-dealer, RP Capital, LLC ("RP Capital"), without providing prior written disclosure to, or obtaining consent from, the clients. RP Capital purchased fixed-income securities from other broker-dealers and then resold them at a higher price to SCG clients without SCG disclosing for more than a year that it was acting as principal through RP Capital and without obtaining required transaction-by-transaction consent. In addition, in its Forms ADV Part 1A filed in 2012 and 2013, SCG incorrectly stated that neither it nor any related person engaged in principal transactions. SCG also failed to seek best execution in determining to route its clients' fixed-income transactions to RP Capital.
2. Separately, from approximately August 2010 to March 2011, SCG provided prospective clients advertisements that contained false and misleading claims and disclosures about the performance of SCG's investment model. The advertisements were also publicly available on SCG's website for at least a month. In the advertisements, SCG claimed the performance returns portrayed were "historical" for SCG's investment model when, in fact, the majority of the results were hypothetical because they were based in part on the use of indexes rather than SCG's actual investment recommendations.
3. As a result, SCG violated the antifraud, principal transactions, advertising, compliance and reporting provisions of the Advisers Act.
4. N. Gary Price, SCG's Chief Executive Officer, and its Chief Compliance Officer until September 2012, failed to implement SCG's compliance policies and procedures that were reasonably designed to prevent violations of the Advisers Act. Price also signed the untrue Forms ADV filed by SCG in 2012 and 2013 without verifying that information contained in the Forms ADV was correct. As a result, Price caused SCG's violations.

Respondents

5. SCG is a Washington limited liability company with its principal place of business in Gig Harbor, Washington. SCG has been registered with the Commission as an investment adviser since 2004. Price owns 50% of SCG and since its inception has been its Chief Executive Officer. As of January 31, 2014, SCG had assets under management of approximately \$482 million in approximately 1,428 accounts. According to its Form ADV, Part 2A dated March 31, 2014, SCG is

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

in the process of transitioning its clients to a different registered investment adviser with whom Price is associated and indirectly has a minority ownership interest. When that transition is complete, SCG will cease to provide investment advisory services.

6. N. Gary Price, age 45, resides in Gig Harbor, Washington. Price owns 50% of each of SCG and RP Capital. During the relevant period, Price served as Chief Executive Officer of SCG and, until September 2012, was its Chief Compliance Officer as well. Price also is a managing member and registered representative of RP Capital. Price has held Series 7 and 63 securities licenses since 1993, Series 24 since 1996, and Series 31 since 2001.

Other Relevant Entity

7. RP Capital is a Washington limited liability company with its principal place of business in Gig Harbor, Washington, and operates at the same premises as SCG. RP Capital has been registered with the Commission as a broker-dealer since 2005. Price owns 50% of RP Capital. Since May 2011, the majority of fixed-income trades for SCG clients have been executed by RP Capital.

Facts

Through Its Affiliate RP Capital, SCG Engaged in Improper Principal Transactions

8. SCG's policies and procedures manual defined principal transactions as "transactions where an adviser, acting as principal for its own account or the account of an affiliated broker-dealer, buys from or sells any security to any advisory client." The manual also stated "[a]s a fiduciary and under the anti-fraud section of the Advisers Act, principal transactions by advisers are prohibited unless the adviser 1) discloses its principal capacity in writing to the client in the transaction and 2) obtains the client's consent to each principal transaction before the settlement of the transaction." It further stated that SCG's policy was to "NOT engage in any principal transactions."

9. In May 2011, SCG began using RP Capital, its affiliated broker-dealer, which was under common control with SCG, to execute the majority of transactions for its clients in fixed-income investments such as municipal and corporate bonds. SCG and RP Capital are both owned 50% by Price and 50% by Price's business partner. Price is Chief Executive Officer of SCG and managing member and associated person of RP Capital. SCG and RP Capital share office space at SCG's main office.

10. In each fixed-income transaction, RP Capital purchased bonds from other broker-dealers for its own account at its clearing broker, marked up the price of the bonds, and then transferred the bonds to an account for the benefit of SCG's clients at the custodian, where the bonds were ultimately allocated to individual SCG client accounts. RP Capital received revenue on the transactions based on the difference between the price RP Capital paid for the bonds and the higher price at which it sold them to SCG clients.

11. Until September 2012, SCG did not disclose to its clients that, through its affiliated broker-dealer, RP Capital, (which was under common control with SCG) it had been acting as principal in fixed-income trades. In September 2012, after an examination by Commission staff and continuing until February 2013, SCG disclosed that it was acting as principal in fixed-income trades, and it obtained retroactive consent from clients for principal transactions that had occurred previously. In February 2013, SCG began obtaining transaction-by-transaction consent in advance of each principal transaction with a client.

12. From May 2011 through January 2013, SCG's owners, including Price, received net profits of \$368,459 from 1,156 principal transactions with SCG clients executed through RP Capital that were not prospectively disclosed and/or approved.

SCG Falsely Claimed in Its Forms ADV that It Did Not Engage in Principal Transactions

13. SCG's Forms ADV Part 1A filed with the Commission on March 29, 2012 and April 1, 2013 stated in Item 8 that neither it nor any related person engaged in principal transactions. During that time, SCG was engaging in principal transactions through RP Capital, its affiliated broker-dealer, which was under common control with SCG. Price signed the Forms ADV as SCG's Chief Executive Officer.

SCG Failed to Seek Best Execution in that It Failed to Evaluate Unaffiliated Broker-Dealers and Failed to Adequately Monitor RP Capital's Execution of Fixed-Income Transactions for SCG Clients

14. SCG's policies and procedures manual stated that the firm "has a fiduciary and fundamental duty to seek best execution for client transactions." The manual also stated that SCG's Investment Committee had "responsibility for monitoring our firm's trading practices, gathering relevant information, periodically reviewing and evaluating the services provided by broker-dealers, the quality of executions, research, commission rates, and overall brokerage relationships, among other things." Also, Part 2A of SCG's March 2012 Form ADV stated that SCG may recommend the use of RP Capital "provided SCG can meet its fiduciary obligation of best execution."

15. However, some members of SCG's Investment Committee were not aware that they had responsibility for carrying out these best execution procedures.

16. Until 2010, SCG relied on relatively large, national broker-dealers to execute fixed-income transactions for its clients. Beginning in 2010, SCG started working with a registered representative of a smaller broker-dealer to execute those transactions. In 2011, this registered representative became associated with RP Capital. At around that time, SCG began using RP Capital to execute fixed-income transactions. SCG was under common control with RP Capital, and Price was 50% owner and an associated person of RP Capital. Even though Price stood to benefit from SCG client trades routed to RP Capital, SCG did not evaluate similar, but unaffiliated, broker-dealers to determine whether they could provide SCG's clients better execution for fixed-income transactions.

17. Until August 2012, SCG did not implement the provisions of its compliance policies and procedures that required it to monitor, or periodically review and evaluate, RP Capital's execution of fixed-income transactions for SCG clients.

SCG Disseminated Misleading Performance Advertising

18. SCG's policies and procedures manual required any advertisement to be "truthful and accurate" and prohibited any advertisements that "may be misleading, fraudulent, deceptive, and/or manipulative." The manual gave the Chief Compliance Officer responsibility for implementing and monitoring the policy. All advertisements were to be reviewed and approved, which was to be documented by initialing and dating the materials.

19. In August 2010, SCG created two advertisements that were false and misleading, and failed to document approval of them. The first advertisement claimed to show the purported "historical" performance of its model investment allocation (the "Company Profile"). The second advertisement described purported historical returns of its equities model (the "SCG Equity Investments"). An SCG financial analyst calculated the performance data for both advertisements, and the analyst and a compliance officer drafted disclosures that were included in them. The advertisements were disseminated to potential clients in "intro kits" used to market SCG's services to prospective clients. For a period of at least a month, the advertisements were also publicly available on SCG's website.

20. The Company Profile contained purported historical performance numbers for 1998 through 2011. The March 31, 2011 Company Profile claimed that SCG's model achieved a 220.79% return compared to a 60/40 S&P and bond mix return of 64.57% during the period. The performance results in the Company Profile were compiled from several sources, but the majority of those sources did not include actual SCG client performance.

21. The results portrayed in the Company Profile were purportedly calculated, in part, based on SCG's allocation of a portion of its model portfolio to a municipal bond ladder. But the Company Profile did not disclose that the returns for the municipal bond ladder portion of the Company Profile were based on the returns of an index, and not the actual, historical returns achieved by SCG's recommendations during the specified period. Nor did the Company Profile disclose that the index data did not reflect mark-ups, mark-downs, or other transaction costs that ordinarily would be incurred.

22. A portion of the model portfolio described in the Company Profile was allocated to a hedge fund of funds that an adviser affiliated with SCG managed. Although the fund of funds was created in 2003, the Company Profile disclosure stated that "results for the period of January 1, 1998 through June 30, 2003 are based on the historical returns and weightings of our underlying Fund Managers." This statement was false. In fact, the 1998 and 1999 returns were compiled using a hedge fund index, which reported returns of 16.95% and 20.33%, respectively, for those years.

23. The SCG Equity Investments advertisement did not disclose that the results portrayed were gross of fees, and thus did not reflect the impact of SCG's advisory fees on the performance results advertised. This omission caused the SCG Equity Investments advertisement to materially overstate the performance of SCG's model equity portfolio.

SCG Failed to Implement Certain Compliance Procedures and Price Caused Those Compliance Violations

24. In addition to being Chief Executive Officer and 50% owner of SCG and RP Capital, Price was SCG's Chief Compliance Officer until September 2012. SCG's policies and procedures manual stated that Price "ha[d] the overall responsibility and authority to develop and implement the firm's compliance policies and procedures and to conduct an annual review to determine their adequacy and effectiveness in detecting and preventing violations of the firm's policies, procedures or federal securities laws."

25. SCG's compliance manual contained policies and procedures that were reasonably designed to prevent SCG's several violations of the Advisers Act. For example, the manual prohibited principal transactions, including through an affiliated broker-dealer. The manual also set forth procedures for analyzing and monitoring best execution and contained detailed procedures for approving advertising, including initialing and dating of approved materials. Yet SCG failed to implement these policies and procedures.

26. By failing to carry out his responsibility as Chief Compliance Officer to implement these policies and procedures, Price caused SCG's compliance failures.

Violations

27. As a result of the conduct described above, SCG willfully² violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon a client or prospective client. Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act but, rather, may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

28. As a result of the conduct described above, SCG willfully violated Section 206(3) of the Advisers Act, which prohibits an investment adviser from, directly or indirectly, "acting as principal for his own account, knowingly to sell any security or to purchase any security from a client . . . without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

29. As a result of the conduct described above, SCG willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder. Section 206(4) prohibits investment advisers from engaging in "any act, practice, or course of business which is fraudulent, deceptive or manipulative," as defined by the Commission by rule. Rule 206(4)-1(a)(5) thereunder makes it unlawful for any registered investment adviser, directly or indirectly, to distribute an advertisement which contains any untrue statement of a material fact, or which is otherwise false and misleading.

30. As a result of the conduct described above, SCG willfully violated, and Price caused SCG's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which, among other things, makes it unlawful for any registered investment adviser to provide investment advice to clients unless it implements written policies and procedures reasonably designed to prevent violation, by the adviser and its supervised persons, of the Advisers Act and the rules that the Commission has adopted under the Act. A violation of Section 206(4) and the rules thereunder do not require scienter. *Steadman*, 967 F.2d at 647.

31. As a result of the conduct described above, SCG willfully violated, and Price caused SCG's violations of, Section 207 of the Advisers Act, which makes it unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

Respondents' Remedial Efforts

32. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

Undertakings

Respondent SCG has agreed to the following undertakings:

33. Independent Compliance Consultant. Respondent SCG has undertaken:

a. to hire, within 30 days of the Order, an Independent Compliance Consultant not unacceptable to the staff of the Commission. Respondent SCG shall require the Independent Compliance Consultant to review the Respondent SCG's compliance program, including its policies relating to advertising, best execution, and principal transactions. Respondent SCG shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to any of its files, books, records and personnel as reasonably requested for review; provided, however, that Respondent SCG need not provide access to materials as to which Respondent SCG may assert a valid claim of the attorney-client privilege. The Independent Compliance Consultant shall maintain the confidentiality of any materials and information provided by Respondent SCG, except to the extent such materials or information are included in the Report described below;

b. to require that, at the conclusion of the review, which in no event shall be more than 120 days after the date of the Order, the Independent Compliance Consultant shall submit a Report to Respondent SCG and the staff of the Commission. The Report shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendation for changes in or improvements to policies and procedures, and a procedure for implementing the recommended changes in or improvements to the procedures;

c. to adopt all recommendations contained in the Report of the Independent Compliance Consultant; provided, however, that within 15 days after receipt of the Report, Respondent SCG shall in writing advise the Independent Compliance Consultant and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that Respondent SCG considers unnecessary or inappropriate, Respondent SCG need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose;

d. that as to any recommendation with respect to the policies and procedures of Respondent SCG on which Respondent SCG and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 30 days after Respondent SCG's receipt of the Independent Compliance Consultant's Report. In the event Respondent SCG and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, Respondent SCG will abide by the determinations of the Independent Compliance Consultant; provided, however, that Respondent SCG may petition the Commission staff for relief from the recommendation;

e. that Respondent SCG (i) shall implement the Independent Compliance Consultant's recommendations in accordance with the above subparagraphs within 180 days of the date of the Order; (ii) shall not have the authority to terminate the Independent Compliance Consultant without the prior written approval of the staff of the Commission before the completion of the Report; (iii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; (iv) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the staff of the Commission;

f. to require the Independent Compliance Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent SCG, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Compliance Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Compliance Consultant in performance of his/her duties under this Order shall not, without prior written consent of the staff of the Commission, enter into any

employment, consultant, attorney-client, auditing or other professional relationship with Respondent SCG, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement; and

g. to preserve for a period of not less than five (5) years from the date of the Order, the first two years in an easily accessible place, any record of Respondent SCG's compliance with the undertakings set forth in this paragraph.

34. Order Notification. Within ten (10) days of the entry of this Order, SCG shall post prominently on the homepage of SCG's website a summary of this Order in a form and location acceptable to the Commission staff, with a hyperlink to the entire Order. SCG shall maintain the posting and hyperlink on SCG's website for twelve (12) months from the entry of this Order. Within thirty (30) days of the entry of this Order, SCG shall provide a copy of the Order to each of SCG's existing advisory clients as of the entry of this Order via mail, email, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff. For purposes of this paragraph, existing advisory clients of SCG shall include any clients SCG has caused or is causing, as of thirty (30) days after entry of this Order, to terminate their advisory relationship with SCG so that they may become clients of a different investment adviser in which Price, directly or indirectly, has an ownership interest. Furthermore, for twelve (12) months from the entry of this Order, to the extent that SCG is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 under the Advisers Act, SCG shall also provide a copy of this Order to such client and/or prospective client at the same time that SCG delivers the brochure.

35. Certifications of Compliance by Respondent. SCG shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and SCG agrees to provide such evidence. The certification and supporting material shall be submitted to Erin Schneider, Assistant Regional Director, Asset Management Unit, San Francisco Regional Office, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

36. Deadlines: For good cause shown, Commission staff may extend any of the procedural dates relating to the undertakings in Paragraphs 33-35. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent SCG cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(3), 206(4) and 207 of the Advisers Act, and Rules 206(4)-1(a)(5) and 206(4)-7 promulgated thereunder.
- B. Respondent Price cease and desist from committing or causing any violations and any future violations of Sections 206(4) and 207 of the Advisers Act, and Rule 206(4)-7 promulgated thereunder.
- C. Respondent SCG is censured.
- D. Respondent SCG shall pay disgorgement and prejudgment interest as follows:
 - a. SCG shall pay disgorgement of \$368,459, consistent with the provisions of this Subsection D. Within ten (10) days of the entry of this Order, SCG shall deposit the full amount of the disgorgement (the "Disgorgement Fund") into an escrow account acceptable to the Commission staff and SCG shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. In addition, within (10) days of the entry of this Order, SCG shall pay prejudgment interest of \$17,831.50 to the Commission for transmittal to the United States Treasury, in the manner provided in Subsection E. below. If timely deposit of the Disgorgement Fund or timely payment of the prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.
 - b. SCG shall be responsible for administering the Disgorgement Fund. SCG shall pay applicable portions of the Disgorgement Fund to affected current and former advisory clients who paid mark ups on principal transactions effected through RP Capital, pursuant to a disbursement schedule (the "Disbursement Schedule") that has been reviewed and approved by the Commission staff, in accordance with this Subsection D. No portion of the Disgorgement Fund shall be paid to any client account in which SCG or Price has a financial interest. Any such funds shall be transferred to the Commission for transfer to the United States Treasury in accordance with Subsection E. below. For any current and former advisory client that is due an amount totaling less than ten dollars (\$10.00), where such amount cannot be credited to a current client account at SCG, SCG shall instead pay such amount to the Commission for transfer to the United States Treasury in the manner provided in Subsection E. below.
 - c. SCG shall, within sixty (60) days from the entry of this Order, submit a proposed Calculation to the Commission staff for its review and approval that identifies, at a minimum: (i) the name and account number of each affected advisory client; (ii) the exact amount of the payment to be made to such client; and (iii) a

description of the relevant principal transactions and mark ups on principal transactions effected through RP Capital. SCG shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to SCG's proposed Calculation and/or any of its information or supporting documentation, SCG shall submit a revised Calculation for the review and approval of the Commission staff and/or additional information or supporting documentation within ten (10) days of the date that SCG is notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection D.

- d. SCG shall complete the transmission of all amounts otherwise payable to affected advisory clients pursuant to the Disbursement Schedule within sixty (60) days of the entry of this Order, unless such time period is extended as provided for in Subsection D.j. below.
- e. If SCG does not distribute or return any portion of the Disgorgement Fund for any reason, including an inability to locate an affected advisory client or any factors beyond SCG's control, or if SCG has not transferred any portion of the Disgorgement Fund to a client because that client is due less than \$10.00, SCG shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury after the final accounting provided for in this Subsection D.h. is approved by the Commission. Any such payment shall be made in accordance with Subsection E. below.
- f. SCG shall be responsible for any and all tax compliance responsibilities associated with the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by SCG and shall not be paid out of the Disgorgement Fund.
- g. Within one hundred and eighty (180) days after the date of entry of this Order, SCG shall submit for Commission approval a final accounting of the disposition of the Disgorgement Fund. The final accounting shall be on a standardized accounting form to be provided by the Commission staff and shall include, but not limited to: (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; and (v) any amounts to be forwarded to the Commission for transfer to the United States Treasury. In addition, SCG shall provide to Commission staff a cover letter representing that all of the requirements of this Subsection D. have been completed and that the information requested has been accurately reported to the Commission (the "certification"). Also included in the certification should be a description of any efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason.

- h. SCG shall submit proof and supporting documentation of such payment (whether in the form of fee credits, cancelled checks, or otherwise) in a form acceptable to the Commission staff and under a cover letter that identifies SCG as a Respondent in these proceedings and the file number of these proceedings to Erin Schneider, Assistant Regional Director, Asset Management Unit, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery St., Suite 2800, San Francisco, CA 94104, or such other address the Commission staff may provide. SCG shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.
 - i. After SCG has submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any remaining amount to the United States Treasury.
 - j. The Commission staff may extend any of the procedural dates set forth in this Subsection D. for good cause shown. Deadlines for dates relating to the Disgorgement Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.
- E. Respondents SCG and Price shall each pay a civil money penalty as follows:
- a. Respondent SCG shall, within ten (10) days of the entry of this Order, pay a civil money penalty of \$200,000 to the Securities and Exchange Commission.
 - b. Respondent Price shall, within ten (10) days of the entry of this Order, pay a civil money penalty of \$50,000 to the Securities and Exchange Commission.
 - c. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:
 - (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
 - (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying SCG or Price as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Marshall Sprung, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 5670 Wilshire Blvd., 11th Floor, Los Angeles, CA 90036.

F. Respondent SCG shall comply with the undertakings enumerated in Section III, paragraphs 33-35, above.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73139 / September 18, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16137

In the Matter of

**China Bus Group Co. (f/k/a Alpine
Alpha 3, Ltd.),
China Capital Finance Corp. Inc.,
China Complant Group Inc.,
China Oumei Real Estate, Inc.,
China Transportation International
Holdings Group Ltd.,
ChinaCast Education Corp.,
Phoenix Agri Enterprises, Inc., and
Precise Strategy Acquisition Corp. I,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents China Bus Group Co. (f/k/a Alpine Alpha 3, Ltd.), China Capital Finance Corp. Inc., China Complant Group Inc., China Oumei Real Estate, Inc., China Transportation International Holdings Group Ltd., ChinaCast Education Corp., Phoenix Agri Enterprises, Inc., and Precise Strategy Acquisition Corp. I.

II.

After an investigation, the Division of Enforcement alleges that:

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A. RESPONDENTS

1. China Bus Group Co. (f/k/a Alpine Alpha 3, Ltd.) (CIK No. 1444185) is a void Delaware corporation located in Shenyang, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Bus Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of \$366,982 from the company's October 31, 2007 inception to March 31, 2011.

2. China Capital Finance Corp., Inc. (CIK No. 1411169) is a void Delaware corporation located in Dalian, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Capital Finance is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of \$3,134 from the company's January 11, 2008 inception to March 31, 2011. Moreover, the company has never filed a Form 10-K since it was registered on February 26, 2008.

3. China Complant Group, Inc. (f/k/a Fangxing Holding Inc.) (CIK No. 1503385) is a dissolved Nevada corporation located in ZhenZhou, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Complant Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011. Moreover, the company has never filed a Form 10-K since it was registered on October 20, 2010.

4. China Oumei Real Estate, Inc. (CIK No. 1368192) is an exempt Cayman Islands corporation located in Qingdao, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Oumei Real Estate is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended December 25, 2010.

5. China Transportation International Holdings Group Ltd. (CIK No. 1318509) is a revoked Nevada corporation located in Yiyang City, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Transportation International Holdings Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2010.

6. ChinaCast Education Corp. (CIK No. 1261888) is a void Delaware corporation located in Shanghai, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ChinaCast Education is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011. As of September 12, 2014, the company's stock (symbol "CAST") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc., had six market makers, but was not eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. Phoenix Agri Enterprises, Inc. (CIK No. 1505947) is a void Delaware corporation located in Shanghai, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Phoenix Agri Enterprises is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 2011, which reported a net loss of \$13,378 from the company's October 13, 2010 inception to July 31, 2011. Moreover, the company has never filed a Form 10-K since it was registered on November 18, 2010.

8. Precise Strategy Acquisition Corp. I (CIK No. 1490460) is a revoked Nevada corporation located in Shenzhen, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Precise Strategy Acquisition is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended December 31, 2010, which reported a net loss of \$13,174 from the company's March 30, 2010 inception to December 31, 2010. Moreover, the company has never filed a Form 10-K since it was registered on April 29, 2010.

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each

class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof; and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

美利坚合众国
之
证券交易监督委员会

《1934 年证券交易法》

发行号 73139 / September 18, 2014

行政程序

备案号 3-16137

就以下相对人之事项:

中国巴士集团公司 (China Bus Group Co.) (原 Alpine Alpha 3, Ltd.)、
中国资本金融股份有限公司 (China Capital Finance Corp. Inc.)、
中成集团公司 (China Complant Group Inc.)、
中国欧美房地产开发有限公司 (China Oumei Real Estate, Inc.)、
中国运输国际
控股集团有限公司 (China Transportation International Holdings Group Ltd.)、
双威教育集团 (ChinaCast Education Corp.)、
凤凰农业企业有限公司 (Phoenix Agri Enterprises, Inc.) 和
精准策略收购公司 I (Precise Strategy Acquisition Corp. I)

依据《1934 年证券交易
法》第 12(j) 条，
送达行政程序启动
暨听证通知令

I.

证券交易监督委员会 (“委员会”) 认为, 依据《1934 年证券交易法》 (“证券法”) 第 12(j) 条对相对人中国巴士集团公司 (China Bus Group Co.) (原 Alpine Alpha 3, Ltd.)、中国资本金融股份有限公司 (China Capital Finance Corp. Inc.)、中成集团公司 (China Complant Group Inc.)、中国欧美房地产开发有限公司 (China Oumei Real Estate, Inc.)、中国运输国际控股集团有限公司 (China Transportation International Holdings Group Ltd.)、双威教育集团 (ChinaCast Education Corp.)、凤凰农业企业有限公司 (Phoenix Agri Enterprises, Inc.) 和精准策略收购公司 I (Precise Strategy Acquisition Corp. I.) 特此提起公共行政程序, 对保护投资者是必要且适当的。

II.

经调查, 执行部诉称:

A. 相对人

1. 中国巴士集团公司 (China Bus Group Co.) (原 Alpine Alpha 3, Ltd.) (CIK 号 1444185) 是位于中国沈阳的一家空头的特拉华州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。中国巴士集团公司未按规定向委员会提交定期报告。自提交截至 2011 年 3 月 31 日的 10-Q 表 (称其自 2007 年 10 月 31 日发起至 2011 年 3 月 31 日期间净亏损 366,982 美元) 后, 中国巴士集团公司再未提交任何定期报告。

2. 中国资本金融股份有限公司 (China Capital Finance Corp., Inc.) (CIK 号 1411169) 是位于中国大连的一家空头的特拉华州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。中国资本金融股份有限公司未按规定向委员会提交定期报告。自提交截至 2011 年 3 月 31 日的 10-Q 表 (称其自 2008 年 1 月 11 日发起至 2011 年 3 月 31 日期间净亏损 3,134 美元) 后, 中国资本金融股份有限公司再未提交任何定期报告。此外, 该公司自 2008 年 2 月 26 日注册以来未提交 10-K 表。

3. 中成集团公司 (China Complant Group, Inc.) (原 Fangxing Holding Inc.) (CIK 号 1503385) 是位于中国郑州的一家已解散的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。中成集团公司未按规定向委员会提交定期报告。自提交截至 2011 年 3 月 31 日的 10-Q 表后, 中成集团公司再未提交任何定期报告。此外, 该公司自 2010 年 10 月 20 日注册以来从未提交 10-K 表。

4. 中国欧美房地产开发有限公司 (China Oumei Real Estate, Inc.) (CIK 号 1368192) 是位于中国青岛市的一家开曼群岛豁免公司, 依据证券法第 12(g) 条在委员会注册了一类证券。中国欧美房地产开发有限公司未按规定向委员会提交定期报告。自提交截至 2010 年 12 月 25 日的 20-F 表后, 中国欧美房地产开发有限公司再未提交任何定期报告。

5. 中国运输国际控股集团有限公司 (China Transportation International Holdings Group Ltd.) (CIK 号 1318509) 是位于中国益阳市的一家已被撤销的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。中国运输国际控股集团有限公司未按规定向委员会提交定期报告。自提交截至 2010 年 12 月 31 日的 10-K 表后, 中国运输国际控股集团有限公司再未提交任何定期报告。

6. 双威教育集团 (ChinaCast Education Corp.) (CIK 号 1261888) 是中国上海的一家空头的特拉华州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。双威教育集团未按规定向委员会提交定期报告。自提交截至 2011 年 9 月 30 日的 10-Q 表后, 双威教育集团再未提交任何报告。截至 2014 年 8 月 26 日, 该公司股票 (代码 "CAST") 仍在由 OTC Markets Group, Inc. 经营的 OTC Link 市场 (原称 "Pink Sheets") 挂牌交易, 并拥有五家做市商, 但不符合证券法 15c2-11 (f) (3) 规则中“捎带” (piggyback) 例外的资格。

7. 凤凰农业企业有限公司 (Phoenix Agri Enterprises, Inc.) (CIK 号 1505947) 是中国上海的一家空头的特拉华州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。凤凰农业企业有限公司未按规定向委员会提交定期报告。自提交截至 2011 年 7 月 31 日的 10-Q 表 (称其自 2010 年 10 月 13 日发起至 2011 年 7 月 31 日期间净亏损 13,378 美元) 后, 凤凰农业企业有限公司再未提交任何定期报告。此外, 该公司自 2010 年 11 月 18 日注册以来未提交 10-K 表。

8. 精准策略收购公司 I (Precise Strategy Acquisition Corp. I) (CIK 号 1490460) 是中国深圳市一家已被撤销的内华达州公司, 依据证券法第 12(g) 条在委员会注册了一类证券。精准策略收购公司未按规定向委员会提交定期报告。自提交截至 2010 年 12 月 31 日的 10-Q 表 (称其自 2010 年 3 月 30 日发起至 2010 年 12 月 31 日期间净亏损 13,174 美元) 后, 精准策略收购公司再未提交任何定期报告。此外, 该公司自 2010 年 4 月 29 日注册以来未提交 10-K 表。

B. 未按规定提交定期报告

9. 正如上文详述, 所有相对人均未按规定向委员会提交定期报告, 屡次不履行按时提交定期报告的义务, 且在收到企业金融部发出的催告函, 要求其遵守定期申报义务后, 仍不予理会, 或因未按证监会的规定在证监会维护有效备案地址, 从而未收到该等催告函。

10. 根据证券法第 13(a) 条及其发布的规定, 依据证券法第 12 条注册的证券发行者, 即使是根据第 12(g) 条自愿注册, 亦应以定期报告的方式向委员会提交最新且准确之信息。具体而言, 第 13a-1 条规定要求发行者提交年报, 第 13a-13 条规定要求国内发行者提交季报。

11. 由于上述原因, 相对人未遵守证券法第 13(a) 条和根据该法发布的第 13a-1 条和/或 13a-13 条之规定。

III.

鉴于执行部提出的诉称, 委员会认为提起公共行政程序确定以下事项对保护投资者是有必要且适当的:

A. 本命令第 II 部分所包含的诉称是否属实, 就该诉称而言, 给予相对人对该等诉称进行抗辩的机会; 以及

B. 就保护投资者而言, 对本命令第 II 部分所指定相对人、证券法第 12b-2 条或第 12g-3 条规定下的任何继承人、采用新公司名称的相对人采取以下行为是否有必要且适当——暂停 (不超过十二个月) 或撤销其依据证券法第 12 条注册的各类证券;

IV.

特此命令，为对第 III 部分所述问题进行取证，应在待定的时间和地点召开公开听证，并由《美国证监会行为规范》第 110 条规定的进一步命令所指定的行政法官主持[《美国联邦法规》第 17 编第 201.110 节]。

进一步命令，相对人应在本命令送达后十 (10) 日内，按《美国证监会行为规范》第 220(b) 条规定 [《美国联邦法规》第 17 编第 201.220(b) 节] 对本命令中所包含的诉称提交答辩状。

若相对人未提交所规定的答辩状，或在收到通知后未出席听证，则相对人及《美国证监会行为规范》第 12b-2 条或第 12g-3 条规定下的任何继承人，以及拥有新公司名称的相对人，将被视为缺席；且将针对其就命令中的事项确定相应程序，根据《美国证监会行为规范》第 155(a)、220(f)、221(f) 和 310 条规定 [《美国联邦法规》第 17 编第 201.155(a)、201.220(f)、201.221(f) 和 201.310 节]，命令中的诉称将被视为属实。

本命令应以直接送达的方式或通过特快专递或《美国证监会行为规范》允许的其它方式，立即送达相对人。

进一步命令，行政法官应依据《美国证监会行为规范》第 360(a)(2) 条规定 [《美国联邦法规》第 17 编第 201.360(a)(2) 节]，在不晚于本命令送达之日起的 120 天内做出初始裁决。

如缺少相关弃权，则委员会在本程序或任何事实上相关的程序中从事调查或起诉职能的任何官员或雇员，均不得参加本事项的决策或对本事项的决策提出建议，但依据通知在诉讼中担任证人或律师的除外。因本程序并非《行政诉讼法》第 551 节定义的“法规制定”，因此不受第 553 条规定的限制，无须推迟委员会任何最终决议的实行日期。

委员会。

助理秘书
Jill M. Peterson

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. IA-3925; September 19, 2014

In the Matter of

Creative Investment Research, Inc.
1050 17th Street, NW, Suite 1000
Washington, DC 20036

FILE NO.: 801-35969

ORDER DENYING A REQUEST FOR HEARING AND CANCELLING THE REGISTRATION
OF AN INVESTMENT ADVISER PURSUANT TO SECTION 203(h) OF THE INVESTMENT
ADVISERS ACT OF 1940

Creative Investment Research, Inc. ("CIR") is registered as an investment adviser under section 203 of the Investment Advisers Act of 1940 (the "Act"). On October 24, 2011, the Division of Investment Management ("Division"), on behalf of the Commission, issued a notice of intention to cancel CIR's registration pursuant to delegated authority (Investment Advisers Act Release No. 3306) because the Commission believed that reasonable grounds existed for a finding that CIR is no longer eligible to be registered with the Commission as an investment adviser and that its registration should be cancelled pursuant to section 203(h) of the Act.¹ The notice provided interested persons an opportunity to request a hearing and stated that an order cancelling CIR's registration would be issued unless a hearing was ordered. On November 17, 2011, CIR submitted a hearing request ("Hearing Request").

Rule 0-5(c) under the Act provides that the Commission will order a hearing on a matter, upon the request of an interested person or upon its own motion, if it appears that a hearing is "necessary or appropriate in the public interest or for the protection of investors."² The Commission has assessed each of the points raised in the Hearing Request and finds that a hearing is not necessary or appropriate in the public interest or for the protection of investors. CIR neither cites a material issue of fact or law that would be relevant to the issues that the Act requires the Commission to consider to cancel an adviser's registration, nor raises any issues that have not already been fully considered and decided by the Commission.

¹ The Commission delegated its authority to cancel an adviser's registration pursuant to section 203(h) of the Act (15 U.S.C. 80b-3(h)) to the Division. 17 CFR 200.30-5(e)(2).

² 17 CFR 275.0-5(c).

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CIR's Hearing Request Cites No Material Issue of Fact or Law Relevant to Canceling an Adviser's Registration

The Commission finds that CIR's hearing request does not cite a material issue of fact or law that would be relevant to the issues that the Act requires the Commission to consider to cancel an adviser's registration.

First, CIR generally states that it "den[ies] any and all claims by the SEC concerning this matter," and that the cancellation would violate section 203(h) of the Act. Section 203(h) permits the Commission, and the Division pursuant to its delegated authority, to cancel the registration of an adviser that is prohibited from registering with it. CIR had indicated on its most recent registration filing (Form ADV) that it is relying on rule 203A-2(a) to register with the Commission, which, at the time of the filing, provided an exemption from the prohibition on registration with the Commission as an investment adviser for a pension consultant if it provided investment advice to plans described in the rule that had an aggregate value of at least \$50,000,000 in assets.³ The Commission finds that CIR has not provided any evidence to indicate that it has any employee benefit plan clients or agreements to provide advice with respect to pension plan assets, or has assets under management that otherwise would allow CIR to register with the Commission. Commission staff have made requests to CIR for it to provide specific information regarding its eligibility for registration, but CIR has failed to provide any evidence that would support its contention that it meets the requirements of the pension consultant exemption or provide any other evidence that it is eligible for Commission registration.

Second, CIR states that cancelling its registration would violate the Due Process Clause of the Constitution, the Civil Rights Act of 1964, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the False Claims Act.⁴ CIR did not support these contentions with specific claims, facts or documentation in the Hearing Request. CIR asked the staff to review amicus curiae briefs he filed in two cases to which the Commission is a party, but those briefs do not present facts that would alter CIR's eligibility for registration.⁵

³ Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. Rule 203A-2 provides exemptions from the prohibition on Commission registration in section 203A of the Act. Effective September 19, 2011, rule 203A-2(b) was renumbered as rule 203A-2(a), and advisers relying on the rule to remain registered with the Commission are required to advise plans with an aggregate value of at least \$200,000,000. *See Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3221 (June 22, 2011) ("Implementing Release").

⁴ *See* Pub.L. 88-352, 78 Stat. 241; Pub. L. No. 111-203; 31 U.S.C. §§ 3729-3733.

⁵ Brief for William Michael Cunningham as Amicus Curiae Supporting the Public Interest, Marc J. Gabelli and Bruce Albert v. Securities and Exchange Commission, 133 S.Ct. 1216 (2013) (No. 11-1274); Brief for William Michael Cunningham as Amicus Curiae Supporting the Public Interest and Against Appellant and Appellee, U.S. Securities and Exchange Commission v. Citigroup Global Markets, Inc., 673 F.3d 158 (2nd Cir. Mar. 15, 2012).

CIR's Hearing Request Raises No Issues That Have Not Been Fully Considered and Decided by the Commission

The Commission also finds that CIR's hearing request does not raise any issues that have not previously been fully considered and decided by the Commission, and cancellation of CIR's registration is consistent with the prohibition against registration in section 203A and the pension consultant provision in rule 203A-2(a). Accordingly, the Commission believes a hearing to consider such issues is unnecessary.

On the basis of the foregoing, the Commission finds that CIR has not articulated any material issue of fact or law that is relevant to the Commission's decision whether to grant the requested relief or identified any issue that has not been considered previously.⁶ It therefore appears that a hearing is not necessary or appropriate in the public interest or for the protection of investors. Accordingly,

IT IS ORDERED that the request for a hearing is denied.

The matter having been considered, it is found that CIR is prohibited from registering as an investment adviser under section 203A of the Investment Advisers Act of 1940 because CIR did not, and does not currently, provide investment advice to plans that have a sufficient aggregate asset value under the rule, and has not demonstrated any other basis for eligibility to register with the Commission. Accordingly,

IT IS FURTHER ORDERED, pursuant to section 203(h) of the Investment Advisers Act of 1940, that the registration of Creative Investment Research, Inc. be, and hereby is, cancelled.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

⁶ The Commission does not deem it necessary to make a formal determination with respect to the status of CIR as an "interested person" within the meaning of rule 0-5(c) under the Act inasmuch as the Commission has determined that the issues raised in the Hearing Request do not warrant a hearing.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73146 / September 19, 2014

Admin. Proc. File No. 3-15833

In the Matter of the Application of

CARYL TREWYN LENAHA
Sarasota, FL 34232

For Review of Disciplinary Action Taken by
FINRA

ORDER GRANTING MOTION TO DISMISS APPLICATION FOR REVIEW

Caryl Trewyn Lenahan, formerly a registered representative of Investors Capital Corp., seeks review of a Financial Industry Regulatory Authority disciplinary action. FINRA barred Lenahan from associating with any FINRA member in any capacity as a result of her failure to comply with requests for information made pursuant to FINRA Rule 8210 regarding a customer complaint.¹ On May 1, 2014, FINRA filed a motion to dismiss Lenahan's application for review, to which Lenahan filed a response on August 15, 2014. Lenahan failed to respond to any of FINRA's notices concerning her pending suspension and bar, and filed her appeal a year and a half after the statutory deadline. Although Lenahan argues that she did not understand the collateral consequences of the bar and did not file a timely appeal based on statements made by a FINRA examiner, we grant FINRA's motion to dismiss, finding that Lenahan failed to exhaust her administrative remedies and that her application for review was untimely.

I. Background

A. Lenahan failed to respond to FINRA's requests for information.

FINRA opened an investigation and requested information from Lenahan pursuant to FINRA Rule 8210 after one of her former customers lodged a complaint. The complaint was filed in September of 2011, and dated from Lenahan's association from 1997 to 2009 with Investors Capital, a FINRA member firm.

¹ FINRA Rule 8210(a)(1) provides in relevant part that "FINRA staff shall have the right to: require a . . . person associated with a member . . . to provide information . . . in writing . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding."

FINRA's first request for information was sent to Lenahan in a December 2011 letter (the "First Letter"). The letter contained a copy of the customer's complaint and a list of questions. FINRA asked Lenahan to provide a written response by December 16, 2011. Although Lenahan received the letter and signed a certified mail return receipt on December 5, 2011, she did not respond to FINRA's Rule 8210 request.

FINRA sent a second letter (the "Second Letter") requesting information in December 2011, which set a December 30 response deadline. Although Lenahan received the Second Letter and signed a certified mail return receipt on December 19, 2011, she did not respond.

B. FINRA suspended and then barred Lenahan for her failure to respond.

After Lenahan failed to respond, FINRA's Department of Enforcement, in a June 19, 2012 letter, notified her that she would be suspended effective July 13, 2012. The notice informed Lenahan that she could take corrective action to prevent the suspension, request a hearing in response to the notice, or, if suspended, request termination of the suspension on the ground of full compliance. The notice warned Lenahan that if she failed to respond within three months, she would be barred from associating with any FINRA member beginning on September 24, 2012. Lenahan never responded to the notice, nor did she answer the outstanding requests for information.

On July 16, 2012, Lenahan received notice that she was suspended from association with any FINRA member in any capacity as of July 13, 2012. The written notice again warned Lenahan that she would be barred on September 24, 2012, if she did not request termination of the suspension within three months. Lenahan did not respond.

Pursuant to FINRA Rule 9552(h), Lenahan was barred from association with any FINRA member in any capacity on September 24, 2012.² On September 25, 2012, Lenahan received notice of the bar, which informed her that any appeal to the Commission must be filed within thirty days of receipt of the notice.

C. Lenahan appealed the bar a year and a half after the deadline.

Lenahan filed her application for review with the Commission on April 10, 2014, a year and a half after the deadline to appeal to the Commission. In her application, she admits that she had received the First Letter, the notice of the upcoming suspension dated June 19, 2012, the notification of suspension dated July 13, 2012, and the notification of bar dated September 24, 2012. Lenahan also recognizes in her application that her appeal was "nineteen months late."³ In the application, Lenahan alleges that, after telling a FINRA examiner she did not plan to keep

² FINRA Rule 9552(h) states that "A member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred."

³ Although Lenahan's application for review was filed almost nineteen months after her bar, she had thirty days after imposition of the bar to appeal to the Commission. Therefore, her application for review is almost eighteen months late, rather than nineteen months.

her securities license active, he told her, "[t]hen just don't answer the letter and your time will run out and you won't be licensed." She claims in her application that this "advice" led her to not respond to the FINRA Rule 8210 requests for information and that the consequences of being barred "were not evident to [her] until August of 2013."

II. Analysis

A. Lenahan failed to exhaust her administrative remedies before FINRA.

We must dismiss Lenahan's application for review because she failed to exhaust her administrative remedies. Lenahan was given the opportunity to avail herself of FINRA's administrative process through taking corrective action, requesting a hearing in response to the notice of suspension, or filing for termination of the suspension. Lenahan failed to exercise her rights at any stage of the process before FINRA and, thus, failed to exhaust her administrative remedies.⁴

The Commission has consistently held that "we will not consider an application for review if that applicant failed to exhaust FINRA's procedures for contesting the sanction at issue."⁵ Holding otherwise would severely hinder the self-regulatory capabilities of the SROs and prevent the efficient resolution of disputes between SROs and their members.⁶ As the Second Circuit has reasoned:

Were SRO members, or former SRO members, free to bring their SRO-related grievances before the SEC without first exhausting SRO remedies, the self-regulatory function of SROs could be compromised. Moreover, like other administrative exhaustion requirements, the SEC's promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review. It also provides SROs with the opportunity to correct their own errors prior to review by the Commission. The SEC's exhaustion requirement thus promotes the efficient resolution of disciplinary disputes between SROs and their members and is in

⁴ See *Royal Sec. Corp.*, Exchange Act Release No. 5171, 36 S.E.C. 275, 1955 WL 43159, at *2 n.3 (May 20, 1955) (stating the established doctrine that failing to avail oneself of an administrative remedy does not constitute exhaustion of that remedy) (citing *Olinger v. Partridge*, 196 F.2d 986 (9th Cir. 1952))).

⁵ *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 WL 1390384, at *3 (Apr. 10, 2014) (dismissing review where applicant failed to exhaust administrative remedies and FINRA barred him in response to a failure to answer a Rule 8210 request); see also *Mark Steven Steckler*, Exchange Act Release No. 71391, 2014 WL 265812, at *2 (Jan. 24, 2014) (same); *Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 WL 772515, at *4 (Mar. 1, 2013) (same); *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 WL 1840609, at *2 (May 6, 2010) (dismissing application for review where applicant "failed to exhaust FINRA's procedures for contesting the sanction at issue").

⁶ *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004).

harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations.⁷

Lenahan argues that she did not respond to FINRA's requests for information because she did not have access to the customer's files, could not handle a contested complaint at that point in time,⁸ and relied on the advice of a FINRA examiner. But none of these reasons justify her failure to respond to FINRA, even if only to explain her circumstances or seek an extension of time to respond. Lenahan's license was not active at the time of FINRA's request, and she alleges that the FINRA examiner advised her not to respond unless she was interested in re-activating her license. Even if we accept these allegations as true, that does not excuse Lenahan from following FINRA's rules, which require compliance with Rule 8210 requests.⁹

Additionally, Lenahan states in her application that she was unaware of the "devastating ramifications of the suspension and [bar]" until August 2013 when she realized that the bar was making it difficult for her to obtain "appointments" with insurance companies for the purpose of providing seminars to seniors about using "cash value life insurance" to make gifts to family members and others. But this also does not excuse her failure to respond because Lenahan was responsible for familiarizing herself with the consequences of a bar.¹⁰

⁷ *Id.*

⁸ In her response to FINRA's motion to dismiss, Lehanan explains in detail how she was "inundated with personal, emotional and business pressures" at the time of FINRA's requests for information.

⁹ FINRA Rule 8210(c) ("No member or person shall fail to provide information . . . pursuant to this Rule."); cf. *Thomas C. Kocherhans*, Exchange Act Release No. 36556, 52 S.E.C. 528, 1995 WL 723989, at *3 (Dec. 6, 1995) ("Participants in the securities industry must take responsibility for compliance with regulatory requirements and cannot be excused for lack of knowledge, understanding, or appreciation of these requirements."). The importance of FINRA Rule 8210 should not be understated. Without subpoena power, FINRA must rely on Rule 8210 "to police the activities of its members and associated persons." *Joseph Patrick Hannan*, Exchange Act Release No. 40438, 53 S.E.C. 854, 1998 WL 611732, at *3 (Sept. 14, 1998). "Delay and neglect on the part of members and their associated persons undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest." *Paz Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *4 (Apr. 11, 2008).

¹⁰ Cf. *Ralph W. LeBlanc*, Exchange Act Release No. 48254, 56 S.E.C. 800, 2003 WL 21755845, at *5 (July 30, 2003) (holding that it is the applicant's responsibility to familiarize himself with the collateral consequences of the consent he signed).

B. Lenahan's appeal was untimely.

Even if Lenahan had exhausted her administrative remedies, we must dismiss her application for review because it was untimely. Under Section 19(d)(2) of the Securities Exchange Act of 1934, an applicant has thirty days to submit an application to the Commission for review of a disciplinary action imposed by a self-regulatory organization.¹¹ Lenahan's application was due October 25, 2012, but she waited until April 10, 2014, to file. Only in extraordinary circumstances does the Commission provide an exception for late filings,¹² and Lenahan has failed to show any extraordinary circumstances here.¹³ Her professed ignorance of the bar's consequences and alleged reliance on advice from a FINRA examiner—the only reasons she offers for the untimeliness of her application—do not constitute extraordinary circumstances that would excuse her late filing.¹⁴ Lenahan's application is thus properly dismissed on this ground as well.

¹¹ 15 U.S.C. § 78s(d)(2).

¹² Commission Rule of Practice 420(b), 17 C.F.R. § 201.420(b). *See generally* Robert M. Ryerson, Exchange Act Release No. 57839, 2008 WL 2117161, at *2 n.9 (May 20, 2008) (providing background on the adoption of Rule 420(b) and the extraordinary circumstances exception).

¹³ *See, e.g., Orbixa Techs.*, Exchange Act Release No. 70893, 2013 WL 6044106, at *4 n.15 (Nov. 15, 2013) (stating that extraordinary circumstances may arise where "reason for the failure timely to file was beyond the control of the applicant") (quoting *Pennmont Sec.*, Exchange Act Release No. 61967, 2010 WL 1638720, at *4 (Apr. 23, 2010)).

¹⁴ *See Lance E. Van Alstyne*, Exchange Act Release No. 40738, 53 S.E.C. 1093, 1998 WL 830817, at *4 (Dec. 2, 1998) (finding no extraordinary circumstances even where it was unclear whether petitioner received notice of NASD action); *Walter v. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at *2 n.16 (May 8, 2014) (finding no extraordinary circumstances where petitioner claimed he was unaware of his ability to appeal); *cf. In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 496 F.3d 863, 868 (8th Cir. 2007) (noting in the context of a Federal Rule of Civil Procedure Rule 60(b) motion that "[e]xceptional circumstances are not present every time a party is subject to potentially unfavorable consequences as a result of an adverse judgment properly arrived at"). Even if Lenahan's ignorance were an extraordinary circumstance, she states that she became aware of the negative consequences of the bar in August 2013, yet she offers no justification for waiting an additional eight months to file her application for review.

III. Conclusion

Lenahan's application for review must be dismissed because she failed to exhaust her administrative remedies and failed to timely file her application. Accordingly, IT IS ORDERED that FINRA's motion to dismiss the application for review filed by Caryl Trewyn Lenahan is GRANTED.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3927 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16139

In the Matter of

LINCOLNSHIRE MANAGEMENT, INC.,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Lincolnshire Management, Inc. ("LMI" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

SUMMARY

1. These proceedings arise from a breach of fiduciary duty by private equity fund adviser Lincolnshire Management, Inc. ("LMI"). Beginning in 2001, LMI integrated two portfolio companies owned by different LMI-advised funds and managed them as one company. The two companies – Peripheral Computer Support, Inc. ("PCS") and Computer Technology Solutions Corp. ("CTS") – were owned by separately advised LMI private equity funds with distinct sets of investors and LMI owed a fiduciary duty to each LMI fund. As part of this integration, the companies utilized a joint management team and developed an expense allocation policy that required each portfolio company to pay a certain percentage of various operating and administrative expenses. The expense allocation policy was not followed in certain instances, however, which resulted in one portfolio company paying more than its share of certain expenses that benefitted both companies. This constituted a breach of LMI's fiduciary duty to the funds and violated Section 206(2) of the Advisers Act.

2. LMI separately violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act arising from integrating two portfolio companies owned by separately advised LMI private equity funds.

RESPONDENT

3. **Lincolnshire Management, Inc. ("LMI")** is a privately held Delaware corporation that was formed in 1986 and has been registered with the Commission as an investment adviser since March 28, 2012. During the relevant time period, LMI served as the investment adviser for Lincolnshire Equity Fund, L.P. and Lincolnshire Equity Fund II, L.P. LMI's principal place of business is in New York, New York.

OTHER RELEVANT ENTITIES

4. **Lincolnshire Equity Fund, L.P. ("LEF")** is a Delaware limited partnership and private investment fund formed in 1993 to make private equity investments in middle market companies.

5. **Lincolnshire Equity Fund II, L.P. ("LEF II")** is a Delaware limited partnership and private investment fund formed in 1999 to make private equity investments in middle market companies.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

FACTS

A. Background

6. LMI is a New York-based private equity fund adviser with approximately \$1.7 billion in assets under management. LMI was formed to make private equity investments in leveraged buyouts and recapitalizations.

7. During the relevant time period, LMI advised multiple private equity funds, including LEF and LEF II. LEF and LEF II had separate Limited Partnership Agreements ("LPA") and distinct sets of limited partner investors. The LPA for each fund governs the rights and obligations of its limited partners, including their obligations to pay advisory and other fees and expenses to LMI pursuant to a separate management agreement between each fund and LMI.

8. In April 1997, LMI caused LEF to acquire PCS through a \$5 million equity investment. PCS was a California-based company that primarily serviced and repaired computer hard disk drives.

9. In September 2001, LMI caused LEF II to acquire CTS through an \$8.5 million equity investment. CTS was a Texas-based company that primarily serviced and repaired laptop computers and handheld devices.

10. The investment opportunity in CTS was brought to LMI's attention by PCS management. The LMI investment committee believed PCS and CTS would have valuable synergies and that each company would complement the other. However, by 2001, LEF's commitment period was closed and it could not call capital to make a new acquisition. Therefore, LMI caused LEF II to acquire CTS with the intention of integrating PCS and CTS where possible and ultimately marketing the two companies for a combined sale. In connection with the 2001 acquisition of CTS, LMI disclosed to LEF's and LEF II's limited partners its intention to integrate and jointly sell the two portfolio companies. In quarterly fund disclosures thereafter, LMI provided regular updates to LEF's and LEF II's limited partners on the operations of the respective portfolio companies, together with additional information regarding the progress toward integration and plans to sell the two companies together.

11. From at least July 2009 to January 2013, PCS was the only portfolio company held by LEF.

12. LMI entered into consulting agreements with each portfolio company that was owned by an LMI-advised fund. Pursuant to the terms of the consulting agreements, LMI charged each portfolio company an annual fee in exchange for rendering consulting and advisory services concerning the portfolio company's financial and business affairs, its relationships with lenders, and the operation and expansion of its business. With regard to LEF II, a percentage of any consulting fees paid to LMI, as well as certain other fees charged by LMI, were used to offset the limited partners' share of the management fees owed to LMI under the LPA.

13. LMI entered into consulting agreements with PCS and CTS in April 1997 and September 2001, respectively. CTS paid LMI \$250,000 annually under its consulting agreement; \$125,000 of the \$250,000 was used to offset management fees owed to LMI. PCS also paid LMI \$250,000 annually during the relevant period, but was unable to pay its consulting fee from 2001 through 2004 based on its financial condition. No portion of PCS's \$250,000 annual consulting fee was used to offset management fees.

B. The Integration of PCS and CTS

14. Although LEF could not purchase CTS because its commitment period had closed, LMI believed that owning both PCS and CTS together would create value for each set of limited partners in LEF and LEF II. Accordingly, in September 2001, LMI caused LEF II to purchase CTS.

15. At the time LEF II purchased CTS, in 2001, LMI disclosed to the limited partners of both LEF and LEF II that it believed there were synergies between PCS and CTS that would provide customers with a single venue to support their personal computing and mobile device support needs. LMI believed that these synergies would allow the companies to compete more effectively in the industry and would add value to both companies. LMI further disclosed its intention to exit the PCS and CTS investments by combining both companies and selling them together. As contemplated, the management of PCS and CTS – at LMI's direction – took various steps to integrate certain operations of the two companies.

16. By 2005, PCS and CTS had integrated their financial accounting systems, and a number of business and operational functions, including all payroll and 401(k) administration, and substantial portions of their respective human resources, marketing, and technology.

17. PCS and CTS also integrated their financing needs. For example, the two companies entered into a line of credit on a joint and several basis.

18. The integration of PCS and CTS operations extended to subsidiaries outside the United States. For example, a wholly owned subsidiary of PCS in Singapore supplied various parts and labor to CTS at cost. Likewise, CTS sold parts to various PCS subsidiaries at cost.

19. By March 2009, to further streamline operations and costs, LMI helped recruit a joint management team for PCS and CTS, including a joint chief executive officer and chief financial officer. Additionally, PCS and CTS shared a joint head of sales and controller.

20. From at least March 2009 to January 2013, the two separately owned companies had a joint "PCS CTS" logo that was used in marketing, advertising, and on employees' business cards.

21. From at least 2005 to January 2013, PCS and CTS were integrated and, in certain respects, operating as one company, although they remained two separate legal entities with separate audited financial statements.

22. During the relevant period, LMI made three separate efforts to sell the two companies jointly. In 2003 and later in 2007, LMI retained investment banks who developed marketing materials aimed at selling the two companies as a single entity under the joint "PCS CTS" marketing logo. While these two efforts were unsuccessful, in January 2013, PCS and CTS were sold together to a single buyer.

C. Expense Allocation Policy

23. Although certain operations of PCS and CTS were integrated, they were owned by separately advised LMI funds – LEF and LEF II, respectively – and LMI owed a fiduciary duty to each fund.

24. From at least 2005 until January 2013, PCS and CTS generally allocated expenses that benefitted both companies based on the proportion of each company's revenue to the combined revenue of PCS and CTS. For example, in 2011, the combined revenue of PCS and CTS was approximately \$120 million, with approximately \$22 million (or 18%) attributable to PCS. Under the expense allocation policy, PCS was required to pay 18% of any relevant shared expense.

25. There was no written guidance or detail that accompanied this expense allocation policy. While the expense allocations were documented in the CTS and PCS financial records and subject to review during the respective annual audits, neither CTS nor PCS had any written agreements relating to sharing or allocating expenses. There were no documents setting forth the parties' respective rights and obligations toward each other.

26. The shared expenses of PCS and CTS related to administrative fees associated with: payroll and 401(k) benefits; information technology; sales and marketing; and corporate management.

D. Misallocated Expenses

27. From at least 2005 to January 2013, PCS and CTS shared numerous annual expenses. While generally the shared expenses were properly allocated and documented in certain instances, a portion of the shared expenses was misallocated and went undocumented, which resulted in one portfolio company paying more than its share of expenses that benefitted both companies.

28. Prior to the integration of PCS and CTS, PCS utilized administrator services to assist with payroll and 401(k) benefits. PCS paid these administrators a fee for the services they provided.

29. After PCS and CTS were integrated, management decided to use PCS's third-party administrators to provide payroll services, and to administer the 401(k) programs for both PCS's and CTS's employees. Notwithstanding the fact that the related administrative expenses covered CTS employees, PCS paid all of the administrative expenses for at least eight years and did not

receive any reimbursement from CTS. During this eight-year period, the estimated administrative expenses paid by PCS averaged approximately \$25,000 annually.

30. In addition to these administrative expenses, there were several employees who performed work that benefitted both PCS and CTS, but their salaries were not allocated between the two companies, as required under the policy.

31. PCS's wholly owned Singapore subsidiary performed services for, and sold supplies and parts to, CTS at cost. For example, in 2011 PCS Singapore sold approximately \$150,000 in supplies and parts to CTS at cost. However, CTS did not contribute to the general overhead costs of running the Singapore subsidiary. Notably, there were PCS Singapore employees devoted solely to performing work for CTS. CTS reimbursed PCS for the salaries of those specific employees but did not pay any of the costs associated with their office space, their computers, or the local business licenses that PCS had to maintain in order to do business in Singapore.

32. When PCS and CTS were sold in January 2013, PCS's and CTS's then-existing executives were paid transaction bonuses. LEF, which owned PCS, paid 10% of the transaction bonuses of two executives who were solely CTS employees.

E. LMI Failed to Adopt and Implement Policies and Procedures to Prevent Violations Arising from Integrating PCS and CTS

33. On March 28, 2012, LMI registered with the Commission as an investment adviser and became subject to the Advisers Act rules relating to registered advisers, including the requirement to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

34. At the time LMI registered as an investment adviser certain operations of PCS and CTS were integrated. Although PCS and CTS were integrated, they were owned by separately managed LMI funds and LMI owed a fiduciary duty to each fund.

35. Despite LMI's integration of PCS and CTS, LMI did not adopt or implement any written policies or procedures designed to prevent violations of the Advisers Act arising from such integration.

VIOLATIONS

36. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

37. As a result of the conduct described above, LMI violated Section 206(2) of the Advisers Act by breaching its fiduciary duty owed to LEF and LEF II. LMI's breach of fiduciary duty resulted in one portfolio company (and, indirectly, the fund that owned it) paying more than its share of certain expenses that benefitted both companies.

38. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

39. LMI violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act arising from integrating PCS and CTS, which were owned by separately advised LMI private equity funds.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent Lincolnshire Management, Inc. cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.
- B. Respondent Lincolnshire Management, Inc. shall pay disgorgement of \$1,500,000, prejudgment interest of \$358,112, and a civil penalty of \$450,000, totaling \$2,308,112, to the Securities and Exchange Commission. Payment shall be made in the following installments: (i) \$808,112 shall be paid within ten (10) days of the entry of this order; and (ii) \$1,500,000 shall be paid within sixty (60) days of the entry of this order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:
 - (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payment by check or money order must be accompanied by a cover letter identifying Lincolnshire Management, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Julie M. Riewe, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5010.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73165 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16145

In the Matter of

KAREN PERSON,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Karen Person ("Person" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over her and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

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Summary

These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

Respondent

1. Karen Person, age 63, a resident of Las Vegas, Nevada. During the period June 28, 2011 through August 11, 2011, while Person was the Chief Executive Officer, President and Chairman of The Small Business Company, Inc. ("SBCO"), she participated in an offering of SBCO stock, which is a penny stock. Person pleaded guilty on April 22, 2013 to one count of conspiracy to commit securities fraud and was sentenced on August 16, 2013 to 30 months' imprisonment to be followed by 36 months' supervised release in *U.S. v. Karen Person, et al.*, 11-CR-10415-NMG (D. Mass.). She was also ordered to pay a fine of \$5,000.

Other Relevant Entities and Individuals

2. The Small Business Company, Inc. was a Delaware corporation that purported to assist small businesses in achieving growth. It also conducted business under the name Select Business and Corporation Opportunities, Inc. SBCO's common stock was registered with the Commission pursuant to Exchange Act Section 12(g), but the Commission revoked its registration on January 21, 2014 pursuant Exchange Act Section 12(j) for failure to make required periodic filings. The company's common stock had been publicly quoted on OTC Pink under the symbol "SBCO," but was deleted from the OTC system on January 21, 2014 in light of the Commission's revocation of its registration.

3. James Prange ("Prange"), age 62, is a resident of Greenbush, Wisconsin. Prange operated Northern Equity, Inc. and was in the business of assisting public companies in finding sources of funding. On May 3, 2013, after a jury trial, Prange was convicted of three counts of conspiracy to commit securities fraud and eight counts of wire fraud in *U.S. v. James Prange, et al.*, 11-CR-10415-NMG (D. Mass.). On September 25, 2013, Prange was sentenced to 30 months' imprisonment to be followed by 24 months' supervised release. He was also ordered to pay a fine of \$15,250 and to forfeit \$4,750.

4. Edward Henderson ("Henderson"), age 71, resides in Lincoln, Rhode Island. During the period relevant to this Order, Henderson held himself out as a "promoter" or "finder" for small companies seeking venture capital or other sources of funding. On January 11, 2012, Henderson pleaded guilty to one count of wire fraud in *U.S. v. Edward Henderson*, 11-CR-10393-WGY (D. Mass.). On November 26, 2013, Henderson was sentenced to one year's probation and was ordered to forfeit \$12,650.

Background

5. On or about June 28, 2011, Prange facilitated a telephone call between Henderson and Person. During that call, Henderson told Person that the Fund Manager was willing to invest Fund monies in companies in exchange for a secret fifty percent kickback that would go to the Fund Manager.
6. On or about July 22, 2011, Person met with the Fund Manager, Prange, and Henderson (the "July 22 Meeting"). The Fund Manager explained to Person that he was prepared to invest Fund monies of up to \$5 million in exchange for a secret fifty percent kickback, thereby enabling the Fund Manager to keep half of the money he was supposedly investing on behalf of the Fund.
7. During the July 22 Meeting, Person indicated that she was willing to enter the kickback arrangement.
8. At the July 22 Meeting, the Fund Manager explained to Person the mechanics of the funding, informing Person that the Fund Manager would begin by investing smaller amounts in SBCO stock, while planning to increase the funding installments, or tranches, in the future.
9. At the July 22 Meeting, the Fund Manager further discussed with Person the mechanics of how monies would be kicked back to the Fund Manager. He arranged with Person that SBCO would execute a consulting agreement with a nominee consulting company that he purportedly controlled, even though the Fund Manager told Person that he would not actually provide any consulting services.
10. On various dates between July 26, 2011 and August 15, 2011, Person sent the Fund Manager documents related to the kickback transaction, including consulting agreements between SBCO and the Fund Manager's nominee consulting company and a phony invoice in the name of the Fund Manager's nominee consulting company.
11. On or about July 28, 2011, \$31,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to an SBCO corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to SBCO.
12. On or about August 9, 2011, Person caused a stock certificate representing the purchase by the Fund of SBCO shares to be sent to the Fund Manager.
13. On or about August 11, 2011, Person caused \$15,500 to be sent by wire transfer from an SBCO corporate bank account outside of Massachusetts to a Citizens Bank account purportedly held in the name of the Fund Manager's nominee company in Massachusetts. This wire transfer represented Person's kickback to the Fund Manager from the first tranche of funding to SBCO.

14. As a result of the conduct described above, Person willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Person's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Person shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Person be, and hereby is:

barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73163 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16143

In the Matter of

KELLY BLACK-WHITE,

Respondent,

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF
1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Kelly Black-White ("Respondent" or "Black-White").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent, age 53, is a resident of Mesa, Arizona. During the period May 2011 through July 2011 ("the Relevant Period"), Respondent was president of Premier Funding Services, Inc. and Premier Media Services, Inc., which purports to provide investor and public relations services to small cap market companies, including Symbolion Pharmaceuticals, Inc. ("Symbolion"), of which she was a member of the Board of Directors. Respondent participated in an offering of the stock of 1st Global Financial, Corp. ("1st Global"), ComCam International, Inc. ("ComCam"), Symbolion, and Microholdings US, Inc. ("Microholdings") which are penny stocks. Respondent pleaded guilty to one count of conspiracy to commit securities fraud and eleven counts of wire fraud on September 12, 2013 in *U.S. v. Kelly Black-White, et al.*, 11-CR-10416-DJC

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(D. Mass.). On February 5, 2014, Respondent was sentenced to 12 months and one day of imprisonment, to be followed by two years' supervised release, and was ordered to pay a \$7,500 fine. She was ordered to forfeit \$6,050 on February 10, 2014.

B. OTHER RELEVANT ENTITIES AND INDIVIDUALS

1. 1st Global Financial, Corp., a Nevada company with its principal place of business in Las Vegas, Nevada, is purportedly in the real estate investment or development business. 1st Global appears to have operated under several other company names in the past, including Global Debit Cash Card, Inc.; Venture Media Communications; Venturenet.com, Inc.; and Mount McKinley Gold, Inc. Venturenet.com, Inc. registered its common stock under Exchange Act Section 12(g) in 2000, and then filed a Form 15 on October 15, 2001 to terminate its Section 12(g) registration. On December 1, 2011, the Commission, pursuant to Exchange Act Section 12(k), suspended trading in the securities of 1st Global for a period of ten business days. 1st Global's stock had been quoted on OTC Pink under the symbol "FGBF," but its symbol changed to "PROD" on August 28, 2013. OTC Markets has discontinued quoting PROD stock and has applied the "caveat emptor" label to it.

2. ComCam International, Inc., a Delaware company with its principal place of business in West Chester, Pennsylvania, designs, manufactures, and sells video surveillance systems. ComCam's common stock is currently quoted on the OTCQB under the symbol "CMCJ." Its common stock was registered with the Commission under Exchange Act Section 12(g), but the company filed a notice of termination of its registration on March 19, 2012. On December 1, 2011, the Commission, pursuant to Section 12(k) of the Exchange Act, suspended trading in the securities of ComCam for a period of ten business days.

3. Sybollon Pharmaceuticals, Inc., a Delaware corporation formerly known as Sybollon Corp. with its principal place of business in Medfield, Massachusetts, is engaged in the development and commercialization of proprietary iodine-based agents and antimicrobials. Sybollon's common stock is registered with the Commission pursuant to Exchange Act Section 12(g), but the last periodic report filed by the company was its March 31, 2011 Form 10-Q filed on May 16, 2011. On December 1, 2011, the Commission, pursuant to Exchange Act Section 12(k), suspended trading in the securities of Sybollon for a period of ten business days. Sybollon's common stock was previously quoted on the OTC Markets under the symbol "SYMBA," but OTC Markets has discontinued quoting SYMBA stock and has applied the "caveat emptor" label to it.

4. Microholdings US, Inc. was an Oklahoma corporation with its principal place of business in Vancouver, Washington, that described itself as "a Public Holding Company positioned for new mergers or acquisitions." It is now defunct. Its common stock was quoted on the OTC Pinks under the symbol MCHU. It never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act. On December 1, 2011, the Commission filed a civil injunctive action

against Microholdings alleging that it violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

5. Albert Reda ("Reda"), age 67, a resident of Tustin, California, was Treasurer of 1st Global and a member of its Board of Directors during the Relevant Period. On November 4, 2013, Reda was found guilty after a jury trial of one count of wire fraud and one count of mail fraud in *U.S. v. Reda, et al.*, 11-CR-10416-DJC (D. Mass.). On March 11, 2014, Reda was sentenced to 26 months' imprisonment, to be followed by one years' supervised release. He was also ordered to pay a fine of \$6,000 and to forfeit \$16,000.

6. Stephen Stuart ("Stuart"), age 50, is a resident of Monrovia, Maryland. During the Relevant Period, Stuart was a consultant to and shareholder of ComCam. On October 24, 2013, Stuart pleaded guilty to one count of wire fraud and one count of mail fraud in *U.S. v. Stuart, et al.*, 11-CR-10416-DJC (D. Mass.). He was sentenced on February 12, 2014 to 16 months' probation, the first two months to be served in community confinement followed by home detention for a period of six months. He was also ordered to pay a fine of \$2,000, and, on February 14, 2014, was ordered to forfeit \$17,000.20.

7. Donald Gilbreath, age 57, is a resident of West Chester, Pennsylvania. During the Relevant Period, Gilbreath was the Chairman and Chief Executive Officer of ComCam. On June 13, 2012, Gilbreath was charged by criminal information with one count of conspiracy to commit securities fraud and pleaded guilty to that charge on June 29, 2012 in *U.S. v. Donald Gilbreath*, 12-CR-10186 (D. Mass.). Gilbreath was sentenced on December 19, 2013 to 18 months' probation and was ordered to pay a fine of \$2,000 and to forfeit \$17,000.

8. Edward Henderson ("Henderson"), age 71, is a resident of Lincoln, Rhode Island. During the Relevant Period, Henderson held himself out as a "promoter" or "finder" with respect to small companies who are seeking venture capital or other sources of funding. On January 11, 2012, Henderson pleaded guilty to one count of wire fraud in *U.S. v. Edward Henderson*, 11-CR-10393-WGY (D. Mass.). On November 26, 2013, Henderson was sentenced to one year's probation and was ordered to forfeit \$12,650.

C. KICKBACK SCHEME

1. Black-White Receives a Portion of the Kickback Monies

a. These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

b. At some time prior to June 13, 2011, Henderson told Black-White that the Fund Manager was willing to invest Fund money in the stock of companies in exchange for a fifty percent kickback that would go to the Fund Manager.

c. On or about June 13, 2011, Black-White met with the Fund Manager (the "June 13 Black-White Meeting"). At the June 13 Black-White Meeting, the Fund Manager offered to pay Black-White a fee for introducing the Fund Manager to executives of publicly traded companies who would agree to pay a kickback to the Fund Manager in exchange for investing the Fund's money in their companies, enabling the Fund Manager to keep for himself half of the money he was supposedly investing on behalf of the Fund.

d. In particular, Black-White was told that the Fund Manager was prepared to invest up to \$5 million of the Fund's money in various publicly traded companies, provided those companies secretly kicked back fifty percent of those funds – \$2,500,000 – to the Fund Manager. Black-White was informed that the Fund was not to be informed of the kickbacks.

e. Black-White was told that if the Fund purchased \$5 million of stock all at once, the transaction might attract attention at the Fund. In order to avoid detection, therefore, the Fund Manager said that he would invest the Fund's money gradually, in tranches, or installments, that would increase in size over time.

f. As a further means of concealing the nature of the transactions, the Fund Manager told Black-White that the kickback payments would be made to one or more nominee consulting companies that the Fund Manager purportedly controlled and about which the Fund did not know. The Fund Manager also told Black-White that invoices would be issued by one of the Fund Manager's nominee companies in order to disguise the kickbacks.

g. Black-White reached an agreement with the Fund Manager whereby he would pay Black-White approximately ten percent of the kickbacks paid by any company executive whom Black-White introduced to the Fund Manager.

h. Prior to the June 13 Black-White Meeting, Black-White had referred executives from at least two publicly traded companies, Symbolon and MicroHoldings, to the Fund Manager so that those executives could enter into a funding/kickback agreement with the Fund Manager.

i. After the June 13 Black-White Meeting, Black-White referred the following individuals and companies to the Fund Manager so that they could enter into a funding/kickback arrangement with the Fund Manager: Reda, and his company 1st Global; Stuart and Gilbreath and their company, ComCam; and executives from two other companies.

j. Each of the executives whom Black-White referred to the Fund Manager agreed to, and did, pay a kickback to the Fund Manager in exchange for the Fund Manager causing the Fund to invest in their respective companies' stock. In connection with the investments, each of the executives also caused stock certificates to be issued representing the purchase by the Fund of shares in their respective companies.

k. The investments in the companies that Black-White referred to the Fund Manager were made by wire transfers from a bank account maintained in Massachusetts. The kickback payments from the various companies Black-White referred to the Fund Manager were made by wire transfers from the various companies to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts.

l. Based on her agreement with the Fund Manager, on various dates between June 22, 2011 and July 5, 2011, Black-White received a portion of the kickbacks paid by company executives she had referred to the Fund Manager. Black-White's shares of the kickbacks, which totaled \$6,050, were paid by wire transfer from a Citizens Bank account held by one of the Fund Manager's nominee companies in Massachusetts to JP Morgan Chase account number *****6930, a bank account held by Premier Funding & Financial Marketing, LLC and controlled by Black-White.

2. The 1st Global Scheme

a. Some time prior to June 29, 2011, Black-White arranged for Reda to meet with the Fund Manager to discuss funding for 1st Global.

b. On or about June 29, 2011, Reda met with the Fund Manager (the "June 29 Reda Meeting"). The Fund Manager explained to Reda that he was prepared to invest Fund monies of up to \$5 million in 1st Global stock in exchange for a secret fifty percent kickback, enabling the Fund Manager to keep for himself half of the money he was supposedly investing on behalf of the Fund.

c. At the June 29 Reda Meeting, the Fund Manager also explained the mechanics of the funding, informing Reda that while the Fund Manager could commit to an investment of \$5 million of the Fund's money, with \$2.5 million being kicked back to the Fund Manager, the Fund Manager did not want to invest the entire amount at once. Therefore, the Fund Manager told Reda he would invest the money over time in tranches, or installments, of increasing amounts.

d. At the June 29 Reda Meeting, the Fund Manager further discussed with Reda the mechanics of how monies would be kicked back to the Fund Manager. The Fund Manager arranged with Reda that 1st Global would execute a consulting agreement with one of the nominee consulting companies that the Fund Manager purportedly controlled, but that the Fund Manager would not actually provide any consulting services. Reda was told that invoices would be issued by one of the Fund Manager's nominee companies to 1st Global in order to disguise the kickbacks.

e. At the June 29 Reda Meeting, Reda agreed to the funding/kickback arrangement.

f. On various dates between June 30, 2011 and July 5, 2011, Reda sent the Fund Manager documents related to the kickback transaction, including a consulting agreement between 1st Global and one of the Fund Manager's nominee consulting companies and stock purchase agreements between 1st Global and the Fund.

g. On or about July 5, 2011, in accordance with wiring instructions provided by Reda, \$32,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a 1st Global corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to 1st Global.

h. On or about July 5, 2011, Reda caused a stock certificate representing the purchase by the Fund of 1st Global shares to be sent to the Fund Manager.

i. On or about July 6, 2011, Reda caused a total of \$16,000 to be sent by wire transfer from a 1st Global corporate bank account outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire transfer represented Reda's kickback to the Fund Manager from the first tranche of funding to 1st Global.

3. The ComCam Scheme

a. On or about June 29, 2011, Stuart and Gilbreath met with the Fund Manager ("the June 29 ComCam Meeting"). The Fund Manager explained to Stuart and Gilbreath that he was prepared to invest Fund monies of up to \$5 million in ComCam stock in exchange for a secret fifty percent kickback, thereby enabling the Fund Manager to keep half of the money he was supposedly investing on behalf of the Fund.

b. At the June 29 ComCam Meeting, the Fund Manager also explained the mechanics of the funding, informing Stuart and Gilbreath that, while the Fund Manager could commit to an investment of \$5 million of the Fund's money, with \$2.5 million being kicked back to the Fund Manager, the Fund Manager did not want to invest the entire amount at once. Therefore, the Fund Manager told Stuart and Gilbreath that he would invest the money over time in tranches, or installments, of increasing amounts.

c. At the June 29 ComCam Meeting, the Fund Manager further discussed with Stuart and Gilbreath the mechanics of how monies would be kicked back to the Fund Manager. He arranged with Stuart and Gilbreath that ComCam would execute a consulting agreement with one of the nominee consulting companies that he purportedly controlled, but that the Fund Manager would not actually provide any consulting services. Stuart and Gilbreath were told that invoices would be issued by the Fund Manager's nominee company to ComCam in order to disguise the kickbacks.

d. At the June 29 ComCam Meeting, Stuart and Gilbreath agreed to the funding/kickback arrangement.

e. On various dates between June 30, 2011 and July 8, 2011, Gilbreath sent the Fund Manager documents related to the kickback transaction, including a consulting agreement between ComCam and one of the Fund Manager's nominee consulting companies, stock purchase agreements between ComCam and the Fund, and a phony invoice for non-existent consulting services purportedly rendered by the Fund Manager's nominee company.

f. On or about July 5, 2011, in accordance with wiring instructions provided by Gilbreath, \$34,000.20 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a ComCam corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to ComCam.

g. On or about July 6, 2011, Stuart and Gilbreath caused a total of \$17,000 to be sent by wire transfer from a ComCam corporate bank account outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire transfer represented Gilbreath's and Stuart's kickback to the Fund Manager from the first tranche of funding to ComCam.

h. On or about July 8, 2011, Stuart and Gilbreath caused a stock certificate representing the purchase by the Fund of 65,385 ComCam shares to be sent to the Fund Manager.

D. VIOLATIONS

1. As a result of the conduct described above, Black-White willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement, and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether, pursuant to Section 21C(f) of the Exchange Act, Respondent should be prohibited, conditionally or unconditionally, and permanently or for such period of time as shall be determined, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether

Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73167 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16147

In the Matter of

STEVEN BERMAN,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Steven Berman ("Berman" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

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Summary

These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge Fund Manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

Respondent

1. Respondent, age 51, a resident of Hillsboro, Ohio, was the Chief Executive Officer and President of China Wi-Max Communications, Inc. ("China Wi-Max"). During the period July 22, 2011 through August 11, 2011, Respondent participated in an offering of China Wi-Max stock, which is a penny stock. Respondent pleaded guilty on April 12, 2013 to one count of conspiracy to commit securities fraud in *U.S. v. Steven Berman, et al.*, CR 11-10415-NMG (D. Mass.), and was sentenced on July 16, 2013 to 18 months' imprisonment to be followed by 12 months' supervised release. He was also ordered to pay a fine of \$4,000 and to forfeit \$16,000.

Other Relevant Entities and Individuals

2. China Wi-Max Communications, Inc. is a communications company incorporated in Nevada and based in Grafton, Wisconsin whose securities had been registered with the Commission under Exchange Act Section 12(g) and whose common stock was publicly quoted on the OTC Markets. The Commission, pursuant to Exchange Act Section 12(j), revoked the registration of China Wi-Max's securities on September 30, 2013 for failure to make required periodic filings, and its stock was delisted by OTC Markets on September 20, 2013.

3. James Prange ("Prange"), age 62, a resident of Greenbush, Wisconsin, operated Northern Equity, Inc. and was in the business of assisting public companies in finding sources of funding. On May 3, 2013, after a jury trial, Prange was convicted of three counts of conspiracy to commit securities fraud and eight counts of wire fraud in *U.S. v. James Prange, et al.*, 11-CR-10415-NMG (D. Mass.). On September 25, 2013, Prange was sentenced to 30 months' imprisonment to be followed by 24 months' supervised release. He was also ordered to pay a fine of \$15,250 and to forfeit \$4,750.

4. Richard Kranitz ("Kranitz"), age 70, a resident of Grafton, Wisconsin and an attorney who has performed services as a securities lawyer, was a member of the Board of Directors of China Wi-Max. Kranitz pleaded guilty on April 15, 2013 to one count of conspiracy to commit securities fraud in *U.S. v. Richard Kranitz, et al.*, 11-CR-10415-NMG (D. Mass.) and was sentenced on July 17, 2013 to 18 months' imprisonment to be followed by 12 months' supervised release. He was also ordered to pay a fine of \$4,000. In light of his criminal conviction, Kranitz's license to practice law in Wisconsin has been suspended for the period August 2013 through August 2015.

5. Edward Henderson ("Henderson"), age 71, is a resident of Lincoln, Rhode Island. During the period relevant to this Order, Henderson held himself out as a "promoter" or

"finder" for small companies seeking venture capital or other sources of funding. On January 11, 2012, Henderson pleaded guilty to one count of wire fraud in *U.S. v. Edward Henderson*, 11-CR-10393-WGY (D. Mass.). On November 26, 2013, Henderson was sentenced to one year's probation and was ordered to forfeit \$12,650.

Background

6. On or about July 13, 2011, Prange, Henderson and Berman participated in a conference call during which they discussed the possibility of the Fund Manager's investing Fund monies in China Wi-Max stock in exchange for a secret fifty percent kickback of the invested monies.

7. On or about July 13, 2011, Prange, Henderson and Kranitz had a separate telephone conference call. During that call, Prange, Henderson and Kranitz discussed the possibility of the Fund Manager's investing Fund monies in China Wi-Max stock in exchange for a secret fifty percent kickback of the invested monies.

8. On or about July 22, 2011, Prange and Berman met with the Fund Manager and Henderson (the "July 22 Meeting"). The Fund Manager explained to Berman that he was prepared to invest Fund monies of up to \$5 million in exchange for a secret fifty percent kickback to the Fund Manager, enabling the Fund Manager to keep for himself half of the money he was supposedly investing on behalf of the Fund. Berman indicated that he was willing to enter the kickback arrangement.

9. At the July 22 Meeting, the Fund Manager also discussed the mechanics of the funding, informing Berman that while the Fund Manager could commit to an investment of \$5 million of the Fund's money, with \$2.5 million being kicked back to the Fund Manager, the Fund Manager did not want to invest the entire amount at once. Therefore, the Fund Manager told Berman, he would invest the money over time, in tranches, or installments, of increasing amounts.

10. At the July 22 Meeting, the Fund Manager further discussed with Berman the mechanics of how monies would be kicked back to the Fund Manager. The Fund Manager arranged with Berman that China Wi-Max would execute a consulting agreement with one of the nominee consulting companies that the Fund Manager purportedly controlled, even though the Fund Manager told Berman that he would not actually provide any consulting services. Berman also was told that invoices would be issued by one of the Fund Manager's nominee companies in order to disguise the kickbacks.

11. On or about July 25, 2011, Prange, Berman, Kranitz and the Fund Manager had a telephone conference call during which Berman, Kranitz and the Fund Manager discussed the mechanics of the kickback transaction. Specifically, they discussed that Kranitz would prepare documentation to accompany the kickback transaction, including a consulting agreement between China Wi-Max and one of the Fund Manager's nominee companies.

12. On various dates between July 26, 2011 and September 5, 2011, Kranitz sent the Fund Manager documents related to the kickback transaction, including a consulting agreement between China Wi-Max and one of the Fund Manager's nominee consulting companies and stock purchase agreements between China Wi-Max and the Fund.

13. On or about July 28, 2011, \$32,000.01 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a China Wi-Max corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to China Wi-Max.

14. On or about August 1, 2011, Berman and Kranitz caused \$16,000 to be sent by wire transfer from a China Wi-Max corporate bank account outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire transfer represented Berman's and Kranitz's kickback to the Fund Manager from the first tranche of funding to China Wi-Max.

15. On or about August 11, 2011, Berman and Kranitz caused a stock certificate representing the purchase by the Fund of China Wi-Max shares to be sent to the Fund Manager.

16. As a result of the conduct described above, Berman willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Berman's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Berman shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

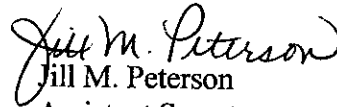
B. Respondent Berman be, and hereby is:

prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the

issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.


Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73166 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16146

In the Matter of

STEVEN BERMAN, Esq.,

Respondent.

ORDER OF FORTHWITH SUSPENSION
PURSUANT TO RULE 102(e)(2) OF THE
COMMISSION'S RULES OF PRACTICE

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Steven Berman pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(2)].¹

II.

The Commission finds that:

1. Berman is an attorney, whom the States of Wisconsin and Pennsylvania admitted to practice law in 1987 and whom the District of Columbia admitted to practice law in 1989.

2. On July 18, 2013, a judgment of conviction was entered against Berman, in *U.S. v. Steven Berman, et al.*, 11-CR-10415-NMG, in the United States District Court for the District of Massachusetts, finding him guilty of one count of conspiracy to commit securities fraud in violation of 18 U.S.C. §§ 1349, 1348, and 2.

3. As a result of this conviction, Berman was sentenced to 18 months' imprisonment to be followed by 12 months' supervised release, a \$100 special assessment, and ordered to pay a

¹ Rule 102(e)(2) provides in pertinent part: Any attorney who has been suspended or disbarred by a court of the United States or of any State; . . . or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission." See 17 C.F.R. 201.102(e)(2).

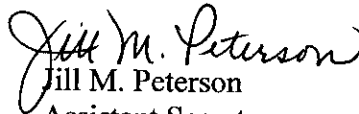
fine of \$4,000 and to forfeit \$16,000.

III.

In view of the foregoing, the Commission finds that Berman has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Steven Berman is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73164 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16144

In the Matter of

MUHAMMAD ("M.J.") SHAHEED,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Muhammad ("M.J.") Shaheed ("Shaheed" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

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Summary

These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

Respondent

1. Respondent, age 46, a resident of Cleveland Heights, Ohio, was President and Chief Executive Officer of Augrid Global Holdings Corporation ("Augrid"), a holding company incorporated in Nevada that seeks to acquire private companies in a variety of industries. Respondent participated in an offering of Augrid stock, which is a penny stock. Shaheed was charged with three counts each of mail fraud and wire fraud on January 18, 2012 and pleaded guilty to all counts on February 12, 2013 in *U.S. v. Shaheed*, 12-CR-10014-DPW (D. Mass.). On July 1, 2013, Shaheed was ordered to forfeit \$30,000 and sentenced to 21 months' imprisonment to be followed by two years' supervised release.

Other Relevant Entities and Individuals

2. Augrid Global Holdings Corporation appears to be a Nevada corporation with its principal place of business currently in Houston, Texas. It is purportedly a holding company operating in the telecommunications and real estate businesses. The company appears to have been formerly known as Augrid Corp. and formerly located in Cleveland, Ohio. Its securities had been registered with the Commission under Exchange Act Section 12(g), but it filed a form 15-12G on January 31, 2007 terminating its securities registration. The company's stock had been quoted on OTC Markets, Inc. ("OTC Markets") under the symbol "AGHD," but OTC Markets has ceased quoting it, and the last known trade in AGHD stock was July 23, 2013. On December 1, 2011, the Commission, pursuant to Exchange Act Section 12(k), suspended trading in the securities of Augrid for a period of 10 business days.

3. Michael Lee ("Lee"), age 63, is a resident of Whitman, Massachusetts. Lee was the Chief Executive Officer and President of ZipGlobal Holdings, Inc. Lee was in the business of assisting publicly-traded companies in finding sources of funding. On January 11, 2012, Lee pleaded guilty to one count of mail fraud and one count of conspiracy to commit securities fraud in *U.S. v. Michael Lee*, 11-CR-10394-RWZ (D. Mass.). On March 6, 2014, Lee was sentenced to 30 months' probation, with nine months of that sentence to be served as home confinement with electronic monitoring, and was ordered to forfeit \$105,603.

Background

4. At some time prior to November 23, 2010, Lee arranged for Shaheed to meet with the Fund Manager to discuss funding for Augrid.

5. On or about November 23, 2010, Shaheed met with the Fund Manager and Lee to discuss a potential investment of the Fund's monies in Augrid stock in exchange for a secret fifty percent kickback to the Fund Manager (the "November 23 Meeting"). Shaheed indicated that he was willing to enter the kickback arrangement.

6. At the November 23 Meeting, the Fund Manager, Shaheed, and Lee also discussed the mechanics of the funding. Shaheed was informed that the Fund Manager would begin by investing smaller amounts in Shaheed's company, while planning to increase the funding installments, or tranches, in the future.

7. At the November 23 Meeting, the Fund Manager further discussed with Shaheed the mechanics of the kickbacks to the Fund Manager. The Fund Manager explained to Shaheed that Shaheed would be sending the kickbacks to one or more companies that the Fund Manager himself controlled. The Fund Manager discussed with Shaheed that Augrid would execute consulting agreements with one or more of the Fund Manager's companies, and Shaheed would pay the relevant company owned by the Fund Manager an amount equaling fifty percent of Fund monies invested in Augrid stock. The Fund Manager further indicated to Shaheed that the Fund would not know about the kickbacks paid to the Fund Manager through such consulting agreements.

8. On various dates between November 26, 2010 and February 14, 2011, Shaheed sent the Fund Manager documents related to the kickback transaction, including consulting agreements between Augrid and one of the Fund Manager's nominee consulting companies and phony invoices in the name of the Fund Manager's nominee consulting company.

9. On or about December 1, 2010, \$10,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to an Augrid corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to Augrid.

10. On or about December 2, 2010, Shaheed caused \$5,000 to be sent by wire transfer from an Augrid corporate bank account outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire transfer represented Shaheed's kickback to the Fund Manager from the first tranche of funding to Augrid.

11. On or about December 3, 2010, Shaheed caused a stock certificate representing the purchase by the Fund of Augrid shares to be sent to the Fund Manager.

12. On or about December 9, 2010, \$20,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to an Augrid corporate bank account outside of Massachusetts. This wire transfer represented the second tranche of funding to Augrid.

13. On or about December 10, 2010, Shaheed caused \$10,000 to be sent by wire transfer from an Augrid corporate bank account outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire transfer represented Shaheed's kickback to the Fund Manager from the second tranche of funding to Augrid.

14. On or about December 10, 2010, Shaheed caused a stock certificate representing the purchase by the Fund of Augrid shares to be sent to the Fund Manager.

15. On or about January 10, 2011, \$30,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to an Augrid corporate bank account outside of Massachusetts. This wire transfer represented the third tranche of funding to Augrid.

16. On or about January 11, 2011, Shaheed caused \$15,000 to be sent by wire transfer from an Augrid corporate bank account outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire transfer represented Shaheed's kickback to the Fund Manager from the third tranche of funding to Augrid.

17. On or about January 24, 2011, Shaheed caused a stock certificate representing the purchase by the Fund of Augrid shares to be sent to the Fund Manager.

18. As a result of the conduct described above, Shaheed willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Shaheed's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

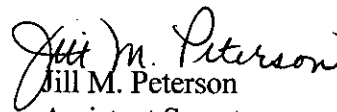
A. Respondent Shaheed shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Shaheed be, and hereby is:

barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

barred from participating in any offering of a penny stock, including:
acting as a promoter, finder, consultant, agent or other person who
engages in activities with a broker, dealer or issuer for purposes of the
issuance or trading in any penny stock, or inducing or attempting to induce
the purchase or sale of any penny stock.

By the Commission.


Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73160 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16140

In the Matter of

JAMES PRANGE,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF
1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against James Prange ("Respondent" or "Prange").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent, age 62, a resident of Greenbush, Wisconsin, operated Northern Equity, Inc. and was in the business of assisting public companies in finding sources of funding. Respondent participated in offerings of the stock of China Wi-Max Communications, Inc. ("China Wi-Max"), the Small Business Company, Inc. ("SBCO"), and Vida-Life International, Ltd. ("Vida-Life"), which are penny stocks. On May 3, 2013, after a jury trial, Prange was convicted of three counts of conspiracy to commit securities fraud and eight counts of wire fraud in *U.S. v. James Prange, et al.*, 11-CR-10415-NMG (D. Mass.). On September 25, 2013, Prange was sentenced to 30 months' imprisonment to be followed by 24 months' supervised release. He was also ordered to pay a fine of \$15,250 and to forfeit \$4,750.

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B. OTHER RELEVANT ENTITIES AND INDIVIDUALS

1. China Wi-Max Communications, Inc. is a communications company incorporated in Nevada and based in Grafton, Wisconsin whose securities had been registered with the Commission under Exchange Act Section 12(g) and whose common stock was publicly quoted on the OTC Markets. The Commission, pursuant to Exchange Act Section 12(j), revoked the registration of China Wi-Max's securities on September 30, 2013 for failure to make required periodic filings, and its stock was delisted by OTC Markets on September 20, 2013.

2. The Small Business Company, Inc. is a Delaware corporation that purported to assist small businesses in achieving growth. It also conducted business under the name Select Business and Corporation Opportunities, Inc. SBCO's common stock was registered with the Commission under Exchange Act Section 12(g), but the Commission revoked its registration on January 21, 2014 pursuant to Exchange Act Section 12(j) for failure to make required periodic filings. The company's common stock had been publicly quoted on OTC Pink under the symbol "SBCO," but was deleted from the OTC system on January 21, 2014 in light of the Commission's revocation of its registration.

3. Vida-Life International, Ltd. is a Nevada corporation in the business of developing and selling animal nutritional products. Its common stock is registered with the Commission under Exchange Act Section 12(g), but on May 23, 2014, the Commission suspended trading in the securities of Vida-Life for ten days pursuant to Exchange Act Section 12(k). Vida-Life's stock was publicly quoted on the OTC Markets under the symbol "VILF," but OTC Markets has discontinued the display of quotes and labeled Vida Life stock as "Caveat Emptor" in light of the Commission's trading suspension.

4. Steven Berman ("Berman"), age 51, a resident of Hillsboro, Ohio was the Chief Executive Officer and President of China Wi-Max during the period from June 28, 2011 through September 18, 2011 ("the Relevant Period"). Respondent pleaded guilty on April 12, 2013 to one count of conspiracy to commit securities fraud in *U.S. v. Steven Berman, et al.*, CR 11-10415-NMG (D. Mass.), and was sentenced on July 16, 2013 to 18 months' imprisonment to be followed by 12 months' supervised release. He was also ordered to pay a fine of \$4,000 and to forfeit \$16,000.

5. Richard Kranitz ("Kranitz"), age 70, a resident of Grafton, Wisconsin and an attorney who has performed services as a securities lawyer, was a member of the Board of Directors of China Wi-Max during the Relevant Period. Respondent pleaded guilty on April 15, 2013 to one count of conspiracy to commit securities fraud in *U.S. v. Richard Kranitz, et al.*, 11-CR-10415-NMG (D. Mass.) and was sentenced on July 17, 2013 to 18 months' imprisonment to be followed by 12 months of supervised release. He was also ordered to pay a fine of \$4,000. In light of his criminal conviction, Respondent's license to practice law in Wisconsin has been suspended for the period August 2013 through August 2015.

6. Karen Person ("Person"), age 63, a resident of Las Vegas, Nevada. Person was the Chief Executive Officer, President and Chairman of SBCO during the

Relevant Period. Person pleaded guilty on April 22, 2013 to one count of conspiracy to commit securities fraud and was sentenced on August 16, 2013 to 30 months' imprisonment to be followed by 36 months' supervised release in *U.S. v. Karen Person, et al.*, 11-CR-10415-NMG (D. Mass.). She was also ordered to pay a fine of \$5,000.

7. John Jordan ("Jordan"), age 62, is a resident of Shingle Springs, California. During the Relevant Period, Jordan was the Chief Executive Officer, President, Chief Financial Officer and a member of the Board of Directors of Vida-Life. On May 3, 2013, Jordan was convicted after a jury trial of one count of conspiracy to commit securities fraud, four counts of wire fraud, and one count of mail fraud and was sentenced on August 16, 2013 to 30 months' imprisonment to be followed by 12 months' supervised release in *U.S. v. John Jordan, et al.*, 11-CR-10415-NMG (D. Mass.). He was also ordered to pay a fine of \$4,000 and to forfeit \$16,000.

8. Edward Henderson ("Henderson"), age 71, is a resident of Lincoln, Rhode Island. During the Relevant Period, Henderson held himself out as "promoter" or "finder" for small companies seeking venture capital or other sources of funding. On January 11, 2012, Henderson pleaded guilty to one count of wire fraud in *U.S. v. Edward Henderson*, 11-CR-10393-WGY (D. Mass.). On November 26, 2013, Henderson was sentenced to one year's probation and was ordered to forfeit \$12,650.

C. KICKBACK SCHEME

1. Prange Receives a Portion of the Kickback Monies

a. These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge Fund Manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

b. On or about June 28, 2011, Henderson told Prange that the Fund Manager was willing to invest Fund monies in the stock of companies in exchange for a secret fifty percent kickback that would go to the Fund Manager, enabling the Fund Manager to keep half of the monies that were supposed to be invested on behalf of the Fund.

c. On or about July 22, 2011, Prange met with Henderson and the Fund Manager (the "July 22 Prange Meeting"). At the July 22 Prange Meeting, the Fund Manager represented to Prange that he had access to Fund monies which he could invest in companies. The Fund Manager represented to Prange that the Fund Manager would only invest in the companies in exchange for a kickback of fifty percent of monies invested. The Fund Manager told Prange that the Fund knew nothing about the kickbacks.

d. At the July 22 Prange Meeting, the Fund Manager and Prange entered into an agreement for Prange to steer companies to the Fund Manager for

potential investment of Fund monies. In exchange, the Fund Manager and Prange agreed that Prange would receive approximately ten percent of the monies those companies kicked back to the Fund Manager.

e. In accordance with his arrangement with the Fund Manager, Prange introduced the following individuals and companies to the Fund Manager – Berman and Kranitz, and their company China Wi-Max; Person, and her company SBCO; and Jordan, and his company Vida-Life. Each of these executives whom Prange referred to the Fund Manager agreed to, and did, pay a kickback to the Fund Manager in exchange for the Fund Manager's share purchases purportedly on the Fund's behalf. In connection with the investments, each of the executives also caused stock certificates to be issued representing the purchase by the Fund of shares in their respective companies.

f. The investments in the companies that Prange referred to the Fund Manager were made by wire transfers from a bank account maintained in Massachusetts. The kickback payments from the various companies Prange referred to the Fund Manager were made by wire transfers from the various companies to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts, as described below.

g. Based on his agreement with the Fund Manager, on various dates between August 2011 and September 2011, Prange received a portion of the kickbacks paid by company executives he had referred to the Fund Manager. Prange's shares of the kickbacks were paid by wire transfer from a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts to Community Bank & Trust account number **0231, a bank account controlled by Prange.

h. Specifically, on or about August 19, 2011, in accordance with wiring instructions provided by Prange, a wire transfer of \$3,150 was sent from a Citizens Bank account to Community Bank & Trust account number **0231; this amount represented ten percent of the kickback amounts provided by Berman/Kranitz and by Person.

i. On or about September 16, 2011, in accordance with wiring instructions provided by Prange, a wire transfer of \$1,600 was sent from a Citizens Bank account Community Bank & Trust account number **0231; this amount represented ten percent of the kickback amounts provided by Jordan.

2. The China Wi-Max Scheme

a. On or about July 13, 2011, Prange arranged to have a telephone conference call with Henderson and Berman. During that call, Prange, Henderson and Berman discussed the possibility of the Fund Manager's investing Fund monies in China Wi-Max stock in exchange for a secret fifty percent kickback of the invested monies.

b. On or about July 13, 2011, Prange, Henderson and Kranitz had a separate telephone conference call. During that call, Prange, Henderson and Kranitz discussed the possibility of the Fund Manager's investing Fund monies in China Wi-Max stock in exchange for a secret fifty percent kickback of the invested monies. Also, during the call, Henderson told Kranitz and Prange that the Fund Manager would not disclose to anyone associated with the Fund his receipt of fifty percent of the monies that were supposed to be invested on the Fund's behalf.

c. On or about July 22, 2011, Prange and Berman met with the Fund Manager and Henderson (the "July 22 Berman Meeting"). The Fund Manager explained to Berman that he was prepared to invest Fund monies of up to \$5 million in exchange for a secret fifty percent kickback to the Fund Manager, enabling the Fund Manager to keep for himself half of the money he was supposedly investing on behalf of the Fund. Berman indicated that he was willing to enter the kickback arrangement.

d. At the July 22 Berman Meeting, the Fund Manager also discussed the mechanics of the funding, informing Berman that while the Fund Manager could commit to an investment of \$5 million of the Fund's money, with \$2.5 million being kicked back to the Fund Manager, the Fund Manager did not want to invest the entire amount at once. Therefore, the Fund Manager told Berman, he would invest the money over time in tranches, or installments, of increasing amounts.

e. At the July 22 Berman Meeting, the Fund Manager further discussed with Berman the mechanics of how monies would be kicked back to the Fund Manager. The Fund Manager arranged with Berman that China Wi-Max would execute a consulting agreement with one of the nominee consulting companies that the Fund Manager purportedly controlled, even though the Fund Manager told Berman that he would not actually provide any consulting services. Berman also was told that invoices would be issued by one of the Fund Manager's nominee companies in order to disguise the kickbacks.

f. On or about July 25, 2011, Prange, Berman, Kranitz and the Fund Manager had a telephone conference call during which Berman, Kranitz and the Fund Manager discussed the mechanics of the kickback transaction. Specifically, they discussed that Kranitz would prepare documentation to accompany the kickback transaction, including a consulting agreement between China Wi-Max and one of the Fund Manager's nominee companies.

g. On various dates between July 26, 2011 and September 5, 2011, Kranitz sent the Fund Manager documents related to the kickback transaction, including a consulting agreement between China Wi-Max and one of the Fund Manager's nominee consulting companies and stock purchase agreements between China Wi-Max and the Fund.

h. On or about July 28, 2011, \$32,000.01 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the

Fund, to a China Wi-Max corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to China Wi-Max.

i. On or about August 1, 2011, Berman and Kranitz caused \$16,000 to be sent by wire transfer from a China Wi-Max corporate bank account outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire transfer represented Berman's and Kranitz's kickback to the Fund Manager from the first tranche of funding to China Wi-Max.

j. On or about August 11, 2011, Berman and Kranitz caused a stock certificate representing the purchase by the Fund of China Wi-Max shares to be sent to the Fund Manager.

3. The SBCO Scheme

a. On or about June 28, 2011, Prange facilitated a telephone call between Henderson and Person. During that call, Henderson told Person that the Fund Manager was willing to invest Fund monies in companies in exchange for a secret fifty percent kickback.

b. On or about July 22, 2011, Person met with the Fund Manager, Prange, and Henderson (the "July 22 Person Meeting"). The Fund Manager explained to Person that he was prepared to invest Fund monies of up to \$5 million in exchange for a secret fifty percent kickback, thereby enabling the Fund Manager to keep half of the money he was supposedly investing on behalf of the Fund.

c. During the July 22 Person Meeting, Person indicated that she was willing to enter the kickback arrangement.

d. At the July 22 Person Meeting, the Fund Manager explained to Person the mechanics of the funding, informing Person that the Fund Manager would begin by investing smaller amounts in SBCO stock, while planning to increase the funding installments, or tranches, in the future.

e. At the July 22 Person Meeting, the Fund Manager further discussed with Person the mechanics of how monies would be kicked back to the Fund Manager. He arranged with Person that SBCO would execute a consulting agreement with one of the nominee consulting companies that he purportedly controlled, even though the Fund Manager told Person that he would not actually provide any consulting services.

f. On various dates between July 26, 2011 and August 15, 2011, Person sent the Fund Manager documents related to the kickback transaction, including consulting agreements between SBCO and one of the Fund Manager's nominee consulting companies and a phony invoice in the name of the Fund Manager's nominee consulting company.

g. On or about July 28, 2011, \$31,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to an SBCO corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to SBCO.

h. On or about August 9, 2011, Person caused a stock certificate representing the purchase by the Fund of SBCO shares to be sent to the Fund Manager.

i. On or about August 11, 2011, Person caused \$15,500 to be sent by wire transfer from an SBCO corporate bank account outside of Massachusetts to a Citizens Bank account purportedly held in the name of the Fund Manager's nominee company in Massachusetts. This wire transfer represented Person's kickback to the Fund Manager from the first tranche of funding to SBCO.

4. The Vida-Life Scheme

a. On or around August 22, 2011 (the "August 22 Jordan Meeting"), Jordan and another individual met with the Fund Manager. The Fund Manager explained to Jordan that he was prepared to invest Fund monies of up to \$5 million in Vida-Life in exchange for a secret fifty percent kickback, enabling the Fund Manager to keep half of the money he was supposedly investing on behalf of the Fund.

b. At the August 22 Jordan Meeting, the Fund Manager also explained the mechanics of the funding, informing Jordan that, while the Fund Manager could commit to an investment of \$5 million of the Fund's money, with \$2.5 million being kicked back to the Fund Manager, the Fund Manager did not want to invest the entire amount at once. Therefore, the Fund Manager told Jordan, he would invest the money over time in tranches, or installments, of increasing amounts.

c. At the August 22 Jordan Meeting, the Fund Manager further discussed with Jordan the mechanics of how monies would be kicked back to him. The Fund Manager arranged with Jordan that Vida-Life would execute a consulting agreement with one of the nominee consulting companies that the Fund Manager purportedly controlled, but that the Fund Manager would not actually provide any consulting services. Jordan was told that invoices would be issued by the Fund Manager's nominee company to Vida-Life in order to disguise the kickbacks.

d. At the August 22 Meeting, Jordan agreed to the funding/kickback arrangement and executed a consulting agreement between Vida-Life and the Fund Manager's nominee consulting company. On various dates between August 23, 2011 and September 18, 2011, Jordan sent the Fund Manager documents related to the kickback transaction, including stock purchase agreements between Vida-Life and the Fund.

e. On or about August 29, 2011, in accordance with wiring instructions provided by Jordan, \$32,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a Vida-Life corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to Vida-Life.

f. On or about September 2, 2011, Jordan caused a total of \$16,000 to be sent by four separate wire transfers, three in the amount of \$5,000 and one in the amount of \$1,000, from two Vida-Life corporate bank accounts outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. These wire transfers represented Jordan's kickback to the Fund Manager from the first tranche of funding to Vida-Life.

g. On or about September 7, 2011, Jordan caused a stock certificate representing the purchase by the Fund of Vida-Life shares to be sent to the Fund Manager.

D. VIOLATIONS

1. As a result of the conduct described above, Prange willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

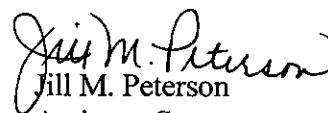
If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73161 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16141

In the Matter of

SEIJIN KI,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF
1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Seijin Ki ("Respondent" or "Ki").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent, age 43, is a resident of Toronto, Canada and was the Chief Financial Officer of Lightlake Therapeutics, Inc. ("Lightlake"). Ki was also President and Chief Executive Officer of Church & Crawford, Inc. ("Church & Crawford"). Respondent participated in offerings of Lightlake and Church & Crawford stock, which are penny stocks. On August 8, 2013, Respondent pleaded guilty to two counts of wire fraud and two counts of mail fraud in *U.S. v. Seijin Ki*, 12-CR-10366-WGY (D. Mass.). On December 4, 2013, he was ordered to forfeit \$33,000, and, on December 11, 2013, was sentenced to 15 months' imprisonment and one year of supervised release and ordered to pay a fine of \$4,000.

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B. OTHER RELEVANT ENTITIES AND INDIVIDUALS

1. Lightlake Therapeutics, Inc. is a Nevada corporation purportedly engaged in drug development. Lightlake's common stock is registered with the Commission under Section 12(g) of the Exchange Act and is quoted on the OTC Markets under the symbol "LLTP."

2. Church & Crawford, Inc. is a Nevada company purportedly engaged in the business of voice response technology. Church & Crawford is quoted on the OTC Markets under the symbol "CCWF," but the OTC Markets website contains a warning that the company may not be making material information publicly available. Church & Crawford's securities had been registered under the name Aviation Industries Corporation with the Commission under Section 12(g) of the Exchange Act, but Church & Crawford filed a Form 15 notice of termination of its registration on April 4, 2002.

3. Hadi Aboukhater ("Aboukhater"), age 43, is a resident of Haymarket, Virginia. Aboukhater was in the business of assisting publicly-traded companies in finding sources of funding. On February 27, 2012, Aboukhater was charged by criminal information with one count of wire fraud and pleaded guilty to that charge on March 25, 2014 in *U.S. v. Hadi Aboukhater*, 14-CR-10057-DJC (D. Mass).

4. Michael Lee ("Lee"), age 63, is a resident of Whitman, Massachusetts. Lee was the Chief Executive Officer and President of ZipGlobal Holdings, Inc. Lee was in the business of assisting publicly-traded companies in finding sources of funding. On January 11, 2012, Lee pleaded guilty to one count of mail fraud and one count of conspiracy to commit securities fraud in *U.S. v. Michael Lee*, 11-CR-10394-RWZ (D. Mass.). On March 6, 2014, Lee was sentenced to 30 months' probation, with nine months of that sentence to be served as home confinement with electronic monitoring, and was ordered to forfeit \$105,603.

C. KICKBACK SCHEME

1. These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

2. At some time prior to January 13, 2011, Aboukhater and Lee arranged for Ki to meet with the Fund Manager to discuss funding for Lightlake. On or about January 13, 2011, Ki met with the Fund Manager, Aboukhater and Lee to discuss a potential investment of the Fund's monies in Lightlake stock in exchange for a secret fifty percent kickback to the Fund Manager, thereby enabling the Fund Manager to keep half of the money he was supposedly investing on behalf of the Fund (the "January 13 Meeting").

3. During the January 13 Meeting, Ki indicated that he was willing to enter the kickback arrangement.

4. At the January 13 Meeting, the Fund Manager, Ki, Aboukhater and Lee also discussed the mechanics of the funding. Ki was informed that the Fund Manager would begin by investing smaller amounts in Lightlake stock while planning to increase the funding installments, or tranches, in the future.

5. At the January 13 Meeting, the Fund Manager further discussed with Ki the mechanics of the kickback to the Fund Manager, explaining to Ki that Ki would be sending the kickback to one or more companies that the Fund Manager himself controlled. The Fund Manager discussed with Ki that Lightlake would execute consulting agreements with one or more of the Fund Manager's companies, and Ki would pay the relevant company owned by the Fund Manager an amount equaling fifty percent of Fund monies invested in Lightlake stock. The Fund Manager further stated to Ki that the Fund would not know about the kickbacks paid to him through such consulting agreements.

6. On various dates between January 14, 2011 and March 3, 2011, Ki sent the Fund Manager documents related to the kickback transaction with Lightlake, including consulting agreements between Lightlake and a nominee consulting company controlled by the Fund Manager and phony invoices in the name of the Fund Manager's nominee consulting company.

7. On or about January 24, 2011, \$21,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to Lightlake.

8. On or about January 26, 2011, Ki caused \$10,482 to be sent by wire transfer from a bank account outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire transfer represented Ki's kickback to the Fund Manager from the first tranche of funding to Lightlake.

9. On or about January 28, 2011, Ki caused a stock certificate representing the purchase by the Fund of Lightlake shares to be sent to the Fund Manager.

10. On or about February 9, 2011, \$30,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a bank account outside of Massachusetts. This wire transfer represented the second tranche of funding to Lightlake.

11. On or about February 11, 2011, Ki caused \$15,000 to be sent by wire transfer from a bank account outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire

transfer represented Ki's kickback to the Fund Manager from the second tranche of funding to Lightlake.

12. On or about February 15, 2011, Ki caused a stock certificate representing the purchase by the Fund of Lightlake shares to be sent to the Fund Manager.

13. Also, in or about January 2011, Ki and Aboukhater solicited the Fund Manager for funding for Church & Crawford. The Fund Manager agreed to invest Fund monies in Church & Crawford stock in exchange for a 50% kickback.

14. On various dates between February 2011 and March 15, 2011, Aboukhater, on Ki's behalf, sent the Fund Manager documents related to the kickback transaction with Church & Crawford, including a consulting agreement between Church & Crawford and one of the Fund Manager's nominee consulting companies and a phony invoice in the name of the Fund Manager's nominee consulting company.

15. On or about February 18, 2011, \$15,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to Church & Crawford.

16. On or about February 22, 2011, Ki caused \$7,500 to be sent by wire transfer from a bank account outside of Massachusetts to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire transfer represented Ki's kickback to the Fund Manager from the first tranche of funding to Church & Crawford.

17. On or about February 23, 2011, Ki caused a stock certificate representing the purchase by the Fund of Church & Crawford shares to be sent to the Fund Manager.

D. VIOLATIONS

1. As a result of the conduct described above, Ki willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement, and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether, pursuant to Section 21C(f) of the Exchange Act, Respondent should be prohibited, conditionally or unconditionally, and permanently or for such period of time as shall be determined, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

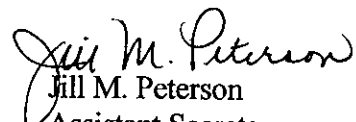
This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is

not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73174 / September 22, 2014

WHISTLEBLOWER AWARD PROCEEDING
File No. 2014 -10

In the Matter of the Claim for Award

in connection with

Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On May 5, 2014, the Claims Review Staff issued a Preliminary Determination for Notice of Covered Action ^{Redacted} and ^{Redacted} related actions.¹ The Preliminary Determination recommended that ^{Claimant} ("Claimant") receive a whistleblower award pursuant to Section 21F(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78u-6(b)(1), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).

Because the record demonstrates that Claimant, a foreign resident, voluntarily provided original information to the Commission that led to the successful enforcement of the covered and related actions, the recommendation that Claimant receive an award is hereby

¹ The related actions are:

Redacted

adopted.² Further, based on a consideration of the factors specified in Rule 21F-6 in relation to the specific facts and circumstances of the covered and related actions, the award amount shall be ^{Redacted} of the monetary sanctions collected or to be collected in the actions.³ Given the monetary sanctions thus far collected, this should yield a total award of

² We believe an award payment is appropriate here notwithstanding the existence of certain extraterritorial aspects of Claimant's application. *See generally Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 266 (2010) (discussing analytical framework for determining whether an application of a statutory provision that involves certain foreign aspects is an extraterritorial or domestic application of the provision; explaining that it is a domestic application of the provision if the particular aspect that is the "focus of congressional concern" has a sufficient U.S. territorial nexus); *European Community v. RJR Nabisco, Inc.*, __ F.3d __, __ 2014 WL 1613878, *10 (2d Cir. Apr. 23, 2014) (applying *Morrison* framework and finding that "[i]f domestic conduct satisfies every essential element to prove a violation of a United States statute that does not apply extraterritorially, that statute is violated even if some further conduct contributing to the violation occurred outside the United States."). In our view, there is a sufficient U.S. territorial nexus whenever a claimant's information leads to the successful enforcement of a covered action brought in the United States, concerning violations of the U.S. securities laws, by the Commission, the U.S. regulatory agency with enforcement authority for such violations. When these key territorial connections exist, it makes no difference whether, for example, the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the U.S. securities law violation occurred entirely overseas. We believe this approach best effectuates the clear Congressional purpose underlying the award program, which was to further the effective enforcement of the U.S. securities laws by encouraging individuals with knowledge of violations of these U.S. laws to voluntarily provide that information to the Commission. *See* S. Rep. No. 111-176 at 110 (2010) ("to motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated the securities laws"). Finally, although we recognize that the Court of Appeals for the Second Circuit recently held that there was an insufficient territorial nexus for the anti-retaliation protections of Section 21F(h) to apply to a foreign whistleblower who experienced employment retaliation overseas after making certain reports about his foreign employer, *Liu v. Siemens*, __ F.3d __, 2014 WL 3953672 (2d Cir. Aug. 14, 2014), we do not find that decision controlling here; the whistleblower award provisions have a different Congressional focus than the anti-retaliation provisions, which are generally focused on preventing retaliatory employment actions and protecting the employment relationship.

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between \$30 and \$35 million.

In reaching the award determination, we have considered the significance of the information provided by Claimant, the assistance that Claimant provided, and the law-enforcement interests at issue.⁴ We also have considered Claimant's delay in reporting the violations, which under the circumstances we find unreasonable. Claimant delayed coming to the Commission for a period of Redacted after first learning of the violations, during which time investors continued to suffer significant monetary injury that otherwise might have been avoided.⁵ We do not agree with Claimant's assertion that Claimant's delay was reasonable under the circumstances because Claimant was purportedly uncertain whether the Commission would in fact take action. There is always some measure of uncertainty about how a law-enforcement agency may respond to a tip, but in our view this does not excuse a lengthy reporting delay while investors continue to suffer losses. Indeed, if Claimant was concerned that the Commission would not respond to Claimant's tip, Claimant also could have reported the violations to other appropriate U.S. authorities; yet Claimant did not do so and the explanations that Claimant offers are not sufficient to mitigate a downward adjustment based on the

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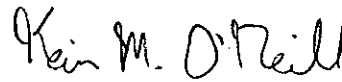
⁴ In Claimant's response to the Preliminary Determination, Claimant suggested that a factor beyond those specified in Rule 21F-6 may have been considered. We wish to make clear that our award determination is based solely on the considerations set forth in Rule 21F-6 as those considerations relate to the specific facts and circumstances of the covered and related actions. Claimant also asserts that Claimant's award is below the average percentage amount awarded to other successful claimants to date, but we find this assertion irrelevant. *First*, every enforcement action is unique and thus each award determination involves a highly individualized review of the facts and circumstances surrounding the particular case; this necessarily precludes any meaningful comparison among award determinations. *Second*, no award determination to date has involved a similar reporting delay.

⁵ Given that Claimant concedes that Claimant could have reported to the Commission as early as "Redacted when the Redacted scheme became clearer" to Claimant, some of the period of the delay occurred before the whistleblower award program was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act. See Pub. L. No. 111-203, § 922, 124 Stat. 1841 (2010). Although Claimant has not raised any specific legal arguments against application of the unreasonable delay factor for that portion of the delay, we have determined in our discretion not to apply the unreasonable delay consideration as severely here as we otherwise might have done had the delay occurred entirely after the program's creation.

unreasonable reporting delay.

Accordingly, upon due consideration under Rules 21F-10(f) and (h), 17 C.F.R. §§ 240.21F-10(f) and (h), it is hereby ORDERED that Claimant shall receive an award of Redacted Redacted of the monetary sanctions collected in Notice of Covered Action Redacted and the related actions, including any monetary sanctions collected after the date of this Order.

By the Commission.



Kevin M. O'Neill
Deputy Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73162 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16142

In the Matter of

JOHN JORDAN,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF
1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against John Jordan ("Respondent" or "Jordan").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Jordan, age 62, is a resident of Shingle Springs, California. During the period August 22, 2011 through September 18, 2011, while Jordan was the Chief Executive Officer, President, Chief Financial Officer and a member of the Board of Directors of Vida-Life International, Ltd. ("Vida-Life"), he participated in an offering of Vida-Life stock, which is a penny stock. On May 3, 2013, Jordan was convicted after a jury trial of one count of conspiracy to commit securities fraud, four counts of wire fraud, and one count of mail fraud and was sentenced on August 16, 2013 to 30 months' imprisonment to be followed by 12 months' supervised release in *U.S. v. John Jordan, et al.*, 11-CR-10415-NMG (D. Mass.). He was also ordered to pay a fine of \$4,000 and to forfeit \$16,000.

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B. OTHER RELEVANT ENTITIES AND INDIVIDUALS

1. Vida-Life International, Ltd. is a Nevada corporation in the business of developing and selling animal nutritional products. Its common stock is registered with the Commission under Exchange Act Section 12(g), but on May 23, 2014, the Commission suspended trading in the securities of Vida-Life for ten days pursuant to Exchange Act Section 12(k). Vida-Life's stock was publicly quoted on the OTC Markets under the symbol "VILF," but OTC Markets has discontinued the display of quotes and labeled Vida Life stock as "Caveat Emptor" in light of the Commission's trading suspension.

C. KICKBACK SCHEME

1. These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

2. On or around August 22, 2011, Jordan and another individual met with the Fund Manager (the "August 22 Meeting"). The Fund Manager explained to Jordan that he was prepared to invest Fund monies of up to \$5 million in Vida-Life stock in exchange for a secret fifty percent kickback, enabling the Fund Manager to keep for himself half of the money he was supposedly investing on behalf of the Fund.

3. At the August 22 Meeting, the Fund Manager also explained the mechanics of the funding, informing Jordan that, while the Fund Manager could commit to an investment of \$5 million of the Fund's money, with \$2.5 million being kicked back to the Fund Manager, the Fund Manager did not want to invest the entire amount at once. Therefore, the Fund Manager told Jordan, he would invest the money over time in tranches, or installments, of increasing amounts.

4. At the August 22 Meeting, the Fund Manager further discussed with Jordan the mechanics of how monies would be kicked back to the Fund Manager. The Fund Manager arranged with Jordan that Vida-Life would execute a consulting agreement with a nominee consulting company that the Fund Manager purportedly controlled, but that the Fund Manager would not actually provide any consulting services. Jordan was told that invoices would be issued by the Fund Manager's nominee company to Vida-Life in order to disguise the kickbacks.

5. At the August 22 Meeting, Jordan agreed to the funding/kickback arrangement and executed a consulting agreement between Vida-Life and the Fund Manager's nominee consulting company. On various dates between August 23, 2011 and September 18, 2011, Jordan sent the Fund Manager documents related to the kickback transaction, including stock purchase agreements between Vida-Life and the Fund.

6. On or about August 29, 2011, in accordance with wiring instructions provided by Jordan, \$32,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts purportedly belonging to the Fund to a Vida-Life corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to Vida-Life.

7. On or about September 2, 2011, Jordan caused a total of \$16,000 to be sent by four separate wire transfers, three in the amount of \$5,000 and one in the amount of \$1,000, from two Vida-Life corporate bank accounts outside of Massachusetts to a Citizens Bank account held in the name of the Fund Manager's nominee company in Massachusetts. These wire transfers represented Jordan's kickback to the Fund Manager from the first tranche of funding to Vida-Life.

8. On or about September 7, 2011, Jordan caused a stock certificate representing the purchase by the Fund of Vida-Life shares to be sent to the Fund Manager.

D. VIOLATIONS

1. As a result of the conduct described above, Jordan willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement, and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether, pursuant to Section 21C(f) of the Exchange Act, Respondent should be prohibited, conditionally or unconditionally, and permanently or for such period of time as shall be determined, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73170 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16150

In the Matter of

RICHARD KRANITZ, Esq.,

Respondent.

ORDER OF FORTHWITH SUSPENSION
PURSUANT TO RULE 102(e)(2) OF THE
COMMISSION'S RULES OF PRACTICE

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Richard Kranitz pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(2)].¹

II.

The Commission finds that:

1. Kranitz is an attorney, whom the State of Wisconsin admitted to practice law in 1969.

2. On July 19, 2013, a judgment of conviction was entered against Kranitz, in *U.S. v. Richard Kranitz, et al.*, 11-CR-10415-NMG, in the United States District Court for the District of Massachusetts, finding him guilty of one count of conspiracy to commit securities fraud in violation of 18 U.S.C. §§ 1349, 1348, and 2.

3. As a result of this conviction, Kranitz was sentenced to 18 months' imprisonment to be followed by 12 months' supervised release, a \$100 special assessment, and ordered to pay a

¹ Rule 102(e)(2) provides in pertinent part: Any attorney who has been suspended or disbarred by a court of the United States or of any State; . . . or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission." See 17 C.F.R. 201.102(e)(2).

fine of \$4,000.

III.

In view of the foregoing, the Commission finds that Kranitz has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Richard Kranitz is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73169 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16149

In the Matter of

RICHARD KRANITZ,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Richard Kranitz ("Kranitz" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

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Summary

These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

Respondent

1. Respondent, age 70, a resident of Grafton, Wisconsin and an attorney who has performed services as a securities lawyer, was a member of the Board of Directors of China Wi-Max Communications, Inc. ("China Wi-Max"). Respondent participated in an offering of China Wi-Max stock, which is a penny stock. Respondent pleaded guilty on April 15, 2013 to one count of conspiracy to commit securities fraud in *U.S. v. Richard Kranitz, et al.*, 11-CR-10415-NMG (D. Mass.) and was sentenced on July 17, 2013 to 18 months' imprisonment to be followed by 12 months' supervised release. He was also ordered to pay a fine of \$4,000 and a special assessment of \$100. In light of his criminal conviction, Respondent's license to practice law in Wisconsin has been suspended for the period August 2013 through August 2015.

Other Relevant Entities and Individuals

2. China Wi-Max Communications, Inc. is a communications company incorporated in Nevada and based in Grafton, Wisconsin whose securities had been registered with the Commission under Exchange Act Section 12(g) and whose common stock was publicly quoted on the OTC Markets. The Commission, pursuant to Exchange Act Section 12(j), revoked the registration of China Wi-Max's securities on September 30, 2013 for failure to make required periodic filings, and its stock was delisted by OTC Markets on September 20, 2013.

3. James Prange ("Prange"), age 62, a resident of Greenbush, Wisconsin, operated Northern Equity, Inc. and was in the business of assisting public companies in finding sources of funding. On May 3, 2013, after a jury trial, Prange was convicted of three counts of conspiracy to commit securities fraud and eight counts of wire fraud in *U.S. v. James Prange, et al.*, 11-CR-10415-NMG (D. Mass.). On September 25, 2013, Prange was sentenced to 30 months' imprisonment to be followed by 24 months' supervised release. He was also ordered to pay a fine of \$15,250 and to forfeit \$4,750.

4. Steven Berman ("Berman"), age 51, a resident of Hillsboro, Ohio was the Chief Executive Officer and President of China Wi-Max. Respondent pleaded guilty on April 12, 2013 to one count of conspiracy to commit securities fraud in *U.S. v. Steven Berman, et al.*, CR 11-10415-NMG (D. Mass.), and was sentenced on July 16, 2013 to 18 months' imprisonment to be followed by 12 months' supervised release. He was also ordered to pay a fine of \$4,000 and to forfeit \$16,000.

5. Edward Henderson ("Henderson"), age 71, is a resident of Lincoln, Rhode Island. During the period relevant to this Order, Henderson held himself out as a "promoter" or "finder" for small companies seeking venture capital or other sources of funding. On January 11, 2012, Henderson pleaded guilty to one count of wire fraud in *U.S. v. Edward Henderson*, 11-CR-10393-WGY (D. Mass.). On November 26, 2013, Henderson was sentenced to one year's probation and was ordered to forfeit \$12,650.

Background

6. On or about July 13, 2011, Prange, Henderson and Berman participated in a conference call during which they discussed the possibility of the Fund Manager's investing Fund monies in China Wi-Max stock in exchange for a secret fifty percent kickback of the invested monies.

7. On or about July 13, 2011, Prange, Henderson and Kranitz had a separate telephone conference call. During that call, Prange, Henderson and Kranitz discussed the possibility of the Fund Manager's investing Fund monies in China Wi-Max in exchange for a secret fifty percent kickback of the invested monies. Also, during the call, Henderson told Kranitz and Prange that the Fund Manager would not disclose to anyone associated with the Fund his receipt of fifty percent of the monies that were supposed to be invested on the Fund's behalf.

8. On or about July 25, 2011, Prange, Berman, Kranitz and the Fund Manager had a telephone conference call during which Berman, Kranitz and the Fund Manager discussed the mechanics of the kickback transaction. Specifically, they discussed that Kranitz would prepare documentation to accompany the kickback transaction, including a consulting agreement between China Wi-Max and one of the Fund Manager's nominee companies.

9. On various dates between July 26, 2011 and September 5, 2011, Kranitz sent the Fund Manager documents related to the kickback transaction, including a consulting agreement between China Wi-Max and one of the Fund Manager's nominee consulting companies and stock purchase agreements between China Wi-Max and the Fund.

10. On or about July 28, 2011, \$32,000.01 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a China Wi-Max corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to China Wi-Max.

11. On or about August 1, 2011, Berman and Kranitz caused \$16,000 to be sent by wire transfer from a China Wi-Max corporate bank account outside of Massachusetts to a Citizens Bank held in the name of one of the Fund Manager's nominee companies in Massachusetts. This wire transfer represented Berman's and Kranitz's kickback to the Fund Manager from the first tranche of funding to China Wi-Max.

12. On or about August 11, 2011, Berman and Kranitz caused a stock certificate representing the purchase by the Fund of China Wi-Max shares to be sent to the Fund Manager.

13. As a result of the conduct described above, Kranitz willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Kranitz's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Kranitz shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Kranitz be, and hereby is:

barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.


Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73168 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16148

In the Matter of

DONALD GILBREATH

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Donald Gilbreath ("Gilbreath" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

Respondent

1. Gilbreath, age 57, is a resident of West Chester, Pennsylvania. During the period June 29, 2011 through July 8, 2011, while Gilbreath was the Chairman and Chief Executive Officer of ComCam International, Inc. ("ComCam"), he participated in an offering of ComCam stock, which is a penny stock. On June 13, 2012, Gilbreath was charged by criminal information with one count of conspiracy to commit securities fraud and pleaded guilty to that charge on June 29, 2012 in *U.S. v. Donald Gilbreath*, 12-CR-10186 (D. Mass.). Gilbreath was sentenced on December 19, 2013 to 18 months' probation and was ordered to pay a fine of \$2,000 and to forfeit \$17,000.

Other Relevant Entities and Individuals

2. ComCam International, Inc., a Delaware company with its principal place of business in West Chester, Pennsylvania, designs, manufactures, and sells video surveillance systems. ComCam's common stock is currently quoted on the OTCQB under the symbol "CMCJ." Its common stock was registered with the Commission under Section 12(g) of the Exchange Act, but the company filed a notice of termination of its registration on March 19, 2012. On December 1, 2011, the Commission, pursuant to Section 12(k) of the Exchange Act, suspended trading in the securities of ComCam for a period of ten business days.

3. Stephen Stuart, age 50, a resident of Monrovia, Maryland, was a consultant to and shareholder of ComCam. On October 24, 2013, Stuart pleaded guilty to one count of wire fraud and one count of mail fraud in *U.S. v. Stuart, et al.*, 11-CR-10416-DJC (D. Mass.). He was sentenced on February 12, 2014 to 16 months' probation, the first two months to be served in community confinement followed by home detention for a period of six months. He was also ordered to pay a fine of \$2,000, and, on February 14, 2014, was ordered to forfeit \$17,000.20.

Background

4. On or about June 29, 2011, Gilbreath and Stuart met with the Fund Manager (the "June 29 Meeting"). The Fund Manager explained to Gilbreath and Stuart that he was prepared to invest Fund monies of up to \$5 million in ComCam stock, in exchange for a secret fifty percent kickback, thereby enabling the Fund Manager to keep half of the money he was supposedly investing on behalf of the Fund.

5. At the June 29 Meeting, the Fund Manager also explained the mechanics of the funding, informing Gilbreath and Stuart that, while the Fund Manager could commit to an investment of \$5 million of the Fund's money, with \$2.5 million being kicked back to the Fund Manager, the Fund Manager did not want to invest the entire amount at once. Therefore, the Fund Manager told Gilbreath and Stuart that he would invest the money over time in tranches, or installments, of increasing amounts.

6. At the June 29 Meeting, the Fund Manager further discussed with Gilbreath and Stuart the mechanics of how monies would be kicked back to the Fund Manager. The Fund Manager arranged with Gilbreath and Stuart that ComCam would execute a consulting agreement with a nominee consulting company that the Fund Manager purportedly controlled, but that the Fund Manager would not actually provide any consulting services. Gilbreath and Stuart were told that invoices would be issued by the Fund Manager's nominee company to ComCam in order to disguise the kickbacks.

7. At the June 29 Meeting, Gilbreath and Stuart agreed to the funding/kickback arrangement.

8. On various dates between June 30, 2011 and July 8, 2011, Gilbreath sent the Fund Manager documents related to the kickback transaction, including a consulting agreement between ComCam and the Fund Manager's nominee consulting company, stock purchase agreements between ComCam and the Fund, and a phony invoice for non-existent consulting services purportedly rendered by the Fund Manager's nominee company.

9. On or about July 5, 2011, in accordance with wiring instructions provided by Gilbreath, \$34,000.20 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a ComCam corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to ComCam.

10. On or about July 6, 2011, Gilbreath and Stuart caused a total of \$17,000 to be sent by wire transfer from a ComCam corporate bank account outside of Massachusetts to a Citizens Bank account held in the name of the Fund Manager's nominee company in Massachusetts. This wire transfer represented Gilbreath's and Stuart's kickback to the Fund Manager from the first tranche of funding to ComCam.

11. On or about July 8, 2011, Gilbreath and Stuart caused a stock certificate representing the purchase by the Fund of 65,385 ComCam shares to be sent to the Fund Manager.

12. As a result of the conduct described above, Gilbreath willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Gilbreath's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

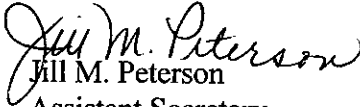
A. Respondent Gilbreath shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Gilbreath be, and hereby is:

barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] for a period of five (5) years from entry of this Order; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock for a period of five (5) years from entry of this Order.

By the Commission.


Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73171 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16151

In the Matter of

STEPHEN STUART,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF
1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Stephen Stuart ("Respondent" or "Stuart").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent, age 50, is a resident of Monrovia, Maryland. During the period June 29, 2011 through July 8, 2011, Respondent was a consultant to and shareholder of ComCam International, Inc. ("ComCam"). During that period, Respondent participated in an offering of ComCam stock, which is a penny stock. On October 24, 2013, Respondent pleaded guilty to one count of wire fraud and one count of mail fraud in *U.S. v. Stuart, et al.*, 11-CR-10416-DJC (D. Mass.). He was sentenced on February 12, 2014 to 16 months' probation, the first two months to be served in community confinement followed by home detention for a period of six months. He was also ordered to pay a fine of \$2,000, and, on February 14, 2014, was ordered to forfeit \$17,000.20.

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B. OTHER RELEVANT ENTITIES AND INDIVIDUALS

1. ComCam International, Inc., a Delaware company with its principal place of business in West Chester, Pennsylvania, designs, manufactures, and sells video surveillance systems. ComCam's common stock is currently quoted on the OTCQB under the symbol "CMCJ." Its common stock was registered with the Commission under Section 12(g) of the Exchange Act, but the company filed a notice of termination of its registration on March 19, 2012. On December 1, 2011, the Commission, pursuant to Section 12(k) of the Exchange Act, suspended trading in the securities of ComCam for a period of ten business days.

2. Donald Gilbreath, age 57, is a resident of West Chester, Pennsylvania. During the period June 29, 2011 through July 8, 2011, Gilbreath was the Chairman and Chief Executive Officer of ComCam. On June 13, 2012, Gilbreath was charged by criminal information with one count of conspiracy to commit securities fraud and pleaded guilty to that charge on June 29, 2012 in *U.S. v. Donald Gilbreath*, 12-CR-10186 (D. Mass.). Gilbreath was sentenced on December 19, 2013 to 18 months' probation and was ordered to pay a fine of \$2,000 and to forfeit \$17,000.

C. KICKBACK SCHEME

1. These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

2. On or about June 29, 2011, Stuart and Gilbreath met with the Fund Manager (the "June 29 Meeting"). The Fund Manager explained to Stuart and Gilbreath that he was prepared to invest Fund monies of up to \$5 million in ComCam stock, in exchange for a secret fifty percent kickback, thereby enabling the Fund Manager to keep half of the money he was supposedly investing on behalf of the Fund.

3. At the June 29 Meeting, the Fund Manager also explained the mechanics of the funding, informing Stuart and Gilbreath that, while the Fund Manager could commit to an investment of \$5 million of the Fund's money, with \$2.5 million being kicked back to the Fund Manager, the Fund Manager did not want to invest the entire amount at once. Therefore, the Fund Manager told Stuart and Gilbreath that he would invest the money over time in tranches, or installments, of increasing amounts.

4. At the June 29 Meeting, the Fund Manager further discussed with Stuart and Gilbreath the mechanics of how monies would be kicked back to the Fund Manager. The Fund Manager arranged with Stuart and Gilbreath that ComCam would execute a consulting agreement with a nominee consulting company that the Fund Manager purportedly controlled, but that the Fund Manager would not actually provide any consulting

services. Stuart and Gilbreath were told that invoices would be issued by the Fund Manager's nominee company to ComCam in order to disguise the kickbacks.

5. At the June 29 Meeting, Stuart and Gilbreath agreed to the funding/kickback arrangement.

6. On various dates between June 30, 2011 and July 8, 2011, Gilbreath sent the Fund Manager documents related to the kickback transaction, including a consulting agreement between ComCam and the Fund Manager's nominee consulting company, stock purchase agreements between ComCam and the Fund, and a phony invoice for non-existent consulting services purportedly rendered by the Fund Manager's nominee company.

7. On or about July 5, 2011, in accordance with wiring instructions provided by Gilbreath, \$34,000.20 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a ComCam corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to ComCam.

8. On or about July 6, 2011, Stuart and Gilbreath caused a total of \$17,000 to be sent by wire transfer from a ComCam corporate bank account outside of Massachusetts to a Citizens Bank account held in the name of the Fund Manager's nominee company in Massachusetts. This wire transfer represented Gilbreath's and Stuart's kickback to the Fund Manager from the first tranche of funding to ComCam.

9. On or about July 8, 2011, Stuart and Gilbreath caused a stock certificate representing the purchase by the Fund of 65,385 ComCam shares to be sent to the Fund Manager.

D. VIOLATIONS

1. As a result of the conduct described above, Stuart willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement, and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it

is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73172 / September 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16152

In the Matter of

ALBERT REDA,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF
1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Albert Reda ("Respondent" or "Reda").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent, age 67, a resident of Tustin, California, was Treasurer of 1st Global Financial, Inc. ("1st Global") and a member of its Board of Directors. During the period June 30, 2011 through July 6, 2011, Respondent participated in an offering of the stock of 1st Global, which is a penny stock. On November 4, 2013, Respondent was found guilty after a jury trial of one count of wire fraud and one count of mail fraud in *U.S. v. Reda, et al.*, 11-CR-10416-DJC (D. Mass.). On March 11, 2014, Respondent was sentenced to 26 months' imprisonment, to be followed by one year's supervised release. He was also ordered to pay a fine of \$6,000 and to forfeit \$16,000.

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B. OTHER RELEVANT ENTITIES AND INDIVIDUALS

1. 1st Global Financial, Inc. a Nevada corporation with its principal place of business in Las Vegas, Nevada is purportedly in the real estate investment or development business. Reda was a member of 1st Global's Board of Directors and its Treasurer. 1st Global appears to have operated under several other company names in the past, including Global Debit Cash Card, Inc.; Venture Media Communications; Venturenet.com, Inc.; and Mount McKinley Gold, Inc. Venturenet.com, Inc. registered its common stock under Exchange Act Section 12(g) in 2000, and then filed a Form 15 on October 15, 2001 terminate its Section 12(g) registration. On December 1, 2011, the Commission, pursuant to Exchange Act Section 12(k), suspended trading in the securities of 1st Global for a period of ten business days. 1st Global's stock had been quoted on OTC Pink under the symbol "FGBF," but its symbol changed to "PROD" on August 28, 2013. OTC Markets has discontinued quoting PROD stock and has applied the "caveat emptor" label to it.

2. Kelly Black-White ("Black-White"), age 53, a resident of Mesa, Arizona, was president of Premier Funding Services, Inc. and Premier Media Services, Inc., which purport to provide investor and public relations services to small cap market companies. Black-White pleaded guilty to one count of conspiracy to commit securities fraud and eleven counts of mail fraud on September 12, 2013 in *U.S. v. Kelly Black-White, et al.*, 11-CR-10416-DJC (D. Mass.). On February 5, 2014, Black-White was sentenced to 12 months and one day of imprisonment, to be followed by two years' supervised release, and was ordered to pay a \$7,500 fine. She was ordered to forfeit \$6,050 on February 10, 2014.

C. KICKBACK SCHEME

1. These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

2. At some time prior to June 29, 2011, Black-White arranged for Reda to meet with the Fund Manager to discuss funding for 1st Global.

3. On or about June 29, 2011, Reda met with the Fund Manager (the "June 29 Meeting"). The Fund Manager explained to Reda that he was prepared to invest Fund monies of up to \$5 million in 1st Global stock in exchange for a secret fifty percent kickback to him, enabling the Fund Manager to keep for himself half of the money he was supposedly investing on behalf of the Fund.

4. At the June 29 Meeting, the Fund Manager also explained the mechanics of the funding, informing Reda that while the Fund Manager could commit to an investment of \$5 million of the Fund's money, with \$2.5 million being kicked back to the Fund

Manager, the Fund Manager did not want to invest the entire amount at once. Therefore, the Fund Manager told Reda he would invest the money over time in tranches, or installments, of increasing amounts.

5. At the June 29 Meeting, the Fund Manager further discussed with Reda the mechanics of how monies would be kicked back to the Fund Manager. The Fund Manager arranged with Reda that 1st Global would execute a consulting agreement with a nominee consulting company that the Fund Manager purportedly controlled, but that the Fund Manager would not actually provide any consulting services. Reda was told that invoices would be issued by the Fund Manager's nominee company to 1st Global in order to disguise the kickbacks.

6. At the June 29 Meeting, Reda agreed to the funding/kickback arrangement.

7. On various dates between June 30, 2011 and July 5, 2011, Reda sent the Fund Manager documents related to the kickback transaction, including a consulting agreement between 1st Global and the Fund Manager's nominee consulting company and stock purchase agreements between 1st Global and the Fund.

8. On or about July 5, 2011, in accordance with wiring instructions provided by Reda, \$32,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a 1st Global corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to 1st Global.

9. On or about July 5, 2011, Reda caused a stock certificate representing the purchase by the Fund of 1st Global shares to be sent to the Fund Manager.

10. On or about July 6, 2011, Reda caused a total of \$16,000 to be sent by wire transfer from a 1st Global corporate bank account outside of Massachusetts to a Citizens bank account held in the name of the Fund Manager's nominee company in Massachusetts. This wire transfer represented Reda's kickback to the Fund Manager from the first tranche of funding to 1st Global.

D. VIOLATIONS

1. As a result of the conduct described above, Reda willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement, and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether, pursuant to Section 21C(f) of the Exchange Act, Respondent should be prohibited, conditionally or unconditionally, and permanently or for such period of time as shall be determined, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

*Commissioner Kinawa
Not participating
Commissioner Stein
Disapproved*

SECURITIES ACT OF 1933

Release No. 9649 \ September 22, 2014

Administrative Proceeding
File No. 3-16153

In the Matter of

Wells Fargo Advisors, LLC

Respondent.

**ORDER UNDER RULE 506(d) OF THE
SECURITIES ACT OF 1933 GRANTING
A WAIVER OF THE RULE
506(d)(1)(iv)(B) DISQUALIFICATION
PROVISION**

I.

Wells Fargo Advisors, LLC ("WFA") submitted a letter dated September 22, 2014, requesting that the Securities and Exchange Commission (the "Commission") grant a waiver of disqualification under Rule 506(d)(1)(iv)(B) of Regulation D under the Securities Act of 1933 (the "Securities Act").

II.

The Commission issued an order instituting administrative and cease-and-desist proceedings against WFA (the "Order") pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (the "Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the "Advisers Act") for WFA's failure to adequately establish, maintain, and enforce policies and procedures reasonably designed to prevent the misuse of material nonpublic information, specifically, the material nonpublic information obtained from its customers or its advisory clients.

III.

The exemptions under Rule 506 of Regulation D would be unavailable to WFA upon entry of the Commission's Order. Rule 506(d)(2) of Regulation D provides, however, that the disqualification "shall not apply . . . upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied."

IV.

Based upon the representations set forth in WFA's request, the Commission has determined that pursuant to Rule 506(d)(2)(ii) of Regulation D under the Securities Act a

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Accordingly, **IT IS ORDERED**, pursuant to Rule 506(d) of Regulation D under the Securities Act, that a waiver from the application of the disqualification provision of Rule 506(d)(1)(iv)(B) under the Securities Act resulting from the entry of the Order is hereby granted to WFA.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

*Commissioner Pinowar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 73175 / September 22, 2014

Investment Advisers Act of 1940
Release No. 3928 / September 22, 2014

Administrative Proceeding
File No. 3-16153

In the Matter of

WELLS FARGO ADVISORS, LLC,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND SECTIONS 203(e) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Wells Fargo Advisors, LLC ("Wells Fargo Advisors" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Wells Fargo Advisors admits the findings set forth in Sections III.B and C below, acknowledges that its conduct violated the federal securities laws, admits the Commission's jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. Summary

The Commission has recognized that the requirement that a broker, dealer, or investment adviser implement and maintain policies and procedures that take into consideration the specific circumstances of its business "is critical" to effectively preventing the misuse of material nonpublic information. See *In re Gabelli & Co., Inc.*, Exchange Act Rel. No. 35057 (Dec. 8, 1994). Section 15(g) of the Exchange Act requires broker-dealers to establish, maintain, and enforce policies and procedures, consistent with the nature of their business, to prevent the misuse of material nonpublic information. Strong enforcement of the policies and procedures is just as important as their design. In enacting the requirement as part of the 1988 Insider Trading and Securities Fraud Enforcement Act, the House Committee on Energy and Commerce stated: "The requirements of these new statutory provisions reflect the Committee's belief that broker-dealers must not only adopt and disseminate written policies and procedures to prevent the misuse of material, nonpublic information, but also must vigilantly review, update, and enforce them." See H. Rep. No. 100-910 at 21-22 (1988). Section 204A of the Advisers Act provides a similar requirement for registered investment advisers.

Broker-dealers come into possession of material nonpublic information in a variety of ways. Sometimes a firm will obtain information in the course of its investment banking business. See, e.g., *In the Matter of Morgan Stanley & Co. Inc.*, Exchange Act Rel. No. 54047 (June 27, 2006). Other circumstances involve a broker-dealer's research operations. See, e.g., *In the Matter of Goldman, Sachs & Co.*, Exchange Act Rel. No. 48436 (Sept. 4, 2003). An additional potential source of nonpublic information is a broker-dealer's customers. Because of the variety of ways in which material nonpublic information can be obtained and potentially misused, a broker-dealer's efforts to monitor trading conducted by the firm, its registered representatives, and its customers are a critical part of complying with Section 15(g). See H. Rep. No. 100-910 at 21-22 (1988) ("the Committee expects that institutions subject to the requirements of this provision will . . . vigorously monitor[] and review[] trading for the account of the firm or of individuals.").

This case involves the failure of Wells Fargo Advisors, a dually-registered broker-dealer and investment adviser, to adequately establish, maintain, and enforce policies and procedures reasonably designed to prevent the misuse of material nonpublic information, specifically, the material nonpublic information obtained from its customers and its advisory clients. Wells Fargo Advisors is the third largest retail brokerage firm in the country, introducing over one million brokerage customer accounts to its affiliated clearing firm, First Clearing, LLC. Wells Fargo Advisors' policies and procedures to prevent the misuse of material nonpublic information were not reasonably designed to address the risk that its associated persons could obtain material nonpublic information from its customers and advisory clients even though the firm expressly

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

identified that risk in multiple internal documents. This risk manifested itself in 2010 when one of Wells Fargo Advisors' registered representatives misappropriated information from one of his customers about Burger King Holdings, Inc. ("Burger King") securities, traded on the basis of that information, and tipped others including several of his Wells Fargo Advisors customers. Although a compliance group at Wells Fargo Advisors reviewed this trading after an acquisition announcement, information about the trading was not shared with senior managers or other compliance groups that were also aware of issues relating to the trading prior to the announcement.

One of the ways Wells Fargo Advisors sought to prevent the misuse of material nonpublic information received by registered representatives and advisory personnel from firm customers and advisory clients was by conducting "look back" reviews of trading in employee accounts and in customer and client accounts after market-moving announcements to detect whether trades may have been based on material nonpublic information. Other ways consisted of establishing and maintaining watch and restricted lists and conducting employee training on insider trading. Wells Fargo Advisors' policies and procedures with respect to conducting "look back" reviews were not reasonably designed because the Retail Control Group ("RCG"), a unit in the firm's compliance department, was designated as having primary, if not sole, responsibility for conducting the look back reviews even though other departments within the firm often had relevant information. No other units had a designated role or were mentioned in the firm's policies and procedures. The manner in which the policies and procedures were designed affected the Burger King review. Multiple units within the firm received indications suggesting that the registered representative was misusing material nonpublic information obtained from a customer to trade in Burger King securities. Because of a lack of assigned responsibility or coordination, each of these units failed to: (a) recognize the significance of those indications; (b) properly consider them; and (c) elevate those indications within their own group or communicate with other groups responsible for conducting surveillance. As a result, the way in which the policies and procedures were designed caused Wells Fargo Advisors not to recognize several red flags that its representative was engaging in insider trading in Burger King securities.

In addition to the inadequate design of the policies and procedures, Wells Fargo Advisors did not effectively maintain and enforce them. Wells Fargo Advisors' failure to implement the policies and procedures occurred in myriad ways. For example, although the policies and procedures required the RCG to contact the branch manager if an employee's trading raised red flags, sometimes the RCG contacted the branch manager and other times, such as the Burger King review, it did not. Additionally, although the policies and procedures required "daily review to identify situations when profit or avoidance of loss could most likely result from trading prior to the public release of information," for a ten month period the RCG failed to perform reviews in a timely manner of at least 40 instances of possible insider trading flagged for review.

During an investigation, Commission staff formally requested that Wells Fargo Advisors produce all documents relating to reviews of trading by the registered representative who traded in Burger King securities. When Wells Fargo Advisors produced documents in response to the staff's request, documents relating to the RCG review of the Burger King trading were not produced. Wells Fargo Advisors unreasonably delayed for six months producing documents

relating to the RCG review without any explanation why they were not produced previously. When the documents were produced, the firm failed to produce an accurate record of the review as it existed at the time of the staff's request. Instead, the firm produced a document that had been altered by an employee after the Commission staff issued its follow up request. When questions arose surrounding the altered document, Wells Fargo Advisors placed the employee on administrative leave and eventually terminated this employee.

As a result, Wells Fargo Advisors violated Sections 15(g), 17(a), and 17(b) of the Exchange Act and Rule 17a-4(j) thereunder and Sections 204(a) and 204A of the Advisers Act.

B. Respondent

1. **Wells Fargo Advisors** is a Delaware limited liability corporation with its principal place of business in St. Louis, Missouri. It is wholly owned by Wachovia Securities Financial Holdings, LLC, which is a wholly owned subsidiary of Wells Fargo & Company. Wells Fargo Advisors has been registered with the Commission as a broker-dealer since 1987 and as an investment adviser since 1990. Wells Fargo Advisors provides securities brokerage, investment advisory, and other financial services to 1.1 million customers and advisory clients, the majority of whom are individuals. Wells Fargo Advisors has 18,900 registered representatives and advisory personnel.

C. Facts

1. *Wells Fargo Advisors' Policies and Procedures to Prevent the Misuse of Material Nonpublic Information*

2. Wells Fargo Advisors' business focuses on retail brokerage services. Through providing services to its customers and advisory clients who may be company insiders or have access to material nonpublic information, the firm recognized that certain customers and advisory clients, and the Wells Fargo Advisors registered representatives and advisory personnel who handle their accounts, can come into possession of such information.

3. Wells Fargo Advisors expressly recognized the risk its employees could obtain material nonpublic information from the firm's customers and advisory clients. This risk was noted in the policies and procedures that RCG established for conducting look back reviews, the guide for branch office managers, and the firm's internal compliance publications called "Sidebars."

4. From at least early 2009 to the present, Wells Fargo Advisors' policies and procedures recognized that its "[a]ssociates from time to time may encounter non-public information concerning **any** company or security (also known as inside information)." (Emphasis added). It also recognized that material nonpublic information included information that was not only "[g]enerated internally by the Firm" or "[r]eceived by the Firm as a result of a business or investment banking relationship," but also included such information that was "[o]btained from a client."

5. Wells Fargo Advisors' policies and procedures prohibited its registered representatives and advisory personnel from trading or soliciting others to trade on material

nonpublic information and from disclosing the information to others except when necessary, and required representatives and advisory personnel to inform their supervisor when faced with such information. Wells Fargo Advisors' policies and procedures outlined a process for the RCG, a unit in the firm's compliance department, to conduct look back reviews to identify potential insider trading situations. RCG personnel considered these look back reviews to be part of the firm's regulatory obligations.

6. The firm's policies and procedures for conducting look back reviews did not address how other units that shared in the responsibility for preventing the misuse of material nonpublic information could review and coordinate with one another about potential insider trading. For example, the policies and procedures did not mention the anti-money laundering ("AML") unit as having responsibility for detecting possible insider trading, despite the fact that senior compliance managers believed the AML group had such responsibility. The policies and procedures also did not mention the central supervision unit ("CSU"), which was responsible for ensuring that branch office personnel were not committing violations of the federal securities laws pursuant to authority delegated to the CSU by branch office supervisors. Although the CSU conducted daily reviews of trade blotters, trade alerts and emails, the CSU limited its focus to potential suitability and sales practice issues. The consequence of these weaknesses in the policies and procedures was that the different groups operated in silos and did not effectively coordinate their work and share information regarding possible insider trading.

2. *Retail Control Group*

7. In early 2009, a RCG compliance officer drafted Wells Fargo Advisors' policies and procedures governing how RCG was to conduct look back reviews. RCG management approved them and the firm's chief compliance officer for retail compliance certified them. Wells Fargo Advisors intended the policies and procedures to provide a "road map" for the reviews and to ensure they were performed consistently.

8. After Wells Fargo Advisors adopted the policies and procedures, it did not adequately evaluate them to determine their effectiveness. In addition, since their adoption, the only significant update Wells Fargo Advisors made to the policies and procedures was to include a requirement in 2010 for RCG to obtain options trading data. Moreover, it took RCG a year from when it identified an issue with obtaining options trading data before it updated the policies and procedures.

9. Between 2009 through at least April 2013, RCG conducted its reviews in an inconsistent manner and often without regard to RCG's policies and procedures for such reviews. RCG closed the vast majority of reviews during this time period with "no findings." During this period, a single RCG compliance officer was responsible for conducting the look back reviews of trading in over one million customer and client accounts.

a. *Wells Fargo Advisors' Inadequate Policies and Procedures*

10. Wells Fargo Advisors' policies and procedures for conducting look back reviews stated:

Description[:] Identify select situations and review trading where there is the potential to profit or avoid losses by trading on insider information. For purposes of this review, insider information[] is defined as material, non-public information that would be important to an investor in making a decision to buy, sell or hold a security. Information would be material if its disclosure were reasonably certain to have a substantial effect on the market price of the security.

Frequency: Daily review to identify situations when profit or avoidance of loss could most likely result from trading prior to the public release of confidential information. Review of trading activity would occur when those situations have been identified.

11. The RCG manually identified market-moving events from news stories as part of the daily identification of situations meriting review. In identifying such situations, the operating procedures listed seven examples of news announcements that traditionally cause price movements: "Mergers and Acquisitions;" "FDA approval of a new drug;" "Discovery of new energy resources (such as oil);" "Financial problems – bankruptcy, inability to make bond or dividend payments;" "Fraud;" "Earnings announcements higher or lower than expected;" and "Changes in key personnel." The procedures then continued by stating "although [the reviewer] also consider[s] other parameters (jump in volume, intense media coverage, intense public interest, Firm relationships) when identifying situations for review, a security with a price movement of 25% and/or \$10 should always receive considered [sic]." The procedures did not provide additional guidance on this topic.

12. The policies and procedures directed a RCG compliance officer to "print the news stories for the file" once a situation for review was identified. There were no other requirements to document work performed on trading reviews. Once a reviewer identified a situation, the policies and procedures required a RCG compliance officer to obtain a report showing the largest stock positions firm-wide and to obtain a report showing stock transactions 10 days before the market-moving event. The policies and procedures required "further review" by the RCG if the compliance officer found: (a) profits or losses avoided greater than \$5,000, or (b) trading by an "insider," or (c) trades in any accounts in the same branch as an insider.

13. The only direction regarding the "further review" consisted of a requirement that RCG "perform a further review" of the account owner and trading history to "identify any indications" of insider trading. The policies and procedures then set out examples, without any discussion, of the following so-called "red flags" to look for: (a) relationship between the account owner and the company or industry; (b) account owner's trading history and/or "out of character trading"; (c) physical location of the account owner and the company; and (d) relationship between Wells Fargo Advisors and the issuer.

14. If any red flags existed, the policies and procedures required RCG to contact the branch to interview the branch manager and the registered representative and advisory personnel to inquire about the red flags. The procedures stated that if the RCG compliance officer's interviews with the branch and the registered representative or advisory personnel provided a "sufficient explanation for the basis of the trade, the review may be documented . . . and closed." If the explanation was "insufficient," the compliance officer was obligated to escalate the review to the RCG manager. The procedures did not provide additional guidance on this topic.

15. The compliance officer responsible for the RCG review created a spreadsheet to note the reasons for closing look back reviews, with many notations consisting of a statement of "no findings." In certain instances the log contained additional information about the reasons for closing the reviews and in other instances it did not. The manner in which the compliance officer chose to document trading reviews made it nearly impossible for managers of the firm to determine to what extent the compliance officer followed Wells Fargo Advisors' policies and procedures when conducting the reviews, if at all.

b. Wells Fargo Advisors Failed to Maintain Adequately Its Policies and Procedures

16. Wells Fargo Advisors' policies and procedures did not address how to consider options trading as part of the look back reviews for at least one year. In April 2009, RCG personnel realized they could not obtain options trading data from the same source that generated the equities trading reports that RCG analyzed for look back reviews. Even though the RCG reviewer raised this issue with her manager, Wells Fargo Advisors did not update its policies and procedures to require reviews of options trading until July 2010. By that time, the RCG reviewer had undertaken at least 65 reviews, only sometimes obtaining options trading data.

c. Wells Fargo Advisors Failed to Enforce Adequately Its Policies and Procedures

17. Between 2009 through at least April 2013, Wells Fargo Advisors did not enforce adequately its policies and procedures in the following ways:

- a. The procedures required: "Daily review to identify situations when profit or avoidance of loss could most likely result from trading prior to the public release of confidential information. Review of trading activity would occur when those situations have been identified." The procedures for daily reviews were not adequately designed to ensure enforcement, and as of April 2013, at least 40 reviews that had been identified had not been performed, some for as long as 10 months.
- b. The procedures required the reviewer to print news stories for the file, but this requirement was not consistently met. RCG management viewed the printing of news stories for the file to be important, but the procedures were not adequately designed to ensure enforcement.
- c. The procedures required the reviewer to contact the branch if any red flags were found, but this requirement was not enforced. In some instances, the RCG reviewer found "red flags" as set forth in the procedures and decided they were worthy of follow up with registered representatives or advisory personnel, branch managers, or both, as the procedures required. In other instances, she saw "red flags" as set forth in the procedures and dismissed them as being unimportant because she believed the existence of red flags under the policies and procedures was not critical as it would depend on the situation and what the red flag was. The RCG manager shared the

mindset that follow up on red flags “depends on the situation.” As a result, although the procedures required contact with the branch when a red flag existed, RCG personnel did not enforce it.

d. RCG’s Review of Trading in Burger King Securities

i. The Underlying Securities Law Violations

18. Waldyr Da Silva Prado Neto (“Prado”) was a registered representative and associated person of Wells Fargo Advisors in a branch office in Miami. In September 2012, the Commission charged Prado with committing insider trading in the securities of Burger King in advance of the September 2, 2010 announcement that 3G Capital Partners Ltd. (“3G Capital”), a private equity firm, would acquire Burger King and take it private (the “Announcement”).² The Commission alleged that Prado, who held Series 7 and 65 registrations and while an employee of Wells Fargo Advisors, misappropriated information about the acquisition from one of his brokerage customers who invested in the private equity fund 3G Capital used to acquire Burger King. The Commission alleged that Prado traded Burger King securities through his personal Wells Fargo Advisors brokerage account and that Prado tipped several of his other brokerage customers, including at least three tippees who traded Burger King securities through their Wells Fargo Advisors accounts. The Commission alleged that Prado and his tippees reaped profits of over \$2 million in total from their Burger King trades, which included trading through Wells Fargo Advisors and another firm.

ii. RCG’s Burger King Review

19. Beginning on September 2, 2010, the RCG compliance officer conducted a look back review of trading in Burger King securities at Wells Fargo Advisors before the Announcement, including trading by Prado and three of his customers. She determined that:

- a. Prado and his customers represented the top four positions in Burger King securities firm-wide;
- b. Prado and his customers bought Burger King securities within 10 days before the Announcement, including on the same days;
- c. The profits by Prado and his customers were at least \$5,000;
- d. Both Prado and Burger King were located in Miami; and

² *SEC v. Waldyr Da Silva Prado Neto*, Civil Action No. 12-CIV-7094, Litigation Release No. 22486 (Sept. 21, 2012). Prado was permanently enjoined from committing future violations on January 7, 2014. Litigation Release No. 22905 (Jan. 14, 2014). Based on the court’s entry of the permanent injunction, administrative proceedings were instituted against Prado. Exchange Act Release No. 71379 (Jan. 23, 2014). The Initial Decision barring Prado from the securities industry was issued on May 20, 2014. Initial Decision Release No. 600 (May 20, 2014). The Initial Decision became final on July 1, 2014. Exchange Act Release No. 72513 (July 1, 2014). Prado was criminally charged with conspiracy to commit securities fraud, securities fraud, and fraud in connection with a tender offer in *USA v. Waldyr Prado, et al.*, SDNY Case No. 13MAG2201 (Sept. 13, 2013).

- e. Prado, his customers, and the company acquiring Burger King were all Brazilian.

20. The compliance officer determined at the time of her review that each of these factors did not constitute "red flags" set forth in the policies and procedures that required follow up with Prado and his branch manager. She did not contact the branch. Instead of taking any further steps, such as escalating the matter to her manager, the compliance officer determined there was no suspicious trading by Prado and his customers, and she closed the review with "no findings."

21. The policies and procedures in effect at the time required news articles to be printed for the file. The compliance officer's file did not contain printouts of any such articles.

22. Because the compliance officer closed the Burger King trading review with no findings, her supervisors within the compliance department were unaware that she conducted a review of trading at Wells Fargo Advisors in Burger King securities including trading by Prado and his customers. The supervisors did not become aware of that fact until September 2012, after the Commission charged Prado with insider trading. Immediately after the Commission charged Prado with insider trading in September 2012 and the existence of the closed Burger King review came to light, the RCG manager notified her own manager that she would begin reviewing all of the compliance officer's reviews.

e. No Communication by the RCG About Suspected Insider Trading

23. At the time the compliance officer conducted the Burger King trading review, unbeknownst to her, employees in the CSU had reviewed concentration alerts in Burger King securities generated for Prado's account and the account of one of his customers. Wells Fargo Advisors' policies and procedures did not address how units with relevant information at the firm could coordinate. The effect of the failure of CSU and RCG to coordinate their efforts caused Wells Fargo Advisors not to recognize red flags that its representative was engaging in insider trading in Burger King securities.

3. The AML Group

24. The AML group considered suspected insider trading to be an "unusual activity" under applicable AML statutes and regulations and, as a consequence, a senior manager at the firm believed all employees should have had "an awareness of insider trading as an issue." An internal form used by AML personnel to track their reviews listed "insider trading" among several potential categories to check that included other concerns such as "forgery," "wire fraud," and "fictitious trading." The AML group had no policies and procedures addressing how it could coordinate with other units within the firm including the RCG.

25. In late September 2010, the AML group examined a \$50 million wire transfer request by Prado's customer to make his private equity investment in the Burger King acquisition. During this AML review, Prado provided to the AML reviewer copies of the offering documents dated before the public announcement concerning his customer's investment in the private equity fund, which was later used to acquire Burger King. The AML group, which already knew that Burger King was the subject of an acquisition by 3G Capital announced

earlier in September 2010, learned from Prado that his customer was an investor in the Burger King acquisition through 3G Capital. Despite these facts, AML personnel did not question how Prado obtained the offering documents or consider whether Prado or his customers possessed or misused material nonpublic information.

4. *The Central Supervision Unit*

26. As a matter of practice the CSU reviewed trade data that showed whether a customer account was concentrated in a particular security and, in that instance, the firm's internal systems generated a security concentration alert, which could have been an indicator of possible insider trading. The CSU did not have policies and procedures to coordinate with the units that investigate suspected insider trading such as the RCG and the AML group.

27. On August 27, 2010, five business days before the Announcement, a CSU regional branch supervisor for Prado's branch reviewed an alert generated in the account of one of Prado's customers which showed that 45% of the account was concentrated in Burger King securities. This supervisor was not aware at the time that this customer, two other customers of Prado, and Prado himself held the four largest positions in Burger King securities firm-wide at that time.

28. On September 2, 2010, the day of the Announcement, a different CSU regional branch supervisor for Prado's branch, reviewed an alert generated in Prado's account which showed that 47% of his account was concentrated in Burger King securities. At that time, this supervisor was not aware that Prado held the largest position and three of his customers held the next three largest positions in Burger King securities within Wells Fargo Advisors firm wide; that the RCG was reviewing trading in Burger King securities at the same time; or that another CSU supervisor reviewed a concentration alert in Burger King securities for one of Prado's customers a week earlier.

29. Under guidance promulgated by Wells Fargo Advisors for CSU operations, the CSU employees exercised their discretion to close the alerts with no action and that decision was not reviewed by a supervisor.

5. *Wells Fargo Advisors Unreasonably Delayed the Production of Certain Documents and Produced an Altered Document to the Commission Staff That Was Altered By an Employee*

30. In July 2012, the Commission staff requested, among other things, that Wells Fargo Advisors produce all documents related to compliance reviews relating to Prado. Wells Fargo Advisors produced documents in response to this request, but the production did not contain any documents relating to the RCG's September 2010 review of the trading in Burger King, even though that review directly related to trading in Burger King by Prado and his customers. In January 2013, after a follow up request from the Commission staff, Wells Fargo Advisors, for the first time, produced documents relating to the RCG's review of Prado's Burger King trades including the reviewer's files and an excerpt of the log of the look back reviews she performed in response to this request.

31. The Commission staff took the testimony of a compliance officer in March 2013. After the compliance officer's testimony, Wells Fargo Advisors produced evidence indicating that a portion of the documents produced to the Commission staff in January 2013 had been altered by the compliance officer in December 2012 prior to production. The following sentences were added to the trading review log: "Rumors of acquisition by a private equity group had been circulating for several weeks prior to the announcement. The stock price was up 15% on 9/1/12 [sic], the day prior to the announcement."

D. Violations

32. As a result of the conduct described above, Wells Fargo Advisors willfully violated Section 15(g) of the Exchange Act, which requires every registered broker or dealer to "establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of ... [the Exchange Act] or the rules or regulations thereunder, of material nonpublic information by such broker or dealer or any person associated with such broker or dealer."

33. As a result of the conduct described above, Wells Fargo Advisors willfully violated Section 204A of the Advisers Act, which requires every registered investment adviser to "establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of ... [the Advisers Act or the Exchange Act] or the rules or regulations thereunder, of material nonpublic information by such investment adviser or any person associated with such investment adviser."

34. As a result of the conduct described above, Wells Fargo Advisors willfully violated Section 17(b) of the Exchange Act, which provides that all records of a broker-dealer are subject to examination by the Commission. Wells Fargo Advisors also willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(j) thereunder, which require broker-dealers to "furnish promptly to a representative of the Commission legible, true, complete and current copies of those records...subject to examination under Section 17(b) of the [Exchange] Act." Wells Fargo Advisors' late production of documents, and production of an altered document, violated these provisions.

35. As a result of the conduct described above, Wells Fargo Advisors willfully violated Section 204(a) of the Advisers Act, which provides that all records of an investment adviser are subject to examination by the Commission. Wells Fargo Advisors' late production of documents, and production of an altered document, rather than the document as it existed when requested, constituted a violation of this provision.

E. Undertakings

36. Independent Compliance Consultant. Wells Fargo Advisors undertakes to retain an Independent Compliance Consultant ("Independent Consultant") as follows:

- a. Wells Fargo Advisors shall retain, within 30 days of the date of this Order, at its expense, an Independent Consultant not unacceptable to the Commission's staff, to conduct a review of: (1) Wells Fargo Advisors'

supervisory, compliance, and other policies and procedures under Section 15(g) of the Exchange Act and Section 204A of the Advisers Act; and (2) the making, keeping and preserving required books and records by Wells Fargo Advisors' RCG. Wells Fargo Advisors shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to its files, books, records, and personnel as reasonably requested for the review;

- b. Wells Fargo Advisors shall provide to the Commission staff, within thirty (30) days of retaining the Independent Consultant, a copy of an engagement letter detailing the Independent Consultant's responsibilities, which shall include the reviews to be made by the Independent Consultant as described in this Order.
- c. Wells Fargo Advisors shall require that, within forty-five (45) days from the end of the Independent Consultant's Review, which in no event will be more than 150 days after the date of the Independent Consultant's retention, the Independent Consultant shall submit a written and dated report of its findings to Wells Fargo Advisors and to the Commission staff (the "Report"). Wells Fargo Advisors shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to Wells Fargo Advisors' policies and procedures and a procedure for implementing the recommended changes in or improvements to Wells Fargo Advisors' policies and procedures.
- d. Wells Fargo Advisors shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, Wells Fargo Advisors shall in writing advise the Independent Consultant and the Commission staff of any recommendations that Wells Fargo Advisors considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Wells Fargo Advisors considers unduly burdensome, impractical or inappropriate, Wells Fargo Advisors need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.
- e. As to any recommendation with respect to Wells Fargo Advisors' policies and procedures on which Wells Fargo Advisors and the Independent Consultant do not agree, Wells Fargo Advisors and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Wells Fargo Advisors and the Independent Consultant, Wells Fargo Advisors shall require that the Independent Consultant inform Wells Fargo Advisors and

the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Wells Fargo Advisors considers to be unduly burdensome, impractical, or inappropriate. Wells Fargo Advisors shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between Wells Fargo Advisors and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, Wells Fargo Advisors shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

- f. Within ninety (90) days of Wells Fargo Advisors' adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Wells Fargo Advisors shall certify in writing to the Independent Consultant and the Commission staff that Wells Fargo Advisors has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Diana Tani, Assistant Regional Director, Market Abuse Unit, Los Angeles Regional Office, Securities and Exchange Commission, 444 S. Flower St., Suite 900, Los Angeles, California, 90071, or such other address as the Commission staff may provide.
- g. Wells Fargo Advisors shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.
- h. To ensure the independence of the Independent Consultant, Wells Fargo Advisors: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
- i. Wells Fargo Advisors shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Wells Fargo Advisors, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to

assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Wells Fargo Advisors, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

37. Recordkeeping. Wells Fargo Advisors shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of Wells Fargo Advisors' compliance with the undertakings set forth in this Order.

38. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

39. Certifications of Compliance by Respondents. Wells Fargo Advisors shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Wells Fargo Advisors agrees to provide such evidence. The certification and supporting material shall be submitted to Diana Tani, Assistant Regional Director, Market Abuse Unit, Los Angeles Regional Office, Securities and Exchange Commission, 444 S. Flower St., Suite 900, Los Angeles, California, 90071, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent Wells Fargo Advisors' Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Wells Fargo Advisors cease and desist from committing or causing any violations and any future violations of Sections 15(g), 17(a), and 17(b) of the Exchange Act and Rule 17a-4(j) promulgated thereunder and Sections 204A and 204(a) of the Advisers Act.

B. Respondent Wells Fargo Advisors is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$5,000,000 to the United States Treasury. If timely payment is not

made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169 17

Payments by check or money order must be accompanied by a cover letter identifying Wells Fargo Advisors as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Daniel Hawke, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 36-39, above.

By the Commission.

Brent J. Fields
Secretary


By **Jill M. Peterson**
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3930 / September 23, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16155

In the Matter of

NICHOLAS ROWE,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Nicholas Rowe ("Rowe" or "Respondent").

II.

A. RESPONDENT

1. Nicholas Rowe, age 55, is a resident of Hollis, New Hampshire. Between 2001 and 2012, Rowe was the owner of Focus Capital Wealth Management, Inc. ("Focus Capital"). Focus Capital was registered as an investment adviser with the Commission from 2005 to 2012, at which point it registered with New Hampshire and withdrew its registration with the Commission. On March 8, 2013, New Hampshire revoked Focus Capital's investment adviser registration. Rowe is identified on Focus Capital's Forms ADV during the period 2007-2012 as its president and chief executive officer.

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B. ENTRY OF NEW HAMPSHIRE ORDER

2. On March 8, 2013, Rowe consented to an order issued on March 12, 2013 ("Consent Order") by the New Hampshire Bureau of Securities Regulation in In the Matter of Nicholas Rowe, et al., COM2011-0037, barring Rowe and Focus Capital from securities licensure in the state of New Hampshire. The Consent Order of the Bureau of Securities Regulation constitutes a final order of a state securities commission.

3. The order alleged that Rowe and Focus Capital engaged in an investment strategy involving leveraged and inverse exchange traded funds (ETFs) that was unsuitable for their clients and made misrepresentations regarding the fees to be charged and thus was in violation of New Hampshire law prohibiting investment advisers from engaging in unethical business practices. Rowe and Focus Capital were also ordered to cease and desist from violating New Hampshire RSA 421-B:3 and RSA 421-B:4 and were ordered to pay \$20,000 (a \$5,000 fine plus the costs of the investigation) and restitution.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

By: *Jill M. Peterson*
Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73183 / September 23, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3929 / September 23, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16154

In the Matter of

Barclays Capital Inc.,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 203(e) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Barclays Capital Inc. ("BCI" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

This matter concerns violations of the Advisers Act by BCI, a dually-registered investment adviser and broker-dealer, arising from systemic failures at BCI after it acquired Lehman Brothers Inc.'s ("Lehman's") advisory business in September 2008. When BCI attempted to integrate this advisory business into its existing business, it did not take the necessary steps to assure that its infrastructure was enhanced to support the newly acquired advisory business, it failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, and it failed to make and keep certain required books and records. These deficiencies contributed to other violations. Specifically, BCI executed more than 1,500 principal transactions with its advisory client accounts without making the required written disclosures or obtaining client consent. Additionally, for 2,785 advisory client accounts, BCI charged commissions and fees, and earned revenues, that were inconsistent with its disclosure to clients. BCI also violated certain of the custody provisions of the Advisers Act, and it underreported its assets under management ("AUM") on its March 31, 2011 amendment to its Form ADV by \$754 million. BCI's violations resulted in overcharges and client losses approximating \$472,000, and additional revenue to BCI of more than \$3.1 million.

Respondent

1. BCI, a dually-registered investment adviser and broker-dealer, has its principal place of business in New York, New York. It has been registered with the Commission as an investment adviser since September 2008 and as a broker-dealer since June 1989. BCI is owned by Barclays Group U.S. Inc., a wholly-owned subsidiary of Barclays Bank PLC, a bank organized in England and Wales. On September 20, 2008, BCI acquired certain of Lehman's North American investment banking and capital markets businesses, including Lehman's former private investment management business. This acquisition resulted in the creation of BCI's wealth management division, now referred to as Wealth and Investment Management, Americas (formerly Barclays Wealth Americas) ("BWIM"), which provides high net worth and corporate clients with brokerage and investment management services. BCI also conducts a securities and commodities business primarily for institutional clients. BCI provides advisory services for a fee generally based on a percentage of AUM through several advisory programs, including managed account wrap fee programs. In its Form ADV dated March 30, 2012, BCI reported a total of approximately \$12 billion in AUM, for 3,644 discretionary accounts and 5,292 non-discretionary accounts. In its Form ADV dated March 31, 2014, BCI reported a total of approximately \$13 billion in AUM, for 3,315 discretionary accounts and 1,094 non-discretionary accounts.

Facts

2. Prior to September 2008, BCI's operations in the United States comprised primarily broker-dealer functions. In September 2008, BCI acquired certain of Lehman's assets, including the former private investment management business of Lehman. Upon acquiring Lehman's advisory business, BWIM¹ attempted to integrate this business into BCI's programs and platforms. Despite the rapid growth of the advisory business following the Lehman acquisition, BWIM failed to build a compliance infrastructure that was reasonably designed to prevent violations of the Advisers Act and its rules. This failure contributed to the deficiencies and violations described below, which were identified during two coordinated and concurrent examinations of BCI's advisory and broker-dealer businesses by the Commission's examination staff ("exam staff"), conducted from July 2011 through March 2012.

BCI Engaged in Principal Transactions Without Making Required Written Disclosures and Obtaining Client Consent

3. In violation of Section 206(3) of the Advisers Act, BCI, acting as a principal for its own account, purchased and sold securities for certain of its advisory client accounts without disclosing to such clients in writing before the completion of the transactions the capacity in which BCI was acting and without obtaining those clients' consent to the transactions. From January 2009 through December 2011, BCI effected 448 transactions in fixed income securities and 1097 transactions in initial public and secondary equity offerings (collectively, the "Principal Trades") for its advisory clients while BCI acted as a principal for its own account. For certain of these transactions, BCI provided no written disclosure to the clients. When BCI did send consent notices, the notices did not provide advisory clients with sufficient information (e.g., the compensation paid to BCI or what BCI had paid for the security) to enable them to make an informed decision to consent to the transactions before their completion.²

¹ For purposes of this Order, "BWIM" will be used to refer specifically to BCI's wealth management investment advisory business.

² As a general matter, an investment adviser must disclose to an advisory client any adverse interest that the adviser might have, "together with any other information in his possession which the client should possess" to facilitate an informed decision by the client whether to consent to a principal transaction. See Advisers Act Rel. No. 40, 1945 SEC LEXIS 139, *3 (Jan. 5, 1945); see also *Interpretation of Section 206(3) of the Investment Advisers Act of 1940*, Advisers Act Rel. No. 1732 at n.9, 1998 SEC LEXIS 1483, *8 (July 17, 1998) (to ensure informed consent, Section 206(3) should be read together with other subsections of 206 to require disclosure of facts necessary to alert the client to the adviser's potential conflicts of interest in a principal or agency transaction). That information must include the capacity in which the adviser is acting, 15 U.S.C. §80b-6, and, depending upon its materiality to a particular transaction, also may include: (1) the cost of the security to the adviser if sold to a client; (2) the price at which securities could be resold if purchased from a client; and (3) the best price at which the transaction could be effected, if more advantageous to the client than the actual transaction price ("best price"), *Interpretation of Section 206(3) of the Investment Advisers Act of 1940*, Advisers Act Rel. No. 1732 at n.9, 1998 SEC LEXIS 1483, *8 (July 17, 1998).

4. For the Principal Trades, BCI received a total of \$2,853,119.62 in revenue.³ It has reimbursed or credited this amount, in addition to \$383,307.89 in interest, to affected clients.

BCI Charged Commissions and Fees, and Earned Revenues, That Were Inconsistent With Its Disclosure to Certain of Its Advisory Clients

5. From September 2008 through December 2011, in violation of Section 206(2) of the Advisers Act, BWIM charged commissions and fees, and earned revenues, that were inconsistent with what was disclosed to certain of its advisory clients. The commissions, fees and revenues occurred as a result of BWIM's errors in processing new clients, in placing trade orders, and in failing to maintain adequate procedures relating to its advisory billing processes.

6. These commissions, fees and revenues occurred in several ways. First, certain clients were enrolled in particular wrap fee investment advisory programs offered to advisory clients in which the client agreed to pay a specified fee (which was determined as a percentage of the client's assets held in the wrap fee account) for advisory and execution services. However, in 31 such accounts, BWIM also charged undisclosed commissions on equity trades in addition to the wrap fees.

7. Second, BWIM charged certain advisory clients who were referred to one of its advisory programs by a certain third party service provider, or solicitor, higher fees than other clients that were not referred but who participated in the same program. BWIM, in turn, paid solicitation fees to the solicitor. However, BWIM failed to ensure that the referred clients received adequate disclosure that they were paying higher fees than those clients who were not referred but participated in the same program.⁴ The higher fees affected approximately 54 accounts.

³ This number is comprised of \$275,542.77 for the fixed income trades and \$2,577,576.85 for the initial public and secondary offerings.

⁴ Rule 206(4)-3(a)(1)(iii) under the Advisers Act requires that cash payments for client solicitations be paid pursuant to a written agreement to which the adviser is a party. With certain exceptions not relevant here, the agreement must: (1) describe the solicitation activities and the compensation received; (2) contain an undertaking by the solicitor to perform his/her duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of and rules under the Advisers Act; and (3) require that the solicitor, at the time of the solicitation, provide the client with a current copy of the investment adviser's written disclosure statement ("brochure") and the solicitor's written disclosure document. Rule 206(4)-3(a)(2)(iii)(A). The Adviser must receive from the client, prior to or at the time of entering into an investment advisory contract, a signed and dated acknowledgement of receipt of the brochure and the solicitor's written disclosure document. Rule 206(4)-3(a)(2)(iii)(B). Rule 204-2(a)(15) requires the adviser to make and keep written acknowledgments of receipt obtained from clients pursuant to Rule 206(4)-3(a)(2)(iii)(B) and copies of the documents delivered to clients by solicitors pursuant to Rule 206(4)-3. BWIM lacked procedures for complying with Rule 206(4)-3 and could not determine if, at the time of a solicitation, the solicitor provided advisory clients with documentation required by the rule.

8. Third, BWIM received undisclosed revenues from certain advisory clients whose retirement account cash balances were held in deposit accounts and invested in money market funds for which those clients were ineligible. BWIM made these investments through automated sweeps or directed investments, and those investments resulted in undisclosed revenues to BWIM that were in addition to the advisory fees the clients were paying. BWIM earned revenue in excess of advisory fees from 2,256 advisory retirement accounts as a result of its placing these clients in investments for which they were ineligible.

9. Fourth, BWIM charged undisclosed processing fees to 397 advisory client accounts in connection with certain fixed income transactions.

10. Finally, BWIM charged 47 advisory clients in excess of the fees previously disclosed that clients would be charged for investment advisory services.

11. For these commissions, fees and revenues, BCI reimbursed or credited a total of approximately \$568,392, inclusive of interest, to affected clients.

BCI Violated the Custody Rule

12. According to Rule 206(4)-2 under the Advisers Act (the "Custody Rule"), for client funds and securities over which BCI had custody, it was required to ensure that those funds and securities were subject to verification by an annual surprise examination by an independent public accountant.⁵ See Rule 206(4)-2(a)(4). Because it did not have an adequate procedure for identifying and extracting certain client information from its systems, BWIM did not identify more than 800 of its advisory accounts to the independent public accountant that performed BCI's 2010 annual surprise examination.

13. BCI was contractually permitted under certain circumstances to withdraw client funds maintained with a third-party qualified custodian upon its instruction to the custodian with respect to limited partnerships and limited liability companies in its Barclays Wealth Advisor Series platform. As such, for purposes of the Custody Rule, BCI had custody of the assets of those entities. See Rule 206(4)-2(d)(2)(ii). The Custody Rule requires BCI to have a reasonable basis, after due inquiry, for believing that the qualified custodian sent account statements, at least quarterly, to each of BCI's clients for which the qualified custodian maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period. See Rule 206(4)-2(a)(3). The statements must be sent to each beneficial owner. See Rule 206(4)-2(a)(5). BCI did not have a reasonable basis to believe, after due inquiry, that such account statements were sent, and it did not qualify for an exception (the "audit exception") from this requirement of the Custody Rule because it did not distribute the 2010 audited financial statements for the limited partnerships and limited

⁵ The Custody Rule was amended in December 2009, effective March 12, 2010. The conduct here post-dated March 12, 2010.

liability companies in its Barclays Wealth Advisor Series platform to each beneficial owner within the time period required by the Custody Rule.⁶ See Rule 206(4)-2(b)(4).

14. Additionally, for client funds and securities over which BCI had custody because a related person to BCI maintained those funds or securities, BCI was required to obtain from its related person a written internal control report prepared by an independent public accountant. See Rule 206(4)-2(a)(6)(ii). Specifically, certain of BCI's advisory client accounts were maintained at Barclays Bank Delaware, Barclays Wealth Trustees (U.S.), N.A., and Barclays Private Bank and Trust Ltd., all related persons to BCI. BCI failed to obtain internal control reports from those related persons from August 1, 2010 to October 31, 2011.⁷

BCI Failed to Adopt and Implement Written Policies and Procedures Reasonably Designed to Prevent Violations of the Investment Advisers Act and the Rules Thereunder for Its Advisory Business

15. BCI failed to comply with the requirement in Rule 206(4)-7 under the Advisers Act that every Commission-registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations, by the adviser and its supervised persons, of the Advisers Act and the rules thereunder. Although BWIM had written compliance policies and procedures, those policies and procedures suffered from deficiencies and weaknesses, and were not reasonably designed to address certain aspects of its businesses, such as those risks that arose as a result of BCI's dual role as investment adviser and broker-dealer. BWIM's deficient policies and procedures included those relating to principal trading, regulatory filings, marketing and solicitation arrangements, fee billing, portfolio management, custody, and books and records.

BCI Failed to Make and Keep Certain Books and Records

16. BCI failed to make and keep certain required books and records. These deficiencies related to its use of technological platforms that did not reliably transmit data between BCI's systems. BCI's numerous issues with accurately capturing information prevented it from identifying its advisory clients and the capacity in which it executed securities transactions in order to adequately perform compliance, surveillance and review services, including reviews of any exception reports and alerts. These deficiencies also resulted in significant problems in producing complete and accurate information in response to the exam staff's requests. For example, it could

⁶ Pursuant to the Custody Rule, BCI was required to provide audited financial statements for the fiscal year ended December 31, 2010 by April 30, 2011. BCI provided these audited financial statements to beneficial owners subsequent to July 2011.

⁷ BCI's sole basis for having custody of these clients' assets was the fact that a related person maintained them. These related persons were not "operationally independent" from BCI because certain BCI personnel held positions with the related persons; hence, the related persons were also subject to BCI's surprise independent verification obligations. See Advisers Act Rules 206(4)-2(b)(6) and 206(4)-2(d)(5). BCI since has obtained internal control reports for Barclays Bank Delaware and Barclays Wealth Trustees (U.S.), N.A. Only one account was maintained at Barclays Private Bank and Trust Ltd. The account was terminated on March 30, 2012.

not produce a list of all accounts in which it was vested with discretionary authority and was unable to provide the exam staff with documentation regarding the disclosure to clients of solicitation fees paid to solicitors for referring those clients to BWIM. As a result of the foregoing, BCI failed to maintain accurate and complete records as required by Advisers Act Section 204(a) and Rules 204-2(a)(8) and 204-2(a)(15) thereunder.

BCI's Form ADV Disclosures Were Materially Inaccurate

17. BCI violated Section 207 of the Advisers Act when it filed its Form ADV Part 1A, dated March 31, 2011, containing material inaccuracies with respect to its AUM. Specifically, the March 31, 2011 filing underreported AUM by approximately \$754 million. BCI also miscalculated the number of accounts in various advisory programs, resulting in an overstatement of the number of accounts in certain programs, and the understatement of the number of accounts in others. BCI also omitted certain advisory programs from the March 31, 2011 filing. As a result, BCI also underreported the value of assets under custody and the total number of custody accounts in Item 9.A.

Violations

18. As a result of the conduct described above, BCI willfully⁸ violated Section 204(a) of the Advisers Act and Rules 204-2(a)(8) and (a)(15) thereunder, which require that investment advisers registered with the Commission maintain and preserve certain books and records. Rule 204-2(a)(8) requires registered investment advisers to make and keep "[a] list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client." Rule 204-2(a)(15) requires registered investment advisers to make and keep "[a]ll written acknowledgements of receipt obtained from clients pursuant to Rule 206(4)-3(a)(2)(iii)(B) and copies of the disclosure documents delivered to clients by solicitors pursuant to Rule 206(4)-3."

19. As a result of the conduct described above, BCI willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon a client or prospective client. A violation of Section 206(2) may rest on a finding of simple negligence; scienter is not required. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

20. As a result of the conduct described above, BCI willfully violated Section 206(3) of the Advisers Act, which prohibits an investment adviser from, directly or indirectly, "acting as

⁸ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

principal for his own account, knowingly to sell any security or to purchase any security from a client ... without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

21. As a result of the conduct described above, BCI willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder. Rule 206(4)-2 provides, in pertinent part, that it is a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) for any registered investment adviser to have custody of client funds or securities unless, among other things, the adviser had a reasonable basis for believing that a qualified custodian was sending quarterly account statements to each of the clients for which it maintained funds or securities, identifying the amount of funds, and of each security in the account at the end of the period and setting forth all transactions in the account during the period. The rule also provides that an independent public accountant generally must verify all of the client funds and securities by actual examination at least once during each calendar year on a date chosen by the accountant without prior notice to the investment adviser (a "surprise examination"). The rule further provides that, with respect to client funds or securities maintained by a related person, the adviser must obtain from the related person, no less frequently than once each calendar year, a written internal control report prepared by an independent public accountant. The report must include an opinion of an independent public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the adviser or a related person on behalf of the advisory clients, during the year. Also, as part of the internal control report, the independent public accountant must verify that the funds and securities are reconciled to a custodian other than the adviser or the adviser's related person.

22. As a result of the conduct described above, BCI willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder by the adviser and its supervised persons.

23. As a result of the conduct described above, BCI willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

BCI's Remedial Efforts

24. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by BCI and cooperation afforded the Commission staff. After the joint examination by the Commission's exam staff, BCI took a number of steps to identify and address various deficiencies, and to address compliance and structural issues. BCI has reimbursed or credited its affected clients approximately \$3.8 million, including interest. In addition, BCI developed and is implementing an action plan in consultation with outside experts.

Undertakings

25. Independent Consultant. Within 270 days of the date of this Order, BCI shall retain an independent compliance consultant ("IC") not unacceptable to the Commission staff. The IC's compensation and expenses shall be borne exclusively by BCI. Prior to the retention of the IC, BCI shall provide to the staff of the Commission a copy of the engagement letter detailing the IC's responsibilities, which includes the reviews to be made by the IC as described in this Order.

- a. BCI shall require that the IC:
 - i. no later than 180 days after being retained by BCI, conduct a review (the "Review") to assess the adequacy of BCI's policies, procedures, controls, recordkeeping, and systems, in particular those relating to: (1) BWIM's trading and investment parameters, billing, reporting, and the related processing of new clients; (2) BCI principal trading for or with BWIM advisory clients; (3) the disclosures to BWIM advisory clients regarding the fees BCI earns, or pays solicitors, in connection with client accounts; (4) the identification of advisory accounts for annual surprise examination and Form ADV filing purposes; (5) the distribution of annual audited financial statements of entities for which BCI is authorized to withdraw client funds maintained with a custodian upon its instruction to the custodian; and (6) the receipt of written internal control reports for related persons that maintain custody of assets of BWIM advisory clients; and
 - ii. within forty-five (45) days from the completion of the Review, submit a written and detailed report of its findings to BCI and to the Commission staff (the "Report"), which shall include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, and the IC's recommendations for changes or improvements (the "Recommendations").
- b. BCI shall adopt all Recommendations contained in the Report within sixty (60) days of the Report; provided, however, that within forty-five (45) days after the date of the Report, BCI shall in writing advise the IC and the Commission staff of any recommendation that BCI considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that BCI considers unduly burdensome, impractical, or inappropriate, BCI need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation on which BCI and the IC do not agree, BCI shall attempt in good faith to reach an agreement with the IC within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by BCI and the IC, BCI shall require that the IC inform BCI and the Commission staff in writing of the IC's final

determination concerning any recommendation that BCI considers to be unduly burdensome, impractical, or inappropriate. BCI shall abide by the final determination of the IC and, within ninety (90) days after a good faith agreement between BCI and the IC or a final determination by the IC, whichever occurs first, BCI shall adopt and implement all of the recommendations that the IC deems appropriate.

- c. Within ninety (90) days of BCI's adoption of all of the Recommendations as determined pursuant to the procedures set forth herein, BCI shall certify in writing to the IC and the Commission staff that BCI has adopted and implemented all of the IC's Recommendations.
- d. BCI shall cooperate fully with the IC and shall provide the IC with access to such of its files, books, records, and personnel as are reasonably requested by the IC for review, except to the extent such files, books, or records are protected from disclosure by any applicable protection or privilege such as the attorney-client privilege or the attorney work product doctrine.
- e. To ensure the independence of the IC, BCI: (1) shall not have the authority to terminate the IC or substitute another independent compliance consultant for the initial IC, without the prior written approval of the Commission staff; and (2) shall compensate the IC and persons engaged to assist the IC for services rendered pursuant to this Order at their reasonable and customary rates.
- f. BCI shall require the IC to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the IC shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with BCI, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the IC will require that any firm with which the IC is affiliated or of which the IC is a member, and any person engaged to assist the IC in performance of the IC's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with BCI, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.
- g. BCI shall not be in, and shall not have an attorney-client relationship with the IC and shall not seek to invoke the attorney-client privilege or any other doctrine or privilege to prevent the IC from transmitting any information, reports, or documents to the Commission staff.

26. Recordkeeping. BCI shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of BCI's compliance with the undertakings set forth in this Order.

27. Notice to Advisory Clients. Within ten (10) days of the entry of this Order, BWIM shall prominently post on its principal website a summary of this Order and a hyperlink to the entire Order in a form and location not unacceptable to the Commission staff. BWIM shall maintain the summary and hyperlink on the website for a period of twelve (12) months from the entry of this Order. Within thirty (30) days of the entry of this Order, BWIM shall send a letter in a form acceptable to the Commission staff to all existing advisory clients notifying them of the entry of this Order, and containing a summary of this Order, via mail, e-mail, or such other method as may be acceptable to the Commission staff. If sent electronically, the letter shall contain a hyperlink to the Order. If sent by mail, the letter shall contain a URL where the Order can be viewed and provide the client the opportunity to request a copy of the Order. Within fourteen (14) days of such a request, BWIM shall deliver a copy of the Order to the client. Furthermore, for twelve (12) months after the entry of this Order, to the extent that BWIM is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 under the Advisers Act, the brochure shall provide notice of the entry of this Order, contain a URL where the Order can be viewed, and provide the client or prospective client the opportunity to request a copy of the Order. Within fourteen (14) days of such a request, BWIM shall deliver a copy of the Order to the client or prospective client.

28. Deadlines. The Commission staff shall have the authority, in its discretion, to extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

29. Certifications of Compliance by Respondent. BCI shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and BCI agrees to provide such evidence. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff pursuant to these undertakings shall be sent to Valerie A. Szczepanik, Assistant Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281-1022, or such other person or address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent BCI's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent BCI cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rules 204-2, 206(4)-2 and 206(4)-7 thereunder.

B. Respondent BCI is censured.

C. Respondent BCI shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$15,000,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Barclays Capital Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Julie M. Riewe, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549, or such other person or address as the Commission staff may provide.

D. Respondent BCI shall comply with the undertakings enumerated in Sections 25-29 above.

By the Commission.

Brent J. Fields
Secretary


By: **Jill M. Peterson**
Assistant Secretary

*Commissioner Stein
Disapproved*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9650 / September 23, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16154

In the Matter of

BARCLAYS PLC

ORDER UNDER RULE 405 OF THE
SECURITIES ACT OF 1933, GRANTING A
WAIVER FROM BEING AN INELIGIBLE
ISSUER

Barclays PLC (Company) has submitted a letter, dated August 6, 2014, constituting an application for relief from the Company being considered an "ineligible issuer" under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 (the "Securities Act"). The Company requests relief from being considered an "ineligible issuer" under Rule 405, due to the entry on September 23, 2014, of an order instituting administrative and cease-and-desist proceedings against Barclays Capital Inc. ("BCI") (the "Cease-and-Desist Order"). The Cease-and-Desist Order requires BCI to cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rules 204-2, 206(4)-2 and 206(4)-7 thereunder.

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "Within the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws..."

Under Paragraph two of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.

Based on the representations set forth in the Company's August 6, 2014 request, and on other considerations, the Commission has determined that the Company has made a showing of good cause under paragraph two of the definition of ineligible issuer in Rule 405 of the

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Securities Act and that the Company should not be considered an ineligible issuer by reason of the Cease and Desist Order.

Accordingly, IT IS ORDERED, pursuant to paragraph two of the definition of ineligible issuer in Rule 405 of the Securities Act, that a waiver from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9651 \ September 23, 2014

In the Matter of

Barclays Capital Inc.,

Respondent.

ORDER UNDER RULE 506(d) OF THE
SECURITIES ACT OF 1933 GRANTING
A WAIVER OF THE RULE
506(d)(1)(iv)(B) DISQUALIFICATION
PROVISION

I.

Barclays Capital Inc. ("BCI"), a dually registered investment adviser and broker-dealer, has submitted a letter, dated September 23, 2014, requesting a waiver of the Rule 506(d)(1)(iv)(B) disqualification from relying on the exemption under Regulation D from the registration requirements under the Securities Act of 1933 (the "Securities Act").

II.

The Securities and Exchange Commission ("Commission") issued an order instituting administrative and cease-and-desist proceedings against BCI (the "Cease-and-Desist Order") pursuant to Sections 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the "Advisers Act") for violations of the Advisers Act.

III.

The exemptions under Rule 506 of Regulation D would be unavailable to BCI as a result of the Cease-and-Desist Order. Rule 506(d)(2) of Regulation D provides, however, that the disqualification "shall not apply. . . upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied."

IV.

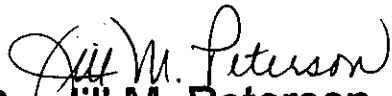
Based upon the representations set forth in BCI's request, the Commission has determined that pursuant to Rule 506(d) under the Securities Act a showing of good cause has been made that it is not necessary under the circumstances that the exemptions be denied.

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Accordingly, **IT IS ORDERED**, pursuant to Rule 506(d) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 506(d)(1)(iv)(B) under the Securities Act resulting from the Cease-and-Desist Order is hereby granted to BCI.

By the Commission.

Brent J. Fields
Secretary


By: **Jill M. Peterson**
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 9652 / September 23, 2014

SECURITIES EXCHANGE ACT OF 1934

Release No. 73185 / September 23, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16154

	:	ORDER UNDER SECTION 27A(b) OF
In the Matter of	:	THE SECURITIES ACT OF 1933 AND
	:	SECTION 21E(b) OF THE SECURITIES
Barclays Capital Inc.,	:	EXCHANGE ACT OF 1934, GRANTING
	:	WAIVERS OF THE DISQUALIFICATION
Respondent.	:	PROVISIONS OF SECTION 27A(b)(1)(A)(ii)
	:	OF THE SECURITIES ACT OF 1933 AND
	:	SECTION 21E(b)(1)(A)(ii) OF THE
	:	SECURITIES EXCHANGE ACT OF 1934
	:	AS TO BARCLAYS CAPITAL INC.
	:	

I.

Barclays Capital Inc. ("BCI" or "Respondent"), has submitted a letter, dated July 30, 2014, requesting a waiver of Section 27A(b)(1)(A)(ii) disqualification from the safe harbor provision of Section 27A(c) of the Securities Act of 1933, as amended ("Securities Act"), and the Section 21E(b)(1)(A)(ii) disqualification from the safe harbor provision of Section 21E(c) of the Securities Exchange Act of 1934, as amended ("Exchange Act") arising from Respondent's settlement of administrative proceedings instituted by the Commission.

On September 23, 2014, pursuant to BCI's Offer of Settlement, the Commission entered an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order") against BCI. In the Order, the Commission found that BCI willfully violated Sections 204(a), 206(2), 206(3), 206(4), and 207 of the Investment Advisers Act of 1940 ("Advisers Act"), and Rules 204-2, 206(4)-2 and 206(4)-7 thereunder. The Commission also found that BCI, a dually-registered investment adviser and broker-dealer, after it acquired Lehman Brothers Inc.'s advisory business in September 2008, did not take the necessary steps to assure that its infrastructure was enhanced to support the newly acquired advisory business; failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act; and failed to make and keep certain required books and records. These deficiencies contributed to other violations. Specifically, BCI executed more than 1,500 principal transactions with its advisory client accounts without making the required written

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disclosures or obtaining client consent. Additionally, for 2,785 advisory client accounts, BCI charged commissions and fees, and earned revenues, that were inconsistent with its disclosure to clients. BCI also violated certain of the custody provisions of the Advisers Act, and it underreported its assets under management on its March 31, 2011 amendment to its Form ADV by \$754 million. BCI's violations resulted in overcharges and client losses approximating \$472,000, and additional revenue to BCI of more than \$3.1 million. In the Order, the Commission censured BCI; ordered BCI to cease and desist from committing or causing any violations and any future violations of Advisers Act Sections 204(a), 206(2), 206(3), 206(4), and 207, and Rules 204-2, 206(4)-2 and 206(4)-7 thereunder; ordered BCI to pay a \$15 million civil money penalty; and ordered BCI to comply with certain undertakings.

With respect to forward looking statements, the safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of a . . . judicial or administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act; Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act; Section 21E(b) of the Exchange Act.

Based upon the representations set forth in Respondent's request, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the issuance of the Commission's Order instituting proceedings is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act, that a waiver from the disqualification provision of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to BCI and its present and future affiliates resulting from entry of the Order is granted.

By the Commission.

Brent J. Fields
Secretary


By: **Jill M. Peterson**
Assistant Secretary

Commissioner Gallagher
Commissioner Stein
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9653 / September 23, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 73189 / September 23, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16157

In the Matter of

REGISTRAR AND
TRANSFER COMPANY and
THOMAS L. MONTRONE,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
17A AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 17A and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Registrar and Transfer Company ("R&T") and Thomas L. Montrone ("Montrone") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act and Sections 17A and 21C of the Exchange Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

In this matter, R&T and certain of its employees violated Section 5 of the Securities Act; its CEO Montrone caused R&T's violation of Section 5; and R&T and Montrone failed reasonably to supervise certain R&T employees with respect to their violations of Section 5 in connection with 54 unregistered issuances of purportedly unrestricted shares of microcap issuer Heathrow Natural Food & Beverage, Inc. ("Heathrow"). No exemptions from registration applied to these issuances, which took place over a two-year period from March 17, 2009 to June 10, 2011. During this period, R&T disregarded numerous red flags with respect to Section 5 violations, and it did not have adequate policies and procedures to prevent or detect violations of Section 5 by certain of its employees.

Respondents

1. R&T is a transfer agent based in New Jersey and registered with the Commission. Thomas L. Montrone was the President and CEO of R&T from 1989 through April 30, 2014. Montrone was also the owner of R&T from December 2008 through April 30, 2014. R&T currently has approximately 190 employees. It began acting as transfer agent for Heathrow in 2005.

2. Thomas L. Montrone, 66, is a resident of New Providence, New Jersey. He was the president and CEO of R&T from 1989 until April 30, 2014. Montrone was also the owner of R&T from December, 2008 until April 30, 2014.

Other Relevant Persons and Entities

3. Heathrow is a Delaware corporation headquartered in Lake Mary, Florida. Heathrow was previously known as World Golf League, Inc. until 2006, when it became WGL Entertainment Holdings, Inc.; it took its current name in 2009. Heathrow's common stock is currently quoted under the ticker symbol "HRNF" on OTC Link (formerly known as the "Pink Sheets"), an electronic interdealer quotation system operated by OTC Markets Group, Inc.

4. Michael S. Pagnano, 63, is a resident of Lake Mary, Florida. Pagnano has been the president and CEO of Heathrow since 2003.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. DLC Capital Group, LLC ("DLC") is a New Jersey corporation headquartered in New Jersey.

Background

6. R&T became the transfer agent for Heathrow in 2005. At that time Heathrow was in the business of promoting a golf event. In 2006 and again in 2008, Heathrow and its investor DLC presented R&T with court orders holding that DLC was eligible to receive unrestricted shares from Heathrow pursuant to Section 3(a)(10) of the Securities Act in satisfaction of Heathrow's debt to DLC. Heathrow also provided R&T with opinion letters from an attorney, stating that R&T could issue unrestricted shares to DLC pursuant to the court orders. R&T thereafter entered into several agreements with Heathrow and DLC that required R&T to create a reserve of Heathrow shares solely for DLC and to allow DLC to request and obtain shares directly from R&T. The agreements, initially negotiated and executed by Montrone on behalf of R&T, were unusual for R&T.

7. In early 2009, Heathrow changed its purported business from golf to the manufacture and distribution of nutrient-infused chewing gum. Over the ensuing 22 months, Pagnano directed the issuance of numerous press releases announcing revenue projections and supposed distribution agreements with major national retail chains.

R&T's and Montrone's Roles in Unregistered Transactions in Heathrow Shares

8. Starting on or about March 17, 2009, on 54 occasions, Pagnano directed R&T to issue large quantities of unrestricted Heathrow shares – for which no registration exemption applied – to numerous recipients, including Pagnano himself, on the basis of two attorney opinion letters (dated February 28, 2008 and March 31, 2009), hereafter the "DLC Opinion Letters," that had previously been provided to R&T, in connection with the share issuances to DLC. None of these 54 issuances pertained to DLC, and the DLC Opinion Letters were plainly inapplicable to these issuances.

9. On or about May 18, 2009, DLC and Heathrow notified R&T that Heathrow's debt was paid in full and that the agreements among DLC, Heathrow, and R&T to issue shares to DLC were canceled. Montrone knew or should have known of this notification.

10. Nonetheless, R&T followed Pagnano's issuance instructions on dozens of occasions for another *two years* after it was notified of the termination of the DLC arrangement in May 2009, even though each of the issuance requests purported to rely on either the February 28, 2008 or March 31, 2009 opinion letter, which plainly applied only to issuances to DLC.

11. R&T had inadequate policies or procedures in place to prevent such unlawful, unregistered share issuances. For example, R&T had no policies or procedures for the review of opinion letters to determine the applicability of the opinion letters to the issuance requests or the legality of the issuance requests.

12. Each time R&T issued the shares, R&T and certain of its employees overlooked the inconsistencies between the requested stock issuances and the DLC Opinion Letters, as well as other red flags, and followed Pagnano's instructions. By doing so, R&T and certain of R&T's employees violated Section 5.

13. An R&T account executive received and passed along the issuance requests and DLC Opinion Letters to a group of R&T transfer clerks. An R&T transfer clerk then checked off on a cover sheet that an opinion letter was provided, without regard to the content of the opinion letters, other than to circle words indicating that shares could be issued without restrictive legends.

14. During the period of the unlawful Heathrow stock issuances, R&T adopted a policy prohibiting the issuance of shares to an officer of an issuer based on a directive from that officer. After adopting that policy, R&T failed to implement it and R&T and certain R&T employees continued to process Pagnano's requests to issue shares to himself.

15. Following the Commission's July 2011 examination by the Office of Compliance Inspections and Examinations, the Commission staff informed Respondents in writing of its conclusion that R&T failed to maintain adequate policies and procedures to conduct due diligence to ensure that it would not execute transfers and/or share issuances that could facilitate an unregistered distribution of securities.

16. The examination staff also informed Respondents in writing of its conclusions that R&T failed to review the DLC Opinion Letters; ignored red flags relating to the Heathrow issuances, including that shares were issued to insiders and affiliates; and failed to conduct any due diligence that the Heathrow issuances were in compliance with the securities laws.

17. In early January 2012, Respondents responded to the Commission in writing by promising to make key reforms, including (1) the creation of a Restricted Processing Unit ("RPU"); (2) new controls; (3) new procedures; and (4) the formalizing of a compliance manual in 2012. Respondents represented to the Commission that the RPU contained a "staff with individuals experienced in the industry who are receiving specific training on the enhanced processing of restricted Securities."

18. R&T created the RPU. However, R&T did not begin to provide the Commission staff with copies of the compliance manual and revised procedures until November 20, 2012. As of that date, Montrone had not reviewed the new policies and procedures nor was he engaged in efforts to train R&T's staff on the policies and procedures.

Red Flags

19. In connection with each of these 54 share issuances, R&T disregarded red flags, including:

- None of the requests for issuance were accompanied by legal opinions pertaining to the shares to be issued. Instead, a DLC Opinion Letter accompanied each issuance request. As a result, in every instance, the shareholder for whom the issuance was requested was not the shareholder covered by the attached opinion letter;
- Heathrow CEO Pagnano repeatedly requested that shares be issued to himself. R&T issued a total of over a billion shares to Pagnano in connection with eight issuance requests. R&T continued to process these requests even after it adopted a written policy against honoring requests by the officers of issuers to issue unrestricted shares to themselves;
- Some of the issuance requests specifically referred to a letter dated February 28, 2008, but the March 31, 2009 opinion letter was attached;
- DLC had notified R&T in writing that effective May 18, 2009 the third-party agreements with DLC were canceled, but R&T employees continued to rely on the DLC Opinion Letters for every one of Pagnano's issuance requests for over two more years;
- Many of the initial issuance requests by Pagnano in 2009 coincided with a name change and business change (from golf-related events to nutrient-infused food) by the issuer; and
- R&T had to make special accommodations for the large volume of Heathrow's share issuances because R&T's transfer agent systems could not accommodate issuer requests for the issuance of billions of shares. R&T also set up a special numbering system to keep track of Heathrow's issuance requests because of the unusual frequency of the requests. Heathrow requested the issuance of an extraordinary number of shares – 5.6 billion shares in 27 months.

20. Had R&T conducted a reasonable inquiry into these red flags, when viewed collectively, the inquiry would have alerted R&T that its own conduct violated Section 5.

21. By essentially rubber-stamping Pagnano's 54 issuance requests, from March 2009 until June 2011, despite these red flags, R&T and certain of its employees repeatedly played a significant role as necessary participants and substantial factors in the unlawful issuances of Heathrow shares, in violation of Section 5 of the Securities Act.

Failure to Establish, Maintain, and Implement Policies and Procedures to Prevent and Detect Violations

22. R&T's policies and procedures did not prevent or detect the securities violations by certain of R&T's employees.

23. R&T had no policy in place requiring the review of opinion letters in support of the issuance of share certificates without a restrictive legend.

24. R&T did not train its employees to inform management of discrepancies between the issuance request and opinion letter. For example, on at least one occasion a transfer clerk noticed that the date of the opinion letter did not match the date of the opinion letter referenced in the issuance request. She did not tell her supervisor, nor did any R&T policy require her to do so.

25. Prior to 2010, R&T policy did not address requests by an issuer's executives to direct share issuances to themselves. After adopting the policy, R&T did not train the relevant employees about the change in policy.

26. R&T had no written policies concerning the duties of account executives in processing share issuance requests.

27. R&T transfer clerks were simply checking boxes on a form; they were neither trained nor expected to use judgment in the exercise of their job duties. Account executives bore an imprimatur of authority among the transfer clerks, resulting in issuance requests being rubber-stamped.

28. In connection with these 54 share issuances, R&T and Montrone failed to establish and maintain policies and procedures, and a system for implementing such policies and procedures, that would reasonably be expected to prevent and detect these violations of Section 5 by certain of R&T's employees.

Violations

29. As a result of the conduct described above, Respondent R&T willfully violated Sections 5(a) and 5(c) of the Securities Act, which make it unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell, or offer to sell or offer to buy a security for which a registration statement is not on file or in effect, absent an available exemption.

30. As a result of the conduct described above, Respondent Montrone caused R&T's violations of Section 5(a) and 5(c) of the Securities Act, which make it unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell, or offer to sell or offer to buy a security for which a registration statement is not on file or in effect, absent an available exemption.

31. As a result of the conduct described above, certain of R&T's employees violated Sections 5(a) and (c) of the Securities Act and Respondents failed reasonably to supervise these R&T employees, with a view to preventing and detecting their violations of the securities laws.

Respondents' Remedial Efforts

32. In determining to accept the Offers, the Commission considered remedial acts undertaken by Respondents and cooperation afforded the Commission staff.

Undertakings

Respondent R&T and its successors and assigns have undertaken to:

33. Provide the Commission's staff within 30 days after entry of this Order, an agreement for the services of an Independent Consultant, acceptable to the Commission's staff, and thereafter exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant. Respondent R&T shall retain the Independent Consultant to conduct a comprehensive review of, and recommend corrective measures concerning, R&T's policies and procedures relating to the issuance of securities and the transfer of penny stocks and restricted securities. Respondent R&T shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to R&T's files, books, records, and personnel as reasonably requested.

34. No more than 120 days after the date of the entry of this Order, submit to the staff of the Commission a written report that Respondent R&T will obtain from the Independent Consultant regarding R&T's policies and procedures. The report will include a description of the review performed, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to the policies and procedures, and a procedure for implementing any recommended changes.

35. Adopt all recommendations made by the Independent Consultant, provided, however, that within 150 days after the date of the entry of this Order, Respondent R&T will, in writing, advise the Independent Consultant and the staff of the Commission of any recommendations it considers unnecessary or inappropriate. With respect to any recommendation that Respondent R&T considers unnecessary or inappropriate, Respondent R&T need not adopt that recommendation at that time, but instead propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation with respect to R&T's policies and procedures on which Respondent R&T and the Independent Consultant do not agree, they will attempt in good faith to reach an agreement within 180 days of the date of entry of this Order. In the event Respondent R&T and the Independent Consultant are unable to agree on an alternative proposal, Respondent R&T will abide by the determinations of the Independent Consultant.

36. To ensure the independence of the Independent Consultant, Respondent R&T: (i) shall not have authority to terminate the Independent Consultant, without the prior written approval of the Commission's staff; (ii) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to this Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client

relationship with the Independent Consultant, and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission or the Commission's staff.

37. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with R&T, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with R&T, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

38. Respondent Montrone shall provide to the Commission, within 30 days after the end of the twelve-month supervisory suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

39. Respondent R&T shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Michael D. Paley, Assistant Regional Director, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400 New York, New York 10281-1022, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 17A and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act.

B. Respondent R&T is censured.

C. Respondent Montrone be, and hereby is, suspended from association in a supervisory capacity with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistically rating organization for a period of twelve months, effective on the second Monday following the entry of this Order.

D. Respondent R&T shall, within 30 days of the entry of this Order, pay disgorgement of \$24,265.86, prejudgment interest of \$3,401.78, and a civil money penalty in the amount of \$100,000, and Respondent Montrone shall pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (2) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Montrone and R&T as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Amelia A. Cottrell, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400 New York, New York 10281-1022.

E. Respondent R&T and its successors and assigns shall comply with the undertakings enumerated above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73187; File No. SR-FICC-2014-801)

September 23, 2014

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing Amendment No. 1 to Advance Notice Relating to the Government Securities Division's Inclusion of GCF Repo® Positions in GSD's Intraday Participant Clearing Fund Requirement Calculation, and GSD's Hourly Internal Surveillance Cycles

On January 10, 2014, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-FICC-2014-801 ("Advance Notice") pursuant to Section 806(e)(1)(A) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")¹ and Rule 19b-4(n)(1)(i)² of the Securities Exchange Act of 1934 (the "Exchange Act"). The Advance Notice was published in the Federal Register on February 10, 2014.³ On March 10, 2014, pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act⁴, additional information regarding this advance notice was requested. Pursuant to Section 806(e)(1)⁵ of the Clearing Supervision Act and Rule 19b-4(n)(1)(i)⁶ of the Exchange Act, notice is hereby given that on August 11, 2014, FICC filed with the Commission, Amendment No. 1 to the Advance Notice as described in Items I, II, and III below, which Items have been

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ Securities Exchange Act Release No. 34-71469 (February 4, 2014), 79 FR 7722 (February 10, 2014) (SR-FICC-2014-801).

⁴ 12 U.S.C. 5465(e)(1)(D).

⁵ 12 U.S.C. 5465(e)(1).

⁶ 17 CFR 240.19b-4(n)(1)(i).

prepared primarily by FICC.⁷ The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Advance Notice

This filing constitutes Amendment No. 1 ("Amendment No. 1") to the Advance Notice previously filed by FICC in connection with the Government Securities Division's ("GSD") inclusion of the underlying collateral pertaining to the GCF Repo®⁸ positions in GSD's noon intraday⁹ participant Clearing Fund requirement ("CFR") calculation, and GSD's hourly internal surveillance cycles.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the Advance Notice, as modified by Amendment No. 1, and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

⁷ FICC also filed the proposal contained in this amendment to the advance notice as a proposed rule change under Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. 15 U.S.C. 78s(b)(1); 17 CFR 240.19b-4. See Securities Exchange Act Release No. 72908 (August 25, 2014), 79 FR 51630 (August 29, 2014).

⁸ The GCF Repo® service enables dealers to trade general collateral repos, based on rate, term, and underlying product, throughout the day without requiring intraday, trade-for-trade settlement on a Deliver-versus-Payment ("DVP") basis. The service fosters a highly liquid market for securities financing. GCF Repo® is a registered trademark of The Depository Trust & Clearing Corporation.

⁹ Noon intraday refers to the routine intraday margining cycle which is based on a 12:00 p.m. (ET) position snap shot. Pursuant to Rule 4, FICC may request additional margin outside of the formal intraday margin calls.

(A) **Clearing Agency's Statements on Comments on the Advance Notice Received from Members, Participants, or Others**

Written comments relating to the change have not yet been solicited or received.

FICC will notify the Commission of any written comments received by FICC.

(B) **Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act.**

1. **Description of the Change**

(i) *Overview*

On January 10, 2014, FICC filed an Advance Notice with the Commission. The Advance Notice related to FICC's proposal to incorporate the underlying collateral pertaining to the GCF Repo® positions in its noon intraday participant CFR calculation, and its hourly internal surveillance cycles. This enhancement is intended to align GSD's risk management calculations and monitoring with the changes that have been implemented to the tri-party infrastructure by the Tri-Party Reform Task Force¹⁰ (the "Task Force"), specifically, with respect to locking up of GCF Repo® collateral until 3:30 p.m. (ET) rather than 7:30 a.m. (ET). Subsequent to the initial Advance Notice filing, FICC discovered that a potential exposure may result from a GCF Repo® participant's cash substitutions and early unwinds of interbank allocations.¹¹ As a result,

¹⁰ The Task Force was formed in September 2009 under the auspices of the Payments Risk Committee, a private-sector body sponsored by the Federal Reserve Bank of New York. The Task Force's goal is to enhance the repo market's ability to navigate stressed market conditions by implementing changes that help better safeguard the market. DTCC has worked in close collaboration with the Task Force on their reform initiatives.

¹¹ The "early unwind of interbank allocations" refers to the automatic return of the collateral from the reverse repo side (cash lender) to FICC's account at the repo side's (cash borrower's) settlement bank and the return of cash to the reverse repo side, which typically occurs before the opening of Fedwire.

FICC is amending the initial Advance Notice to discuss the manner in which GSD intends to protect itself and its members from the potential exposure.

(ii) Historical Background

Prior to the changes implemented by the Task Force, the underlying collateral pertaining to the GCF Repo® positions was locked up each afternoon (approximately 4:30 p.m. (ET)) and unwound at the beginning of the next business day (approximately 7:30 a.m. (ET)). Thus, the GCF Repo® positions were included in the end of day (“EOD”) CFR calculations but not included in GSD’s noon intraday CFR calculations. Because the GCF Repo® positions were not included in GSD’s noon intraday CFR calculation, the noon calculation could result in an under-margined condition relative to the same EOD¹² CFR. Thus, GSD imposed a “higher-of” standard on GCF Repo® participants, whereby their noon intraday CFR was the higher of the actual noon intraday CFR calculation or its prior EOD CFR calculation.¹³

¹² As used herein “prior EOD” refers to the end of day cycle immediately preceding the current noon intraday cycle and “same EOD” refers to the cycle immediately subsequent to the current noon intraday cycle.

¹³ For example, in the extreme case where a participant’s portfolio was comprised entirely of GCF Repo® positions, at each EOD margining cycle GSD could calculate a substantial margin requirement which had to be met by 9:30 a.m. (ET) the next morning. But at each intraday margining cycle, GSD would calculate a negligible margin requirement (because GCF Repo® positions were not included at intraday). This would allow the participant to withdraw substantially all its margin collateral before the same EOD. In this case, if the participant defaulted overnight, GSD would hold almost no margin collateral from the participant while having the exposure of liquidating losses on a substantial GCF Repo® portfolio. To prevent this potential under-margin condition, GSD imposed the “higher of” standard.

With the advent of the Task Force's reform, which resulted in moving the unwind from 7:30 a.m. (ET) to 3:30 p.m. (ET), details on the underlying collateral pertaining to GCF Repo® positions are now received from the clearing banks on an hourly basis and can be incorporated into the noon intraday CFR calculation. Substitutions of underlying collateral are now permitted between 8:30 a.m. (ET) and 3:30 p.m. (ET).¹⁴

At the time of the initial Advance Notice filing, GSD believed that the noon intraday CFR calculation based on the actual underlying collateral pertaining to the GCF Repo® positions provided a more accurate CFR and would be more equitable for participants rather than imposing a "higher-of" standard. In connection with this proposal, GSD performed the testing that was described in SR-FICC-2014-801. The testing revealed that a potential exposure may result from a GCF Repo® participant's cash substitutions and early unwind of interbank allocations. This information became available after FICC formally filed the initial Advance Notice with the Commission. As a result, this information was not included in the filing at that time.

(iii) Proposed Change

GSD plans to incorporate the underlying collateral pertaining to GCF Repo® positions in its noon intraday participant CFR calculation, and its hourly internal surveillance cycles. This enhancement is intended to align GSD's risk management

¹⁴ A key aspect of the GCF Repo® service is to give the repo side (cash borrower) the ability to retrieve its securities during the business day and deliver those securities to meet a delivery obligation. As a result, GCF Repo® was unwound in the morning. With the Tri-Party Reform's change in the unwind from 7:30 a.m. (ET) to 3:30 p.m. (ET), participants now have access to their securities during the day via collateral substitutions.

calculations and monitoring with the changes that have been implemented to the tri-party infrastructure by the Task Force.

In connection with the Task Force's tri-party reform, GCF Repo® collateral now remains locked up until 3:30 p.m. (ET), with substitutions permitted intraday at the times established by each clearing bank. Because the GCF Repo® collateral was unwound at 7:30 a.m. (ET), the current production system does not include GCF Repo® collateral in the GSD noon intraday CFR calculation, and its hourly surveillance cycles. To account for the risk associated with the underlying collateral pertaining to the GCF Repo® positions, GSD's margin requirements currently apply a "higher of" standard, which means that the margin calculation takes the higher of the prior EOD core charge¹⁵ (which includes GCF Repo® collateral) or the current day's noon intraday core charge (which does not¹⁶ include GCF Repo® collateral). However, now that the collateral is locked-up until 3:30 p.m. (ET), the noon intraday participant CFR and hourly surveillance calculations will be based on the actual locked-up GCF Repo® collateral. In the ordinary course of business, the "higher of" standard will not apply. However, this standard will remain available in the event that one or both clearing banks do not provide intraday underlying collateral pertaining to the GCF Repo® position data because such clearing bank, as applicable, is unable to provide the data.

In connection with the testing described in the Advance Notice, GSD observed that cash substitutions and early unwinds of interbank allocations resulted in reducing the

¹⁵ The core charge consists primarily of value-at-risk, the implied volatility charge (also known as the augmented volatility multiplier) and the coverage component.

¹⁶ Since GCF Repo® collateral is excluded, only DVP positions are included in the noon core charge.

underlying securities pertaining to GCF Repo® positions of impacted participants. As a result, GSD is proposing the Early Unwind Intraday Charge (“EUIC”) to protect itself and its membership from the exclusion of the portion of the underlying collateral pertaining to the GCF Repo® positions impacted by cash substitutions or early unwinds of interbank allocations.¹⁷ GSD will remove the “higher of” standard which will give margin relief to participants who truly have a lower portfolio risk profile at intraday, but will impose the EUIC to adjust for the exposure for the portion of the GCF Repo® portfolio impacted by cash substitutions and early unwinds of interbank allocations.

The proposed change is consistent with Rule 17Ad-22¹⁸ (the “Clearing Agency Standards”) which establishes the minimum requirements regarding how registered clearing agencies must maintain effective risk management procedures and controls. Specifically, consistent with Rule 17Ad-22(b)(1)¹⁹ and (b)(2)²⁰, the proposed change (1) provides a more accurate and timely view of member positions and their corresponding exposures and (2) addresses exposures that arise as a result of certain cash substitutions or early unwind of interbank allocations. In sum, FICC’s more accurate and timely calculations around and monitoring of GCF Repo® activity will better enable FICC to respond in the event that a member defaults. As such, FICC believes that the proposal promotes robust risk management, and the safety and soundness of FICC’s operations,

¹⁷ GSD’s review during the parallel testing revealed circumstances under which a member would be charged an EUIC. If, however, a member is assessed an EUIC under circumstances that were not initially contemplated and the EUIC charge is deemed unnecessary, management will have the discretion to waive such charge.

¹⁸ 17 CFR 240.17Ad-22.

¹⁹ 17 CFR 240.17Ad-22(b)(1).

²⁰ 17 CFR 240.17Ad-22(b)(2).

which reduce systemic risk and support the stability of the broader financial system which is consistent with the Clearing Agency Standards.²¹

(iv) *Membership Outreach*

In connection with this initiative, FICC is providing an extended member parallel period which began on January 13, 2014. The parallel period has continued for over six months during which GCF Repo® participants have been able to view their production and test requirements on a daily basis. This allows members to assess the impact of the change in margining for the noon intraday CFR calculation and potentially adjust their GCF Repo® activity prior to implementation of the change. Because this proposal remains subject to the Commission's approval, the parallel testing period did not include the proposed EUIC. However, GSD has discussed the EUIC with the participants that are likely to be materially impacted by this proposed charge. These participants did not express any concerns about the EUIC.

2. Anticipated Effect on and Management of Risks

FICC believes that the proposed change to incorporate the underlying collateral pertaining to the GCF Repo® positions in its noon intraday participant CFR calculation, and its hourly internal surveillance cycles, will improve its risk management by providing a more accurate and timely view of member positions and their corresponding exposures. FICC believes that the proposed changes will better reflect the actual risk in its members' portfolios. For members who participate in the GCF Repo® service, this change will impact their CFRs. However, because of the parallel period, members will have time to review the possible impact and potentially modify their settlement and trading activity to

²¹ 17 CFR 240.17Ad-22.

align with the changes to the noon intraday CFR calculation. FICC's parallel period, which began on January 13, 2014, has covered over six months in order to give customers ample time to review the impact and consider changes to their portfolios.

In addition to the above, FICC is addressing an exposure that may arise with the incorporation of the GCF Repo® positions in its noon intraday participant CFR calculation, and its hourly internal surveillance cycles. Specifically, in connection with the review of the testing that was described in the initial Advance Notice, GSD discovered that there were instances where exposure arose as a result of certain cash substitutions or early unwind of interbank allocations. This is because the noon intraday underlying collateral pertaining to the GCF Repo® positions of impacted participants may exhibit a different risk profile than their same EOD positions. The impact could be to increase or decrease the Value-at-Risk ("VaR") component of the CFR.

In certain instances, cash substitutions, for repo and reverse repo positions and the early unwind of interbank allocations for reverse repo positions, could result in higher cash balances in the underlying collateral pertaining to GCF Repo® positions at noon intraday than the same EOD, and could present a potential under-margin condition because cash collateral is not margined. In addition, it is likely that the cash will be replaced by securities in the next GCF Repo® allocation of collateral. The under-margin condition will exist overnight because the VaR on the GCF Repo® collateral in the same EOD cycle will not be calculated until after Fedwire is closed thus precluding members from satisfying margin deficits until the morning of the next business day. Accordingly, GSD will adjust the noon intraday CFR in the form of an EUIC, to address this risk. In

order to determine whether an EUIC should be applied, GSD will take the following steps:

1. At noon, GSD will compare the prior EOD VaR component of the CFR calculation with the current day's noon intraday VaR component of the CFR calculation.
2. If the current day's noon intraday VaR calculation is equal to or higher than the prior EOD's VaR calculation then GSD will not apply an EUIC. If however, the current day's noon calculation is lower, then GSD will proceed to the step 3. below.
3. GSD will review the GCF Repo® participant's DVP and GCF Repo® portfolio to determine whether the reduction in the noon calculation may be attributable to the GCF Repo® participant's intraday cash substitutions or early unwind of interbank allocations. If so, then GSD will apply the EUIC.
4. At the participant level, the EUIC²² will be the lesser of (i) the net VaR decrease that may be deemed to be attributable to either cash substitutions and/or early unwind of interbank allocations or (ii) the prior EOD VaR minus the noon intraday VaR.²³

²² The EUIC will be included in the noon intraday participant CFR, but not the same EOD CFR. This is because the risk associated with cash lockups exists at intraday, that is, at any time before at EOD. At EOD in the normal course of business, GCF Repo® positions consist of 100% eligible non-cash securities. GCF Repo® is used for overnight financing of securities inventory. Absent extraordinary circumstances, participants do not use cash to collateralized overnight cash loans. Cash substitutions occur at intraday as participants substitute in cash to withdraw securities they need for intraday deliveries.

²³ In the event that cash substitutions or early unwind of interbank allocations impacts the CFR, the prior end of day CFR is used as a proxy for the same end of

The EUIC for cash substitutions will apply to both the repo side (cash borrower) and the reverse repo side (cash lender) of the transaction and the EUIC for the early unwind of interbank allocations will apply to the reverse repo side only. As such, it should be noted that the reverse repo side is subject to the EUIC notwithstanding its inability to control the substitutions or the early unwind. The EUIC applies to the reverse repo side because although they do not initiate the cash substitutions or the early unwind of interbank allocations, these events change the reverse repo participants' risk profile and as a result, their noon intraday CFR could be unduly reduced. GSD has discussed the EUIC with the participants that are likely to be materially impacted by this proposed charge. These participants did not express concerns about the EUIC. The EUIC for the early unwind of interbank allocations will only apply to the reverse repo side (cash lender) since it is only the reverse side whose lockup is unwound early. The securities subject to the early unwind are not returned to the repo side (cash borrower) in connection with the early unwind of interbank allocations. The early unwind of interbank allocations is performed on the reverse repo side to ensure that the underlying collateral is available to the repo side at its settlement bank. Cash is returned to the reverse repo side and thus unwound early.

There is no automatic unwind (return of securities) to the repo side. If the repo side needs its securities before the 3:30 p.m. (ET) scheduled unwind, it may perform a

day CFR for the portion of the portfolio that is impacted by such cash substitutions or early unwind of interbank allocations. The EUIC is designed to prevent the impact of cash substitutions and early unwind of interbank allocations from unduly reducing noon intraday CFR relative to the prior EOD CFR calculation, thus the EUIC will not increase the noon intraday CFR above the prior EOD CFR calculation. (But the noon intraday CFR calculation exclusive of EUIC could be higher than the prior EOD CFR calculation).

securities-for-securities substitution or a cash-for-securities substitution (in which case it may be subject to the EUIC).

Prior to implementation of the proposed changes (including the proposed EUIC), several steps were and/or will be taken to prepare for the changes and to prepare members for the changes. These steps include (1) internal review of the data available in the test environment, (2) FICC's parallel period, which began on January 13, 2014, and has covered over six months in order to give customers ample time to review the impact and consider changes to their portfolios, and (3) outreach to all GCF Repo® customers, plus additional outreach to give an overview of the proposed EUIC to those customers who are likely to be the most impacted by the EUIC.

FICC believes it is important to incorporate the proposed changes in its risk management process as soon as possible because such changes will allow GSD to use more accurate position information in its margin calculations.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The Clearing Agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the Clearing Agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date

further information requested by the Commission is received, if the Commission notifies the Clearing Agency in writing that it does not object to the proposed change and authorizes the Clearing Agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The Clearing Agency shall post notice on its website of proposed changes that are implemented.

The proposed change shall not take effect until all regulatory actions required with respect to the proposal are complete.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2014-801 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-FICC-2014-801. This file number should be included on the subject line if e-mail is used. To help the Commission process

and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on FICC's website at <http://www.dtcc.com/legal/sec-rule-filings.aspx>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2014-801 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73197 / September 23, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16158

In the Matter of

David A. Roskein,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against David A. Roskein ("Roskein" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and except as otherwise provided herein in paragraph IV.C, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

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Summary

1. These proceedings arise out of insider trading by Roskein, who purchased securities of Terremark Worldwide, Inc. ("Terremark") on the basis of material nonpublic information that he learned during a telephone call, when an employee of Terremark ("Individual A") told him about an impending acquisition of Terremark by Verizon Communications, Inc. ("Verizon"). Individual A told Roskein that this information was confidential and requested Roskein not to trade securities based on the information, and Roskein agreed to keep the information confidential and not to trade on it. In violation of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder, Roskein misappropriated the information and breached the duty of trust or confidence that he owed to Individual A when he later traded in Terremark securities in advance of the January 27, 2011 public announcement that Verizon had agreed to acquire Terremark for \$19 per share via a tender offer. Roskein sold all of his Terremark securities the day after the public announcement, realizing illicit profits of \$42,833.78.

Respondent

2. **David A. Roskein**, age 44, is a resident of Miami, Florida.

Other Relevant Entities and Person

3. **Terremark Worldwide, Inc.** was a Delaware corporation headquartered in Miami, Florida engaged in the business of providing managed IT solutions using carrier-neutral data centers across major networking hubs in the United States, Europe and Latin America. Prior to its acquisition by Verizon, the common stock of Terremark was registered under Section 12(b) of the Exchange Act and traded on the NASDAQ Global Market under the ticker symbol "TMRK."

4. **Verizon Communications Inc.** is a Delaware corporation headquartered in New York, New York engaged, through its subsidiaries, in the business of providing communications, information and entertainment products and services. The common stock of Verizon is registered under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange and NASDAQ Global Select Market under the ticker symbol "VZ."

5. **Individual A** was an employee of Terremark during the relevant time period.

Facts

6. On December 13, 2010, a senior executive of Verizon met with the CEO of Terremark in Miami, Florida and conveyed an offer by Verizon to acquire Terremark for \$19 per share, subject to due diligence, an exclusivity period, and other items. On December 14, 2010, Terremark determined to engage in the transaction process Verizon had proposed. On December 15, 2010, the parties entered into a confidentiality agreement. From mid-December through January 26, 2011, Verizon conducted due diligence regarding Terremark. The parties exchanged

an initial draft of the merger agreement on January 10, 2011 and negotiated the terms of the agreement thereafter until January 27, 2011. Verizon's board of directors approved the merger agreement on January 26, 2011 and Terremark's board of directors approved the merger agreement on January 27, 2011.

7. Individual A became aware of material nonpublic information concerning the impending transaction between Verizon and Terremark on or about January 17, 2011 during the course of Individual A's employment at Terremark. On January 20, 2011, Individual A sent an email to Terremark's Vice President of Corporate Communications, attaching a draft of a press release announcing the acquisition. In addition, that day Individual A received emails referring to "Venice" and "Grace," which Individual A knew to be the code names for Verizon and Terremark used during the transaction due diligence and negotiations.

8. By January 22, 2011, substantial steps had been taken in furtherance of the tender offer. Terremark and Verizon had signed confidentiality agreements, retained lawyers and financial advisors, and conducted due diligence.

9. At the time of the conduct described herein, Roskein and Individual A were friends and they shared a familial connection. They spoke often on the telephone and in person. Roskein knew that Individual A was an employee of Terremark.

10. On Saturday, January 22, 2011, Roskein placed a telephone call to Individual A that lasted for over eight minutes. During the call, Individual A informed Roskein about Verizon's impending acquisition of Terremark. Individual A told Roskein that this information was confidential and asked Roskein not to trade securities based on the information. Roskein agreed to keep the information confidential and not to trade on it.

11. However, on the basis of the material nonpublic information that he received from Individual A, on Monday, January 24, 2011, Roskein purchased a total of 3,700 Terremark shares in three brokerage accounts at an average price of \$13.29 per share. That same day, in a fourth account, Roskein paid \$4,200 to buy 30 call options on the common stock of Terremark at a price of \$1.40 per unit. The call options had an expiration date of February 19, 2011 and a strike price of \$12.50.

12. On Thursday, January 27, 2011, in a fifth account, Roskein purchased an additional 1,300 shares of Terremark at an average price of \$13.66 per share.

13. In total, Roskein paid approximately \$71,126 to purchase Terremark securities. Roskein knew or was reckless in not knowing that these securities transactions were in breach of the duty of trust or confidence he owed to Individual A.

14. After the market closed on January 27, 2011, Terremark and Verizon publicly announced the merger agreement pursuant to which Verizon would acquire all outstanding shares of Terremark for \$19 per share through a tender offer.

15. On January 28, 2011, the first trading day after the merger announcement, Terremark's share price closed at \$18.92, an increase of \$4.87 or 35% over the prior trading day's close.

16. That same day, Roskein sold all of his Terremark securities, realizing illicit profits of \$42,833.78.

17. Subsequently, on February 10, 2011, Verizon commenced a tender offer for all outstanding shares of Terremark common stock.

18. Roskein knew that the information Individual A disclosed to him concerning the impending acquisition was material and nonpublic. By purchasing Terremark securities on the basis of that information, Roskein misappropriated the information and breached the duty of trust or confidence that he owed to Individual A.

19. As a result of the conduct described above, Roskein violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Roskein's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent David A. Roskein shall cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of \$42,833.78, prejudgment interest thereon of \$4,717.09, and a civil penalty of \$42,833.78, for a total of \$90,384.65, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

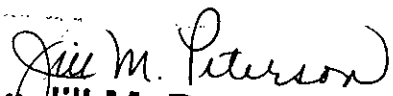
Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying David A. Roskein as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to G. Jeffrey Boujoukos, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Philadelphia Regional Office, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

C. Solely for the purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in the Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other order, consent order, judgment, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Commissioner Finowar
Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9654 / September 24, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 73200 / September 24, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3583 / September 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16159

In the Matter of

SABA SOFTWARE, INC.,
PATRICK FARRELL and
SAJEEV MENON

Respondents.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Saba Software, Inc., Patrick Farrell and Sajeev Menon (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, each of the Respondents has submitted an Offer of Settlement (the "Offers") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over each and over the subject matter of

these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents Offers, the Commission finds¹ that:

Summary

1. This financial fraud involves falsification of time records and fraudulent revenue recognition for certain professional services at Saba Software, Inc. ("Saba" or "the Company"), a Silicon Valley-based enterprise software company that traded on the NASDAQ (ticker: SABA) until it was de-listed in April 2013 for delinquent SEC filings. The scheme to defraud was carried out, over the period from Saba's fiscal year 2008 through the second quarter of fiscal 2012, by professional services managers in multiple geographies directing consultants in Saba's Indian subsidiary (the India Consulting Group or "ICG") to falsify time records by either recording time in advance of performance of work or failing to record time for hours worked in order to achieve their quarterly revenue and margin targets.

2. Although the fraud occurred throughout the global professional services organization, former Vice Presidents Patrick Farrell ("Farrell") and Sajeew Menon ("Menon") were the most senior individuals involved in the improper time-reporting practices during their respective periods of employment at Saba. They also understood the impact that these improper practices had on Saba's reporting of professional services revenue.

3. As a result of the falsification of time records by Saba professional services managers, Saba reported false financial results in at least 40 filings with the Commission and dozens of press releases. Over the period from October 4, 2007 through January 6, 2012, Saba cumulatively overstated the Company's reported pre-tax earnings by approximately \$70 million and made material misstatements regarding its revenue recognition practices. As Saba announced on August 6, 2012 and November 5, 2012, management has determined that the Company is required to restate its financial statements for fiscal years 2008 through 2011, as well as the first two quarters of fiscal 2012. Although Saba has not yet filed its restatement, the Company expects that the restatement will change the time period during which the affected revenues are recognized, generally shifting the timing of such revenues to later periods.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. In addition to the misconduct described herein and the professional services organization's circumvention of the internal controls that did exist, the time-reporting misconduct at Saba went uncorrected and undetected for so long because Saba failed to devise and maintain adequate internal accounting controls over its professional services business and ICG. Saba announced on January 18, 2013 that management had determined there were material weaknesses in its internal control over financial reporting with respect to its accounting and time-reporting practices over the period of the fraud.

5. To date, Saba has not filed any required periodic reports since January 6, 2012.

Respondents

6. **Saba Software, Inc.** ("Saba" or "the Company") is a Delaware corporation headquartered in Redwood Shores, California. The software company provides cloud-based enterprise learning, talent management and social networking tools to businesses and large organizations. At all relevant times, Saba's common stock has been registered pursuant to Section 12 of the Exchange Act. From its IPO in April 2000 until July 31, 2006, its common stock was registered pursuant to Section 12(g). Thereafter, until June 2013, it was registered pursuant to Section 12(b). It traded on the Nasdaq Global Market until it was suspended on April 9, 2013, and then it was delisted effective June 17, 2013 for failure to remain compliant with its SEC reporting obligations. Upon its delisting and deregistration from Section 12(b), it reverted to its previous Section 12(g) registration. Its common stock is currently registered pursuant to Section 12(g) and traded on the OTC Markets. Saba has not filed any periodic reports since January 6, 2012, when it filed its Form 10-Q for the quarter ended November 30, 2011.

7. **Patrick Farrell**, age 55, was Saba's Vice President of Consulting, North America Service Operations, from June 2006 to June 2011, when he became interim Vice President of Global Services. In January 2012, Farrell resumed his responsibilities as Vice President of Consulting, North America until he left Saba in July 2012.

8. **Sajeev Menon**, age 46, was Regional Vice President of Consulting, Western Region, North America from September 2009 until June 2011. He served as Vice President of Consulting, North America from June 2011 until January 2012, when he resumed his Regional Vice President, Western Region position until he left Saba in July 2012.

Facts

A. Saba's Falsification of Time Records

9. Saba provides professional services solutions in conjunction with its product offerings sold to customers. These professional services are often sold simultaneously with the software as part of a multiple-element arrangement. Saba's professional services historically has accounted for about one third of its approximately \$120 million in yearly revenues. Professional services have been delivered to customers worldwide by (1) customer-facing field consultants in

North America and Europe ("Field Consultants") and (2) off-shore technical development services provided to the Field Consultants by the Company's India Consulting Group ("ICG Consultants"). ICG is an organization within Saba's Indian subsidiary designed to help the Company deliver professional services to its customers at a lower cost than comparable consultants in North America and Europe. By 2011, ICG employed 50-60 consultants who generated approximately 14,000 hours of billable work per quarter, which constituted about 17% of consulting revenue and 6% of total revenue per quarter.

10. Both Field Consultants and ICG Consultants were required to record time worked on customer projects in a timesheet database. Hours input into the system by Field or ICG Consultants were approved on a weekly basis by project managers in North America and Europe, and revenue for the professional services organization was then measured based on the approved number of hours in the timesheet database.

11. Saba disclosed in its public filings that it recognized revenue for both "time and materials" and "fixed fee" contracts as the services were performed. This revenue recognition treatment was consistent with GAAP only if Saba could demonstrate that (1) its customers have historically paid a consistent rate for its services (measured by Vendor Specific Objective Evidence or "VSOE") and (2) it could accurately estimate how many hours it took to complete projects ("ability to estimate"). Therefore, Saba's finance personnel depended on accurate time records to ensure that Saba recognized revenue in accordance with GAAP.

12. From at least 2008 through the second quarter of Saba's fiscal 2012, Saba professional services employees and managers engaged in two time-keeping practices that led to its improper revenue recognition. First, there were multiple incidents of ICG Consultants recording hours and billing customers for the performance of professional services in advance of performing those services in order to accelerate revenue recognition and achieve the managers' quarterly revenue targets ("pre-booking"). Second, ICG and Field Consultants regularly failed to report professional services time worked in order to conceal budget overruns from management and finance, instead recording that time to non-billable project codes or not at all ("under-booking").

13. These improper time-keeping practices precluded the time records from serving as reliable evidence under GAAP to recognize revenue in the manner that Saba did. As such, Saba management has concluded that Saba cannot demonstrate VSOE for the period from 2008 through the second quarter of fiscal 2012. Over that period, therefore, Saba was required to recognize professional services revenues on a completed contract basis, which would have required it to defer substantially all of its professional services revenue and much of its license revenue (where software licenses were bundled with professional services) until the contract was completed. Accordingly, virtually all of Saba's professional services revenue was misstated over the relevant time period.

B. Farrell's and Menon's Knowledge of, and Participation In, the False Time Reporting Practices

14. Farrell served as Vice President of Consulting, North America Service Operations from June 2006 to June 2011, when Menon assumed his position and he became Vice President of Global Services. From September 2009 through June 2011, Menon served as Regional Vice President of Consulting, Western Region, North America. From June 2011 until January 2012, Menon served as Vice President of Consulting, North America. In January 2012, Menon resumed his Regional Vice President, Western Region position. In their respective roles, both individuals were charged with ensuring that the professional services organization met the financial targets set by Saba's Chief Executive Officer, Bobby Yazdani, and other senior management.

15. Although the practices of pre-booking and under-booking were directed by and known to numerous individuals in the professional services organization and ICG, Farrell and Menon were the two most senior individuals who directed or approved these improper time-keeping practices and understood that they would impact Saba's reported professional services revenue and violate Company's policies regarding financial reporting, including Saba's Revenue Recognition Policy and Code of Business Conduct.

16. Farrell was told that Field Consultants had requested or planned to request that ICG Consultants pre-book hours in order to achieve their quarterly revenue targets. In other cases, where Field and ICG Consultants overran budgets provided to customers and the finance department, Farrell directed the Consultants to "eat" the hours or back them out of the timesheet database. Despite being told by the finance department that the Company's accountants and auditors needed to understand exactly how many hours were being worked and when (regardless of whether or not they were billed to the customer) in order to ensure that revenue was not being recognized too quickly, Farrell failed to advise the finance department of these practices or take any other remedial measures to ensure that there were no misstatements in Saba's reported professional services revenue as a result of pre-booking or under-booking.

17. In multiple instances, Menon directed consultants reporting to him to book time to the timesheet database at quarter-end, even though those hours would not be worked until the following quarter. On numerous occasions, he also advised direct reports to fail to reflect in the time-keeping system non-billable hours that had been worked or was made aware of this prevalent practice by those reporting to him. Although Menon was advised by the finance department on multiple occasions that non-billable hours needed to be visible to those responsible for preparing Saba's financial statements, he never told finance, the auditors or anyone outside the professional services organization about the improper time-keeping practices that he directed and knew about.

18. Farrell and Menon knew, or were reckless in not knowing, that Field and ICG Consultants were not accurately reporting their time. They also knew, or were reckless in not knowing, that improper time-reporting would affect the way in which Saba recognized revenue. Both Farrell and Menon signed several certifications during the relevant period stating that they read and understood the Company's Code of Business Conduct and Revenue Recognition Policy, both of which prohibited the improper time-reporting practices.

19. During their periods of employment with Saba, Farrell and Menon each received bonuses based on achievement of certain revenue and margin targets that they could not have achieved absent the false time-reporting practices described above.

C. Scope and Impact of the Fraud

20. Saba's professional services revenues, gross margins and income were materially overstated in its periodic filings from October 4, 2007 through January 6, 2012 as a result of the time-reporting misconduct described above. Those false financial results were also reported in Saba's registration statements filed on Forms S-8 on December 18, 2009, October 6, 2011 and January 6, 2012, and Saba raised money through those offerings.

21. The practices of pre-booking and under-booking, and the inaccuracy in Saba's time records revealed by these practices, have led Saba management to conclude that it can no longer rely on its calculation of VSOE of fair value for professional services. In this circumstance, ASC 985-605 (Certain Revenue Arrangements That Include Software Elements) and ASC 605-35 (Revenue Recognition) require that the Company defer to the point where services are complete, rather than recognize over the period where services are performed, standalone services revenue and revenue on software license and cloud services agreements that contain bundled professional services. Accordingly, Saba has determined and announced that it is required to restate its financial statements for the years 2008, 2009, 2010 and 2011, and the first two quarters of 2012, due to its material non-compliance with GAAP. Although Saba has not yet filed its required restatement, the cumulative impact of this alternative revenue recognition treatment is to defer recognition of approximately \$70 million over the period from 2008 through the second fiscal quarter of 2012.

22. The falsification of time records also concealed from Saba's finance team and auditors information that rendered false and misleading the Company's disclosures about its revenue recognition policies, including statements that it had established VSOE and recognized revenue as services were performed. Those disclosures were made in Forms 10-Q and 10-K filed from October 10, 2007 through January 6, 2012.

23. These misstatements are material. First, based on the Company's own estimates, the restated financials will reflect overstatements of gross revenue from 6% to 19% and gross profit from 10% to 41% for each of the fiscal years 2008 through 2011. Second, the effect of the inflated revenue was that Saba met analyst expectations for EPS in certain quarters and reversed at least one year (2010) from a net income to a net loss for the year.

D. Saba's Deficient Internal Controls Over ICG and Time Reporting

24. Several Saba managers described an environment in the professional services organization in which senior management set aggressive revenue and margin targets. These pressures were not counter-balanced by effective internal accounting controls.

25. The Company's internal controls for ensuring the accuracy of professional services time-keeping were deficient. Although there was a control that required project managers to approve the time records of Field Consultants and ICG Consultants, this control failed in multiple ways. There was virtually no training on time entry for Consultants or their managers. Moreover, managers approving time regularly rejected time entries that resulted in overruns to their project budget.

26. Saba also failed to adequately address the financial reporting and internal control risks associated with ICG. Almost all Saba's professional services managers referred to ICG as a "black box," reflecting the fact that the consulting managers who approved time entry for revenue recognition and customer billing purposes had almost no visibility into who was performing what work and when. Despite this fact, there were insufficient controls in place to address the risk of inaccurate time reporting.

27. Saba admitted in its January 18, 2013 Form 8-K that it had determined there were material weaknesses in its internal control over financial reporting with respect to its accounting and time-reporting practices.

E. Saba's Required Restatement

28. On August 6, 2012, Saba announced that, following an internal accounting review, management had determined that its annual financial results for fiscal years 2011 and 2010, as well as the first and second quarters of fiscal year 2012, should be restated as a result of instances of improper time-recording that it had identified in the Company's professional services business. On November 5, 2012, Saba announced that management had determined that the Company's annual financial results for fiscal years 2009 and 2008 would also need to be restated.

29. Although Saba has announced on multiple occasions that it would complete its restatement "as soon as practicable," it has not yet filed its restatement.

F. Saba's Filing Delinquencies

30. Saba's last-filed periodic report containing financial statements was its quarterly report on Form 10-Q dated January 6, 2012.

31. On April 9, 2013, Saba's shares were suspended from trading on Nasdaq. As of June 30, 2014, Saba common stock traded on the OTC Markets with an average daily trading volume of 54,006 over the prior three months.

Violations

32. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit, in connection with the purchase or sale of securities, (1) employing any device, scheme or artifice to defraud; (2) making any material misrepresentation or omission; or (3) engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any person. As a result of the

conduct described above, Saba violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Farrell and Menon each violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder.

33. Section 17(a)(1) of the Securities Act prohibits the use of a device, scheme or artifice to defraud in the offer or sales of securities. Sections 17(a)(2) and 17(a)(3) make it unlawful, in the offer or sale of securities, to (1) obtain money or property by means of any material misrepresentation or omission or (2) engage in any transaction, practice or course of business that operates as a fraud or deceit upon the purchaser. As a result of the conduct described above, Saba, Farrell and Menon each violated Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act.

34. Section 13(a) of the Exchange Act requires issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. With exceptions not applicable here, Rules 13a-1, 13a-11 and 13a-13 of the Exchange Act require each issuer to file annual, current, and quarterly reports respectively on the appropriate forms and within the period specific on the form. Rule 12b-20 further requires that the required reports must contain any material information necessary to make the required statements made in the reports not misleading. As a result of the conduct described above, Saba violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder, and Farrell and Menon caused violation of these provisions by Saba.

35. Section 13(b)(2)(A) of the Exchange Act requires issuers of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets. As a result of the conduct described above, Saba violated Section 13(b)(2)(A) of the Exchange Act, and Farrell and Menon caused violation of these provisions by Saba.

36. Section 13(b)(2)(B) of the Exchange Act requires issuers of securities registered pursuant to Section 12 of the Exchange Act to, among other things, devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles. As a result of the conduct described above, Saba violated Section 13(b)(2)(B) of the Exchange Act, and Farrell and Menon caused violation of these provisions by Saba.

37. Section 13(b)(5) of the Exchange Act prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying books, records, or accounts described in Section 13(b)(2) of the Exchange Act. As a result of the conduct described above, Farrell and Menon each violated Section 13(b)(5) of the Exchange Act.

38. Rule 13b2-1 promulgated under the Exchange Act prohibits any person from directly or indirectly falsifying any books and records subject to Section 13(b)(2)(A) of the

Exchange Act. As a result of the conduct described above, Farrell and Menon each violated Exchange Act Rule 13b2-1.

Undertakings

Respondent Saba has undertaken to:

39. By no later than 5:30 p.m. EST on November 17, 2014, file a comprehensive Form 10-K for the fiscal year ended May 31, 2014. That comprehensive annual report shall contain (i) restated financial results for Saba's 2010 and 2011 fiscal years (unaudited) as well as the first two quarters of its 2012 fiscal year and (ii) an opinion from Saba's independent registered public accounting firm as to the consolidated balance sheets as of May 31, 2013 and 2014, and the consolidated statement of operations, stockholders' equity and cash flows for each of the years in the three year period ended May 31, 2014; and (iii) an opinion from Saba's independent registered public accounting firm on internal controls over financial reporting as of May 31, 2014 (the "2014 Annual Report"). The 2014 Annual Report shall otherwise materially comply with the technical and substantive requirements for EDGAR documents, and be in accordance with the requirements of Section 13(a) of the Exchange Act and rules and regulations thereunder. If Saba files its 2014 Annual Report by no later than 5:30 p.m. EST on November 17, 2014, and the Division of Enforcement does not notify Saba of a deficiency pursuant to paragraph 42(1), *infra*, the Division of Enforcement shall notify the Office of the Secretary of the Commission of Saba's compliance with the undertaking set forth in this paragraph and the proceeding will be terminated in accordance with the Order Instituting Administrative Proceedings Pursuant to Section 12(j) of the Securities Exchange Act of 1934, Making Findings, Accepting Settlement, Implementing Settlement, and Staying Proceedings to Implement Settlement entered against Saba on September 24, 2014.

40. Make an additional payment of \$100,000 to the Securities and Exchange Commission on or before December 4, 2014, if Saba does not comply with the undertaking contained in paragraph 39, *supra*, in lieu of the Commission seeking a civil monetary penalty from Saba for violation of this Order pursuant to Section 21(d)(3) of the Exchange Act.

If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Saba as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Erin Schneider, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

41. If Saba fails to comply with the undertaking set forth in paragraph 39, *supra*, Saba has undertaken to file its 2014 Annual Report (as defined in paragraph 39, *supra*) by no later than 5:30 p.m. EST on February 16, 2015. The 2014 Annual Report shall otherwise materially comply with the technical and substantive requirements for EDGAR documents, and be in accordance with the requirements of Section 13(a) of the Exchange Act and rules and regulations thereunder. If Saba files its 2014 Annual Report by no later than 5:30 p.m. EST on February 16, 2015, and the Division of Enforcement does not notify Saba of a deficiency pursuant to paragraph 42(1), *infra*, the Division of Enforcement shall notify the Office of the Secretary of the Commission of Saba's compliance with the undertaking set forth in this paragraph and the proceeding will be terminated in accordance with the Order Instituting Administrative Proceedings Pursuant to Section 12(j) of the Securities Exchange Act of 1934, Making Findings, Accepting Settlement, Implementing Settlement, and Staying Proceedings to Implement Settlement entered against Saba on September 24, 2014.

42. If Saba files its 2014 Annual Report by either of the dates set forth in paragraphs 39 and 41, *supra*, but the Division of Enforcement concludes, in consultation with the Division of Corporation Finance and any other appropriate staff, that Saba's filing, or any filing resubmitted pursuant to paragraph 42(2), *infra* fails to comply with the undertakings set forth in paragraphs 39 or 41, *supra*:

- (1) The Division of Enforcement will advise Saba within ten business days of Saba's filing of the nature of the deficiency or deficiencies in the filing;
- (2) Saba will have until March 9, 2015 to remedy any identified deficiency or deficiencies in the filing and to resubmit it;
- (3) If Saba fails to resubmit such filing by March 9, 2015, or if Saba resubmits such filings pursuant to paragraph 42(2), *supra*, and the Division of Enforcement concludes after March 9, 2015, in consultation with the Division of Corporation Finance and any other appropriate staff, that any such filing fails to remedy the identified deficiency or deficiencies, the Division of Enforcement shall notify the Office of the Secretary of the Commission and Saba of its conclusion prior to March 16, 2015, and the registration of Saba's securities registered pursuant to Exchange Act Section 12 will be revoked pursuant to Exchange Act Section 12(j) in accordance with the Order Instituting Administrative Proceedings

Pursuant to Section 12(j) of the Securities Exchange Act of 1934, Making Findings, Accepting Settlement, Implementing Settlement and Staying Proceedings to Implement Settlement entered against Saba on September 24, 2014; and

- (4) If Saba resubmits its filing pursuant to paragraph 42(2), *supra*, and the Division of Enforcement has not, in accordance with paragraph 42(1), *supra*, advised Saba that the deficiency or deficiencies remain uncorrected, the Division of Enforcement shall notify the Office of the Secretary of the Commission of its conclusion prior to March 16, 2015, and the proceeding will be terminated in accordance with the Order Instituting Administrative Proceedings Pursuant to Section 12(j) of the Securities Exchange Act of 1934, Making Findings, Accepting Settlement, Implementing Settlement and Staying Proceedings to Implement Settlement entered against Saba on September 24, 2014.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents Saba, Farrell and Menon cease and desist from committing or causing any violations and any future violations of Sections 17(a)(1), (a)(2) and (a)(3) of the Securities Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent Saba cease and desist from committing or causing any violations and any future violations of Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13 thereunder, and Respondents Farrell and Menon cease and desist from committing or causing any violations and any future violations of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rules 10b-5(a) and (c), 12b-20, 13a-1, 13a-11, 13a-13 and 13b2-1 thereunder.

C. Respondent Saba shall pay a civil money penalty in the amount of \$1,750,000 to the Securities and Exchange Commission on the following schedule: \$750,000 within 30 days of the entry of this Order; \$500,000 within 180 days of the entry of this Order; and \$500,000 within 360 days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Saba as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Erin Schneider, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

D. Respondent Farrell shall, within 30 days of the entry of this Order, pay disgorgement of \$31,832, a civil penalty of \$50,000, and prejudgment interest of \$3,185 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Farrell as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Erin Schneider, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

E. Respondent Menon shall pay disgorgement of \$17,875, prejudgment interest of \$1,746 and civil penalties of \$50,000 to the Securities and Exchange Commission on the following schedule: \$23,207 within 30 days of the entry of this Order; \$23,207 within 180 days of the entry of this Order; and \$23,207 within 360 days of the entry of this Order. If any payment is not made

by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (3) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (4) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Menon as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Erin Schneider, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

F. Saba shall comply with its undertakings contained in paragraphs 39, 41 and 42, *supra*.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Commissioner Pinowar
Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73202 / September 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16161

In the Matter of

SABA SOFTWARE, INC.

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
12(j) OF THE SECURITIES EXCHANGE
ACT OF 1934, MAKING FINDINGS,
ACCEPTING SETTLEMENT,
IMPLEMENTING SETTLEMENT, AND
STAYING PROCEEDINGS TO IMPLEMENT
SETTLEMENT

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Saba Software, Inc. ("Saba" or "Respondent").

II.

In anticipation of the institution of these proceedings, Saba has submitted an Offer of Settlement Regarding Administrative Proceedings Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings, and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 12(j) of the Securities Exchange Act of 1934, Making Findings, Accepting Settlement, Implementing Settlement, and Staying Proceedings to Implement Settlement ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. Saba Software, Inc. is a Delaware corporation based in Redwood Shores, California. At all relevant times, Saba's common stock has been registered pursuant to Section 12 of the Exchange Act. From its IPO in April 2000 until July 31, 2006, its common stock was registered pursuant to Section 12(g). Thereafter, until June 2013, it was registered pursuant to Section 12(b). It traded on the Nasdaq Global Market until it was suspended on April 9, 2013, and then it was delisted effective June 17, 2013 for failure to remain compliant with its SEC reporting obligations. Upon its delisting and deregistration from Section 12(b), it reverted to its previous Section 12(g) registration. Its common stock is currently registered pursuant to Section 12(g) and traded on the OTC Markets. Saba has not filed any periodic reports since January 6, 2012, when it filed its Form 10-Q for the quarter ended November 30, 2011.

B. Saba has failed to comply with Exchange Act Section 13(a), and Rules 13a-1 and 13a-13 thereunder, because it has not filed any periodic reports since it filed on January 6, 2012 its Form 10-Q for the period ending November 30, 2011.

IV.

Saba in an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order ("Cease-and-Desist Order") entered against it on September 23, 2014 has undertaken, among other things, to file with the Commission its 2014 Annual Report (as defined in paragraph 39 of the Cease-and-Desist Order), by no later than 5:30 p.m. EST on February 16, 2015.

V.

IT IS ORDERED THAT, if Saba files its 2014 Annual Report by 5:30 p.m. EST on February 16, 2015 in accordance with the undertaking in paragraph 41 of the Cease-and-Desist Order, and if the Division of Enforcement raises no objection to Saba's filing in accordance with paragraph 42(1) of the Cease-and-Desist Order, or if the Division of Enforcement objects to Saba's filing in accordance with paragraph 42(1) of the Cease-and-Desist Order, but Saba resubmits the filing in accordance with the terms set forth in paragraph 42(4) of the Cease-and-Desist Order, the Division of Enforcement shall notify Saba and the Office of the Secretary of the Commission of its conclusion no later than March 16, 2015 and, upon receiving notice from the Division of Enforcement, the Office of the Secretary of the Commission shall immediately enter an order terminating this proceeding without the requested remedy of revocation of the registration of each class of Saba's securities registered pursuant to Exchange Act Section 12, pursuant to Section 12(j) of the Exchange Act.

¹ The findings herein are made pursuant to the Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

VI.

IT IS FURTHER ORDERED THAT, if Saba does not file its 2014 Annual Report by 5:30 p.m. EST on February 16, 2015 in accordance with the undertaking in paragraph 41 of the Cease-and-Desist Order, or if Saba files its 2014 Annual Report by 5:30 p.m. EST on February 16, 2015, but the Division of Enforcement objects to Saba's filing in accordance with paragraph 42(1) of the Cease-and-Desist Order and (a) Saba fails to resubmit the filing by March 9, 2015 or (b) Saba resubmits the filing but the Division of Enforcement concludes after March 9, 2015 that such filing fails to remedy the identified deficiency or deficiencies, then in accordance with the terms set forth in paragraph 42(3) of the Cease-and-Desist Order, the Division of Enforcement shall notify Saba and the Office of the Secretary of the Commission of its conclusion no later than March 16, 2015, and, upon receiving notice from the Division of Enforcement, the Office of the Secretary shall immediately enter an order, in the form agreed to in the Offer and attached to the Offer as Exhibit A, pursuant to Exchange Act Section 12(j), revoking the registration of each class of Saba's securities registered pursuant to Exchange Act Section 12.

VII.

IT IS FURTHER ORDERED THAT this proceeding is stayed until the earlier of March 11, 2015 or until the Division of Enforcement notifies the Office of the Secretary of the Commission to enter an order pursuant to Section V or VI.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Commissioner Piwowar
Disapproved*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73201 / September 24, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3584 / September 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16160

In the Matter of

BABAK ("BOBBY")
YAZDANI

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Bobby Yazdani ("Respondent").

II.

In anticipation of the institution of these proceedings, the Respondent has submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over each and over the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter involves misstated revenues in the professional services organization at Saba Software, Inc. ("Saba" or "the Company"), a Silicon Valley-based enterprise software company. The misstatements were the result of the falsification of time records over a period of more than four years by professional services managers in multiple geographies directing consultants in Saba's Indian subsidiary (the India Consulting Group or "ICG") to falsify time records by either recording time in advance of performance of work or failing to record time for hours worked in order to achieve their quarterly revenue and margin targets.

2. As a result, Saba reported false financial results in its financial statements filed with the Commission over the period from October 4, 2007 through January 6, 2012. As Saba announced on August 6, 2012 and November 5, 2012, management has determined that the Company is required to restate its financial statements for fiscal years 2008 through 2011, as well as the first two quarters of fiscal 2012. The Company expects that the restatement will change the time period during which the affected revenues are recognized, generally shifting the timing of such revenues to later periods.

3. Saba's Chief Executive Officer, Bobby Yazdani, received bonuses and incentive- and equity-based compensation from Saba, and also realized Saba stock-sale profits, during the 12-month periods following the filings containing financial results that Saba is required to restate. Yazdani has not, to date, reimbursed Saba for those amounts.

Respondent and Related Entity

4. **Bobby Yazdani**, age 49, has a primary residence in Potomac, Maryland and a condominium in Redwood Shores, California. He founded Saba in April 1997 and served as CEO from then until 2002 and again from 2003 to March 2013. He served as Chairman of the Board from April 1997 until March 2013. He resigned both positions in March 2013. Yazdani is currently self-employed.

5. **Saba Software, Inc.** ("Saba" or "the Company") is a Delaware corporation headquartered in Redwood Shores, California. The software company provides cloud-based enterprise learning, talent management and social networking tools to businesses and large organizations. At all relevant times, Saba's common stock has been registered pursuant to Section

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

12 of the Exchange Act. From its IPO in April 2000 until July 31, 2006, its common stock was registered pursuant to Section 12(g). Thereafter, until June 2013, it was registered pursuant to Section 12(b). It traded on the Nasdaq Global Market until it was suspended on April 9, 2013, and then it was delisted effective June 17, 2013 for failure to remain compliant with its SEC reporting obligations. Upon its delisting and deregistration from Section 12(b), it reverted to its previous Section 12(g) registration. Its common stock is currently registered pursuant to Section 12(g) and traded on the OTC Markets. Saba has not filed any periodic reports since January 6, 2012, when it filed its Form 10-Q for the quarter ended November 30, 2011.

Facts

A. Saba's Falsification of Time Records

6. Saba's professional services historically has accounted for about one third of its approximately \$120 million in yearly revenues. Professional services have been delivered to customers worldwide by (1) customer-facing field consultants in North America and Europe ("Field Consultants") and (2) off-shore technical development services provided to the Field Consultants by the Company's India Consulting Group ("ICG Consultants"). ICG is an organization within Saba's Indian subsidiary designed to help the Company deliver professional services to its customers at a lower cost than comparable consultants in North America and Europe. By 2011, ICG employed 50-60 consultants who generated approximately 14,000 hours of billable work per quarter, which constituted about 17% of consulting revenue and 6% of total revenue per quarter.

7. Both Field Consultants and ICG Consultants were required to record time worked on customer projects in a timesheet database. Hours input into the system by Field or ICG Consultants were approved on a weekly basis by project managers in North America and Europe, and revenue for the professional services organization was then measured based on the approved number of hours in the timesheet database.

8. Saba disclosed in its public filings that it recognized revenue for both "time and materials" and "fixed fee" contracts as the services were performed. This revenue recognition treatment was consistent with GAAP only if Saba could demonstrate that (1) its customers have historically paid a consistent rate for its services (measured by Vendor Specific Objective Evidence or "VSOE") and (2) it could accurately estimate how many hours it took to complete projects ("ability to estimate"). Therefore, Saba's finance personnel depended on accurate time records to ensure that Saba recognized revenue in accordance with GAAP.

9. From at least 2008 through the second quarter of Saba's fiscal 2012, Saba professional services employees and managers engaged in two time-keeping practices that led to its false revenue recognition. First, there were multiple incidents of ICG Consultants recording hours and billing customers for the performance of professional services in advance of performing those services in order to accelerate revenue recognition and achieve quarterly revenue targets ("pre-booking"). Second, ICG and Field Consultants regularly failed to report professional services time

worked in order to conceal budget overruns from management and finance, instead recording that time to non-billable project codes or not at all ("under-booking").

10. These improper time-keeping practices precluded the time records from serving as reliable evidence under GAAP to recognize revenue in the manner that Saba did. As such, Saba management has concluded that Saba cannot demonstrate VSOE for the period from 2008 through the second quarter of fiscal 2012. Over that period, therefore, Saba was required to recognize professional services revenues on a completed contract basis, which would have required it to defer substantially all of its professional services revenue and much of its license revenue (where software licenses were bundled with professional services) until the contract was completed. Accordingly, virtually all of Saba's professional services revenue was misstated over the relevant time period because revenue was recognized earlier than it should have been under the applicable accounting principles.

11. The practices of pre-booking and under-booking were directed by and known to numerous individuals in the professional services organization and ICG, including the two most senior Saba employees overseeing the professional services organization in North America over the relevant time period. Those senior Saba employees were told on multiple occasions by the finance department that the Company's accountants and auditors needed to understand exactly how many hours were being worked and when (regardless of whether or not they were billed to the customer) in order to ensure that revenue was recognized accurately, and they understood that inaccurate time-keeping would lead to misstatements in Saba's reported professional services revenue and violate the Company's policies regarding financial reporting, including the Code of Business Conduct and the Revenue Recognition Policy.

B. Scope and Impact of the Fraud

12. Saba's professional services revenues, gross margins and income were materially overstated in its periodic filings from October 4, 2007 through January 6, 2012 as a result of the time-reporting misconduct.

13. The practices of pre-booking and under-booking, and the fundamental inaccuracy in Saba's time records revealed by these practices, have led Saba management to conclude that it can no longer rely on its calculation of VSOE of fair value for professional services. In this circumstance, ASC 985-605 (Certain Revenue Arrangements That Include Software Elements) and ASC 605-35 (Revenue Recognition) require that the Company defer to the point where services are complete, rather than recognize over the period where services are performed, standalone services revenue and revenue on software license and cloud services agreements that contain bundled professional services. Accordingly, Saba has determined and announced that it is required to restate its financial statements for the years 2008, 2009, 2010 and 2011, and the first two quarters of 2012, due to its material non-compliance with GAAP. Although Saba has not yet filed its required restatement, the cumulative impact of this alternative revenue recognition treatment is approximately \$70 million over the period from 2008 through the second fiscal quarter of 2012. The Company expects that the restatement will change the time period during which the affected revenues are recognized, generally shifting the timing of such revenues to later periods.

14. These misstatements are material. First, based on the Company's own estimates, the restated financials will reflect overstatements of gross revenue and profit of more than 5% in each year for the period 2008 through 2011. Second, the effect of the inflated revenue was that Saba met analyst expectations for EPS in certain quarters and reversed at least one year (2010) from a net income to a net loss for the year.

C. Saba's Required Restatement

15. On August 6, 2012, Saba announced that, following an internal accounting review, management had determined that its annual financial results for fiscal years 2011 and 2010, as well as the first and second quarters of fiscal year 2012, should be restated as a result of instances of improper time-recording that it had identified in the Company's professional services business. On November 5, 2012, Saba announced that management had determined that the Company's annual financial results for fiscal years 2009 and 2008 would also need to be restated.

D. Compensation of CEO Yazdani

16. During the 12-month periods that followed the filing of the periodic reports requiring restatement, Yazdani received cash incentive awards and bonuses and also realized profits from sales of Saba stock.

17. Yazdani has not reimbursed those amounts to Saba.

Violations

18. Section 304 of the Sarbanes-Oxley Act of 2002 requires the chief executive officer of any issuer required to prepare an accounting restatement due to material noncompliance with the securities laws as a result of misconduct to reimburse the issuer for (i) any bonus or incentive-based or equity-based compensation received by that person from the issuer during the 12-month periods following the false filings, and (ii) any profits realized from the sale of securities of the issuer during those 12-month periods. Section 304 does not require that a chief executive officer engage in misconduct to trigger the reimbursement requirement. Yazdani received bonuses and incentive- and equity-based compensation from Saba, and also realized Saba stock-sale profits, during the 12-month periods following the filings containing financial results that Saba is required to restate. He has not, to date, reimbursed the Company for those amounts.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 21C of the Exchange Act, that:

A. Respondent Yazdani cease and desist from committing or causing any violations and any future violations of Section 304 of the Sarbanes-Oxley Act.

B. Respondent Yazdani shall, within 30 days of the entry of this Order, reimburse Saba for a total of \$2,570,596 in Saba bonuses, other incentive-based or equity-based Saba compensation, and Saba stock sale profits pursuant to Section 304(a) of SOX. Respondent shall simultaneously deliver proof of satisfying this reimbursement obligation to Erin Schneider, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

By the Commission.

Brent J. Fields
Secretary


By: **Jill M. Peterson**
Assistant Secretary

*Commissioner Aguilar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73206 / September 24, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3933 / September 24, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31260 / September 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16163

In the Matter of

YALE I. ASBELL

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 4C AND 21C OF
THE SECURITIES EXCHANGE ACT OF
1934, SECTIONS 203(f) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940, AND RULE
102(e)(1)(iii) OF THE COMMISSION'S
RULES OF PRACTICE, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), and Rule 102(e)(1)(iii) of the Commission's Rules of Practice against Yale I. Asbell ("Asbell" or "Respondent").

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II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, Section 9(b) of the Investment Company Act of 1940, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

These proceedings arise from fraudulent transactions entered into by Asbell, a New Jersey attorney who was operating as an unregistered investment adviser through his professional corporation, Yale Asbell P.C. ("PC"). Asbell, who, as of June 30, 2013, managed at least \$139 million, engaged in fraudulent transactions with the apparent purpose of shifting trading profits to or trading losses from accounts belonging to Asbell, members of his family, and/or certain clients. Based on these transactions and on his failure to register PC with the Commission as an investment adviser, Asbell violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; Sections 206(1), (2), and (3) of the Advisers Act; and aided and abetted and caused PC's violation of Section 203(a) of the Advisers Act.

Respondent

1. **Yale I. Asbell**, JD, age 57, resides in Cherry Hill, New Jersey, and is the founder and sole principal of PC, an entity through which he conducted his investment adviser activities. Asbell is also an attorney licensed to practice in New Jersey and Pennsylvania.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Other Relevant Entities

2. **Yale Asbell P.C.**, a Pennsylvania professional corporation formed on December 23, 1994, was the entity through which Asbell conducted his investment adviser activities. PC, which maintains its principal place of business in Cherry Hill, New Jersey, has never been registered with the Commission in any capacity.

3. **Custodian** is the trust department of a bank headquartered in Pennsylvania that, from 2010 through 2014, served as the custodian for the majority of Asbell's/PC's investment advisory clients.

Background

4. From at least 2010, Asbell, through PC, for compensation, engaged in the business of advising others as to the advisability of investing in, purchasing, or selling securities and, according to the records of Custodian, as of June 30, 2013, managed at least \$139 million. These activities were not solely incidental to Asbell's practice of law as an attorney.

5. On Monday, August 20, 2012, Asbell knew (a) of the Friday, August 17, 2012, public announcement that Western Liberty Bancorp ("WLBC") and Western Alliance Bancorporation ("WAL") had entered into a definitive merger agreement pursuant to which WLBC would be absorbed into WAL, (b) of the approximately 34% increase in WLBC's share price following this news, and (c) that Custodian's computer system only updated securities pricing data on Fridays.

6. On this same date, Monday, August 20, 2012, Asbell instructed employees of Custodian to process a private sale of 30,000 WLBC shares from Asbell Advisory Client R's account to (a) another Asbell advisory client's account (25,000 shares) and (b) the account of a member of Asbell's family (5,000 shares). These transactions were processed via interaccount journal entries and dated as of Friday, August 17, 2012.

7. Through this backdated transaction, Advisory Client R's unrealized profit on her WLBC shares was transferred to another Asbell advisory client and to Asbell's family member.

8. Before entering into these WLBC transactions, Asbell did not disclose to Advisory Client R his conflict of interest concerning the transfer of Client R's profitable WLBC shares to Asbell's family member, Asbell's use of stale price information, or Asbell's use of a backdated trade date.

9. Asbell was also the sole trustee of a trust (the "Trust") established for the benefit of the grandchildren of a deceased former advisory client. Between May 2010 and March 2011, Asbell caused the Trust to purchase the shares of four different companies from Asbell, members of his family, and/or other advisory clients via interaccount journal entry transactions. Asbell failed to provide the Trust with the written disclosures concerning principal transactions

between Asbell [or his accounts] and the Trust that are required under Section 206(3) of the Advisers Act.

10. The purchases by the Trust of the shares of three of the four subject companies were processed at prices significantly higher than the then applicable market prices. This overpayment by the Trust for shares then being sold by Asbell, members of his family, and/or other advisory clients was caused by Asbell's use of the stale pricing information resident on Custodian's computer system.

11. Within days or weeks of causing the purchases of the subject shares by the Trust, Asbell then had the Trust begin selling those shares via market (*i.e.*, brokerage) transactions and to realize substantial losses on these short-term investments.

Violations

12. As a result of the conduct described above, Asbell willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

13. As a result of the conduct described above, Asbell willfully violated Sections 206(1), (2), and (3) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

14. As a result of the conduct described above, Asbell willfully aided and abetted and caused PC's violations of Section 203(a) of the Advisers Act, which specifies that it shall be unlawful for any investment adviser, unless registered, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 4C and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 203(a), 206(1), (2), and (3) of the Advisers Act.

B. Respondent be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

Any reapplication for association by Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

C. Respondent be, and hereby is denied the privilege of appearing or practicing before the Commission as an attorney for five years from the date of the Order.

D. After five years from the date of the Order, Respondent may request that the Commission consider his application to resume appearing and practicing before the Commission as an attorney. The application should be sent to the attention of the Office of the General Counsel.

E. In support of such an application, Respondent must provide a certificate of good standing from each state bar where Respondent is a member.

F. In support of such an application, Respondent must also submit an affidavit truthfully stating, under penalty of perjury:

1. that Respondent has complied with the Order;
2. that Respondent:
 - a. is not currently suspended or disbarred as an attorney by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession; and
 - b. since the entry of the Order, has not been suspended as an attorney for an offense involving moral turpitude by a court of the United States (or any agency of the United States) or the bar or court of any

state, territory, district, commonwealth, or possession, except for any suspension concerning the conduct that was the basis for the Order;

3. that Respondent, since the entry of the Order, has not been convicted of a felony or misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice; and
4. that Respondent, since the entry of the Order:
 - a. has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, except for any finding concerning the conduct that was the basis for the Order;
 - b. has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
 - c. has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, to have committed an offense involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and
 - d. has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, with having committed an offense involving moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

G. If Respondent provides the documentation required in Paragraphs E and F, and the Commission determines that he truthfully attested to each of the items required in his affidavit, he shall by Commission order be permitted to resume appearing and practicing before the Commission as an attorney.

H. If Respondent is not able to truthfully attest to the statements required in Subparagraphs F(2)(b) or F(4), Respondent shall provide an explanation as to the facts and circumstances pertaining to the matter and the Commission may hold a hearing to determine whether there is good cause to permit him to resume appearing and practicing before the Commission as an attorney.

I. Respondent shall, within 14 days of the entry of this Order, pay disgorgement, which represents profits gained and/or losses avoided as a result of the conduct described herein, of \$60,622.90 and prejudgment interest of \$5,772.65 to the Securities and Exchange Commission. If

timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Asbell as the respondent in these proceedings and include the file number of these proceedings. A copy of the cover letter and check or money order must be sent to: James A. Davidson, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

J. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Asbell as the respondent in these proceedings and include the file number of these proceedings. A copy of the cover letter and check or money order must be sent to: James A. Davidson, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

K. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest, and penalties referenced in paragraphs I and J above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

L. After receipt of the disgorgement, interest, and penalties referenced in paragraphs I and J above, the Commission shall, within 90 days, make payments to Client R and the Trust as set forth in Exhibit 1 hereto. The amount of each of these payments represents the dollar amount of each entity's net loss plus reasonable prejudgment interest thereon. Commission staff shall seek the appointment of a tax administrator in regard to the payments to Client R and the Trust as they constitute payments from a qualified settlement fund ("QSF") under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. Taxes, if any, and related administrative expenses shall be paid from the funds remaining after payments have been made to Client R and the Trust. After the Commission makes the foregoing payments, any remaining funds consisting of Respondent's disgorgement, prejudgment interest, and/or penalties paid, shall be remitted to the United States Treasury.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty, or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Exhibit 1

Affected Advisory Clients of Yale Asbell P.C.

Entity	Payment Amount
Client R	\$44,886.18
The Trust	\$68,959.30

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73205 / September 24, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3932 / September 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16162

In the Matter of

WILLIAM L. WALTERS,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940
AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against William L. Walters ("Respondent" or "Walters").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Walters, age 48, formerly resided in Honolulu, Hawaii, from 2000 to 2003, and then in Lone Tree, Colorado, through August 2006. He was the owner and operator of Samurai Capital, Inc. ("Samurai") and Mana Trading Co., Inc. ("Mana Trading"), two alter ego

entities. From 1993 through 1997, prior to the relevant time period, Walters was a registered representative associated with two successive broker-dealers.

2. From at least 2001 through 2006, Walters offered and sold securities to investors in connection with a purported "day trading" program. During the relevant period, Walters was not registered with the Commission in any capacity. Walters acted as an unregistered broker in these offers and sales in violation of Section 15(a) of the Exchange Act by: (1) soliciting investors to purchase securities; (2) negotiating the terms of sales to investors; and (3) receiving and handling investor funds. In connection with these offers and sales, Walters also received compensation tied to particular investments because he used the investor funds received for his personal expenses. During the same period, Walters acted as an investment adviser to the pooled day trading funds because he, for compensation, engaged in the business of advising the funds as to their purchase and sale of securities.

B. RESPONDENT'S CRIMINAL CONVICTION

3. On April 15, 2011, Walters pleaded guilty to multiple counts of securities fraud and theft before the Colorado District Court. People v. Walters, Colo. Dist. Ct. Case No. 07-CR-408. On April 29, 2013, a judgment of conviction in the criminal case was entered against Walters. He was sentenced to a prison term of 40 years and ordered to make restitution in the amount of \$9.5 million.

4. The counts of the criminal information to which Walters pleaded guilty alleged, among other things, that between 2001 and at least 2006, Walters defrauded investors by soliciting money for his purported "day trading" program through Samurai and Mana Trading. The indictment further alleged that the Samurai and Mana trading investments offered and sold by Walter, evidenced in part by promissory notes, involved the purchase and sale of securities. The indictment alleged that most of the investor funds were used by Walters for personal purposes and to make ostensible "interest payments" and payouts to other investors. The indictment further alleged that Walters made false and misleading statements to investors about the rates of return of his program, and failed to disclose to investors his trading losses and his use of investor funds to pay other investors.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act; and

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73219 / September 25, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3938 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16168

In the Matter of

**COLORADO FINANCIAL
SERVICE CORPORATION**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, AND SECTION 203(e) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act"), against Colorado Financial Service Corporation ("CFSC" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. These proceedings arise out of CFSC's failure to properly handle customer funds in connection with two private placements in which it participated in 2010. In connection with one private placement, CFSC, a registered broker-dealer, received, deposited, and held three customers' funds. As a result of that conduct, CFSC failed to comply with its net capital and customer protection obligations and willfully violated Section 15(c)(3) of the Exchange Act and Rules 15c3-1 and 15c3-3 thereunder.¹ In addition, by failing to provide notifications to the Commission of its net capital deficiencies, and by failing to create and maintain accurate books and records, CFSC willfully violated Sections 17(a) of the Exchange Act and Rules 17a-3 and 17a-11 thereunder.

2. In connection with the second private placement, which was a contingent offering, CFSC received customer funds and forwarded those funds to the issuer, instead of the issuer's bank escrow agent. As a result, CFSC willfully violated Section 15(c)(2) of the Exchange Act and Rule 15c2-4 thereunder.

Respondent

3. CFSC is a Colorado corporation with its principal place of business in Centennial, Colorado. Since December 7, 2000, CFSC has been registered as a broker-dealer with the Commission and a member of the Financial Industry Regulatory Authority ("FINRA"). Between June 8, 2012 and August 8, 2013, CFSC was also registered with the Commission as an investment adviser. Since 2013, CFSC has been a registered investment adviser in several states. CFSC has no prior disciplinary history with the Commission. In February 2014, CFSC settled a regulatory action with FINRA in which it consented, without admitting or denying the allegations, to findings that it had failed to establish, maintain, and enforce adequate systems and written procedures to supervise and review electronic communications and to conduct due diligence into private placements and non-traded real estate investment trusts. Pursuant to the settlement, CFSC was censured and paid a \$10,000 fine.

¹ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

**CFSC Willfully Violated the Exchange Act's Net Capital, Customer Protection,
Notification, and Books and Records Requirements**

4. Section 15(c)(3) of the Exchange Act authorizes the Commission to prescribe rules and regulations with respect to the financial responsibility and related practices of broker-dealers. Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder require that a broker-dealer generally effecting transactions in securities "at all times have and maintain net capital" no less than the greatest of the highest minimum requirement applicable to its business. The net capital rule requires different minimum amounts of net capital based on the nature of a firm's business (for example, whether the firm holds customer funds or securities), and the method a firm uses in computing its net capital. The rule is designed to require a broker-dealer to maintain sufficient liquid assets to meet all obligations to customers and counterparties and have adequate additional resources to wind down its business in an orderly manner without the need for a formal proceeding if the firm fails financially. A broker-dealer must cease conducting a securities business if the amount of net capital maintained by the firm falls below the minimum required amount. During the relevant time, CFSC determined that its minimum net capital requirement pursuant to Rule 15c3-1(a) was the greater of 6 2/3 percent of its aggregate indebtedness or \$5,000.

5. Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder require, among other things, that broker-dealers subject to the rule perform a calculation to determine the amount of funds that must be maintained in a special reserve account for the exclusive benefit of customers. Rule 15c3-3 is intended to protect customer funds and securities in the possession of broker-dealers. During the relevant time, CFSC was relying on an exemption set forth in Rule 15c3-3(k)(2)(ii), which exempts a broker-dealer from the rule's substantive provisions if, among other things, the broker-dealer acts as an introducing broker-dealer and clears all transactions with and for customers on a fully disclosed basis with a clearing broker-dealer that carries all of the accounts of such customers.

6. In February and March 2010, a CFSC branch office served as a placement agent for a private offering of securities. In connection with that offering, three CFSC customers were provided with "Inbound Wire Instructions" that provided wire information for the branch office's bank account. The branch office received these three customers' funds, deposited them into a bank account held in the name of the branch, commingled the funds with other branch office funds from its non-brokerage business, and waited several days before forwarding the funds to the issuer.

7. By receiving and holding customer funds in February and March 2010, CFSC rendered itself ineligible to rely on the \$5,000 minimum net capital requirement of Rule 15c3-1(a)(2)(vi). During the time that CFSC was holding customer funds, it was required to maintain \$250,000 in net capital pursuant to Rule 15c3-1(a)(2)(i); however, CFSC's net capital was below the required \$250,000 and it continued its broker-dealer securities business and effected transactions in securities. As a result, CFSC willfully violated Exchange Act Section 15(c)(3) and Rule 15c3-1 thereunder.

8. By receiving, depositing, and holding customer funds in a bank account in the name of one of its branch offices, CFSC handled customer funds in a manner inconsistent with the terms of the exemptions from Rule 15c3-3 and rendered itself ineligible to rely upon any of the Rule

15c3-3 exemptions. These actions created customer liabilities for CFSC, which subjected the firm to the substantive provisions of Rule 15c3-3, including the customer reserve formula computation and reserve bank account deposit requirements. Because CFSC did not perform required reserve formula calculations or maintain cash and/or qualified securities in a reserve bank account for amounts owed to customers, CFSC willfully violated Section 15(c)(3) under the Exchange Act and Rule 15c3-3 thereunder.

9. CFSC's main office was unaware of the branch office's receipt of customer funds and therefore failed to account for them on its books and records and failed to file on a timely basis the requisite notifications with the Commission of its net capital deficiencies. As a result, CFSC willfully violated Section 17(a) of the Exchange Act and Rules 17a-3(a)(3) and 17a-11 thereunder.

CFSC Willfully Violated the Exchange Act's Contingent Offering Requirements

10. Pursuant to Section 15(c)(2) of the Exchange Act and Rule 15c2-4 thereunder, a broker-dealer that is participating in a contingent securities offering, other than a firm-commitment underwriting, must promptly transmit all customer funds to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

11. Between February and April 2010, an issuer conducted a private offering of securities in which CFSC participated. Pursuant to the private placement memorandum for the offering, all investor funds would be held in an escrow account until \$10,000,000 was raised. If \$10,000,000 was not raised by April 30, 2010, all investor funds were to be returned.

12. In March and April 2010, a CFSC registered representative solicited three customers to subscribe to the contingent offering. In each case, the customers wrote checks payable to the issuer. The CFSC registered representative, rather than depositing the checks into the escrow account, sent these customers' funds directly to the issuer, which deposited the funds in its operating account. The issuer did not raise \$10,000,000 by the April 30, 2010 deadline, and the customers' funds were not returned immediately after the contingency failed. By providing funds directly to the issuer in connection with this contingent offering, CFSC willfully violated Section 15(c)(2) of the Exchange Act and Rule 15c2-4 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondent CFSC's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent CFSC cease and desist from committing or causing any violations and any future violations of Sections 15(c) and 17(a) of the Exchange Act and Rules 15c2-4, 15c3-1, 15c3-3, 17a-3, and 17a-11 thereunder.

B. Respondent CFSC is censured.

C. Respondent CFSC shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying CFSC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas J. Krysa, Esq., Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Byron G. Rogers Federal Building 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73209 / September 25, 2014

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 3585 / September 25, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16164

In the Matter of

JDA SOFTWARE GROUP, INC.,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against JDA Software Group, Inc. ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

SUMMARY

During the time period from fiscal year 2008 through the third quarter of fiscal year 2011, JDA Software Group, Inc. ("JDA"), a software solutions company, materially misstated its revenue, net income, and other financial metrics in certain of its annual and quarterly reports filed with the Commission and in certain of its earnings releases. In particular, JDA failed to properly record and report revenue from its software license sales in the correct accounting periods because it did not establish vendor specific objective evidence of fair value ("VSOE") for Managed Services and certain types of consulting arrangements sold in conjunction with its software licenses. In addition, JDA failed to accurately record and report revenues from the sale of software licenses and certain services agreements that were linked to each other. JDA's failures in these areas were caused by inadequate internal controls surrounding revenue recognition. JDA lacked adequate revenue recognition policies and procedures and failed to identify all service-related contracts needed for VSOE testing to determine the fair value of certain services.

Ultimately, in August 2012, JDA restated its financial results for fiscal years 2008 through the third quarter of fiscal year 2011, and in its restatement acknowledged, among other things, material weaknesses in its internal controls over financial reporting. By engaging in the foregoing conduct, JDA violated the reporting, books and records, and internal controls provisions of the federal securities laws, namely Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

RESPONDENT

JDA Software Group, Inc. ("JDA"), a Delaware corporation headquartered in Scottsdale, Arizona, is a leading provider of business software solutions for a broad range of industry groups ranging from foods, manufacturing, retail, government and defense contracting. In December 2012, JDA was acquired by RedPrairie, a privately held software company for approximately \$1.9 billion. Both JDA and RedPrairie are owned by New Mountain Capital, LLC, a private investment company. Prior to its acquisition by RedPrairie, JDA's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Act of 1933 ("Securities Act") and traded on the NASDAQ Global Select Market. Since JDA had stock registered under Section 12 of the Securities Act, it was required to file reports with the Commission pursuant to Sections 13(a) of the Exchange Act.

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

BACKGROUND

1. In 1997, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position 97-2, Software -- Revenue Recognition ("SOP 97-2"), the first industry-specific GAAP guidance on revenue recognition for software and software-related products. Following the issuance of SOP 97-2, the AICPA also released numerous standards and Technical Practice Aids ("TPAs") clarifying specific aspects of software revenue recognition. In June 2009, existing GAAP pronouncements were codified into the Accounting Standards Codification, effective for interim and annual periods ending after September 15, 2009. SOP 97-2, its related amendments and related TPAs were codified at ASC 985-605 (hereinafter "ASC 985-605").

2. JDA's business involved selling computer software licenses and services related to those software licenses to various customers located throughout the world. The primary related services were: (i) Managed (Hosting/Cloud) Services; (ii) Consulting Services; (iii) Post Contract Customer Support (Maintenance); and (iv) Education/Training. Managed Services involved, among other things, JDA hosting the software for customers on JDA's servers. Consulting Services involves assisting customers in all phases of systems implementation, including program and project management.

3. JDA sold its software licenses and related services in three ways: (i) it bundled the software license and some, if not all, of the related services and sold them as a single contract, known as a "multiple element arrangement" under the accounting literature; (ii) it sold the software license and the related services in separate contracts that were linked; or (iii) it sold the software license and related services in separate contracts that were not linked. These services contracts were typically offered for a set period of time.

4. As a computer software company, JDA's ability to recognize revenue from the sale of software and related services in a multiple element arrangement was governed broadly by ASC 985-605. In order to recognize the full amount of revenue from the sale of a software license immediately in the quarter in which the sale occurred, JDA had to establish that it had VSOE for each undelivered element of the bundled services. If JDA was unable to establish VSOE for any undelivered element, it had to recognize revenue from the software license ratably over the term of the services agreement.

5. ASC 985-605 limits the information that a company may use to establish the fair value of a particular element. This information is limited to:

- a. The price charged when the same element is sold separately²; or
- b. For an element not yet being sold separately, the price established by management having the relevant authority; it must be probable that the price, once established, will not change before the separate introduction of the element into the market place ("management authority").

VSOE FOR MANAGED SERVICES

6. JDA offered Managed Services to its customers. In fiscal years 2008 and 2009, JDA did not conduct any VSOE studies using stand-alone transactions to determine whether it had established VSOE for its Managed Services. Rather than using stand-alone transactions, JDA relied solely on management authority to establish VSOE for its Managed Services.

7. To establish VSOE using management authority, a company must demonstrate that the actual prices charged for the services in multiple element arrangements conform to the prices set by management. In fiscal years 2008 and 2009, however, JDA did not have adequate policies and procedures to determine whether the sales prices for Managed Services in its multiple element arrangements complied with the prices that were set by JDA's management. JDA conducted no testing to make this determination. Thus, as part of its restatement process – and specifically with regard to Managed Services – JDA determined that it had not established VSOE for Managed Services in fiscal years 2008 and 2009 because it did not sell its Managed Services offerings at prices that were consistent with prices set by management.

8. For fiscal year 2010, JDA conducted its first-ever VSOE study for Managed Services using stand-alone transactions. JDA initially identified five stand-alone Managed Services transactions and determined that those transactions demonstrated sufficient clustering to establish VSOE. As part of its 2010 annual audit, JDA's auditor determined that one of the transactions was not a stand-alone transaction, and JDA concluded that the remaining four were sufficient to establish VSOE.

9. As part of the restatement process, however, JDA determined that one of those four transactions was not a stand-alone transaction because it was "linked" to a software license agreement. JDA determined that the remaining three transactions did not constitute an acceptable population by which VSOE for Managed Services could be established. In particular, JDA noted that "the objective testing populations of stand-alone transactions [the remaining three transactions]

² For ease of reference in the Order, we refer to contracts in which services are sold separately as stand-alone transactions. An analysis of stand-alone transactions for VSOE purposes involves: (i) identifying transactions in which a particular service is sold separately (not in a multiple element arrangement); (ii) identifying the actual prices at which those services were sold; and (iii) determining whether those prices demonstrate sufficient clustering (i.e. prices that are tightly grouped around the average price) to establish VSOE.

were not substantial enough to establish VSOE.” Thus, JDA did not properly record revenue from the sale of certain software licenses in which Managed Services were a bundled or linked service.

VSOE FOR CONSULTING SERVICES

10. During the relevant period, JDA offered Consulting Services to its customers throughout the world, including in Japan, Australia, and Europe. JDA offered its Consulting Services typically through fixed bid contracts or contracts based on a time and material arrangements with set hourly rates.

11. In fixed bid contracts, JDA set a fixed total dollar amount for a particular consulting arrangement, which was based on an estimate of the number of hours that were expected to be spent by the consultants on the project. During the relevant period – and as they had with Managed Services arrangements in fiscal years 2008 and 2009 – JDA did not conduct VSOE testing to determine whether the actual contract rates in fixed bid contracts complied with the consulting rates set by management authority.

12. As part of its restatement process, JDA concluded that from fiscal year 2008 through fiscal year 2010, JDA’s fixed bid contracts lacked consistency in pricing. In particular, for fixed bid contracts in fiscal year 2010, JDA found that it only had a 13% compliance rate, and therefore JDA concluded that VSOE for fixed bid contracts did not exist.

13. With respect to consulting services based upon time and material arrangements, because consulting and currency rates varied depending on the customer’s geographic region, JDA was required to establish VSOE for Consulting Services on a geographic basis. JDA, however, did not conduct any VSOE analysis for certain geographic regions.

14. During its restatement process, JDA conducted an analysis on a geographic basis and determined that for certain regions it did not have a sufficient volume of consulting contracts to establish VSOE in certain foreign currencies. Thus, JDA did not properly record revenue from the sale of certain software licenses in which Consulting Services were a bundled or linked service.

LINKED CONTRACTS

15. With respect to services offered in stand-alone arrangements, ASC 985-605-55-4³ requires computer software companies to analyze whether the services offered to a customer are “linked” to a software license sold to the same customer.

16. Pursuant to ASC 985-605-55-4, a group of contracts or agreements may be so closely related that they are, in effect, parts of a single arrangement. The form of an arrangement is not necessarily the only indicator of the substance of an arrangement. The existence of any of the following factors (which are not all-inclusive) may indicate that a group of contracts should be

³ Prior to the accounting standards codification, TPA 5100.39 provided authoritative guidance for the analysis of linked contracts.

accounted for as a single arrangement: (i) the contracts or agreements are negotiated or executed within a short timeframe of each other; (ii) the different elements are closely interrelated or interdependent in terms of design, technology, or function; (iii) the fee for one or more contracts or agreements is subject to refund, forfeiture, or other concession if another contract is not completed satisfactorily; (iv) one or more elements in one contract or agreement are essential to the functionality of an element in another contract or agreement; (v) payment terms under one contract or agreement coincide with performance criteria of another contract or agreement; and (vi) the negotiations are conducted jointly with two or more parties (for example, from different divisions of the same company) to do what in essence is a single project.

17. Whether contracts are linked has significant implications from a VSOE, and in turn, a revenue recognition perspective. If two contracts are deemed to be linked, they are treated as part of a multiple element arrangement. As noted earlier, software companies are unable to recognize the full amount of the license revenue in the quarter in which the revenue is obtained unless they have VSOE for each service that is linked to the license agreement.

18. Moreover, if a service contract is linked to a license agreement, that service agreement cannot be used as a stand-alone transaction for purposes of establishing VSOE. In fact, as noted above, JDA determined in connection with its restatement that one of the stand-alone transactions relied upon in its VSOE study of Managed Services for fiscal year 2010 was linked, and therefore, could not be included in a population of stand-alone transactions.

19. During the relevant period, JDA's internal controls and testing for linked contracts were deficient. JDA's controls were not adequately designed to identify all of the service contracts that were in the process of being negotiated with customers. Specifically, JDA did not maintain any centralized database to track such contracts. In addition, JDA's controls were not adequately designed to systematically identify – by customer – any services contracts that were signed within a defined period of the software license agreement. Accordingly, JDA was unable to conduct adequate testing for linked contracts in compliance with ASC 985-605-55-4.

20. As JDA determined during its restatement process, any linkage analysis that occurred was rarely documented. Accordingly, even in those instances where it appeared that linkage was purportedly considered, it was very difficult to determine what if any analysis was done or whether the software license was linked to any service due to the lack of documentation.

21. JDA's linkage analysis was largely limited to determining whether an obligation existed to deliver services and whether a carve-out from license revenue was necessary where rates in a related services agreement were below VSOE, and did not consider all of the other factors set forth in ASC 985-605-55-4.

22. Accordingly, JDA did not properly assess contracts for linkage. Consequently, JDA reported a material weakness in its internal controls over financial reporting.

THE RESTATEMENT

23. On August 6, 2012, JDA restated its financial statements for fiscal years 2008, 2009, 2010 and the first three quarters of fiscal year 2011. JDA misstated its revenues, net income and other financial metrics in all reporting periods. In particular, JDA determined in the restatement that revenue was not recognized in the correct reporting periods. Thus, in some reporting periods, JDA's financial results were materially overstated and in others they were materially understated. The chart below summarizes JDA's material misstatements:

Financial Metric (figures in \$000)	2008	2009	2010	2011
Revenue - Originally Reported	390,332	385,800	617,209	671,753
Revenue - Restated	381,516	390,968	593,742	691,243
Revenue - Over/(Under) Statement	8,816	(5,168)	23,467	(19,490)
Percentage Over/(Under) Statement	2.31%	-1.32%	3.95%	-2.82%
Gross Profit- Originally Reported		240,129	363,675	
Gross Profit - Restated		245,543	338,996	
Gross Profit - Over/(Under) Statement		(5,414)	24,679	
Percentage Over/(Under) Statement	N/A	-2.20%	7.28%	N/A
Net Income/(Loss) - Originally Reported	3,124	17,746	17,718	71,000
Net Income/(Loss) - Restated	(386)	18,982	2,141	82,688
Net Income/(Loss) - Over/(Under) Statement	3,510	(1,236)	15,577	(11,688)
Percentage Over/(Under) Statement	909.33%	-6.51%	727.56%	-14.14%
EBITDA - Originally Reported	97,354	96,846	160,851	179,637
EBITDA - Restated	88,538	102,461	135,786	201,608
EBITDA - Over/(Under) Statement	8,816	(5,615)	25,065	(21,971)
Percentage Over/(Under) Statement	9.96%	-5.48%	18.46%	-10.90%

24. In the restatement, JDA identified control failures that constituted material weaknesses, and a significant deficiency, in its internal controls over financial reporting – specifically related to multiple element arrangements and VSOE for certain services. Specifically, JDA acknowledged that material weakness existed in its internal controls over the application of revenue recognition criteria required by ASC 985-605.

25. JDA noted that the material weakness related to both the insufficient design and ineffective operation of certain internal controls over the identification of license agreements linked to consulting agreements and Managed Services, as well as testing and documentation of VSOE for Managed Services and Consulting Services products.

VIOLATIONS

26. Under Section 21C of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Act and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

27. Section 13(a) of the Exchange Act requires issuers to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1, 13a-11, and 13a-13 require the filing of annual, current, and quarterly reports, respectively. In addition to the information expressly required to be included in such reports, Rule 12b-20 of the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading. "The reporting provisions of the Exchange Act are clear and unequivocal, and they are satisfied only by the filing of complete, accurate, and timely reports." *SEC v. Savoy Industries*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing *SEC v. IMC Int'l, Inc.*, 384 F. Supp. 889, 893 (N.D. Tex. 1974)). A violation of the reporting provisions is established if a report is shown to contain materially false or misleading information. *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975).

28. Section 13(b)(2)(A) of the Exchange Act requires issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles.

29. By engaging in the conduct above, JDA violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

30. In determining to accept Respondent's Offer, the Commission considered remedial acts undertaken by JDA, including its enhancement of internal controls, retention of additional accounting personnel, and JDA's cooperation with the staff's investigation.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$750,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following three ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying JDA Software as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5030.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

*Commissioner Gallagher
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3935 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16165

In the Matter of

DAVID SCOTT CACCHIONE,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against David Scott Cacchione ("Respondent" or "Cacchione").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT AND RELATED ENTITY

1. Cacchione, 49 years old, is a resident of Menlo Park, California. He is a Managing Member, Chief Compliance Officer, and owner of at least fifty percent interest in Montara Capital Management LLC ("Montara"). From 1987 to 2008, Cacchione was a registered representative with various registered broker-dealers and lastly with Merriman Curhan Ford & Co. ("Merriman"). Cacchione has a disciplinary history with NASD. In January 2004, he consented to a thirty day suspension and was fined \$30,000 after the NASD found that he sold unregistered securities to public customers without proper disclosure. In 1995, a customer alleged that Cacchione made an unauthorized disbursement from her account to a third party.

Cacchione also has \$1.2 million in outstanding federal and state tax liens.

2. Montara is a Delaware limited liability company with its principal place of business in Menlo Park, California.

3. On June 25, 2014, Montara filed an application on Form ADV with the Commission for registration as an investment adviser but withdrew its application on July 21, 2014.

4. Based upon Cacchione's positions and ownership interest in Montara, and his efforts to remain associated with Montara and/or other investment advisers, Cacchione is, or is seeking to be, a "person associated with" an investment adviser as that term is defined in Section 202(a)(17) of the Advisers Act.

B. ENTRY OF THE INJUNCTION/RESPONDENT'S CRIMINAL CONVICTION

5. On April 1, 2009, a final judgment was entered by consent against Cacchione, permanently enjoining him from future violations of 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. David Scott Cacchione, Civil Action Number 3:09-CV-1259-CRB, in the United States District Court for the Northern District of California. The Commission also issued an order permanently barring him from association with any broker-dealer under Section 15(b) of the Exchange Act. In the Matter of David Scott Cacchione, Exch. Act Release No. 59812, Admin. Proc. File No. 3-13455 (Apr. 22, 2009).

6. The complaint alleged that from 2007 to 2008, in connection with the purchase or sale of securities, Cacchione supplied account statements of unknowing Merriman customers to a friend knowing that his friend would fraudulently pledge the securities in the accounts as collateral to obtain more than \$45 million of personal loans. Cacchione was motivated to assist his friend in the latter's scheme, in part, because Cacchione owed over \$2 million to his friend. The complaint further alleged that Cacchione selected the statements in a manner to avoid detection and that he signed lending agreements falsely certifying that the securities owned by several Merriman customers belonged to his friend.

7. The Commission's complaint also alleged that Cacchione defrauded his own clients, including a local children's charity and an elderly widow, by engaging in a pattern of unauthorized trading in the customers' accounts and pocketing the commissions from those trades. According to the complaint, from 2006-2007, Cacchione made at least 20 trades in highly risky, thinly-traded stocks in his customers' accounts without the customers' permission and in one or more instances, against the customer's express instructions not to trade such stocks.

8. On March 31, 2009, Cacchione pleaded guilty to one count of aiding and abetting securities fraud in violation of Title 18 United States Code, Sections 1348 and 2 before the United States District Court for the Northern District of California, in United States v. David Scott Cacchione, Crim. Information No. 3:09-CR-296. On October 13, 2009, a judgment in the criminal case was entered against Cacchione. He was sentenced to a prison term of 60 months followed by

three years of supervised release and ordered to make restitution in the amount of \$47,542,887. Cacchione was released from custody on June 9, 2014. He has not satisfied the restitution requirement of his sentence.

9. The criminal information to which Cacchione pleaded guilty alleged, among other things, that Cacchione, while he was associated with a broker-dealer, aided and abetted a scheme to defraud lenders in connection with the fraudulent pledge of securities underlying the Commission's complaint described in Paragraph 6 above.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73216 / September 25, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3937 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16167

In the Matter of

RANDAL KENT HANSEN

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940
AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Randal Kent Hansen.

II.

After an investigation, the Division of Enforcement alleges that:

1. Randal Kent Hansen ("Hansen"), of Sioux Falls, South Dakota, was the owner and principal of RAHFCO Management Group, LLC ("RAHFCO"). RAHFCO, a Delaware limited liability company, with its principal place of business in Sioux Falls, South Dakota, served as the general partner of RAHFCO Funds LP and RAHFCO Growth Fund LP (collectively the "RAHFCO Hedge Funds"). Hansen solicited investments in the RAHFCO Hedge Funds and received transaction based compensation for doing so. In addition, Hansen controlled the RAHFCO Hedge Funds, including directing the funds' investments, and received a management fee from each account for doing so.

2. On January 22, 2014, Hansen was convicted of twenty-one counts of mail fraud in violation of Title 18 United States Code, Section 1341, four counts of wire fraud in violation of Title 18 United States Code, Section 1343, and one count of conspiracy to commit wire fraud and mail fraud in violation of Title 18 United States Code, Section 1349, before the United States District Court for the District of South Dakota, in *United States v. Randal Kent Hansen*, Case

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No. 4:13CR40053-1. On May 19, 2014 and June 10, 2014, judgment in the criminal case was entered against Hansen. He was sentenced to a prison term of 108 months followed by three years of supervised release and ordered to make restitution in the amount of \$17,514,258.89.

3. The counts of the indictment under which Hansen was convicted alleged, *inter alia*, that from March, 2006 to May, 2011 Hansen, operating the RAHFCO Hedge Funds as a Ponzi scheme, engaged in a scheme to defraud investors and obtain money by means of materially false and fraudulent pretenses, representations, and promises, and that he used the United States Postal Service and other interstate carriers and made interstate wire communications in furtherance of the scheme.

4. While committing his criminal offenses, Hansen acted as an unregistered broker-dealer by raising money and soliciting investors to purchase securities in the form of the limited partnership interests in the RAHFCO Hedge Funds. He participated in the offering at key points, received and handled investor funds, and held himself out as the intermediary between investors and the funds. He regularly participated in securities transactions by raising large amounts of money for the RAHFCO Hedge Funds through extensive solicitation of investors. He received transaction-based compensation in the form of fees based on a percentage of the profits from securities transactions.

5. In addition, while committing his criminal offenses, Hansen acted as an investment adviser in connection with his management of the RAHFCO Hedge Funds through RAHFCO. RAHFCO, as the General Partner, was responsible for the management and investment decisions of the funds. Hansen controlled all of the funds' operations and activities and exercised primary responsibility for researching, selecting, and monitoring the funds' investments. RAHFCO and Hansen received from the RAHFCO Hedge Funds a management fee charged to each RAHFCO Fund investor's capital account.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By **Jill M. Peterson**
Assistant Secretary

*Commissioner Aguilar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 25, 2014

IN THE MATTER OF

ALL GRADE MINING, INC.
BLUFOREST, INC.
DHS HOLDING CO.
ESSENTIAL INNOVATIONS
TECHNOLOGY CORP.
GLOBAL GREEN INC.
INOVA TECHNOLOGY, INC.
MLIGHT TECH, INC.
SOLAR THIN FILMS, INC.
XUMANII INTERNATIONAL
HOLDINGS CORP.

ORDER OF SUSPENSION
OF TRADING

File No. 500-1

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of the issuers listed below.

1. All Grade Mining, Inc. is a Colorado corporation based in New Jersey. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's revenues. The company is quoted on OTC Link operated by OTC Markets Group, Inc. ("OTC Link"), under the ticker symbol HYII.
2. Bluforest, Inc. is a Nevada corporation based in Quito, Ecuador. Questions have arisen concerning the adequacy of publicly available information about the company because it has not filed any periodic reports since the period ended September 30, 2013. The company is quoted on OTC Link under the ticker symbol BLUF.

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3. DHS Holding Co. is a Nevada corporation based in Tennessee. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's revenues. The company is quoted on OTC Link under the ticker symbol DHSM.
4. Essential Innovations Technology Corp. is a Nevada corporation based in Washington state and Hong Kong. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations. The company is quoted on OTC Link under the ticker symbol ESIV.
5. Global Green Inc. is a Florida corporation based in Florida. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations. The company is quoted on OTC Link under the ticker symbol GOGC.
6. Inova Technology, Inc. is a Nevada corporation based in Nevada. Questions have arisen concerning the adequacy of publicly available information about the company because it has not filed any periodic reports since the period ended July 31, 2013. The company is quoted on OTC Link under the ticker symbol INVA.
7. mLight Tech, Inc. is a Florida corporation based in California. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations. The company is quoted on OTC Link under the ticker symbol MLGT.
8. Solar Thin Films, Inc. is a New York corporation based in New York. Questions have arisen concerning the adequacy and accuracy of press releases concerning

the company's operations. The company is quoted on OTC Link under the ticker symbol SLTZ.

9. Xumanii International Holdings Corp. is a Nevada corporation based in Nevada. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations. The company is quoted on OTC Link under the ticker symbol XUII.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT, on September 25, 2014 through 11:59 p.m. EDT, on October 8, 2014.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 9655 / September 25, 2014

SECURITIES EXCHANGE ACT OF 1934

Release No. 73213 / September 25, 2014

INVESTMENT ADVISERS ACT OF 1940

Release No. 3936 / September 25, 2014

INVESTMENT COMPANY ACT OF 1940

Release No. 31263 / September 25, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16166

In the Matter of

RICHARD O'LEARY

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO 8A OF THE SECURITIES
ACT OF 1933, SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTION 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY ACT
OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Richard O'Leary ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the

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Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

These proceedings arise out of insider trading in the securities of Towerstream Corporation ("Towerstream") in advance of the announcement after the market close on January 30, 2013, of its intent to offer for purchase shares of its previously registered common stock in an underwritten public offering. The next day, January 31, Towerstream's stock price dropped to \$2.95 per share from its closing price on January 30, the day of the announcement, of \$3.17 -- an approximate seven percent decline. Prior to the announcement, on January 28, 2013, O'Leary received material, nonpublic information relating to the offering. The next day, O'Leary sold 16,500 shares of Towerstream on the basis of that information, avoiding losses of \$6,845.

Respondent

1. **Richard O' Leary**, 48, of Boulder, Colorado, is associated with an unregistered investment adviser. Specifically, O'Leary is an analyst for an investment adviser that provides investment advice to a private hedge fund and a venture fund for compensation. O'Leary is not and has never been associated with a registered investment adviser nor been registered as an investment adviser with the Commission or any state. From approximately February 1989 through February 2005, O'Leary was a registered representative associated with broker-dealers registered with the Commission. O'Leary has no disciplinary history.

Other Relevant Entity

2. **Towerstream Corporation** is a Delaware corporation with its principal place of business in Middletown, Rhode Island. It is a 4G wireless service provider. Towerstream's securities are registered with the Commission under Exchange Act Section 12(b) and its common stock trades on the NASDAQ under the symbol "TWER."

Background

3. On or about January 15, 2013, Towerstream's management met with a third-party advisory group to discuss financing alternatives for Towerstream. On or about January 24, 2013,

Towerstream determined the structure of a potential underwritten offering of its previously-registered securities. From about January 25 through January 30, 2013, the advisory group solicited potential investors for the underwritten offering, bringing some of those investors "over the wall" to learn the identity of the offeror and details of the offering. The potential investors agreed to keep the information confidential.

4. On January 28, 2013, after the market close, Towerstream's advisory group spoke with O'Leary, seeking the participation of O'Leary's employer in the contemplated offering. O'Leary agreed to be brought "over the wall," and the advisory group identified Towerstream as the offeror and detailed some of the proposed offering terms. In an email dated that same day, a representative of the advisory group confirmed O'Leary's receipt of material, nonpublic information and reminded O'Leary of his agreement to keep the information confidential and of the restriction from trading in Towerstream's securities until the information became publicly available.

5. On January 29, 2013, O'Leary, knowing this material, nonpublic information, sold 16,500 shares of Towerstream's common stock from brokerage accounts held in the names of his wife and children for which he was an authorized agent.

6. After the market close on January 30, 2013, Towerstream announced the public offering of shares of previously registered common stock. The offering raised approximately \$30 million from the sale of ten million shares of Towerstream common stock at a price of \$3.00 per share. The \$3.00 per share purchase price represented a more than five percent discount to Towerstream's January 30 closing price (the last trading day before the announcement) of \$3.17 per share and caused an approximately 21.5 percent dilution of the total shares outstanding. The day after the announcement, Towerstream's stock closed at \$2.95 per share, an approximate seven percent decline from \$3.17 per share.

7. As a result of this decrease in Towerstream's stock price following the announcement of the offering, O'Leary avoided losses of \$6,845 based on the sale of Towerstream stock on January 29, 2013.

8. As a result of the conduct described above, O'Leary willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

O'Leary's Cooperation

In determining to accept the Offer, the Commission considered cooperation afforded the Commission staff.

Undertakings

Respondent undertakes to:

Provide to the Commission, within 15 days after the end of the 12-month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent O'Leary's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent O'Leary cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent O'Leary be, and hereby is, suspended from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of 12 months, effective on the second Monday following the entry of this Order.

C. Respondent is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of 12 months, effective on the second Monday following the entry of this Order.

D. Respondent shall, within 14 days of the entry of this Order, pay disgorgement, which represents losses avoided as a result of the conduct described herein, of \$6,845, prejudgment interest of \$313, and a civil penalty of \$6,845, for a total of \$14,003 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Richard O'Leary as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas J. Krysa, Associate Director, Division of Enforcement, Securities and Exchange Commission, Denver Regional Office, 1961 Stout St., Suite 1700, Denver, Colorado 80294-1961.

E. Respondent shall comply with the undertakings enumerated in Section III above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73223 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16172

In the Matter of

ERIC ARONSON,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Eric Aronson ("Aronson" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. At various times from 2006 to 2010, Aronson was the owner, CEO, and Managing Member of PermaPave Industries, LLC, Chairman of the Board and Senior Vice President of Sales and Marketing of PermaPave USA Corp., the principal of Permeable Solutions, Inc., the sole owner of PermaPave Distributions, Inc. and PermaPave Construction Corp., a 50% owner of Verigreen, LLC, and a de facto officer and director and the Senior Vice President of Sales and Marketing of Interlink-US-Network, Ltd. ("Interlink"). Aronson has not been associated with a registered broker-dealer since 1996, and, in 2000, the National Association of Securities Dealers barred him from associating with any of its member firms in any capacity. Aronson is 46 years old and a resident of Syosset, New York.

2. On February 3, 2014, a final judgment was entered against Aronson, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and from aiding and abetting future violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 thereunder in the civil action entitled Securities and Exchange Commission v. Eric Aronson, et al., Civil Action Number 11 Civ. 7033, in the United States District Court for the Southern District of New York.

3. The complaint alleged that, from 2006 to 2010, Aronson and others sold in unregistered offerings promissory notes and "use of funds agreements" issued by PermaPave Industries, LLC and its affiliates (collectively, the "PermaPave Entities"). According to the complaint, Aronson told investors that the PermaPave Entities had a tremendous backlog of confirmed orders for PermaPave pavers, which were permeable paving stones comprised of small rocks glued together, and that their money would be used to purchase and ship PermaPave pavers from Australia to satisfy these orders. The complaint further alleged that, in reality, there was little demand for these pavers, and the "interest" and "profit" payments that investors temporarily received were really the proceeds raised from newer investors.

4. The complaint also alleged that Aronson played a role in drafting and issuing a Form 8-K on behalf of Interlink which stated that a company that had never heard of Interlink had agreed to invest \$6 million in it.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9656 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16173

In the Matter of

The Registration Statement of

Esir1, Inc.
433 North Camden Drive
6th Floor
Beverly Hills, CA 90210

Respondent.

**ORDER FIXING TIME AND PLACE OF
PUBLIC HEARING AND INSTITUTING
PROCEEDINGS PURSUANT TO SECTION
8(d) OF THE SECURITIES ACT OF 1933**

I.

The Securities and Exchange Commission ("the Commission") deems it appropriate and in the public interest that proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be, and they hereby are, instituted to determine whether a stop order should issue suspending the effectiveness of Esir1, Inc.'s ("Respondent") registration statement.

II.

The Division of Enforcement alleges that:

1. On July 31, 2013, Respondent filed a Form S-1 registration statement with the Commission, seeking to register the resale of common shares in a \$785,000 initial public offering. Respondent filed amendments to its registration statement on August 19, 2013 and October 4, 2013. The initial filing and the amendments thereto are collectively referred to as the "Registration Statement".

A. RESPONDENT

2. Respondent is a California corporation located in Beverly Hills, California.

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B. MATERIAL MISSTATEMENTS AND OMISSIONS

3. Respondent's second amendment to the Form S-1, which was filed on October 4, 2013, (the "October 4 Amendment") includes materially false or misleading information. In the October 4 Amendment, the Respondent included an audit report purportedly issued and signed by Grant Thornton LLP ("Grant Thornton"). Grant Thornton did not prepare or issue the audit report, did not perform any audit procedures for Esir1, Inc., and has no record or knowledge of ever doing any work for Esir1, Inc. The fake Grant Thornton audit report included in the October 4 Amendment constitutes a materially false or misleading statement in the Registration Statement.

III.

In view of the allegations made by the Division of Enforcement, the Commission, having considered the aforesaid, deems it necessary and appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on October 9, 2014 at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IV

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS FURTHER ORDERED that the Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 221(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice. In the absence of an appropriate waiver, no

officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Commissioner Aguilar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3939 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16169

In the Matter of

HIGHLAND CAPITAL
MANAGEMENT, L.P.

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 203(e), 203(i), AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(i), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Highland Capital Management, L.P. ("Highland" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(i), and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

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Respondent

1. Highland Capital Management, L.P. ("Highland") is a limited partnership organized under the laws of Delaware with its principal place of business in Dallas, Texas. Highland has been registered with the Commission as an investment adviser since 1997. Highland serves as an investment adviser to, among others, unregistered hedge funds and private accounts.

Summary

2. These proceedings arise out of certain instances by Highland of trading securities between its clients' accounts and accounts in which Highland and its principals maintained an ownership interest, without adhering to certain requirements set forth by the Advisers Act. In addition, with respect to these principal transactions and certain other business operations, Highland failed to keep and maintain true, accurate and current books and records as required by the Advisers Act.

Background

3. Highland, an investment adviser that has been registered with the Commission since 1997, primarily focuses on investments in the debt instruments of distressed companies, debt-related structured products, and other securities that are not listed or traded on a national securities exchange. Although a market for these securities does exist, many of these securities are considered illiquid and trade primarily among institutional investors.

Highland Engaged in Improper Principal Transactions

4. A cross trade is a transaction between two accounts managed by the same investment adviser. Cross trades can benefit clients in a number of ways, including: (i) enabling the transfer of securities among client accounts without having to expose the security to the market, thereby saving transaction and market costs that would otherwise be paid; (ii) eliminating counterparty risk; and (iii) providing an adviser with added flexibility when dealing with an illiquid asset. Cross trades can be executed by an adviser on an agency or a principal basis. In an agency cross trade, the adviser buys or sells a security in the account of one client with the account of another client. In contrast, in a principal cross trade, the adviser - acting for its own account - buys a security from, or sells a security to, one of its client's accounts.

5. Although cross trades can be appropriate in many circumstances, they also can create the possibility of a conflict of interest for an adviser: the better the price the adviser obtains for the selling client, the worse it is for the buying client, and vice versa. And, cross trades involving a principal account heighten the potential for unfair treatment. Highland was aware of the potential conflicts created by cross trading, and established a process for its compliance department to monitor such trades.

6. Between 2007 and 2009, Highland knowingly engaged in a number of transactions with its client advisory accounts without disclosing in writing that Highland was acting as principal, or obtaining client consent, before the trades were completed (the "Trades").¹

7. Many of the Trades took place during September and October 2008 when, with the onset of the financial crisis, asset values were dropping and the market for credit products was increasingly illiquid. As a result, margin calls were being made on Highland's accounts. According to Highland, many of the Trades were executed in an effort to generate or maintain liquidity for the advised accounts.

8. For example, on September 23, 2008, an account in the name of and owned by Highland purchased \$3,300,423 in securities from one of Highland's clients, a hedge fund it advised. Highland failed to properly obtain the consent of the hedge fund prior to completing the transaction. As another example, on September 19, 2008, Highland advised two hedge fund clients to sell approximately \$15 million in debt securities to four separate accounts in which Highland maintained an ownership interest. Again, Highland failed to properly obtain the consent of the hedge fund clients prior to completing the transaction.

Highland Failed to Maintain Accurate Books and Records

9. During the relevant time period, Highland failed to maintain books and records that were true, accurate, and current in relation to certain of the Trades and certain other business operations, as required by the Advisers Act: Highland failed to maintain sufficient documentation in relation to certain principal transactions; Highland maintained trade blotters that reflected certain transactions, but those transactions were either not reflected on a general ledger or did not have a corresponding order ticket, or vice versa; Highland's internal records at times conflicted with those of its former third-party administrator; and, in at least two instances, Highland failed to maintain documents supporting the transfer of funds from a client account to an account maintained by Highland or its principals.

Violations

10. Section 206(3) of the Advisers Act prohibits an investment adviser, acting as a principal for its own account, from knowingly buying from or selling to a client any security without disclosing in writing to such client the capacity in which the adviser is acting and obtaining the client's consent before the completion of the transaction. During the relevant period, as described above, Highland engaged in numerous such transactions without disclosing in writing to the relevant client the capacity in which Highland was acting or obtaining timely consent. As a result, Highland willfully violated Section 206(3) of the Advisers Act.

11. Section 204(a) of the Advisers Act and Rule 204-2(a) thereunder require investment advisers to make and to keep true, accurate, and current books and records, and to maintain certain other records for a period five years. Rule 204-2(a)(3) requires investment advisers to keep a

¹ Highland did ultimately receive client consent for many of the Trades; however, this consent was received after the Trades had settled, and therefore did not comply with the requirements of Section 206(3) of the Advisers Act.

memorandum concerning certain transaction details for the purchase or sale of any security. Highland, as detailed above, failed to make and keep true, accurate, and current certain required books and records. As a result, Highland willfully violated Section 204(a) of the Advisers Act and Rule 204-2 thereunder.

Undertakings

Respondent has undertaken to:

12. The Respondent shall no later than four (4) months after the issuance of this order retain at its expense a qualified independent consultant (the "Consultant") not unacceptable to the staff of the Commission to conduct a comprehensive review of the Respondent's compliance and control systems relating to principal trades, and the creation and retention of its books and records. The Respondent shall require the Consultant to assess the adequacy of the Respondent's compliance and control systems as they relate to principal transactions and the creation, retention, and adequacy of its books and records.

13. The Respondent shall require the Consultant, within six (6) months of the Consultant's engagement, to submit a report of his/her findings and recommendations ("Initial Report") simultaneously to the Commission's Division of Enforcement and Office of Compliance Inspections and Examinations ("OCIE"), that:

- (A) Set forth the Consultant's findings about the adequacy of the Respondent's compliance and control systems as they relate to principal transactions and the creation, retention, and adequacy of its books and records; and
- (B) If necessary, makes recommendations regarding how the Respondent should modify or supplement its compliance and control systems as they relate to principal transactions and creation, retention, and adequacy of its books and records.

14. Respondent shall adopt and implement all recommendations made by the Consultant, subject to Paragraph 15 below.

15. If Respondent determines that any of the Consultant's recommendations in the Initial Report are unduly burdensome or impractical, or if they determine that the objectives of the recommendation can be more effectively achieved through another means, the Respondent may propose that a recommendation not be implemented or propose an alternative reasonably designed to accomplish the same objectives, and shall notify the Consultant of any such proposals with thirty (30) days of receipt of the Initial Report. If, upon evaluating the Respondent's proposal(s), the Consultant determines that a recommendation should not be implemented or that a suggested alternative is reasonably designed to accomplish the same objectives as the recommendation in question, then the Consultant may withdraw the recommendation and/or accept the proposed alternative and notify the Commission's Division of Enforcement and OCIE of any such withdrawn recommendations and/or accepted alternatives, and the Respondent shall adopt and implement the accepted alternative(s). If, upon evaluating the Respondent's proposals, the

Consultant concludes that the Consultant's recommendation should be implemented, the Consultant shall notify the Respondent within thirty (30) days of receipt of the alternative proposal and the Respondent and the Consultant shall, with fourteen (14) days of the Consultant's notification, jointly confer with the staff of the Division of Enforcement and OCIE to resolve the matter. In the event, after conferring with the Commission staff, the Respondent and the Consultant are unable to agree on an alternative proposal, the Respondent shall adopt and implement the Consultant's recommendation.

16. Within six (6) months from Respondent's receipt of the Initial Report, the Respondent shall complete implementation of all of the Consultant's recommendations and/or accepted alternatives.

17. No sooner than six (6) months from the Respondent's receipt of the Initial Report, the Respondent shall require the Consultant to conduct a review of the Respondent's implementation of the Consultant's Recommendation set forth above and, within twelve (12) months from Respondent's receipt of the Initial Report, submit a final report ("Final Report") to the Commission's Division of Enforcement and OCIE. The Final Report shall describe the review made of the Respondent's implementation of the Consultant's recommendations and describe how Respondent has implemented and are complying with the Consultant's recommendations.

18. Within two (2) months from Respondent's receipt of the Final Report, a Highland principal shall certify in writing to the Division of Enforcement and OCIE that, to the best of his knowledge based on reasonable inquiry, all of the Consultant's recommendations and any alternative approaches approved by the Consultant have been adopted and implemented by the Respondent.

19. The Respondent shall cooperate fully with the Consultant, including providing the Consultant with access to all relevant files, books, records, and personnel of the Respondent and facilitate access to relevant personnel at any third party service providers as requested for the above-mentioned review, and obtaining cooperation of employees or persons under the Respondent's control. Nothing in the foregoing shall be deemed to require the Respondent to waive its attorney-client privileges or other privileges with respect to privileged documents.

20. The Respondent shall require the Consultant to report to the Commission staff on its activity as the staff may reasonably request.

21. To ensure the independence of the Consultant, the Respondent shall not have the authority to terminate the Consultant without prior written approval of the Commission staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at its reasonably and customary rates.

22. The Respondent shall expend sufficient funds to permit the Consultant to discharge its duties. The Respondent shall permit the Consultant to engage such assistance, clerical, legal or expert, as necessary and at a reasonable cost, to carry out its activities, and the cost, if any, of such assistance shall be borne exclusively by the Respondent.

23. The Respondent shall bear the full expense of carrying out these undertakings, including the costs of retraining the Consultant and implementing the Consultant's recommendations.

24. The Respondent shall require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which it is affiliated or of which it is a member, and any person engaged to assist the Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Fort Worth Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

25. The Respondent may apply to the Division of Enforcement for an extension of the deadlines described above before their expiration and, upon a showing of good cause by the Respondent, the Division of Enforcement may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

26. The Respondent shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to David Peavler, Assistant Regional Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondent Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 204(a) and 206(3) of the Advisers Act and Rule 204-2 thereunder.

B. Pursuant to Section 203(e) of the Advisers Act, Respondent is censured.

C. Pursuant to Section 203(i) of the Advisers Act, Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$225,000 to the Securities and

Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Highland Capital Management, L.P. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to David Peavler, Division of Enforcement, Securities and Exchange Commission, Burnett Plaza, 801 Cherry Street, Suite 1900, Unit 18, Fort Worth, TX 76102.

D. Pursuant to Section 203(k) of the Advisers Act, Respondent Highland shall comply with the undertakings set forth in Section III, Paragraphs 12 through 26, above.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73226 / September 25, 2014

INVESTMENT COMPANY ACT OF 1940

Release No. 31266 / September 25, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16175

In the Matter of

Kenneth C. Meissner, James
Doug Scott, and Mark S.
"Mike" Tomich,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934 AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Kenneth C. Meissner ("Meissner"), James Doug Scott ("Scott"), and Mark S. "Mike" Tomich ("Tomich") (collectively "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. This proceeding arises from a multi-million dollar investment scheme orchestrated by Gary Snisky ("Snisky"). From August 2011 to January 2013, Snisky raised approximately \$4.3 million from at least 40 investors across at least eight states through the sale of membership interests in Arete, LLC ("Arete") and other LLCs he controlled. Snisky recruited active insurance agents to solicit prospective investors. These salespeople promised investors no-risk, profitable

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alternatives to traditional annuities by offering investments in government agency bonds that were backed by the full faith and credit of the United States Government. However, Snisky never made any legitimate investments with investor funds. Instead, Snisky misappropriated approximately \$2.8 million of investor funds, mostly through cash withdrawals. He also used these funds to pay commissions to the salespeople and for his personal expenditures.

2. Three of these salespeople – Meissner, Scott and Tomich – raised more than \$1.47 million from investors to invest with Snisky and received more than \$87,000 in commissions. Meissner, Scott and Tomich directly or indirectly solicited current and prospective insurance clients for investments, advised prospective investors on the specific details and merits of the investments, received transaction-based compensation for bringing in money from investors, and participated at key points in the investment chain. None of the three was registered with the Commission as a broker or associated with a registered broker-dealer during this time. Accordingly, Meissner, Scott and Tomich violated Section 15(a) of the Exchange Act by effecting transactions as an unregistered broker.

RESPONDENTS

3. Meissner, age 73, is a resident of Fair Oaks Ranch, Texas. Meissner has held an insurance producer license in Texas for more than 30 years. Over the course of his career, Meissner also formerly held insurance producer licenses in at least 25 other states. Meissner also held a Series 1 license from 1968 until June 2000, when the NASD barred him from selling securities in any capacity for participating in a private securities transaction without providing his member firm written notice and information regarding whether he received compensation in connection with the transaction.

4. Scott, age 62, is a resident of Perkasio, Pennsylvania. Since 1978, Scott has held an insurance producer license in the state of Pennsylvania. He has also held insurance producer licenses in at least two other states. Additionally, Scott was previously employed by Brown Investment Advisors, Inc. ("Brown Advisors"), a Pennsylvania and New Jersey registered investment adviser, from 2005 through January 1, 2012. During that same time period, Scott also performed consulting services for Summit Trust Company ("Summit Trust"), a Nevada Trust self-directed IRA administrator and critical cog in the investment scheme at issue. Scott also controlled an entity called the Cromarty Group, which he used to funnel money to other salespeople in this matter.¹ Scott has never held any securities licenses, yet he has been the subject of two significant actions brought by the Pennsylvania Securities Commission ("PSC"), both of which resulted in severe penalties, including a permanent bar from offering or selling securities in Pennsylvania.²

¹ The Cromarty Group is a Nevada LLC formed in 2012, with its principal place of business in Hatfield, Pennsylvania. Although Scott's wife, Linda F. Close, is the managing member of the Cromarty Group, Scott testified that he used the entity to engage in his consulting business and appear "more professional." Scott also testified that his wife is the founder because his credit is "not good" and he wished to secure a line of credit for the entity at some point.

² In October 1999, the PSC ordered Scott to cease and desist from offering and selling unregistered and nonexempt promissory notes and acting as an unregistered broker-dealer (Docket No. 9910-06). In 2005, the PSC, in an administrative action against Scott related again to the sale of promissory notes, permanently barred him from: representing an issuer offering or selling securities in Pennsylvania; acting as a promoter, officer, director, or partner

5. Tomich, age 73, is a resident of Belmont, Michigan. Since 1982, Tomich has held an insurance producer license in Michigan, and currently holds producer licenses in at least two other states. Tomich held Series 6 and 63 securities licenses from 1987 to 1997, when he voluntarily separated from his last securities firm and the licenses lapsed. Tomich was an investment adviser registered with the state of Michigan through Michigan's Department of Licensing and Regulatory Affairs from 1999 to October 2010, at which time he voluntarily withdrew his registration. In November 2000, Tomich consented to a cease-and-desist order by the Office of Financial and Insurance Services of the Michigan Department of Consumer and Industry Services based on his illegal sales of viatical settlements. Tomich agreed to cease and desist from violations of the Michigan Uniform Securities Act, which included the prohibition against the sale of unregistered, nonexempt securities and omitting to state material facts in the offer and sale of securities. Tomich paid restitution to his victims and a \$2,000 civil penalty.

OTHER RELEVANT PARTIES

6. Snisky, age 46, was a resident of Longmont, Colorado. He was the sole managing member of Arete, along with four pooled investment vehicles which made offerings as a part of his scheme: (1) CMG Offering – 12PO5i, LLC; (2) CMG Offering – 12PO10i, LLC; (3) Summit Offering – 12PO5i, LLC; and (4) Summit Offering – 12PO10i, LLC (collectively "Snisky PIVs").³ For orchestrating the scheme described herein, Snisky was indicted by a federal grand jury on November 19, 2013 on charges of mail fraud and money laundering. The next day, he was arrested. Additionally, on February 28, 2013, Colorado's Department of Regulatory Agencies, Division of Securities ("DORA") filed a Complaint for Injunctive and Other Relief against Snisky, Colony Capital, Colony Capital Group, Colony Capital Investments, Colony Capital Holdings, and others alleging various violations of the Colorado Securities Act on the basis that Snisky and others carried out a "private equity fund" scheme to defraud dozens of investors of at least \$3.2 million. Trial is set for February 2015 in this matter. Furthermore, Snisky formerly held an ownership interest in Arete, Ltd., a/k/a Sky Peak Capital Management (SEC No. 801-77422), a Cheyenne, Wyoming-based investment adviser registered with the Commission. Snisky formerly held Series 7, 62, and 63, licenses, which all expired in 1999.

7. Arete was a Colorado limited liability company with its principal place of business in Longmont, Colorado. Snisky was Arete's sole and managing member. Arete functioned both as

of an issuer offering or selling securities in Pennsylvania or of a person who controls or is controlled by an issuer; being registered as, or being an affiliate of, a broker-dealer, investment adviser, or investment adviser representative; or relying on various offering exemptions (Docket No. 0102-36).

³ The Snisky PIVs shared the following characteristics: (1) all had principal place of business in Longmont, CO; (2) Snisky was the sole and managing member of all the entities; (3) all were formed in April 2012 as "placement LLC" or pooled investment vehicle by which investors invested funds for the Arete investment; (4) none of the Snisky PIVs were ever registered as an offering of securities under the Securities Act or as a class of securities under the Exchange Act; and (5) none of the Snisky PIVs have ever been registered with the Commission in any capacity. Although the investment contracts offered by Snisky identified the Snisky PIVs and Arete separately, all of the investors believed they were investing in Arete. Additionally, all investor funds flowed through bank accounts held in Arete's name.

the entity through which Snisky engaged in his overall business operations and as the primary issuer, or pooled investment vehicle, whose interests were offered and sold to investors. Snisky formed Arete in June 2011 and voluntarily dissolved the entity in late April 2012. Arete has never registered an offering of securities under the Securities Act of 1933 or a class of securities under the Exchange Act. Arete has never been registered with the Commission in any capacity.

FACTS

8. From August 2011 through January 2013, Snisky offered and sold membership interests in LLCs he created, managed and controlled (Arete, LLC and the Snisky PIVs) to investors across the country. Investors were told that money from their membership purchases in Arete or the Snisky PIVs would be pooled together to purchase government-backed agency bonds.

9. Snisky did not personally solicit the investments from the investors. Rather, he recruited and trained veteran insurance salespersons across the country to solicit investments from their current and prospective client bases. Snisky persuaded the salespeople to market and sell the investments by, among other things, showing them fraudulent investor account statements, an Excel-based financial model that calculated "guaranteed returns" based on a given investment amount and provided a print out for investors, and screenshots from a Bloomberg software purportedly showing the bond investments.

10. In order to entice the investors to invest their money in Arete and the Snisky PIVs, Snisky instructed his salespeople to communicate the following information to investors: (1) these investments would purportedly generate a guaranteed annual return of 6% or 7% annually; (2) Snisky could use his status as an "institutional trader" to engage in overnight banking sweeps to generate even larger returns for the investors; (3) investors would receive a 10% bonus to compensate them for any early withdrawal penalties from their existing investments; (4) investors received assurances that their investments would be "safe" and "guaranteed" because the investments in the bonds were backed by the "full faith and credit" of the United States Government and the investments were structured in a way that permitted withdrawal of principal and interest much earlier than traditional annuities. Relying on the promises of a purportedly safe and more profitable alternative to annuities, individuals from across the country invested approximately \$4.3 million in the scheme.

11. These representations were false. Snisky did not purchase any agency bonds, nor did he engage in any overnight banking sweeps. Rather, he misappropriated approximately \$2.8 million of investor funds, mostly through cash withdrawals. He then used these funds to pay commissions to his sales staff, as well as make personal expenditures (such as mortgage payments).

12. The salespeople were actively involved in the recommendation and advising process concerning the Arete and Snisky PIV investments by investors, and participated in the order taking process to initiate the purchases. In exchange for soliciting the investors, the salespeople were promised transaction-based compensation, which amounted to a percentage of the funds invested with Snisky through his companies.

13. In July 2011, Scott learned about the Snisky investment scheme from an insurance agent acquaintance. At the time, Scott was working for Brown Advisors and Summit Trust, marketing trust services to life insurance agents and financial advisors. After talking directly with Snisky on multiple occasions, Scott reached an agreement with Snisky that he would recruit other salespeople to solicit investments.⁴ Scott introduced Meissner, Tomich and other agents Scott knew through Brown Advisors and Summit Trust to Snisky starting in December 2011. Scott provided the salespeople with information and documents regarding Arete. Scott also met with advisors to explain Summit Trust's role in the scheme. In return, Scott, through Cromarty Group, received a 1.5% commission on the total amount of funds brought in by the Respondents. Cromarty Group then paid the commissions to the salespeople that directly solicited the investments. Scott received \$21,000 in commissions for his role in the scheme.

14. Meissner advertised his "Safe Money Strategies" to investors that "protect your Principal and increase[] your annual income so that you never again suffer a loss." Meissner traveled to Colorado with Scott in early 2012 to meet Snisky and learn about the Arete investments. From April 2012 to June 2012, Meissner solicited current and prospective insurance clients to invest in the scheme and advised clients on the merits of the investment. He sold Arete to four investors, all Texas residents, securing \$355,242.09 for Snisky. Meissner received a 5% commission for all invested funds, and received \$17,737.00 in total commissions through Cromarty Group on these sales.

15. Tomich operated his business Strategic Planning Services, where he marketed his investment strategies as one to "protect [your] financial assets and maintain [your] standard of living." Tomich also offered a seminar called ABC Conservative Investing concerning life insurance and fixed annuities at a local college, where he gained some of his clients. Tomich traveled to Colorado with Scott in early 2012 to meet Snisky and learn about the Arete investments. From April 2012 to October 2012, Tomich solicited current and prospective insurance clients and advised clients on the merits of the investment. He sold Arete to seven investors, all Michigan residents, securing approximately \$1.12 million for Snisky. Tomich received a 5% commission on the invested funds and received \$48,327 in total commissions through the Cromarty Group on these sales.

16. In the course of their solicitation, Meissner and Tomich: (1) directly and regularly solicited current and prospective insurance clients for investments in Arete and the Snisky PIVs; (2) advised prospective investors on the specific details and merits of the investments; (3) received transaction-based compensation for bringing in money from investors; (4) participated at key points in the investment chain; and (5) sold multiple issuers to multiple investors.

17. Although Scott relied on Tomich and Meissner to solicit investors, he satisfied a number of other hallmarks for an individual acting as a broker, such as receiving transaction based compensation and regularly participating in the transactions. Scott performed many of the

⁴ The consulting agreement between Scott's company, Cromarty Group, and Summit Trust (the self-directed IRA administrator used by Snisky) included a specific provision that Scott (through Cromarty Group) was not to provide investment advice. However, Scott could refer investors to insurance agents that could provide investment advice.

necessary acts to make the sales operation possible for Meissner and Tomich. Additionally, Scott served as the conduit through which Tomich and Meissner received documents and information about the Arete investment to advise prospective and current clients on the merits of the investment.

18. At no point between August 2011 and April 2012 was Meissner, Scott or Tomich registered with the Commission as a broker, nor were they associated with a registered broker-dealer at the time of these activities.

VIOLATIONS

19. Section 15(a) of the Exchange Act, among other things, prohibits a broker or a natural person not associated with a broker (other than such a broker whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker is registered in accordance with Section 15(b). Scienter is not an element of a violation of Section 15(a). SEC v. Rabinovich & Assoc., LP, 2008 U.S. Dist. LEXIS 93595, at *14 (S.D.N.Y. 2008).

20. As a result of the conduct described above, Respondents willfully violated Section 15(a) of the Exchange Act.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

D. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 15(a) of the Exchange Act, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73225 / September 25, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31265 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16174

In the Matter of

David C. Sorrells,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934 AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against David C. Sorrells ("Sorrells" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Exchange Act Sections 15(b) and 21C and Investment Company Act Section 9(b), Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ the following:

1. This proceeding arises from a multi-million dollar investment scheme orchestrated by Gary Snisky ("Snisky"). From August 2011 to January 2013, Snisky raised approximately \$4.3 million from at least 40 investors across at least eight states through the sale of membership interests in Arete, LLC ("Arete") and other LLCs he controlled. Snisky recruited active insurance agents to solicit prospective investors. These salespeople promised investors no-risk, profitable alternatives to traditional annuities by offering investments in government agency bonds that were backed by the full faith and credit of the United States Government. However, Snisky never made any legitimate investments with investor funds. Instead, Snisky misappropriated approximately \$2.8 million of investor funds, mostly through cash withdrawals. He also used these funds to pay commissions to the salespeople and for his personal expenditures.

2. One of the most active salespeople was Sorrells, who raised more than \$2.4 million from investors to invest with Snisky, and received more than \$207,000.00 in commissions for his efforts. Sorrells directly solicited current and prospective insurance clients for investments, advised prospective investors on the specific details and merits of the investments, received transaction-based compensation for bringing in money from investors, and participated at key points in the investment chain. Sorrells was not registered with the Commission as a broker or associated with a registered broker-dealer during this time. Accordingly, Sorrells violated Section 15(a) of the Exchange Act by effecting transactions as an unregistered broker.

RESPONDENT

3. Sorrells, age 59, is a resident of Linden, Texas. Since 2006, Sorrells has held an insurance producer license with the state of Arizona. From mid-2011 through April 2012, Sorrells solicited current and prospective insurance clients to invest with Snisky. Sorrells previously held Series 6 (since 1997), 26 (since 1998), 63 (since 1997), and 65 (since 1999) licenses through April 2010, at which time he separated voluntarily from his most recent broker-dealer employer and the licenses lapsed. Sorrells has no disciplinary history.

OTHER RELEVANT PARTIES

4. Snisky, age 46, was a resident of Longmont, Colorado. He was the sole managing member of Arete, along with four LLCs which made offerings as a part of his scheme: (1) CMG Offering - 12PO5i, LLC; (2) CMG Offering - 12PO10i, LLC; (3) Summit Offering - 12PO5i, LLC; and (4) Summit Offering - 12PO10i, LLC (collectively "Snisky PIVs").² For orchestrating

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² Snisky gave the Snisky PIVs names that were personalized for the insurance firm or self-directed IRA company associated with or engaged in offering the membership interests. "GMC" was an abbreviation for Cornerstone Marketing Group LLC, and "Summit" was short for Summit Trust Company. The Snisky PIVs shared the following characteristics: (1) all had principal place of business in Longmont, CO; (2) Snisky was the sole and

the scheme described herein, Snisky was indicted by a federal grand jury on November 19, 2013 on charges of mail fraud and money laundering. The next day, he was arrested. Additionally, on February 28, 2013, Colorado's Department of Regulatory Agencies, Division of Securities ("DORA") filed a Complaint for Injunctive and Other Relief against Snisky, Colony Capital, Colony Capital Group, Colony Capital Investments, Colony Capital Holdings, and others alleging various violations of the Colorado Securities Act on the basis that Snisky and others carried out a "private equity fund" scheme to defraud dozens of investors of at least \$3.2 million. Trial is set for February 2015 in this matter. Furthermore, Snisky formerly held an ownership interest in Arete, Ltd., a/k/a Sky Peak Capital Management (SEC No. 801-77422), a Cheyenne, Wyoming-based investment adviser registered with the Commission. Snisky formerly held Series 7, 62, and 63, licenses, which all expired in 1999.

5. Arete was a Colorado limited liability company with its principal place of business in Longmont, Colorado. Snisky was Arete's sole and managing member. Arete functioned both as the entity through which Snisky engaged in his overall business operations and as the primary issuer, or pooled investment vehicle, whose interests were offered and sold to investors. Snisky formed Arete in June 2011 and voluntarily dissolved the entity in late April 2012. Arete has never registered an offering of securities under the Securities Act of 1933 or a class of securities under the Exchange Act. Arete has never been registered with the Commission in any capacity.

FACTS

6. From August 2011 through January 2013, Snisky offered and sold membership interests in LLCs he created, managed and controlled (Arete, LLC and the Snisky PIVs) to investors across the country. Investors were promised that once they made their membership purchase in Arete or the Snisky PIVs, their money would then be pooled together to purchase Ginnie Mae agency bonds.

7. In order to entice the investors to invest their money in Arete and the Snisky PIVs, Snisky instructed his salespeople to communicate the following information to investors: (1) these investments would purportedly generate a guaranteed annual return of 6% or 7% annually; (2) Snisky could use his status as an "institutional trader" to engage in overnight banking sweeps to generate even larger returns for the investors; (3) investors would receive a 10% bonus to compensate them for any early withdrawal penalties from their existing investments; (4) investors received assurances that their investments would be "safe" and "guaranteed" because the investments in the bonds were backed by the "full faith and credit" of the United States Government and the investments were structured in a way that permitted withdrawal of principal and interest much earlier than traditional annuities. Relying on the promises of a purportedly safe and more profitable alternative to annuities, individuals from across the country invested approximately \$4.3 million in the scheme.

managing member of all the entities; (3) all were formed in April 2012 as "placement LLC" or pooled investment vehicle by which investors invested funds for the Arete investment; (4) none of the Snisky PIVs were ever registered as an offering of securities under the Securities Act or as a class of securities under the Exchange Act; and (5) none of the Snisky PIVs have ever been registered with the Commission in any capacity.

8. These representations were false. Snisky did not purchase any agency bonds, nor did he engage in any overnight banking sweeps. Rather, he misappropriated approximately \$2.8 million of investor funds, mostly through cash withdrawals. He then used these funds to pay commissions to his sales staff, as well as make personal expenditures (such as mortgage payments).

9. Snisky did not personally solicit the investments from the investors. Rather, he recruited and trained veteran insurance salespersons across the country to solicit investments from the current and prospective client bases of these salespersons. The salespeople then parroted many of Snisky's representations about the investments to the investors. The salespeople were actively involved in the recommendation and advising process concerning the investments, and participated in the order taking process to initiate the purchases. In exchange for soliciting the investors, the sales people were promised transaction-based compensation, which amounted to a percentage of the funds invested with Snisky through his companies.

10. Sorrells represented to investors that his company, Cornerstone Financial used a six-step process to help investors protect assets and get out of debt. In 2011, Sorrells met with Snisky multiple times in Colorado to learn more about the Arete investment. Through a July 7, 2011 Memorandum of Understanding with Arete, Sorrells agreed to sell the investments in Arete and the Snisky PIVS. Additionally, Sorrells agreed to provide insurance agents through his company, Cornerstone Financial, to market and sell the investments to pre-existing and prospective clients in the insurance industry.

11. From August 2011 to April 2012, Sorrells individually solicited current and prospective clients to invest with Snisky. Using methods such as phone and email, Sorrells individually sold Arete to eight investors, securing \$1,404,019.10 in investment funds. During the same period, Sorrells jointly sold Arete with another Cornerstone Financial insurance agent to 10 additional investors, securing an additional \$1,058,686.19. The 18 investors included residents of Arizona, Montana, and Washington. Sorrells received 8% commission from Arete for every dollar placed individually, and a 4% for every sale he split with the other Cornerstone agent. Sorrells ultimately received \$207,213.34 in commissions from these sales.

12. In the course of his solicitation, Sorrells: (1) directly and regularly solicited current and prospective insurance clients for investments in Arete and the Snisky PIVs; (2) advised prospective investors on the specific details and merits of the investments; (3) received transaction-based compensation for bringing in money from investors; and (4) participated at key points in the investment chain.

13. At no point between August 2011 and April 2012 was Sorrells registered with the Commission as a broker, nor was he associated with a registered broker-dealer at the time of these activities.

VIOLATIONS

14. Section 15(a) of the Exchange Act, among other things, prohibits a broker or a natural person not associated with a broker (other than such a broker whose business is

exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker is registered in accordance with Section 15(b) of the Exchange Act. Scienter is not an element of a violation of Section 15(a). SEC v. Rabinovich & Assocs., LP, 2008 U.S. Dist. LEXIS 93595, at *14 (S.D.N.Y. 2008).

15. As a result of the conduct described above, Sorrells willfully³ violated Section 15(a) of the Exchange Act.

IV.

Pursuant to this Order, Respondent agrees to additional proceedings in this proceeding to determine what, if any, civil penalties are in the public interest pursuant to Section 21B(a) of the Exchange Act. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violated the federal securities laws described in this Order; (b) Respondent agrees that he may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the allegations of this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent Sorrells's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Sorrells cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act;

B. Respondent Sorrells be, and hereby is:

barred from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a

³ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

C. Sorrells shall pay disgorgement in the amount of \$207,213.34. Sorrells is currently the subject of ongoing forfeiture proceedings instituted by the United States Attorney's Office ("USAO") for the District of Colorado to recoup the commissions he earned based on the conduct set forth above. (Civil Action No. 1:13-cv-00567-REB-KLM). On January 13, 2014, the USAO filed a Consent Agreement ("January 13, 2014 Consent Agreement") entered into with Sorrells whereby Sorrells voluntarily turned over to the government a 2011 Toyota Tacoma (owned free and clear of any liens) and cash (approximately \$4,000.00). Sorrells also agreed to pay \$190,000 to satisfy the full amount sought in the civil forfeiture proceedings. The \$190,000 is to be paid out of proceeds from the sale of property owned by Sorrells, his ex-wife Pamela Sorrells and Sorrells' company Frontier Group. The disgorgement amount shall be deemed satisfied based on the terms of the January 13, 2014 Consent Agreement. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent complied with the terms of the January 13, 2014 Consent Agreement; and (2) seek an order directing payment of disgorgement and pre-judgment interest.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73222 / September 25, 2014

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 3586 / September 25, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16170

In the Matter of

TRADEBOT SYSTEMS, INC.,

Respondent.

**ORDER INSTITUTING CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 21C OF
THE SECURITIES EXCHANGE
ACT OF 1934, MAKING FINDINGS
AND IMPOSING A CEASE-AND-
DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Tradebot Systems, Inc. ("Respondent" or "Tradebot").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

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A. SUMMARY

1. Tradebot is a registered broker-dealer that is required to file annual reports with the Commission containing financial statements audited by an independent public accountant ("Annual Reports").

2. From 2004 through 2012, Mayer Hoffman McCann P.C. ("MHM") served as Tradebot's auditor for the financial statements included in Tradebot's Annual Reports filed with the Commission for those years.

3. MHM is associated with CBIZ, Inc. ("CBIZ"), a publicly traded company, through a business model referred to as an alternative practice structure ("APS"). CBIZ's APS model with MHM utilizes an administrative service agreement ("ASA") which requires MHM to lease from CBIZ virtually all of the human capital, equipment and overhead MHM requires to perform its attest work, in exchange for a majority of MHM's revenue.

4. CBIZ is an associated entity of MHM, and CBIZ and MHM are viewed as a single entity for Commission auditor independence purposes.

5. From 2008 to at least 2013, Tradebot has traded in CBIZ stock, thereby impairing MHM's independence with respect to its audits of Tradebot's financial statements for the years 2008 through 2012. As a result, Tradebot's Annual Reports do not comply with Rule 17a-5 for those years.

Respondent

6. **Tradebot Systems, Inc.**, is a broker dealer registered with the Commission, and is located in Kansas City, Missouri.

Related Entities And Individuals

7. **Mayer Hoffman McCann P.C.**, is a Missouri professional corporation headquartered in Leawood, Kansas, with offices throughout the U.S.

8. **CBIZ, Inc.**, is a Delaware corporation headquartered in Cleveland, Ohio, that provides products and services to businesses throughout the U.S. CBIZ's stock is traded on the New York Stock Exchange.

Commission Promulgated Revised Rule 2-01 In 2001

9. In 2000, the Commission promulgated a revision of its auditor independence requirements under Rule 2-01 of Regulation S-X. 17 C.F.R. § 210.2-01. Included in the revision was subsection 2-01(c)(1)(iv)(A) which provides:

(iv) Audit clients' financial relationships. An accountant is not independent when:

(A) Investments by the audit client in the accounting firm. An audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client's officers or directors are record or beneficial owners of more than 5% of the equity securities of the accounting firm.

10. Pursuant to Section 17(a) of the Exchange Act and Rule 17a-5(d) promulgated thereunder, Tradebot is required to file an Annual Report which contains its audited financial statements. Rules 17a-5(d), (e) and (f) specifically require that the Annual Report be audited by an "independent public accountant" and a "public accountant who shall be in fact independent" as defined by Rule 2-01(b) and (c) of Regulation S-X. From 2004 through 2012, Tradebot engaged MHM to audit its financial statements included in the Annual Report.

Tradebot Traded In CBIZ Stock During The Audit Periods

11. Commencing in 2008, Tradebot began to regularly trade in CBIZ stock and continued to trade in that stock through at least June 2013.

12. Prior to 2012, Tradebot was unaware of any prohibition against it acquiring any interest in the securities of CBIZ. Prior to the 2012 audit period, MHM had never inquired whether Tradebot traded in CBIZ stock.

13. In September 2012, MHM learned from Tradebot that Tradebot had traded in CBIZ stock, and discussed with Tradebot the possibility that such trades may impact MHM's independence of Tradebot.

14. Tradebot sought guidance from MHM regarding whether Tradebot's trades in CBIZ stock may impair MHM's independence but received no further guidance in that month.

15. On October 3, 2012, before resolving whether MHM was independent, Tradebot engaged MHM for the 2012 audit.

MHM Provided Erroneous Instruction To Tradebot

16. On December 5, 2012, MHM advised Tradebot that if it had not become the beneficial owner of more than 5% of the CBIZ stock at one time, MHM's independence was not impaired in its audits of Tradebot's financial statements. As support for its advice to Tradebot, MHM quoted Rule 2-01(c)(1)(iv)(A).

17. MHM's instruction to Tradebot concerning the application of Rule 2-01(c)(1)(iv)(A) was erroneous because the 5% threshold referenced in the rule does not apply to Tradebot; rather, it applies to Tradebot's officers and directors.

18. In January and February 2013, MHM had communications with Commission Staff ("Staff") regarding Tradebot's trading in CBIZ securities and the potential impact such trading had on MHM's independence for the 2008 through 2012 Tradebot audits.

19. On February 15, 2013, as part of its discussions with Staff regarding whether Tradebot would be required to refile its Annual Reports, Tradebot represented to the Staff, through MHM, that it had ceased trading in CBIZ stock.

20. According to Tradebot, in an effort to cause Tradebot to cease trading in CBIZ stock, Tradebot's president erroneously disabled trading for the ticker symbol "CBIZ" instead of "CBZ" in Tradebot's trading system and, as a result, Tradebot never ceased trading in CBIZ stock. According to Tradebot, the symbols "CBIZ" and "CBZ" were both listed as stocks in Tradebot's trading system because, in the past, CBIZ stock had traded under the symbol "CBIZ."

21. Tradebot never checked its trading system to ensure it had ceased trading in CBIZ stock.

22. On February 28, 2013, MHM issued a Report of Independent Registered Public Accounting Firm for Tradebot's 2012 financial statements ("MHM's Report"). Tradebot included MHM's Report in its Annual Report which it filed with the Commission on March 1, 2013.

23. Shortly thereafter, Tradebot determined that it would not retain MHM for the 2013 audit because of the restriction on Tradebot trading in CBIZ stock.

MHM Provided Audit Opinions For 2008 Through 2012 That Represented It Was Independent Of Tradebot When It Was Not

24. MHM performed audits of Tradebot's financial statements for the periods 2008 through 2012 in connection with Tradebot's Annual Reports filed with the Commission. MHM provided audit opinions for those audits which indicated, among other things, that MHM was independent of Tradebot for those audits.

25. In fact, due to Tradebot's trading of CBIZ stock, MHM was not independent of Tradebot for the 2008 through 2012 audits included in the Annual Reports filed with the Commission for those years.

Tradebot's Violations

26. As a result of the conduct described above, Tradebot violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder, which require Tradebot to file Annual Reports with the Commission that contain financial statements audited by an independent public accountant.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Tradebot's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Tradebot cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Tradebot Systems, Inc., as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Karen L. Martinez, Regional Director, Salt Lake Regional Office, 351 South West Temple, Suite 6.100, Salt Lake City, UT 84101.

C. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2)

assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73224 / September 25, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3587 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16171

In the Matter of

**MAYER HOFFMAN
McCANN, P.C.**

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE COMMISSION'S
RULES OF PRACTICE AND NOTICE OF
HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e) of the Commission's Rules of Practice against Mayer Hoffman McCann, P.C. ("Respondent" or "MHM").

II.

After an investigation, the Division of Enforcement ("Enforcement") and the Office of the Chief Accountant ("OCA") allege that:

A. SUMMARY

1. Mayer Hoffman McCann P.C. ("MHM") is a public accounting firm associated with CBIZ, Inc. ("CBIZ"), a publicly traded company, through a business model referred to as an alternative practice structure ("APS"). CBIZ's APS model with MHM utilizes an administrative service agreement ("ASA") which requires MHM to lease from CBIZ virtually all of the human capital, equipment and overhead MHM requires to perform its attest work, in exchange for a majority of MHM's revenue.

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2. CBIZ is an associated entity of MHM, and CBIZ and MHM are viewed as a single entity for Commission auditor independence purposes.

3. MHM has numerous attest clients that file reports with the Commission, including Tradebot Systems, Inc. "(Tradebot)", a registered broker-dealer. Pursuant to Rule 17a-5 promulgated under Section 17(a) of the Exchange Act, Tradebot is required to file annual reports with the Commission containing financial statements audited by an independent public accountant ("Annual Reports").

4. MHM audited Tradebot's Annual Reports from 2004 through 2012. From 2008 to at least 2013, Tradebot invested in CBIZ stock, thereby impairing MHM's independence with respect to its audits of Tradebot's 2008 through 2012 financial statements. As a result, Tradebot's Annual Reports do not comply with Rule 17a-5 for those periods.

5. In addition to MHM's independence violations related to the Tradebot audits, MHM's procedures were deficient to prevent such independence violations for all of its broker-dealer and investment fund audit clients, and resulted in MHM's multiple failures to comply with the auditor independence rules.

6. MHM lacked an appropriate system of quality controls to detect transactions in CBIZ stock by its attest clients in order to ensure that those engagements complied with the firm's legal and ethical requirements. MHM's quality control and audit procedures failed to meet adequate professional standards with respect to its audits of Tradebot.

7. During the audit of its 2012 year, Tradebot was made aware that trading in CBIZ stock would impair MHM's independence. Tradebot continued to trade in CBIZ stock.

B. RESPONDENT

8. **Mayer Hoffman McCann P.C.**, is a Missouri professional corporation headquartered in Leawood, Kansas, with offices throughout the U.S. MHM's Commission-related attest practice includes registered broker-dealers, investment funds and publicly traded companies.

C. RELATED ENTITIES

9. **CBIZ, Inc.**, is a Delaware corporation headquartered in Cleveland, Ohio, that provides products and services to businesses throughout the U.S. CBIZ associates with several U.S. public accounting firms through its APS model, with MHM being the largest. CBIZ's stock is traded on the New York Stock Exchange.

10. **Tradebot Systems, Inc.**, is a broker dealer registered with the Commission, and is located in Kansas City, Missouri.

D. CBIZ AND MHM ASSOCIATION

11. In about 1996, CBIZ began using the APS model to expand its revenue base by acquiring the non-attest practices of public accounting firms and forming relationships with those public accounting firms by means of ASAs.

12. From about 1998 to present, CBIZ entered into periodic ASAs with MHM which provide, among other things, that virtually all of MHM's shareholders are salaried employees of CBIZ and are leased to MHM along with other CBIZ professional and non-professional staff, office space, equipment, and marketing and other services, to enable MHM to perform its attest practice, in exchange for approximately 85% of MHM's revenues.

E. SEC STAFF INFORMED CBIZ IT IS SUBJECT TO THE COMMISSION'S INDEPENDENCE STANDARDS

13. On November 2, 1998, OCA became aware of CBIZ's use of the APS model and its acquisition of non-attest practices of accounting firms. OCA notified CBIZ of the application of the Commission's independence rules:

[Y]our affiliation with certain accounting firms ... may subject you to the application of the independence rules set forth in Rule 2-01 of Regulation S-X.

... [A]ny accounting firm and the acquirer ("acquirer") of that accounting firm that employs any accountants that work on SEC clients of the accounting firm should continue to fully comply with the SEC's independence requirements.

14. On August 13, 1999, OCA sent guidance to CBIZ related to independence disclosures provided in a CBIZ Form S-4 filing then under review. In that letter, OCA stated:

[T]he Commission and the staff are concerned about the significant public policy issues that are raised in situations where audits of public companies are performed by auditors under an alternative business structure. . . . [CBIZ] has acquired the non-attest businesses of several accounting firms ("the Attest Firms") that have audited clients required to file financial statements with the [Commission]. . . .

... [I]n the application of the independence rules, the SEC staff will view [CBIZ] and all Attest Firms as a single entity. As a result, [CBIZ] must abide by all of the independence rules that the Attest Firm must follow in order for the Attest Firm to be independent of an SEC audit client. . . .

F. SEC PROMULGATED REVISED RULE 2-01 IN 2001

15. In 2000, the Commission promulgated an extensive revision of its auditor independence requirements under Rule 2-01 of Regulation S-X. 17 C.F.R. § 210.2-01. The revised rule was adopted in response to "an increasingly complex web of business and financial

relationships” of public accounting firms. Included in the revision was subsection 2-01(c)(1)(iv)(A). It provides:

(iv) Audit clients' financial relationships. An accountant is not independent when:

(A) Investments by the audit client in the accounting firm. An audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client's officers or directors are record or beneficial owners of more than 5% of the equity securities of the accounting firm.

16. Rule 2-01(f)(2) of Regulation S-X defines “accounting firm” as “an organization . . . that is engaged in the practice of public accounting . . . and all of the organization’s . . . associated entities”

17. CBIZ is an associated entity of MHM by virtue of its APS relationship and ASA with MHM.

G. MHM LEARNED OF TRADEBOT TRADES IN CBIZ STOCK

18. Pursuant to Rule 17a-5(d) of the Exchange Act, Tradebot is required to file an annual report (“Annual Report”) which contains its audited financial statements. Rules 17a-5(d), (e) and (f) specifically require that the Annual Report be audited by an “independent public accountant” and a “public accountant who shall be in fact independent” as defined by Rule 2-01(b) and (c). From 2004 through 2012, Tradebot engaged MHM to audit its financial statements included in the Annual Report.

19. Commencing in 2008, Tradebot began to regularly trade in CBIZ stock and continued to trade in that stock through 2013.

20. Prior to 2012, Tradebot was unaware of any prohibition against it acquiring any interest in the securities of CBIZ. Prior to the 2012 audit period, MHM had never inquired whether Tradebot traded in CBIZ stock.

21. In about mid-2012, MHM’s engagement shareholder learned from Tradebot’s CFO that Tradebot had traded in CBIZ stock and discussed with Tradebot’s CFO the possibility that such trades may impact MHM’s independence.

22. In response, MHM’s engagement shareholder contacted MHM’s national office shareholder over independence and asked “whether or not that was something we need to be concerned about from an independence issue.” MHM’s national office shareholder over independence indicated he was not sure and forwarded the question to MHM’s national director of professional standards, MHM’s president, and members of MHM’s executive committee.

23. On September 4, 2012, Tradebot’s CFO emailed MHM’s engagement shareholder seeking further guidance on the impact of Tradebot’s trading in CBIZ, asking: “Can you send me the link pointing to the independence issue related to trading public stock.”

24. On September 6, 2012, MHM's engagement shareholder responded to Tradebot's CFO's email, stating: "I do not have anything specific to this situation to send (as it does not exist). It is basically an interpretation of the SEC rules. Our New York office had inquired of a similar situation in which the entity holds CBIZ stock and it was determined to be an issue.... Unfortunately our chief independence officer is on a long vacation and I am trying to get a hold of him for thoughts."

H. MHM WAS ENGAGED FOR 2012 AUDIT BEFORE INDEPENDENCE ISSUE WAS RESOLVED

25. On October 3, 2012, before resolving whether MHM was independent, Tradebot engaged MHM for the 2012 audit. In connection with that engagement, MHM did not discuss with Tradebot the unresolved independence issue and proceeded to sign the engagement letter.

26. MHM's potential independence conflict should have been resolved prior to signing the engagement letter.

I. MHM PROVIDED ERRONEOUS INSTRUCTION TO TRADEBOT REGARDING INDEPENDENCE ISSUE

27. On October 28, 2012, MHM's national office shareholder over independence contacted MHM's national director of professional standards and MHM's president regarding the Tradebot independence issue. On October 30, 2012, MHM's national director of professional standards provided guidance to MHM's national office shareholder over independence and MHM's engagement shareholder, citing Rule 2-01(c)(1)(iv)(A) and instructing them that he thought MHM would have to resign if Tradebot would be able to acquire more than 5% of the equity securities of CBIZ.

28. MHM's national director of professional standards's guidance to MHM's national office shareholder over independence and MHM's engagement shareholder did not comply with Rule 2-01(c)(1)(iv)(A).

29. In October 2012, MHM requested a meeting with the Commission staff ("Staff") to discuss matters relevant to the investigation, including a response to a request by the Staff to know whether MHM monitored the holdings of its broker-dealer clients for CBIZ stock, and whether there were instances of a broker-dealer client taking a position in CBIZ stock.

30. The Staff met with MHM on December 4, 2012; MHM's president attended the meeting with MHM's counsel. At the meeting, despite MHM's and MHM's president's knowledge regarding Tradebot's trades in CBIZ, MHM failed to inform the Staff of Tradebot's trades in CBIZ, even after specific requests for information regarding possible broker-dealer attest client trades in CBIZ stock. At that meeting the Staff conveyed to MHM that an audit client holding even one share of CBIZ would impair MHM's independence.

31. On December 5, 2012, one day after MHM's meeting with the Staff, MHM's engagement shareholder emailed Tradebot concerning MHM's conclusion regarding the independence question posed in September 2012, stating:

Following up on the independence issues we discussed earlier this year, below is the SEC rule. I am assuming Tradebot has not become the beneficial owner of more than 5% of the CBIZ stock at one time, however, I would like to propose perhaps you put a limit on the number of shares to be acquired at any one time. Is that possible??

Reg. SX §210.2-01(c)(1)(iv)(A)-

An accountant is not independent when:

(A) Investments by the audit client in the accounting firm. An audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client's officers or directors are record or beneficial owners of more than 5% of the equity securities of the accounting firm.

32. MHM's engagement shareholder's instruction to Tradebot was erroneous because the 5% threshold referenced in the rule does not apply to Tradebot; rather, it only applies to Tradebot's officers and directors.

33. Tradebot responded to MHM's engagement shareholder's email by indicating it would place a 10,000 share limit on trades in CBIZ, an amount that was below 5% of CBIZ's outstanding shares.

34. Tradebot continued to trade in CBIZ stock through 2013.

J. MHM LACKED QUALITY CONTROL OR AUDIT PROCEDURES TO ENSURE CLIENTS DID NOT TRADE IN CBIZ STOCK

35. Until 2013, MHM did not have any quality control or audit procedures to ensure clients did not trade in CBIZ stock or to otherwise comply with Rule 2-01(c)(1)(iv)(A). Until 2013, MHM provided no guidance to any audit client, including Tradebot, regarding trading prohibitions in CBIZ stock by the audit client. Further, MHM did not implement any audit procedures during its audits of Tradebot, or any other broker-dealer clients, to review the securities they were trading to ensure compliance with Rule 2-01(c)(1)(iv)(A).

K. MHM PROVIDED AUDIT OPINIONS FOR 2008 THROUGH 2012 THAT REPRESENTED IT WAS INDEPENDENT OF TRADEBOT

36. MHM performed audits of Tradebot's financial statements for the periods 2008 through 2012 in connection with Tradebot's Annual Reports filed with the Commission. MHM provided audit opinions for those audits which indicated, among other things, that MHM was independent of Tradebot for those audits, when in fact, MHM was not independent.

L. MHM's IMPROPER PROFESSIONAL CONDUCT

37. Section 4C(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice allow the Commission to censure, or deny temporarily or permanently, an accounting firm's privilege of practicing before it if the firm is found to have "engaged . . . in improper professional conduct."

38. Pursuant to Section 4C(2) and Rule 102(e)(1)(ii), improper professional conduct involves a violation of applicable professional standards through intentional, knowing or reckless conduct, and two types of negligent conduct: a single instance of highly unreasonable conduct for which heightened scrutiny is warranted; or repeated instances of unreasonable conduct that indicate a lack of competence to practice before the Commission.

39. "Because of the importance of an accountant's independence to the integrity of the financial reporting system, the Commission has concluded that circumstances that raise questions about an accountant's independence always merit heightened scrutiny." Amendment to Rule 102(e) of the Commission's Rules of Practice, Release No. 33-7593 (Oct. 19, 1998), 63 Fed. Reg. 57168.

1. Relevant Audit Standards

40. The term "applicable professional standards" primarily refers to generally accepted accounting principles ("GAAP"), generally accepted auditing standards ("GAAS"), the AICPA Code of Professional Conduct, and Commission regulations, but is broad enough to accommodate changes in the body of professional guidance routinely used by accountants.

41. For auditors of registered broker-dealers, such as Tradebot, the applicable professional standards related to GAAS are those that have been issued by the AICPA.¹

42. Both Rule 2-01 and GAAS require auditors to maintain strict independence from their audit clients. AICPA Auditing Standards AU Section 150.02 requires that the auditor "maintain independence . . . in all matters relating to the audit." AICPA Auditing Standards AU Section 220.03 states "[i]t is of utmost importance to the profession that the general public maintain confidence in the independence of auditors."

43. GAAS requires that an auditor have policies and procedures designed to prevent independence impairment, and client acceptance and continuance procedures that ensure compliance with legal requirements, discussed below.

44. MHM was negligent in its failure to comply with those professional standards.

¹ The AICPA auditing standards are applicable for the audits of broker-dealers, *Commission Guidance Regarding Auditing, Attestation, and Related Practice Standards Related to Brokers and Dealers*, Release No. 34-62991, Sept. 24, 2010.

2. MHM'S Independence Was Impaired When It Audited Tradebot's 2008 – 2012 Financial Statements

a. Rule 17a-5

45. Rule 17a-5 of the Exchange Act requires registered broker dealers to file periodic reports with the Commission including, pursuant to Rule 17a-5(d)(1)(i), an annual report "which shall be audited by an independent public accountant." Rule 17a-5(e)(1)(i) further states: "An audit shall be conducted by a public accountant who shall be in fact independent as defined in paragraph (f)(3) of this section herein, and shall give an opinion covering the statements filed pursuant to paragraph (d)..."

46. Rule 17a-5(f)(3) defines independence as "in accordance with the provisions of § 210.2-01(b) and (c) of this chapter."

b. Rule 2-01(b) and (c)

47. The general standard of auditor independence is described in Rule 2-01(b) and states an accountant is not independent if not "capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement."

48. Additionally, Rule 2-01(c)'s subsections set forth "a non-exclusive specification of circumstances inconsistent with" Rule 2-01(b)'s general requirement. The Commission stated: "As to circumstances specifically set forth in our rule, we have set forth a bright-line test: an auditor is not independent if he or she maintains the relationships, acquires the interests, or engages in the transactions specified in the rule." Revision of the Commission's Auditor Independence Requirements, Release No. 33-7919, 65 Fed. Reg. 76008 at 76030.

49. When MHM audited Tradebot's financial statements during the audit periods in which Tradebot had acquired direct investments in CBIZ stock, namely 2008 through 2012, MHM's independence was impaired as to those audits.

3. MHM Violated Other Applicable Professional Standards

50. MHM violated professional standards that require an accounting firm to establish policies and procedures designed to assure independence, and client engagement procedures that ensure compliance with legal requirements and risks associated with the engagement.

a. MHM Failed to Design Policies and Procedures That Assured Independence

51. AICPA quality control standards are professional standards under GAAS. Pursuant to AICPA QC Section 10 Paragraph 22, an auditor is required to have policies and procedures "designed to provide with reasonable assurance that the firm ... maintain independence"

52. In about 2012, MHM had well over a hundred broker dealer and investment fund clients, including Tradebot, which regularly trade in the securities of thousands of public companies. Despite the risks of audit clients trading in CBIZ securities, MHM did not have any written policies or procedures to address the independence issues established by Rule 2-01(c)(1)(iv)(A) of audit clients trading in CBIZ securities.

53. Further, MHM did not have any written procedures to inform audit clients of the transactional proscriptions of trading in CBIZ securities or any written procedures to follow if audit clients traded in CBIZ securities in violation of Rule 2-01(c)(1)(iv)(A).

54. Until 2013, MHM's audit clients were unaware of restrictions on the trading of CBIZ securities.

b. MHM Failed To Follow Proper Client Engagement Procedures

55. Pursuant to AICPA QC Section 10 Paragraph 27, an auditor is required to have adequate policies and procedures for client continuance that are "designed to provide the firm with reasonable assurance that it will ... continue ... engagements only when the firm can comply with legal and relevant ethical requirements."

56. After learning in 2012 of Tradebot's CBIZ transactions, MHM failed to perform adequate client acceptance procedures to ensure it was independent when being engaged and beginning substantive field work. Shortly after internal consultation over the independence question was initiated but before MHM's national director of professional standards had provided any guidance to the engagement shareholder, MHM proceeded with the engagement. By doing so, MHM entered into an engagement without determining whether it could continue with the audit.

4. MHM Violated AICPA Professional Standards

57. Through the conduct described above, MHM violated GAAS provisions AU Sections 150.02 and 220.03, AICPA QC Section 10 Paragraphs 22 and 27 and thereby negligently engaged in improper professional conduct.

58. Through its repeated violations of applicable professional standards, MHM demonstrated a lack of competence to practice before the Commission.

M. MHM CAUSED TRADEBOT'S VIOLATION OF SECTION 17(a) AND RULE 17a-5

59. Under Section 21C of the Exchange Act, a person is a "cause" of another's primary violation if the person knew or should have known that its act or omission would contribute to the primary violation. Negligence is sufficient to establish "causing" liability under Section 21C when a person is alleged to have caused a primary violation that does not require scienter. *In re KPMG Peat Marwick*, Exch. Act. Rei. No. 43862 (Jan. 19, 2001), *aff'd*, *KPMG v. SEC*, 289 F.3d 109 (D.C. Cir. 2002).

60. MHM caused Tradebot's violations of Section 17(a) and Rule 17a-5 by certifying, as independent public accountants, Tradebot's financial statements contained in its Annual Reports, when, in fact, MHM was not independent of Tradebot.

61. Further, MHM lacked an adequate system of controls to maintain independence and failed to inform Tradebot of the proscription against trading in CBIZ stock. Those failures impaired MHM's independence and thereby caused Tradebot to file Annual Reports that did not contain audits by an independent accountant.

62. MHM was negligent in certifying it was independent of Tradebot and having an inadequate system of controls and by failing to notify Tradebot of the proscription against trading in CBIZ stock.

III.

In view of the allegations made by the Division of Enforcement and the Office of Chief Accountant, the Commission deems it appropriate that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent MHM an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate against Respondent MHM pursuant to Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice, including, but not limited to, censure or denying, temporarily or permanently, the privilege of appearing or practicing before the Commission; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Exchange Act Section 17(a) and Rule 17a-5 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Section 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent MHM shall file an answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent MHM fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

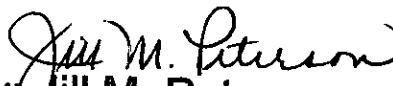
This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as a witness or counsel in proceedings held pursuant to notice. Since this proceeding is not a "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary


By **Jill M. Peterson**
Assistant Secretary

*Commissioner Stein
Disapproved*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9658 / September 26, 2014

In the Matter of

CITIGROUP INC.

ORDER UNDER RULE 405 OF THE
SECURITIES ACT OF 1933, GRANTING A
WAIVER FROM BEING AN INELIGIBLE
ISSUER

Citigroup Inc. ("Company") has submitted a letter, dated August 18, 2014, constituting an application for relief from the Company being considered an "ineligible issuer" under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 ("Securities Act"). The Company requests relief from being considered an "ineligible issuer" under Rule 405, due to the entry on August 5, 2014, of a Judgment against Citigroup Global Markets Inc. ("CGMI"). The Judgment enjoins CGMI against violations of Sections 17(a)(2) and (3) of the Securities Act.

Under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer becomes an ineligible issuer and thus unable to avail itself of well-known seasoned issuer status, if "Within the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws"

Under Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, an issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.

Based on the representations set forth in the Company's August 18, 2014 request, and on other considerations, the Commission has determined that the Company has made a showing of good cause under Paragraph two of the definition of ineligible issuer in Rule 405 of the

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Securities Act and that the Company should not be considered an ineligible issuer by reason of the entry of the Judgment.

Accordingly, IT IS ORDERED, pursuant to Paragraph (2) of the definition of ineligible issuer in Rule 405 of the Securities Act, that a waiver from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9657 / September 26, 2014

In the Matter of

CITIGROUP GLOBAL
MARKETS, INC.

ORDER UNDER RULE 506(d) OF THE
SECURITIES ACT OF 1933 GRANTING A
WAIVER OF THE RULE 506(d)(1)(ii)
DISQUALIFICATION PROVISION

Citigroup Global Markets, Inc. ("CGMI") has submitted a letter, dated August 22, 2014, requesting a waiver of the Rule 506(d)(1)(ii) disqualification from relying on the exemption under Regulation D from the registration requirements under the Securities Act of 1933 (the "Securities Act"). The exemption under Rule 506 of Regulation D would be unavailable to CGMI as a result of the entry on August 5, 2014, of a judgment against CGMI (the "Judgment"). The Judgment enjoins CGMI against violations of Sections 17(a)(2) and (3) of the Securities Act.

The exemption under Rule 506 of Regulation D would be unavailable to CGMI as a result of the Judgment against CGMI. Rule 506(d)(2) of Regulation D provides, however, that the disqualification "shall not apply ... upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied."

Based upon the representations set forth in CGMI's request, the Commission has determined that pursuant to Rule 506(d) under the Securities Act a showing of good cause has been made that it is not necessary under the circumstances that the exemption be denied.

Accordingly, **IT IS ORDERED**, pursuant to Rule 506(d) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 506(d)(1)(ii) under the Securities Act resulting from the Judgment is hereby granted to CGMI.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-73229]

Delegation of Authority to the Chief Financial Officer

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its rules to delegate to the Chief Financial Officer the authority granted to the Commission by Section 21F(g)(4) of the Securities and Exchange Act of 1934 ("Exchange Act") to request that the Secretary of the Treasury invest the portion of the Commission's whistleblower reward fund that, in its discretion, is not required to meet the current needs of the fund, and determine the maturities for those investments suitable to the needs of the fund. These changes are intended to streamline the operation of the Commission by delegating to staff certain routine financial responsibilities.

DATES: Effective [Insert date of filing for public inspection by the Federal Register]

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Chief Financial Officer, at (202) 551-5472 or Caryn Kauffman, Deputy Chief Financial Officer, at (202) 551-8834, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION

I. Discussion

Section 21F(g)(1) of the Exchange Act establishes the Securities and Exchange Commission Investor Protection Fund ("Fund"),¹ which is available to pay awards to whistleblowers (as provided in Section 21F(b)), and to fund certain activities of the

¹ 14 U.S.C. 78u-6(g)(1).

*Commissioners Gallagher
and Purrowan
dissent as to the Delegation
of Authority*

Commission's Inspector General.² The Commission may request that the Secretary of the Treasury invest the portion of the Fund that is not, in the discretion of the Commission, required to meet the current needs of the Funds.³ The Secretary of the Treasury must invest such funds in obligation of the United States, "within maturities suitable to the needs of the funds of the Fund as determined by the Commission on the record."⁴

The Commission is amending its rules to delegate to the Chief Financial Officer the authority, in accordance with section 21F(g)(4), to make requests to the Secretary of the Treasury to invest the Fund's monies that are not, in his or her discretion, required to meet the current needs of the Fund and to determine what maturities for these investments are suitable to the needs of the Fund.

The Office of Financial Management, headed by the Chief Financial Officer, is responsible for managing the financial matters of the Commission. In providing the Chief Financial Officer with the authority to perform these additional functions, this amendment is intended to streamline the efficient operation of the Commission.

II. Administrative Law Matters

The Commission has determined that these amendments relate solely to the agency's organization, procedure, or practice. Accordingly, the provisions of the Administrative Procedure Act regarding notice of proposed rulemaking and opportunity for public participation are not applicable.⁵ The Regulatory Flexibility Act, therefore, does not apply.⁶ Because these rules relate solely to the agency's organization, procedure, or practice and do not substantially affect the rights or obligations of non-agency parties, they are not subject to the Small Business Regulatory

² 15 U.S.C. 78u-6(g)(2).

³ 15 U.S.C. 78u-6(g)(4)(A).

⁴ 15 U.S.C. 78u-6(g)(4)(B).

⁵ 5 U.S.C. 553(b)

⁶ 5 U.S.C. 601 through 612.

Enforcement Fairness Act.⁷ Finally, these amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.⁸ Further, because the amendments impose no new burdens on private persons, the Commission does not believe that the amendments will have any impact on competition for purposes of Section 23(a) (2) of the Exchange Act. Accordingly, the amendments are effective [insert date of publication in Federal Register].

STATUTORY AUTHORITY

The amendments to the Commission's rules are adopted pursuant to 15 U.S.C. 77o, 77s, 77sss, 77d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

TEXT OF AMENDMENTS

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200 – ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

SUBPART A – ORGANIZATION AND PROGRAM MANAGEMENT

1. The authority citation for Part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 77d, 78d-1, 78d-2, 78o-4, 78w, 78ll(d), 78mm, 80a-37, 80b-11, 7202, and 7211 *et seq.* unless otherwise noted.

* * * * *

2. Section 200.30-13 is amended by adding paragraph (c) to read as follows.

⁷ 5 U.S.C. 804.

⁸ 44 U.S.C. 3501 through 3520.

§200.30-13 Delegation of authority to Chief Financial Officer.

* * * * *

(c) Pursuant to section 21F(g)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78u-6(g)(4)), the making of requests to the Secretary of the Treasury to invest the portion of the Securities and Exchange Commission Investor Protection Fund that is not, in his or her discretion, required to meet the current needs of the fund, and the determination of the maturities for those investments suitable to the needs of the fund.

By the Commission.

Dated: September 26, 2014

Kevin M. O'Neill
Kevin M. O'Neill
Deputy Secretary

*Commissioner Aquilar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 29, 2014

In the Matter of

China Valves Technology, Inc.,

File No. 500-1

ORDER OF SUSPENSION OF TRADING

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Valves Technology, Inc. ("CVVT") because CVVT has not filed periodic reports with the Commission from the quarter ended March 31, 2012 to the present. In addition, in a Form 8-K/A filed on February 28, 2012, CVVT disclosed that its unaudited financial statements for the quarters ended March 31, 2011 and June 30, 2011, and its audited financial statements for the year ended September 30, 2011, could no longer be relied upon. CVVT has failed to issue restated financials for those periods as of the date of this order.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of CVVT.

Therefore, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of CVVT is suspended for the period from 9:30 a.m. EDT, September 29, 2014, through 11:59 p.m. EDT, on October 10, 2014.

By the Commission.

Brent J. Fields
Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

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*Commissioner Aguilar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73242 / September 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16176

In the Matter of

China Valves Technology, Inc.,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondent China Valves Technology, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. Respondent China Valves Technology, Inc. ("CVVT" or "Respondent") (CIK No. 0001080360), a Nevada corporation with operations solely in the People's Republic of China ("China"), purports to develop, manufacture, supply, and provide services related to water flow management products in China. CVVT's common stock was registered with the Commission pursuant to Sections 12(b) and 12(g) of the Exchange Act, and listed on the NASDAQ Global Market ("NASDAQ"). On September 21, 2012, CVVT filed a Form 25 voluntarily withdrawing its securities from listing and registration on NASDAQ, effective October 1, 2012. At that time, CVVT's obligations to file reports pursuant to Exchange Act Section 12(b) were suspended, but its obligations to file reports pursuant to Exchange Act Section 12(g) continued. As of September 26, 2014, CVVT's securities were quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. at 60 cents per share.

B. CVVT is delinquent in its reporting obligations under Section 13(a) of the Exchange Act having not filed a periodic report for any period ended after March 31, 2012.

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C. Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission current and accurate information in periodic reports. Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

D. As a result of the foregoing, Respondent failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II above are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondent identified in Section II above.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III above shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order.

If Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondent personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Kevin M. O'Neill
By: Kevin M. O'Neill
Deputy Secretary

Chair White
Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73243 / September 29, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3588 / September 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16177

In the Matter of

BANK OF AMERICA
CORPORATION,

Respondent.

ORDER INSTITUTING
CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 21C
OF THE SECURITIES EXCHANGE
ACT OF 1934, MAKING FINDINGS,
AND IMPOSING A CEASE-AND-
DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Bank of America Corporation ("BAC" or "Respondent").

II.

In anticipation of the institution of these proceedings, BAC has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, BAC consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (the "Order"), as set forth below.

III.

On the basis of this Order and BAC's Offer, the Commission finds¹ that:

A. Summary

1. The federal securities laws require public companies to make and keep books and records in reasonable detail to, among other things, accurately and fairly reflect transactions in which they engage. The federal securities laws also require public companies to devise and maintain a system of internal accounting controls sufficient to, among other things, provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with United States Generally Accepted Accounting Principles ("GAAP"). These laws seek to ensure the integrity and accuracy of information that is eventually disclosed to investors.

2. As part of its acquisition of Merrill Lynch & Co., Inc. ("Merrill") on January 1, 2009, BAC assumed (or acquired) a \$52.5 billion portfolio of structured notes and other financial instruments (the "Notes") that Merrill issued.² At the time of acquisition, BAC recorded the Notes at fair value, which was a \$5.9 billion discount to the Notes' par value due to an adverse change in Merrill's creditworthiness.

3. As of March 31, 2014, 87 percent of the Notes had either matured or been repurchased by BAC. Because BAC recorded the Notes at a discount to par when acquired, BAC realized losses on the Notes upon their maturation or when BAC redeemed them at par.

4. For purposes of calculating regulatory capital,³ applicable rules required BAC to deduct the realized losses on the Notes as they occurred. From January 1, 2009 through March 31, 2014, however, BAC failed to deduct certain realized losses on the Notes when it calculated and reported its regulatory capital.

5. From the first quarter of 2009 to the fourth quarter of 2013, the realized losses that BAC incurred on the Notes increased over time as more Notes either matured or were redeemed. Therefore, with each passing fiscal quarter and year starting in 2009, BAC overstated its Basel I and

¹ The findings herein are made pursuant to BAC's Offer of Settlement and are not binding on any other entity or person in this or any other proceeding.

² Generally, a structured note is a debt obligation where the return typically is not based on an interest rate like a bank note but instead pays a return based on an embedded derivative component. For example, with a structured note, the note holder will receive her principal at a fixed maturity but may or may not receive income based on the performance of a defined security, index or asset class over a period of time.

³ "Regulatory capital" is the amount of capital that a banking organization must maintain as required by, among others, the Board of Governors of the Federal Reserve System ("FRB"). Regulatory capital requirements were put into place to ensure that banking organizations have sufficient capital to sustain operating losses while still honoring withdrawals and so that they do not take on excessive leverage. Regulatory capital typically is expressed in the form of ratios (certain calculations or categories of regulatory capital over risk-weighted assets).

Basel III regulatory capital by a greater amount in each of its Form 10-Q and Form 10-K filings with the Commission.⁴

6. BAC overstated its regulatory capital in all Form 10-Q filings that it made with the Commission from 2009 to 2013 (15 filings). BAC also overstated its regulatory capital in all Form 10-K filings that it made with the Commission for fiscal years 2009 through 2013 (5 filings).

7. By year-end 2013, BAC overstated its Basel I regulatory capital by \$3.714 billion. In mid-April 2014, BAC internally discovered the regulatory capital overstatements and, after analyzing the issue, BAC disclosed the overstatements in a Form 8-K filing that it made with the Commission, dated April 28, 2014.

8. To ensure it properly deducted the realized losses that it incurred on the Notes from its regulatory capital starting in 2009, BAC should have made and kept accurate books and records and also should have devised and maintained a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP.

9. As a result of its failure to do so, BAC violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

10. In response to the Commission's investigation, BAC provided substantial cooperation to Commission staff. BAC also has voluntarily undertaken steps to remediate and address, among other things, the inadequate books and records and internal accounting control deficiencies that are the subject of this proceeding.

⁴ GAAP requires banking organizations to disclose regulatory capital ratios and requirements in notes to the financial statements. Basel I was the first international uniform framework developed to calculate regulatory capital and became effective in 1988. Basel III, which became effective for certain banking organizations, including BAC, beginning with the quarter ended March 31, 2014, is the latest international uniform framework developed to calculate regulatory capital. Though disclosure and compliance with Basel III regulatory capital ratios only became effective for these banking organizations effective January 1, 2014, many public banking organizations started disclosing Basel III figures and ratios much earlier than required in light of investor interest in how banking organizations' capital ratios would change under the new requirements. BAC first started disclosing its estimated Basel III regulatory capital ratios in its Form 10-Q filing for the third quarter of 2012. Under Regulations G and S-K, these Basel III estimated ratios were considered to be "non-GAAP" measures until BAC was required by regulatory rules to comply with the Basel III capital ratio minimums.

B. Respondent

11. **Bank of America Corporation** is a bank holding company incorporated in Delaware and a financial services holding company under the Gramm-Leach-Bliley Act. BAC's common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the symbol "BAC." BAC's principal offices are located in Charlotte, North Carolina.

C. Facts

The Overstatements

12. When BAC acquired Merrill on January 1, 2009, it acquired three types of Notes with a total par value of \$52.5 billion. At the time BAC acquired the Notes from Merrill, the Notes had a fair value below par due to a decline in Merrill's creditworthiness. Pursuant to GAAP, BAC recorded the Notes at then-fair value—a \$5.9 billion discount to par.

13. Even though BAC acquired the Notes at a discount to par, BAC assumed liability on the Notes to redeem them at par upon their maturation or when BAC otherwise repurchased them. Because BAC acquired the Notes at a discount but redeemed them at par, BAC realized losses on the Notes upon redemption or maturity.

14. When calculating regulatory capital, BAC was required to include these realized losses that were recognized in GAAP equity.⁵ When calculating its regulatory capital from 2009 through 2013, however, BAC failed to do so. In other words, BAC improperly excluded certain realized losses related to the initial \$5.9 billion discount when calculating its regulatory capital, which resulted in the regulatory capital overstatements.

15. As more Notes matured or BAC repurchased more Notes over time, BAC incurred more realized losses. Therefore, with each passing fiscal quarter and year starting in 2009, BAC overstated its regulatory capital by a greater amount in its Form 10-Q and Form 10-K filings.⁶

⁵ Calculation of regulatory capital begins with total common shareholders' equity followed by adjustments as required by the regulatory capital rules and frameworks.

⁶ As the regulatory capital amounts were only disclosed in the notes to the financial statements, the overstatements of regulatory capital that BAC made had no effect on the company's consolidated balance sheet, consolidated statements of income, comprehensive income, changes in shareholders' equity or cash flow statements.

16. As a result of its inaccurate books and records and its deficient internal accounting controls, BAC overstated its Basel I regulatory capital in its Form 10-Q and Form 10-K filings. At the end of each year, these overstatements were as follows:⁷

Form 10-K (for fiscal year)	Overstatement (in billions)
2009	\$0.888
2010	\$1.491
2011	\$2.131
2012	\$2.823
2013	\$3.714

17. Correspondingly, by fiscal year end 2013, BAC overstated the following Basel I ratios by the following percentages in its Form 10-K filing:

Ratio	Overstatement
Tier 1 Common Capital	0.3%
Tier 1 Capital	0.2%
Total Capital	0.3%
Tier 1 Leverage	0.2%

18. In addition to disclosing its regulatory capital under the Basel I framework, BAC also first disclosed its regulatory capital under the Basel III framework starting in its Form 10-Q filing for the third quarter of 2012. Therefore, BAC made additional Basel III regulatory capital overstatements in four Form 10-Q filings (third quarter of 2012 through third quarter of 2013) and in two Form 10-K filings (for fiscal years 2012 and 2013).

19. By fiscal year end 2013, BAC overstated the following Basel III ratios (pro-forma on a fully phased-in basis) by the following percentages in its Form 10-K filings:⁸

Ratio	Overstatement
Common Equity Tier 1 Capital—Standardized Approach	0.3%
Common Equity Tier 1 Capital—Advanced Approach	0.4%

⁷ The dollar amounts associated with the regulatory capital overstatement that BAC made in its Form 10-Q filings are not provided in this Order.

⁸ BAC overstated its Basel III regulatory capital (pro-forma on a fully phased-in basis) by \$4.369 billion in its Form 10-K filing for fiscal year end 2013.

How the Overstatements Occurred

20. A number of groups within BAC had some involvement with regulatory capital calculation and reporting. Shortly after the acquisition of Merrill, a transition team created a schedule that tracked cumulative gains and losses on certain liabilities. In creating that schedule, BAC correctly understood that pre-acquisition declines in fair value on the Notes relating to Merrill's own creditworthiness should not be included as an adjustment in BAC's regulatory capital calculation. That schedule did not, however, contemplate or account for the fact that those Notes would mature or otherwise be redeemed over time.

21. BAC used this schedule each quarter, correctly excluding the difference in value of the Notes at par and their fair value at the time of acquisition from its regulatory capital calculation. The flaw in this process was that BAC continued to make this adjustment in BAC's regulatory capital calculation even after some of the Notes had matured or otherwise been redeemed, resulting in a recurring overstatement of regulatory capital. In other words, BAC never recognized and reflected in its regulatory capital calculations the fact that some of the Notes had matured or were redeemed, which were events that caused BAC to incur realized losses on the Notes. It was this oversight that led BAC to incorrectly exclude—or to *improperly not include*—these realized losses for purposes of calculating regulatory capital.

22. In sum, BAC's regulatory capital overstatements arose from the rote application of this process—quarter after quarter, year after year—since the acquisition of Merrill in January 2009.

23. From 2009 through 2013, therefore, BAC did not adequately consider whether its internal process for computing its regulatory capital was operating as intended or required. As a result, BAC failed to make and keep accurate books and records, and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP, over this time period.

Identification of the Overstatements

24. BAC released its earnings for the first quarter ending March 31, 2014 on April 16, 2014. In the days that followed, BAC's Corporate Tax Department was reviewing the earnings release and made certain inquiries, which led to the identification of the error. Between April 21, 2014 and April 28, 2014, BAC worked to analyze and resolve the issue.

25. On April 28, 2014, BAC issued a press release announcing a downward revision to the company's previously disclosed regulatory capital amounts and ratios, and also filed a Form 8-K with the Commission disclosing the company's revised regulatory capital amounts and ratios. In its press release, BAC explained that at "the FRB's request, the company is suspending its previously announced 2014 capital actions, including the \$4.0 billion common stock repurchase authorization and the planned increase in the quarterly common stock dividend from \$0.01 per common share to \$0.05 per share."

26. Since discovery and disclosure of the computation error, BAC is developing improved documentation and spreadsheet controls, as well as enhanced internal controls around automation of processes, relating to its calculation and reporting of regulatory capital amounts and ratios.

D. Violations

27. As a result of the conduct described above, BAC violated Section 13(b)(2)(A) of the Exchange Act, which requires public companies to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer."

28. As a result of the conduct described above, BAC violated Section 13(b)(2)(B) of the Exchange Act, which requires public companies to "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that . . . (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets."

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in BAC's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. BAC cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. BAC shall, within twenty (20) days of the entry of this Order, pay a civil money penalty in the amount of \$7,650,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) BAC may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) BAC may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) BAC may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying BAC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Michael J. Osnato, Chief, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Commissioner Gallagher
Commissioner Frowd
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9659 / September 29, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 73244 / September 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16178

In the Matter of

Gregory T. Bolan, Jr. and
Joseph C. Ruggieri,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 8A OF THE SECURITIES
ACT OF 1933 AND SECTIONS 15(b)
AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Gregory T. Bolan, Jr. ("Bolan") and Joseph C. Ruggieri ("Ruggieri") (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. These proceedings arise out of an insider trading scheme involving Bolan, a research analyst at Wells Fargo Securities, LLC ("Wells Fargo"), who provided advance notice of forthcoming ratings changes to Ruggieri, a trader at Wells Fargo, and Trader A, Bolan's trusted friend and former colleague.
2. Ruggieri and Trader A traded ahead of these ratings changes, purchasing stock ahead of a number of upgrades and selling stock short ahead of at least

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one downgrade. Ruggieri generated over \$117,000 in gross profits for Wells Fargo by trading ahead of six ratings changes authored by Bolan. Trader A, who is deceased, generated approximately \$10,000 in gross profits in his personal brokerage account from trading ahead of three ratings changes authored by Bolan.

3. By virtue of their conduct, Bolan and Ruggieri willfully violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. RESPONDENTS

4. Bolan, age 37, was a research analyst in Wells Fargo's research department in Nashville, Tennessee from June 2008 to April 2011, and was promoted to director in March 2011. Bolan, who was a registered representative at Wells Fargo, focused his research on three sub-sectors of the health care industry: contract research organizations, health care information technology, and life science tools. His ratings changes consistently moved the stock prices of the companies being analyzed. Bolan resigned in April 2011, after being questioned by Wells Fargo compliance personnel about communications he had with customers concerning his nonpublic research. Prior to joining Wells Fargo in June 2008, Bolan was an associate in the research department at Jefferies & Co., Inc. and a trader at various institutions, including First New York Securities, LLC ("First New York") and Opus Trading Fund LLC. Bolan is currently a research analyst at Sterne Agee Group, Inc. in Nashville, Tennessee.

5. Ruggieri, age 35, was a senior trader of health care stocks in Wells Fargo's trading department in New York, New York from August 2009 to April 2011. As a senior trader, Ruggieri, who was a registered representative at Wells Fargo, executed customer transactions and placed principal trades on behalf of Wells Fargo. He was paid approximately six percent of the monthly net profit and loss in his Wells Fargo trading account. In addition to this amount, Ruggieri received a salary and 6% of the commissions he generated on a monthly basis. Prior to joining Wells Fargo, from June 2001 to August 2009, Ruggieri was first an analyst and then a trader at Bank of America Securities LLC. Ruggieri was terminated from Wells Fargo after Wells Fargo compliance personnel questioned him about communications he had with customers concerning Bolan's nonpublic research. Ruggieri is currently a trader of health care stocks at International Strategy & Investment Group LLC with his primary office in Raleigh, North Carolina.

C. RELEVANT INDIVIDUAL AND ENTITY

6. Trader A was a trader and Bolan's friend who died in May 2013. He traded equities at Dimension Trading Group, LLC from December 2010 through May 2013. From June 2009 through November 2010, Trader A does not appear to have been employed, but was an active trader in his personal brokerage accounts.

7. Wells Fargo is a registered broker-dealer headquartered in Charlotte, North Carolina. Wells Fargo provides a broad range of brokerage services to retail and institutional customers, including institutional equities trading and equity research.

D. ALLEGATIONS

Bolan Tipped Ruggieri Who Traded Ahead of Bolan's Ratings Changes

8. Bolan repeatedly tipped Ruggieri about Bolan's ratings changes before they were made public. When these ratings changes were made public, they impacted the stock price and volume of the companies being analyzed. After receiving Bolan's tips, Ruggieri either purchased the relevant company's stock ahead of Bolan's upgrades or sold short the stock at issue ahead of Bolan's downgrades. Ruggieri then closed his overnight positions in the relevant securities shortly after Bolan's ratings changes were made public and the stock prices had moved.

9. From April 2010 through March 2011, Bolan published a total of eight ratings changes or initiations of coverage with an outperform or underperform rating, and Ruggieri traded ahead of six of them.

10. Aside from his trading ahead of Bolan's six ratings changes, Ruggieri had only a handful of overnight positions in the securities being rated in the six months, or over 120 trading days, before his trading ahead of Bolan's ratings changes.

11. Ruggieri generated over \$117,000 in profits in his account at Wells Fargo from trading ahead of five of Bolan's ratings changes and one initiation of coverage with an outperform rating. Wells Fargo has agreed to place the amount it received from Ruggieri's trading in reserve pending the adjudication of this matter and has agreed to pay that amount if there is an order requiring the payment of disgorgement by Ruggieri or Bolan.

Parexel International Corp.

12. In late March and early April 2010, Ruggieri traded ahead of Bolan's April 7, 2010 downgrade of Parexel International Corp. ("PRXL"). Bolan's research report, entitled "PRXL: Downgrading to Market Perform Optimism Running High and Valuation Running Even Higher," was published before the market opened on April 7, 2010. Bolan changed his rating from outperform or buy to market perform or hold.

13. After the publication of the PRXL downgrade, PRXL's stock price decreased 3.20% at the market open and was down 4.34% at the market close. On the same day, PRXL's trading volume increased 163% relative to PRXL's average daily trading volume on the thirty days surrounding the PRXL downgrade.

14. After drafting the PRXL downgrade on March 29, 2010, Bolan communicated, in words or substance, material nonpublic information about the PRXL

downgrade to Ruggieri who then established a short position in PRXL stock. For example, Bolan spoke with Ruggieri before the market opened on March 30, 2010 and on the morning of March 31, 2010. Ruggieri was a net seller of PRXL stock in his Wells Fargo trading account on both March 30, 2010 and March 31, 2010, ending the day on March 31, 2010 short 10,550 shares. On April 5, 2010, Ruggieri once again was a net seller of PRXL stock, ending the day short 27,750 shares. Ruggieri and Bolan then spoke on the evening of April 5, 2010. On April 6, 2010, Ruggieri sold short additional PRXL stock, ending the day short 52,500 shares. Although Ruggieri previously traded PRXL stock, he held only three overnight positions in PRXL stock consisting of 54, 5,000, and 10,000 shares during the six months before his trading ahead of the PRXL downgrade. Before the market opened on April 7, 2010, Wells Fargo published Bolan's market-moving report containing his PRXL downgrade. Later that day, Ruggieri covered his entire short position in PRXL stock, generating gains of \$24,944.

Covance Inc.

15. In June 2010, Ruggieri traded ahead of Bolan's June 15, 2010 upgrade of Covance Inc. ("CVD"). Bolan's research report, entitled "CVD: Opportunities Multiply as CVD Seizes Them – Upgrading Rating Revising Estimates – Increasing Valuation Range," was published before the market opened on June 15, 2010. Bolan changed his rating from marketperform or hold to outperform or buy.

16. After the publication of the CVD upgrade, CVD's stock price increased 2.19% at the market open and was up .55% at the market close. On the same day, CVD's trading volume increased 58% relative to CVD's average daily trading volume on the thirty days surrounding the CVD upgrade.

17. After obtaining approval to upgrade CVD, Bolan communicated, in words or substance, material nonpublic information about the CVD upgrade with Ruggieri who then established a long position in CVD stock. On Sunday, June 13, 2010, Bolan obtained approval from his supervisor to upgrade CVD. The next morning, on June 14, 2010, Bolan spoke with Ruggieri. Later that day, Ruggieri purchased 40,000 shares of CVD stock in his Wells Fargo trading account. Although Ruggieri previously traded CVD stock, he held only one overnight position of CVD stock consisting of 76 shares in the six months before his trading in advance of the CVD upgrade. Before the market opened on June 15, 2010, Wells Fargo published Bolan's market-moving report containing his CVD upgrade. Later that day and on the next day, Ruggieri sold the 40,000 shares of CVD that he accumulated before Bolan's upgrade, generating gains of \$17,445.

Albany Molecular Research, Inc.

18. In early July 2010, Ruggieri traded ahead of Bolan's July 6 upgrade of Albany Medical Research, Inc. ("AMRI"). Bolan's research report, entitled "AMRI: Upgrade Rtg & Raise Est on Three Recent Developments Upgrading to Outperform," was published before the market opened on July 6, 2010. Bolan changed his rating from marketperform or hold to outperform or buy.

19. After the publication of the AMRI upgrade, AMRI's stock price increased 5.36% at the market open and was down -.18% at the market close. This slight decline was less than AMRI's expected fall given the decline in the relevant health care subsector on the trading day following the AMRI upgrade. On the same day, AMRI's trading volume increased 40% relative to AMRI's average daily trading volume on the thirty days surrounding the AMRI upgrade.

20. Before the publication of the report containing the AMRI upgrade, Bolan communicated, in words or substance, material nonpublic information about the AMRI upgrade with Ruggieri who then established a long position in AMRI stock. On the evening of July 1, 2010, Ruggieri emailed Bolan, "Call u right back." Bolan responded by email, "Cool - call my home" The next day, on July 2, 2010, Ruggieri made net purchases of 35,050 shares of AMRI stock in his Wells Fargo trading account. Although Ruggieri previously traded AMRI stock, he had held only three overnight positions in AMRI stock consisting of 1, 79, and 48 shares, respectively, in the six months before his trading in advance of the AMRI upgrade. Before the market opened on July 6, 2010, the trading day following Ruggieri's purchases of AMRI stock, Wells Fargo published Bolan's market-moving report containing his AMRI upgrade. Ruggieri sold the majority of his position in AMRI later that day, and exited the entirety of his position within a week, generating gains of \$9,334.

Emdeon Inc.

21. In August 2010, Ruggieri traded ahead of Bolan's August 16 upgrade of Emdeon, Inc. ("EM"). Bolan's research report, entitled "EM: Valuation, Sentiment At Depressed Levels - Upgrading to OP [Outperform] ...," was published before the market opened on August 16, 2010. Bolan changed his rating from marketperform or hold to outperform or buy.

22. After the publication of the EM upgrade, EM's stock price increased 1.10% at the market open and was up 1.38% at the market close. On the same day, EM's trading volume increased 107% relative to EM's average daily trading volume on the thirty days surrounding the EM upgrade.

23. After requesting approval to upgrade EM, Bolan communicated, in words or substance, material nonpublic information about the EM upgrade with Ruggieri who then established a long position in EM stock. Shortly after the market opened on Friday, August 13, 2010, Bolan spoke with Ruggieri. Later that morning and throughout the afternoon, Ruggieri purchased 10,000 shares of EM stock in his Wells Fargo trading account. Although Ruggieri previously traded EM stock, he had held no overnight positions in EM stock in the six months before his trading in advance of the EM upgrade. Before the market opened on Monday, August 16, 2010, the trading day following Ruggieri's purchases of EM stock, Wells Fargo published Bolan's market-moving report containing his EM upgrade. Later that day, Ruggieri sold his entire positions in EM stock, generating gains of \$266.

athenahealth, Inc.

24. In February 2011, Ruggieri traded ahead of Bolan's February 8 upgrade of athenahealth, Inc. ("ATHN"). Bolan's research report, entitled "ATHN: Soaring Into The Clouds – Upgrading to Outperform Significantly Lifting Estimates and Valuation Range," was published before the market opened on February 8, 2011. Bolan changed his rating from marketperform or hold to outperform or buy.

25. After the publication of the ATHN upgrade, ATHN's stock price increased 5.66% at the market open and was up 4.05% at the market close. On the same day, ATHN's trading volume increased 116% relative to ATHN's average daily trading volume on the thirty days surrounding the ATHN upgrade.

26. After obtaining approval to upgrade ATHN, Bolan communicated, in words or substance, material nonpublic information about the ATHN upgrade with Ruggieri who then established a long position in ATHN stock. On February 4, 2011, Bolan obtained approval from his supervisor to upgrade ATHN. Less than two hours later, Bolan attempted to call Ruggieri. Bolan reached Ruggieri by telephone later that afternoon. On the next trading day, February 7, 2011, Ruggieri made net purchases of 13,500 shares of ATHN stock. Although Ruggieri previously traded ATHN stock, he held only one overnight position in ATHN stock lasting two weeks during the six months before his trading in advance of the ATHN upgrade. Before the market opened on February 8, 2011, Wells Fargo published Bolan's market-moving report containing his ATHN upgrade. Later that day, Ruggieri sold his entire position in ATHN, generating gains of \$40,686.

Bruker Corp.

27. In March 2011, Ruggieri traded ahead of Bolan's March 29 initiation of coverage of Bruker Corp. ("BRKR") that included an outperform rating for the security. Bolan's research report, entitled "BRKR: Initiating Coverage With An Outperform Rating One of the BEST Ways To Harvest Value In A Growing Industry," was published after the market closed on March 29, 2010. Bolan initiated his coverage of BRKR with an outperform or buy rating.

28. After the publication of the BRKR report, BRKR's stock price increased 2.56% at the market open and was up 3.36% at the market close. On the same day, BRKR's trading volume increased 42% relative to BRKR's average daily trading volume on the thirty days surrounding the BRKR report.

29. After obtaining approval to publish the BRKR report, Bolan communicated, in words or substance, material nonpublic information about the BRKR report with Ruggieri who then established a long position in BRKR stock. On March 22, 2011, Bolan obtained approval from his supervisor to publish the BRKR report with an outperform rating. Before the market opened the next day, on March 23, 2011, Bolan spoke with Ruggieri. During the trading day, Ruggieri made net purchases of 5,000 shares

of BRKR stock. Ruggieri continued to make net purchases of BRKR stock from March 24, 2011 through March 29, 2011, amassing a 25,000-share position in the stock. Although Ruggieri previously traded BRKR stock, he held no overnight positions in BRKR stock in the six months before his trading in advance of the BRKR report. After the market closed on March 29, 2011, Wells Fargo published Bolan's market-moving BRKR report containing the outperform rating. The next day, on March 30, 2011, Ruggieri sold his entire position in BRKR, generating gains of \$24,452.

Bolan Tipped Trader A Who Traded Ahead of Bolan's Ratings Changes

30. In addition to tipping Ruggieri concerning the impending research reports, the circumstantial evidence indicates that Bolan also communicated, in words or substance, material nonpublic information about his forthcoming ratings changes to Trader A, who then traded on these tips to generate over \$10,000 in illicit gains. First, Bolan spoke with Trader A after the market had closed two days before the PRXL downgrade, and Trader A subsequently short sold PRXL on the day before the PRXL downgrade. Trader A covered his short position in PRXL on the day of the PRXL downgrade and made a profit of \$1,007. Second, Bolan spoke with Trader A after the market had closed three trading days before the AMRI upgrade, and Trader A subsequently amassed a 24,252-share position of AMRI during the two trading days before the AMRI upgrade. Trader A sold his long position in AMRI on the day of the AMRI upgrade for a profit of \$8,400. Third, Bolan spoke with Trader A on the morning of August, 13, 2010, the trading day before the EM upgrade. Later that day, Trader A purchased 5,000 shares of EM stock. Trader A sold his long position in EM on the day of the premarket EM upgrade for a profit of \$835.

31. Significantly, before these profitable trades in PRXL, AMRI, and EM, Trader A had not traded these securities for the preceding six months.

Bolan Was a Respected Analyst in the Sub-Sectors That He Covered

32. Market professionals were aware of the significance of Bolan's research reports, as evidenced by the Institutional Investor publication naming Bolan the "Best up and Comer" in the Health Care Technology and Distribution sectors for 2010.

33. In Bolan's director nomination form, Bolan's manager stated that Bolan "is viewed by most within the department as a rising star His efforts lift the entire group and his best practices lead others to follow his example."

34. Bolan understood the impact of his ratings changes, as underscored by an email he wrote shortly after the publication of the ATHN upgrade. On the morning of the publication, Bolan stated in an email that there was "gonna be some unhappy folks today (aka shorties)." In fact, in response to an email from Bolan containing a recently published research note, Ruggieri replied "[s]till moving stocks."

Bolan Benefitted from Tipping Ruggieri and Trader A

35. Bolan benefited from his tipping of Ruggieri and Trader A by virtue of his friendships with Ruggieri and Trader A. After Bolan resigned from Wells Fargo, Ruggieri gave Bolan the keys to his apartment so that he could use it when interviewing for positions in New York. In March 2011, Bolan asked the head of equity sales at Wells Fargo whether there were any job openings for Trader A, referring to him as a "trusted friend."

36. Additionally, Ruggieri, and his managers at Wells Fargo, provided positive feedback to Bolan's managers at Wells Fargo. This feedback helped Bolan to be promoted from vice president to director at Wells Fargo. In fact, in Bolan's director nomination form, Bolan's manager stated "Greg is among the best analysts in the department in terms of his dialogue with trading. We consistently hear from trading that Greg provides great information flow to the desk and they are able to monetize his efforts. They often hold [him] out as the standard."

Bolan and Ruggieri Were Aware of the Relevant Wells Fargo Policies

37. Wells Fargo's research department held annual compliance meetings, before which a PowerPoint presentation was circulated to members of the research department, including Bolan. The presentation for the annual compliance meetings in 2009 and 2010 stated that there should be "no previewing research/opinion/estimates," and that research analysts should have "no discussions on timing and views of reports with anyone outside of research." Bolan received the 2009 and 2010 presentations by email and attested that he attended the annual compliance meetings for these years.

38. Similarly, Wells Fargo's trading desk held annual compliance meetings, before which a PowerPoint presentation was circulated to members of the desk, including Ruggieri. The presentation for compliance meetings in 2009 and 2010 stated that "[i]t is the responsibility of each employee and Supervisory Principal of each trading desk to ensure that WFS [Wells Fargo Securities] trading team members do not buy or sell positions in anticipation of the dissemination of written research." Ruggieri received the 2009 and 2010 presentations by email and signed attendance sheets verifying that he attended the annual compliance meetings.

39. Wells Fargo's policies prohibited Bolan and Ruggieri from trading while in possession of material nonpublic information and trading ahead of Wells Fargo's research reports. In fact, Wells Fargo's information barrier policy stated that "[f]raudulent misuse of inside information includes buying or selling securities while aware of material, nonpublic information Fraudulent misuse of inside information also includes disclosing or tipping such information to someone else who then trades on it."

Bolan and Ruggieri Acted with the Requisite Scienter

40. Bolan knowingly or recklessly, for his direct or indirect benefit and in breach of a duty to Wells Fargo, communicated to Ruggieri and Trader A, in words or in substance, material nonpublic information concerning forthcoming ratings changes that he had authored.

41. Ruggieri knew, or acted with reckless disregard of the fact, that: (a) Bolan was aware of material nonpublic information concerning his ratings changes; (b) Bolan communicated to Ruggieri, in words or in substance, material nonpublic information concerning these ratings changes; and (c) Bolan's conveyance of this material nonpublic information to Ruggieri and Ruggieri's subsequent trading constituted breaches of duty to Wells Fargo.

E. VIOLATIONS

42. As a result of the conduct described above, Bolan and Ruggieri willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened *not earlier than 30 days and not later than 60 days from service of this Order* at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

*Commissioner Aguilar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9660 / September 30, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 73260 / September 30, 2014 i

INVESTMENT ADVISERS ACT OF 1940
Release No. 3940 / September 30, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31272 / September 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16182

In the Matter of

PAUL EDWARD "ED"
LLOYD, JR., CPA,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, SECTIONS
203(f) AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY
ACT OF 1940 AND NOTICE OF
HEARING

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Paul Edward "Ed" Lloyd, Jr., CPA ("Respondent" or "Lloyd") pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act").

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II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. This matter concerns the unregistered broker-dealer activity, fraudulent offer and sale of investments in land "conservation easements," and misappropriation of investor funds by Paul Edward "Ed" Lloyd, Jr., a North Carolina-based certified public accountant ("CPA") and tax-planner. Between August 2012 and December 2012, Lloyd induced seventeen of his tax-planning clients, including four who also were Lloyd's investment advisory clients, to purchase a total of \$632,500 of interests in a limited liability company and special purpose vehicle that Lloyd created and controlled, called Forest Conservation 2012, LLC ("Forest Conservation 2012"). Lloyd told his clients that, through Forest Conservation 2012, he would pool their funds and purchase units in a private Regulation D offering of an unrelated entity (hereafter, "Land Entity A") which planned to acquire controlling interest in land that would then be set aside through a conservation easement.
2. Under the Internal Revenue Code, the owners of land that is set aside as a conservation easement may obtain a tax deduction equal to the difference between a hypothetical best-use of the preserved land (e.g., use for a residential sub-division) and the lower existing value of the undeveloped land. Investing in a land-conservation easement occurs when an investor, for the purpose of obtaining the benefit of a tax deduction, acquires an interest in land that is then set aside for conservation purposes. The value of the tax deduction resulting from the easement is typically a multiple of the value of the ownership units purchased by the investor, thereby leading to a net profit in the form of tax savings for the investor that are greater than the funds used to acquire the ownership units.
3. Lloyd represented to his clients that, once the easement took effect, Forest Conservation 2012 would obtain a tax deduction that Lloyd would then allocate on a *pro rata* basis among those holding interests in Forest Conservation 2012. Lloyd further told his clients that the value in terms of tax savings from the deduction that each would obtain as a result of the investment would exceed the initial amount that each invested through the offering.
4. In fact, Lloyd's offering was a fraud. Although Lloyd sold to his clients \$632,500 of interests in Forest Conservation 2012, he used only \$502,500 of the funds raised to purchase ownership units of Land Entity A and misappropriated the remainder of \$130,000.
5. The funds that Lloyd misappropriated were the aggregated investments of three of his tax-planning clients. When Lloyd was required to identify the members of Forest Conservation 2012 to the broker-dealer sponsoring the Regulation D offering ("Broker A") to establish the members' accredited-investor status, he identified only fourteen of the investors (including the four who also were his advisory clients), along with himself, and never disclosed the existence of the three investors whose money he stole. After receiving contribution checks from all seventeen clients whom Lloyd lured into participating in Forest Conservation 2012, Lloyd then drafted and

signed an operating agreement for Forest Conservation 2012 (hereafter, "Operating Agreement") to which he attached a schedule of only fifteen investors (fourteen investors plus himself), omitting the names of the three clients whose funds he misappropriated.

6. Of the \$130,000 that Lloyd diverted to himself, he transferred \$105,750 to other accounts that he or his current spouse controlled, and then claimed the remainder, \$24,250, as part of his own fraudulently-inflated personal investment in Forest Conservation 2012.

7. Lloyd took additional steps to conceal his scheme. After Forest Conservation 2012 received its tax deduction based on its ownership interest in Land Entity A, Lloyd prepared and distributed to *all* seventeen of his clients and to himself individual Internal Revenue Service ("IRS") Schedule K-1s that were fraudulently misstated. To the three tax-planning clients whose money he stole, Lloyd gave Schedule K-1s that allocated a tax deduction that none of the three clients had earned because their funds were not used in their names to purchase ownership interests in Forest Conservation 2012, they were not listed on the Forest Conservation 2012 Operating Agreement as owning any interests in Forest Conservation 2012, and they were never identified to, or approved by Broker A as accredited investors. To the remaining fourteen clients, Lloyd sent Schedule K-1s that understated the deductions that they should have earned. This was the result of Lloyd trying to conceal his scheme by allocating across all seventeen clients on a *pro rata* basis a tax deduction that in actuality was based on his use of only fourteen clients' funds, plus his own investment, to purchase units in Land Entity A.

8. Between December 2011 and December 2012, Lloyd also offered and sold interests in two other Lloyd-created special purpose vehicles similar to Forest Conservation 2012. When selling these interests, Lloyd collected from each investor a fee, ranging from \$4,500 to \$7,500 per investor.

RESPONDENT AND RELEVANT ENTITIES

9. Paul Edward "Ed" Lloyd, Jr. ("Lloyd"), 51 years of age and a resident of Waxhaw, North Carolina, is a North Carolina-licensed CPA and tax planner and preparer. Between October 2006 and March 2013, he also was a registered representative and associated person of LPL Financial, LLC ("LPL"), a broker-dealer and investment adviser registered with the Commission. Lloyd conducted his LPL activities through an entity called Lloyd Wealth Management, LLC. Lloyd provides his accounting, tax planning, and tax preparer services through Ed Lloyd & Associates, PLLC, which he solely owns and controls. Lloyd holds Financial Industry Regulatory Authority ("FINRA") Series 6, 7, 24, 65 and 66 licenses. After resigning from LPL, Lloyd sought to register Lloyd Wealth Management, LLC as an investment advisor with the State of North Carolina, but withdrew the application in late 2013.

10. Forest Conservation 2012, LLC ("Forest Conservation 2012") is a Wyoming limited liability company formed by Lloyd in 2012 to pool investor funds in order to buy ownership units in Land Entity A. At that time, Land Entity A was raising investor funds to acquire an ownership interest in certain undeveloped land in Van Buren County, Tennessee. Lloyd was the managing member of Forest Conservation 2012.

11. Forest Conservation 2011, LLC ("Forest Conservation 2011") and Forest Conservation 2012 II, LLC ("Forest Conservation 2012 II") are both Wyoming limited liability companies created by Lloyd as special purpose vehicles to pool investor funds in order to buy ownership units in two unrelated entities, namely Land Entity B and Land Entity C, respectively. In 2011, Land Entity B was raising investor funds to acquire an ownership interest in certain undeveloped land in DeKalb County, Alabama, while, in 2012, Land Entity C was raising investor funds to acquire an ownership interest in certain undeveloped land in Tennessee. Lloyd offered and sold interests in Forest Conservation 2011 and Forest Conservation 2012 II as investments in conservation easements that would yield for investors a tax savings in excess of the amount invested (*i.e.*, a net profit).

BACKGROUND

12. Lloyd first learned of conservation easements as tax-saving devices in 2011 from a conservation easement specialist who also was a registered representative ("Representative A") of Broker A. At the time, Broker A, among other things, was in the business of sponsoring various private placement offerings of ownership units in entities that were raising funds in order to acquire ownership interests in third-party entities which held large tracts of undeveloped real estate as their main assets. These third-party entities ultimately placed their respective real estate holdings into conservation easements, generating tax deductions for the entities' owners, (*i.e.*, the investors in the offerings).

13. Such offerings, as structured by Broker A, typically required a minimum threshold investment for individual investors to participate and, thereby, acquire ownership units. Although these offerings were marketed as a means to obtain a tax deduction—indeed, that is what primarily motivated investors to invest in them—the offering documents distributed by Broker A to Lloyd's clients made clear to investors that there were no guarantees on how the underlying land would be used. For example, once an entity raised sufficient investor funds to acquire controlling ownership units in a certain tract of land, the entity would allow its members to determine how the land would be used, *i.e.*, for investment purposes (such as residential or commercial development) or preserved through a conservation easement.

14. Under Section 170(h) of the Internal Revenue Code, the owners of land that is set aside as a conservation easement may obtain a tax deduction equal to the difference between an appraised best-use of the preserved land (*e.g.*, use for a residential sub-division or commercial structure) and the lower existing value of the undeveloped land.

15. The offering summaries of the real estate investments for which Lloyd pooled investor funds and purchased ownership units made clear that the entities were under no obligation to create conservation easements and could ultimately opt, upon member approval, to develop the land for investment purposes.

16. In order to offer conservation easements to his tax clients, Lloyd created Forest Conservation 2011, Forest Conservation 2012, and Forest Conservation 2012 II (collectively, the "Forest Conservation Entities") for the purpose of pooling individual investor funds and making

acquisitions of ownership units—one acquisition per each of the Forest Conservation Entities—through the private placement offerings of Broker A. Lloyd's plan was for each of the Forest Conservation Entities to receive a tax deduction based on its bundled investment in the private placement after a conservation easement was granted on the respective land tract, and for Lloyd then to apportion that deduction among the investors in the corresponding Forest Conservation entity on a *pro rata* basis.

17. Lloyd was the tax preparer for each of the clients to whom he offered investments in the Forest Conservation Entities, and intended to use the tax deductions his clients received to lower their taxable income when he prepared their tax returns.

18. Lloyd never told LPL of any of the offerings of investments in the Forest Conservation Entities, and LPL did not sponsor these offerings.

FOREST CONSERVATION 2011

19. In or around December 2011, Lloyd learned from Representative A that Broker A was offering opportunities to invest in an entity called Land Entity B, a Georgia limited liability company that was in the process of raising investor funds for use in acquiring interest in undeveloped land in Alabama. The Land Entity B offering summary explained that Land Entity B had researched developing the property for investment, consisting of as many as 68 residential lots, or granting a conservation easement to achieve certain business and tax objectives.

20. Lloyd created Forest Conservation 2011, and, in December 2011, offered and sold \$347,480 in ownership interests to ten tax clients, two of whom were also LPL investment advisory clients of Lloyd. These clients bought ownership interests in Forest Conservation 2011, which, through Lloyd's actions as manager and adviser to the Forest Conservation 2011 fund, pooled their funds and acquired 20 percent of the Land Entity B ownership units.

21. Lloyd required each of his tax clients to pay him a flat transaction fee, separate from the \$347,480 raised, of either \$4,500 or \$5,000 for investing in Forest Conservation 2011. Lloyd also participated as an individual in the Forest Conservation 2011 offering, using \$30,000 of the \$31,500 that he collected in fees from his clients as his own contribution to Forest Conservation 2011.

22. Lloyd deposited the client checks into the bank account for Ed Lloyd & Associates, PLLC.

23. Lloyd never told LPL of the Forest Conservation 2011 offering and LPL did not sponsor the Forest Conservation 2011 offering.

24. Ultimately, the Alabama land in which Land Entity B acquired a controlling ownership interest was preserved as a conservation easement and Land Entity B issued a tax deduction to Forest Conservation 2011 based on the 20 percent of ownership of units that Forest Conservation 2011 held in Land Entity B. Lloyd then issued individual IRS Schedule K-1s to his ten clients and himself based on their *pro rata* ownership in Forest Conservation 2011.

25. Lloyd used these K-1s to prepare each client's taxes for the 2011 calendar year, resulting in a reduction in taxes paid that was greater in amount than the funds each client contributed to invest in Forest Conservation 2011.

FOREST CONSERVATION 2012

26. In 2012, Representative A informed Lloyd of a new real estate-related offering by Land Entity A for which Broker A was serving as the sponsoring broker. As described to Lloyd by Representative A and in the Land Entity A offering summary, the property in which Land Entity A sought to acquire controlling interest, through the raising of investor funds, was a tract of approximately 439.86 acres of undeveloped land in Tennessee, owned by a separate entity as its principal asset.

27. The Land Entity A offering summary explained that Land Entity A was being created for the purpose of selling units of membership in itself to accredited investors. Once a requisite amount of units were sold, Land Entity A would acquire between 95.20 and 95.99 percent ownership interest in the separate entity owning the undeveloped land in Tennessee.

28. The Land Entity A offering summary explained that the manager of Land Entity A would recommend to Land Entity A members to pursue either an investment proposal, such as the development of the land into residential lots for sale, or, in the alternative, a conservation easement proposal. Further, the offering summary explained that Land Entity A was under no obligation to grant a conservation easement for any interest in land the company acquired.

29. Representative A, through her assistant, told Lloyd in an email that the expected return for the investors, in the event of a conservation easement, was a tax deduction equal to approximately 4.25 times the value of each investor's contribution to Forest Conservation 2012.

30. In explaining the prospective offering to Lloyd, Representative A also told Lloyd that, unlike the 2011 offering, Broker A had decided to impose two additional requirements on Lloyd because of his use of special purpose vehicles (*i.e.*, the Forest Conservation entities) to aggregate and invest his clients' funds. In a 2012 email to Lloyd, Representative A told Lloyd that he could not charge his clients fees for participating in the offering, and he would need to provide to Broker A client account forms for each of his participating clients so that Broker A, in turn, could make sure that each of his investors in the special purpose vehicle was an accredited investor.

31. As he previously had done in 2011, Lloyd created a limited liability company—this time calling it, Forest Conservation 2012—for the purpose of aggregating his clients' investment contributions, along with a contribution of his own, and making a single purchase of ownership units in Land Entity A's offering. Lloyd alone advised his LPL clients to invest in Forest Conservation 2012.

32. Between August 2012 and December 2012, Lloyd offered and sold a total of \$632,500 of interests in Forest Conservation 2012 to seventeen of his tax-planning clients, including four clients who were also LPL investment advisory clients with whom Lloyd had entered into advisory contracts giving him discretionary authority to trade securities for these individuals. Lloyd alone created Forest Conservation 2012 and advised his clients to invest in Forest Conservation 2012, and also advised the Forest Conservation 2012 fund as to which securities to purchase (*i.e.*, Land Entity A ownership units) and how many units to acquire.

33. Lloyd represented to his clients that the amount of money they were each providing to Forest Conservation 2012 would be pooled and used to purchase the units of ownership being offered by Land Entity A. Lloyd also represented to his clients that the purchase of a singular amount of ownership units in the Land Entity A offering ultimately would lead to a tax deduction for Forest Conservation 2012 based on the anticipated preservation of the underlying land through a conservation easement. Lloyd further told clients that Forest Conservation 2012 would then provide each investor his or her *pro rata* share of the tax deduction based on the individual's contribution, resulting in a reduction in income taxes paid that was greater than the amount initially invested by each participant in Forest Conservation 2012 (*i.e.*, a net profit).

34. In order to assess each investor's suitability for participation in the Land Entity A offering, Broker A provided Lloyd with paperwork for each individual Forest Conservation 2012 investor to complete, including Lloyd, and return for Broker A's review. Through these documents, Broker A planned to confirm each person was an accredited investor with sufficient assets and net worth to participate in the private offering.

35. On this paperwork, investors in Forest Conservation 2012, including Lloyd himself as a participant, were to indicate their annual income and their individual "Amount of Purchase" of interests in Forest Conservation 2012. Lloyd distributed the paperwork to all seventeen of his clients from whom he had received funds for the Forest Conservation 2012 investment in Land Entity A.

36. The clients then returned the paperwork to Lloyd. However, Lloyd ultimately, in December 2012, only submitted finalized accredited investor paperwork for himself and fourteen of the clients to Broker A for review.

37. On December 7, 2012, Lloyd deposited \$16,802 into the Forest Conservation 2012 bank account for his own participation in the offering. At this point, all seventeen of Lloyd's clients who were pooling their money in Forest Conservation 2012 had already provided their funds, totaling \$632,500, to the Forest Conservation 2012 account via checks deposited by Lloyd. Lloyd then wired \$543,552 from the Forest Conservation bank account to the escrow account for Land Entity A.

38. On December 10, 2012, Lloyd emailed Representative A "a schedule of contributions by person" for Forest Conservation 2012. The schedule included the names of only fourteen investors and Lloyd. The total amount of contributions was listed as \$543,552, and the amount of individual contribution listed for each of Lloyd's fourteen clients matched the individual

amount of funds that each of the fourteen had sent to Forest Conservation 2012. However, Lloyd's individual contribution was listed as \$41,052, which was \$24,250 higher than the amount Lloyd deposited into the account.

39. The schedule did not include the other three individuals ("Client A," "Client B," and "Client C") who were tax-planning clients and who had provided a total of \$130,000, collectively, to the Forest Conservation 2012 bank account in the form of checks. Client A and Client C each gave \$50,000, while Client B gave \$30,000, respectively.

40. Lloyd also listed the \$41,052 figure as the amount he was contributing personally in the accredited investor paperwork that he e-mailed to Representative A for review by Broker A.

41. Also on December 10, 2012, Lloyd e-mailed Representative A the final version of the Forest Conservation 2012 Operating Agreement, dated December 7, 2012, which included a schedule of investors as an attachment. The attachment to the agreement allocated 100 percent of ownership in Forest Conservation 2012 to the fourteen tax clients listed on the separate schedule sent earlier in the day, as well as to Lloyd as the fifteenth investor. This schedule included only Lloyd and the fourteen investors for whom Lloyd returned finalized accredited investor paperwork to Broker A. The schedule did not include Clients A, B, or C. Each of the fourteen clients was noted on the schedule as having a percentage of ownership in Forest Conservation 2012 based on that individual's percentage of contribution to the \$543,552 wired to Land Entity A on December 7, 2012. Each of the fourteen client investors received an ownership percentage based on the full check amount written to Forest Conservation 2012, while Lloyd's percentage was based on his claimed, but fraudulently inflated, contribution of \$41,052.

42. On December 11, 2012, Land Entity A issued a subscription agreement to Forest Conservation 2012 for the purchase of 228 units (23.76 percent of ownership) in the offering. The total-units purchase price was listed as \$543,552, which was the amount Lloyd had wired from the Forest Conservation 2012 account to Land Entity A's escrow account.

43. On December 26, 2012, the undeveloped land underlying Land Entity A's offering was donated as a conservation easement to a private land conservancy. On March 18, 2013, a certified land appraiser, having appraised the conserved land, concluded the value of the easement was \$10,132,000.

44. Land Entity A subsequently issued an IRS Schedule K-1 (IRS Form 1065), indicating that Forest Conservation 2012 was receiving a roughly \$2.2 million tax deduction based on its percentage of ownership units in Land Entity A. Lloyd then issued individual Schedule K-1s, through Forest Conservation 2012, to all seventeen of his clients who had provided contributions to the Forest Conservation 2012, including the three clients who are not listed on the Forest Conservation 2012 Operating Agreement as owning any interests in the entity and who were never approved by Broker A as accredited investors (Clients A, B and C). Lloyd also issued a Schedule K-1 to himself. Lloyd subsequently prepared and submitted income tax filings for the seventeen clients using these Schedule K-1s.

45. Lloyd never told LPL of the Forest Conservation 2012 offering and LPL did not sponsor the Forest Conservation 2012 offering.

MISREPRESENTATIONS

46. Contrary to what Lloyd told Clients A, B and C, the \$130,000 in funds that Forest Conservation 2012 received from these three individuals, collectively, was not used to acquire ownership interests for Clients A, B and C in Forest Conservation 2012, and, therefore, was not used by Forest Conservation 2012 to acquire ownership units in Land Entity A for which Clients A, B and C were entitled to receive individual *pro rata* tax deductions.

47. Lloyd misappropriated the \$130,000 deposited into the Forest Conservation 2012 bank account in the form of checks from Clients A, B and C, using \$24,250 to artificially inflate his own stated contribution to Forest Conservation 2012, per his accredited investor paperwork and the entity's Operating Agreement, while also writing \$105,750 in checks from the Forest Conservation 2012 bank account to other accounts controlled by Lloyd or his current spouse.

48. In or around early December 2012, Lloyd provided Client B's paperwork as a potential investor to Representative A for review, leading Representative A to email Lloyd on December 6, 2012 with various questions, including a request for Lloyd to indicate the dollar amount of ownership interests that Client B was purchasing in Forest Conservation 2012. Lloyd responded to Representative A by email on December 7, 2012, just three days after depositing Client B's check into the Forest Conservation 2012 bank account, writing that Client B was "OUT." Representative A sent an email back to Lloyd on December 7, 2012, seeking clarification as to what Lloyd's earlier email meant, writing: "[Client B] is not participating, correct?" Lloyd responded to Representative A the same day, writing: "Correct."

49. No accredited investor paperwork completed by Client A and Client C was ever provided by Lloyd to Broker A for review, as Lloyd did not reveal to Broker A that Client A and Client C, as well as Client B, had provided investment funds to Forest Conservation 2012.

50. The Schedule K-1s that Lloyd issued on behalf of Forest Conservation 2012 to Clients A, B and C, respectively, were false because Clients A, B and C were not listed as members holding any ownership interests in Forest Conservation 2012 on the entity's Operating Agreement, and their funds were not used in their names by Forest Conservation 2012 to buy units of Land Entity A.

51. Further, the Schedule K-1s that Lloyd issued on behalf of Forest Conservation 2012 to the other fourteen investors known to Broker A also were false. These K-1s understated the tax deductions earned by these clients, including the four individuals who were also LPL advisory clients. Lloyd did not base the tax deductions on the full amounts that each of these fourteen investors provided to Forest Conservation 2012, but instead used a lower amount dictated by his need to conceal his scheme by allocating across all seventeen clients the deduction received from Land Entity A.

FOREST CONSERVATION 2012 II

52. In December 2012, Lloyd learned from Representative A that Broker A was offering opportunities to invest in another real estate-related offering by an entity called Land Entity C, a Tennessee limited liability company that was in the process of acquiring interest in undeveloped land in Tennessee.

53. Like the other offerings described above, Land Entity C's offering summary explained that it had researched the options of developing the land for investment purposes or preserving the land as a conservation easement, and the manager of Land Entity C would later make a recommendation to those acquiring ownership units as to how the land should be used after the closing of the offering.

54. Lloyd created Forest Conservation 2012 II, LLC and, in December 2012, offered and sold a total of \$164,220 of interests in Forest Conservation 2012 II to six of his tax clients. Lloyd required his participating tax clients to pay him a tax-services fee, ranging from \$4,500 to \$7,500. In total, Lloyd collected \$35,780 in fees from clients participating in the Forest Conservation 2012 II offering.

55. Ultimately, the Tennessee land in which Land Entity C acquired controlling ownership interest was preserved as a conservation easement and Land Entity C issued a tax deduction to Forest Conservation 2012 II based on the percentage of ownership of units that Forest Conservation 2012 II held in Land Entity C. Lloyd then issued Schedule K-1s to his six clients based on their *pro rata* ownership in Forest Conservation 2012 II.

56. Lloyd never told LPL of the Forest Conservation 2012 II offering and LPL did not sponsor the Forest Conservation 2012 II offering.

VIOLATIONS

57. As a result of the conduct described above, Respondent willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5, thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

58. As a result of the conduct described above, Respondent willfully violated Section 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8, thereunder, which prohibit fraudulent conduct by investment advisers with regard to any client or prospective client, including making false statements of material fact to any investor or prospective investor in a pooled investment vehicle, failing to state material facts necessary to make statements made to such investors not misleading, or engaging in any act, practice or course of business that is fraudulent, deceptive or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.

59. As a result of the conduct described above, Respondent willfully violated Section 15(a) of the Exchange Act, which prohibits a broker or dealer, unless an exemption applies, from effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security without registering as, or associating with, a registered broker-dealer.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate and in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act, including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act, including, but not limited to, disgorgement and civil penalties pursuant to Sections 203(j) and 203(k)(5) of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

E. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5, thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act, and Rule 206(4)-8, thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, and Section 203(i) of the Advisers Act, and whether Respondent should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, and Sections 203(j) and 203(k)(5) of the Adviser Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73247 / September 29, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16179

In the Matter of

**TODD A. DUCKSON, ESQ.,
CPA,**

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS AND
IMPOSING TEMPORARY SUSPENSION
PURSUANT TO RULE 102(e)(3)(i)(A) OF
THE COMMISSION'S RULES OF
PRACTICE**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Todd A. Duckson ("Respondent" or "Duckson") pursuant to Rule 102(e)(3)(i)(A) of the Commission's Rules of Practice [17 C.F.R. 200.102(e)(3)(i)(A)].¹

II.

The Commission finds that:

1. Duckson is licensed as an attorney and a certified public accountant ("CPA") in the State of Minnesota. Duckson's CPA license is currently inactive.

2. On September 21, 2010, the Commission filed civil fraud charges against Duckson, and others, in the United States District Court for the District of Minnesota. *SEC v. True North Finance Corp.*, No. 10-3995 (D. Minn.). The complaint alleged, among other things, that between

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant . . . or other professional . . . who has been by name: (A) permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder. . . .

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March 2008 and December 2009, Duckson, and two real estate lending fund promoters, fraudulently raised more than \$21 million from investors in the Capital Solutions Monthly Income Fund (the "Fund"), a Minneapolis-based real estate lending fund, by concealing the collapse of the Fund's sole business partner. After that collapse, the Fund – whose sole business was to make real estate loans to that single borrower – had no meaningful income. Duckson and others used new investor funds mostly to pay existing investors, as well as management fees, legal fees, and related-party transaction fees to themselves. Duckson, individually, as outside counsel to the Fund, and later through his firm, Transactional Finance Fund Management LLC ("TFFM"), which served as investment manager for the Fund, obtained over \$4 million in ill-gotten gains.

3. The complaint alleged that Duckson violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5, Section 17(a) of the Securities Act of 1933 ("Securities Act"), and, in the alternative, aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5. The Commission sought a permanent injunction, disgorgement of unlawful proceeds plus pre-judgment interest, a financial penalty, and an order prohibiting Duckson from acting as an officer or director of any public company.

4. On July 1, 2014, the District Court entered a final judgment against Duckson, which permanently enjoins him from committing any future violations of Section 10(b) of the Exchange Act, Rule 10b-5, Section 17(a) of the Securities Act, and "from aiding and abetting violations of any securities laws." The Court noted that the jury found that Duckson's violations of Section 10(b), Rule 10b-5, and Section 17(a) were made knowingly. The Court also barred Duckson from serving as an officer or director of a publicly-traded corporation for a period of ten years from the date of the judgment and ordered Duckson and another defendant to disgorge unlawful proceeds, pay pre-judgment interest, and pay civil penalties.

III.

Based upon the foregoing, the Commission finds that a court of competent jurisdiction has permanently enjoined Duckson, by reason of his misconduct in an action brought by the Commission, from violating provisions of the securities laws or of the rules and regulations thereunder. In view of this finding, the Commission deems it appropriate and in the public interest that Duckson be temporarily suspended from appearing or practicing before the Commission.

IT IS HEREBY ORDERED that Duckson be, and hereby is, temporarily suspended from appearing or practicing before the Commission as an attorney and as an accountant. This Order will be effective upon service on the Respondent.

IT IS FURTHER ORDERED that Duckson may, within thirty days after service of this Order, file a petition with the Commission to lift the temporary suspension. If the Commission receives no petition within thirty days after service of the Order, the suspension will become permanent pursuant to Rule 102(e)(3)(ii).

If a petition is received within thirty days after service of this Order, the Commission will, within thirty days after the filing of the petition, either lift the temporary suspension, or set the

matter down for hearing at a time and place to be designated by the Commission, or both. If a hearing is ordered, following the hearing, the Commission may lift the suspension, censure the petitioner, or disqualify the petitioner from appearing or practicing before the Commission for a period of time, or permanently, pursuant to Rule 102(e)(3)(iii).

This Order shall be served upon Duckson personally or by certified mail at his last known address.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Commissioner Aguilar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73248 / September 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16180

In the Matter of

ROTHMAN SECURITIES, INC. and
THEODORE ROTHMAN,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Rothman Securities, Inc. and Theodore Rothman (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondents consent to the Commission's jurisdiction over them and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

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1. These proceedings arise out of a fraud conducted by David L. Rothman ("David"), Theodore Rothman's son and a registered representative of Rothman Securities, Inc.

Respondents

2. Rothman Securities, Inc. ("RSI"), is a Pennsylvania corporation that has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act since October 1983. RSI is headquartered in Southampton, PA and is a mutual fund retailer and municipal securities broker. RSI has transferred the majority of its customers, is no longer conducting broker-dealer activities, and is in the process of winding down its business and operations.

3. Theodore Rothman ("Rothman"), age 76, is the founder, owner, President and Director of RSI. Until 2013, Rothman served as RSI's Chief Compliance Officer. From 1963 through July 28, 2014, Rothman was a registered representative associated with broker-dealers registered with the Commission.

Other Relevant Individual

4. David L. Rothman, age 50, is Rothman's son and, during the relevant period, was a registered representative and partial owner of RSI. On September 21, 2012, the Commission filed a civil injunctive action against David in the United States District Court for the Eastern District of Pennsylvania. SEC v. David L. Rothman, Civ. Action No. 12-cv-5412-BMS (E.D.Pa.). As described in more detail below, the Commission's complaint alleges that, from 2006 to 2011, David engaged in fraudulent conduct in connection with his position as a registered representative with RSI. Based on that misconduct, the complaint alleges that David violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. On January 27, 2014, the district court entered a final judgment as to David, based upon his consent to judgment on the Commission's complaint.

5. On the same date that the Commission filed its complaint, the United States Attorney's Office for the Eastern District of Pennsylvania filed an indictment against David stemming from the same conduct. On March 26, 2013, David pled guilty to one count of wire fraud in violation of Title 18 United States Code, Section 1343 and one count of engaging in a monetary transaction in criminally derived property in violation of Title 18 United States Code, Section 1957 before the United States District Court for the Eastern District of Pennsylvania, in United States v. David L. Rothman, Crim. No. 12-513. The counts of the criminal indictment to which David pled guilty alleged that, in connection with RSI, David schemed to defraud several customers of RSI and obtain money by means of false representations; that he did so by use of the means of wire communications in interstate commerce; and that he executed the scheme and artifice to defraud by making misrepresentations concerning, among other things, the value of customers' investments.

Overview

6. From 2006 through 2011, David issued inflated account statements to several investors that materially overstated the value of their investment accounts. When the investors discovered that David had misrepresented the value of their investments, he engaged in a scheme to conceal his fraudulent conduct by agreeing to pay those investors the investment returns he reported on the inflated account statements. When David could no longer afford to make those payments, he misappropriated funds from an elderly and unsophisticated RSI customer and from two trust accounts (established by former RSI customers but not maintained at RSI) for which he served as trustee, and borrowed funds from Rothman. David also used a substantial portion of the misappropriated funds for his personal benefit.

7. RSI and Rothman failed reasonably to supervise David with a view to preventing and detecting his violations of the federal securities laws.

David Rothman's Conduct

8. Beginning at least as early as 2006, David prepared and sent cover letters and account statements that overstated the value of two of his customers' investment accounts. David inflated the customers' investment accounts by increasing the amount or price of the shares they owned. David continued to send false account statements and cover letters to customers at least through May 2011.

9. By issuing inflated account statements, David at times exaggerated these customers' returns and at other times concealed the fact that their account values were in decline. As a result, David was able to maintain his business relationship with these customers and he continued to earn compensation from the investment products he sold to them.

10. In 2010, the customers who had been receiving inflated account statements from David discovered that their holdings were, in fact, worth substantially less than the amount reported by David. The customers confronted David and he agreed to compensate them until the true value of their holdings equaled the amount he reported they held in their accounts.

11. David misappropriated funds from an elderly customer and two trusts for which he served as trustee and used a portion of the misappropriated funds to pay the customers that had received the inflated statements. In particular, on at least six occasions from May 6, 2011 until May 11, 2011, David caused an elderly customer to redeem mutual funds worth approximately \$335,000. David deposited the proceeds of each of these sales into a bank account that he controlled.

Respondents Failed Reasonably to Supervise David Rothman

12. RSI and Rothman failed reasonably to supervise David with a view to preventing and detecting his fraudulent acts. Rothman was responsible for overall supervision at RSI, including the development and implementation of reasonable supervisory policies and procedures. RSI and Rothman failed to develop reasonable policies and procedures, and a system for implementing such procedures, which would reasonably be expected to prevent and detect the

fraudulent conduct described herein. In particular, RSI and Rothman failed to adopt and implement adequate supervisory policies, procedures and systems that would have prevented and detected David's misappropriation of customer funds and misrepresentations to customers. Specifically, RSI's procedures failed to require the review and monitoring of transmittals of customer funds resulting from the liquidation of mutual funds. In addition, RSI and Rothman failed to develop reasonable policies and procedures with respect to follow-up of red flags indicating that registered representatives may be making misrepresentations to customers regarding account values. If RSI and Rothman had developed policies and procedures reasonably designed to address the review and monitoring of transmittals of funds resulting from customers' mutual fund redemptions and reasonable policies and procedures to provide guidance on appropriate follow-up to red flags indicating possible misrepresentations by registered representatives to customers, it is likely that RSI would have prevented and detected David's misconduct.

13. Rothman, David's supervisor, failed reasonably to supervise his son with a view to preventing his violations of the federal securities laws. At all times, Rothman was solely responsible for supervising David. Rothman exercised inadequate supervision over David. Specifically, Rothman failed reasonably to supervise David with respect to his misrepresentations to customers. RSI's procedures required Rothman to review incoming and outgoing correspondence, including periodic account statements and cover letters, and to document his review of such communications. Rothman failed to regularly review communications that David prepared. If Rothman had reviewed the customer account statements and customer cover letters that David sent to customers, he would have prevented and detected David's misrepresentations to customers regarding their account values and could have prevented David's subsequent misappropriation of another customer's funds that David used to pay back the customers for inflated account values.

14. Moreover, once Rothman became aware of a customer complaint indicating that David had sent many false statements to customers, he failed to take reasonable steps to address the red flags reflected in the multiple account statements sent over several years, such as by subjecting David to heightened supervision, closely monitoring his communications with customers, or restricting his business activities at RSI in a timely manner. David continued to send false account statements and cover letters to customers at least through May 2011. If Rothman had taken appropriate follow-up action with respect to David's misrepresentations to customers, he would have prevented David's ongoing misconduct.

Failure to Supervise

15. Section 15(b)(4)(E) of the Exchange Act provides for the imposition of a sanction against a broker or dealer who has failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to his supervision. Section 15(b)(6)(A)(i) incorporates by reference Section 15(b)(4)(E) and provides for the imposition of sanctions against persons associated with a broker or dealer.

16. As a result of the conduct described above, Respondents RSI and Rothman failed reasonably to supervise David with a view to preventing and detecting his violations of the federal securities laws.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED pursuant to Section 15(b) of the Exchange Act that:

- A. RSI is hereby censured.
- B. Rothman shall be, and hereby is barred from association in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.
- C. Any reapplication for association by Rothman will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Rothman, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.
- D. Rothman shall pay a civil money penalty in the amount of \$40,000 to the United States Treasury as follows: \$20,000 to be paid within 10 days of the entry of this Order, and the remaining \$20,000 to be paid within nine months of the entry of this Order. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:
 - (1) Rothman may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - (2) Rothman may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
 - (3) Rothman may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Theodore Rothman as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kingdon Kase, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

E. RSI shall pay a civil money penalty in the amount of \$90,000 to the United States Treasury as follows: \$45,000 to be paid within 10 days of the entry of this Order, and the remaining \$45,000 to be paid within nine months of the entry of this Order. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) RSI may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) RSI may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) RSI may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Rothman Securities, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kingdon Kase, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Commissioner Aguilar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73263 / September 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16184

In the Matter of

JORDAN PEIXOTO

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 21C OF THE
SECURITIES EXCHANGE
ACT OF 1934 AND NOTICE OF
HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Jordan Peixoto ("Peixoto" or the "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. Peixoto engaged in insider trading in connection with securities of Herbalife Ltd. ("Herbalife").

2. In 2012, Peixoto's friend, Filip Szymik ("Szymik"), was a close friend and the roommate of an analyst employed at Pershing Square Management, L.P. ("Pershing"). Pershing was a hedge fund headed by well-known activist investor William Ackman ("Ackman"). Prior to December 19, 2012, Szymik's roommate ("the Analyst") informed Szymik of an upcoming Pershing public presentation regarding its negative view of Herbalife (the "Pershing Presentation"). The Analyst also told Szymik, and Szymik understood and agreed, that any information that Szymik might learn from the Analyst concerning Pershing (including concerning the Pershing Presentation) was highly confidential and that Szymik should not trade securities on the basis of any such information.

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3. Nonetheless, in breach of his duty of trust or confidence with the Analyst, Szymik informed his friend Peixoto of the essential substance and date of the upcoming Pershing Presentation, which ultimately took place on December 20, 2012. Peixoto and Szymik knew or recklessly disregarded that that information was material and nonpublic, and both understood that, once publicized, Pershing's negative view of Herbalife likely would cause Herbalife's stock price to fall.

4. On December 19, 2012, prior to any such public announcement, Peixoto purchased a number of Herbalife put options. Later that day, CNBC reported Pershing would be announcing publicly a negative view of Herbalife in a presentation the following day. Immediately following both the CNBC announcement and the Pershing Presentation the following day, Herbalife's stock price dropped considerably, falling a total of 39% by the close of trading on December 24. The market value of Peixoto's Herbalife's put options increased by approximately \$339,421 (as of December 21, 2012), and he ultimately obtained \$47,100 in actual profits from Herbalife options that he purchased prior to the CNBC report.

5. By purchasing Herbalife put options while in possession of material nonpublic information -- when he knew or had reason to know that that information had been improperly obtained -- Peixoto violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. RESPONDENT

6. **Peixoto**, age 30 and a resident of Toronto, is a Canadian citizen. During December 2012, Peixoto was employed as a research analyst at Deloitte in New York, New York. Peixoto has never been registered with the Commission.

C. OTHER RELEVANT INDIVIDUALS AND ENTITIES

7. **Szymik**, age 28 and a resident of New York City, is a Polish citizen. Since 2008, Szymik has worked as a consultant or senior consultant at a consulting firm. Szymik has never been registered with the Commission.

8. **The Analyst**, age 28 and a resident of New York City, is a Polish citizen. The Analyst began working for Pershing in April 2010, as an intern, and later became a research analyst. The Analyst left Pershing in September 2013.

9. **Pershing**, a limited partnership, was formed in New York, New York. Pershing was founded by William Ackman in 2004 and operates as a hedge fund. Pershing is registered with the Commission as an investment adviser. As of December 2012, it had approximately \$11 billion in assets under management.

10. **Herbalife**, a Cayman Islands corporation, is headquartered in Los Angeles, California. Herbalife's common stock is registered with the Commission pursuant to

Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange. Herbalife common stock options are traded on various exchanges.

D. BACKGROUND

11. The Analyst began working at Pershing as an intern in April 2010 and became a research analyst and full-time employee in March 2011. Pershing's employee compliance manual states in part that "[Pershing] generates, maintains and possesses information that we view as proprietary, and it must be kept confidential by our Employees"; and that such information includes "investment positions that have not otherwise been publicly disclosed; research analyses that have not otherwise been publicly disclosed ..." Pershing's written compliance policies further state: "Employees may not disclose proprietary information to anyone outside the Firm ..." Upon becoming a full-time Pershing employee, the Analyst acknowledged to Pershing in writing that he had received, read, and understood Pershing's compliance manual and confidentiality policy.

12. As a Pershing employee, the Analyst also attended routine mandatory training seminars hosted by Pershing, which included training concerning Pershing's compliance manual, code of ethics, and insider trading.

13. Beginning in the first quarter of 2012, through at least September 2013, the Analyst was a member of Pershing's investment team assigned to research Herbalife. In that capacity, prior to December 2012, the Analyst learned that Pershing had concluded that Herbalife was operating an illicit pyramid scheme and that Pershing had acquired a substantial short position in Herbalife stock. The Analyst also knew that Pershing intended to publicly disclose its Herbalife thesis through a presentation at the Sohn Conference Foundation (the Pershing Presentation) ultimately scheduled for, and which occurred on, December 20, 2012.

14. All information concerning Pershing's Herbalife research -- including its negative view of Herbalife, its thesis that Herbalife was operating as an illicit pyramid scheme, its short position in Herbalife stock, and the timing of its disclosure of that information -- constituted material nonpublic information. As a Pershing employee, the Analyst knew that such information was nonpublic and highly confidential.

E. THE ANALYST'S RELATIONSHIP WITH SZYMIK

15. In 2012, the Analyst and Szymik were very close friends who had grown up together in Poland. From 2008 to April 2013, they shared an apartment as roommates in New York, New York. The Analyst and Szymik had a relationship of mutual trust or confidence in which they shared both personal and professional confidences.

16. In 2012, Szymik knew that the Analyst was a Pershing research analyst and that his work there was highly confidential.

17. Prior to December 2012, the Analyst expressly cautioned Szymik, and Szymik understood, that all of the Analyst's work at Pershing was highly confidential; that Szymik should not disclose anything regarding Pershing that he might hear or learn from the Analyst to anybody else; and that Szymik should not trade securities using any such information. Prior to December 2012, Szymik explicitly promised the Analyst that he would neither trade on any information he learned from the Analyst concerning Pershing nor disclose such information to anyone else.

18. Prior to December 19, 2012, in violation of Pershing's confidentiality policy, the Analyst disclosed material nonpublic information about his work regarding Herbalife to Szymik. The Analyst told Szymik, at the least, that he was researching Herbalife for Pershing and that Pershing had a negative view of Herbalife. The Analyst also told Szymik that Pershing would present its thesis concerning Herbalife at the Pershing Presentation, and he informed Szymik of the date of the presentation. As described in the preceding paragraph, Szymik had agreed with the Analyst to maintain the confidentiality of such information. Furthermore, given Szymik's and the Analyst's history, pattern, and practice of sharing confidences, Szymik knew or reasonably should have known that the Analyst expected Szymik to maintain the confidentiality of such information.

F. SZYMIK TIPPED PEIXOTO

19. In 2012, Szymik and Peixoto were close friends who lived within a block of each other in New York, New York and spent time socializing together nearly every weekend.

20. Peixoto knew that Szymik and the Analyst were roommates and very close friends, having known each other since childhood. Peixoto also knew that the Analyst worked at Pershing as a research analyst, and Peixoto knew or had reason to know that the Analyst's work at Pershing was highly confidential.

21. In a series of communications prior to December 19, 2012, Szymik breached his duty of trust or confidence to the Analyst by telling Peixoto, at the least, that the Analyst was researching Herbalife for Pershing; that Pershing had a negative view of Herbalife; that Pershing would publicly disclose its Herbalife thesis; and the date that disclosure would occur. At the time of those communications, both Szymik and Peixoto either knew or recklessly disregarded that the information was material and non-public.

22. When Szymik gave Peixoto the confidential information concerning the Pershing Presentation described in paragraph 21 above, Szymik knew or recklessly disregarded both that he was violating his duty of trust or confidence to the Analyst and that Peixoto intended to trade Herbalife securities based on that information. Szymik received a personal benefit by gifting confidential information to his friend, Peixoto.

23. When Peixoto received the confidential information from Szymik described in paragraph 21 above, Peixoto knew or had reason to know that Szymik provided the information to him improperly, in breach of a duty of trust or confidence.

G. PEIXOTO TRADED HERBALIFE OPTIONS

24. On the basis of the confidential information that Szymik had provided to him, Peixoto purchased Herbalife put options in advance of the Pershing Presentation. On December 19, 2012, from approximately 12:00 p.m. to 1:23 p.m. Peixoto purchased eight out-of-the-money Herbalife put options (the "Herbalife Options"). Peixoto previously had never traded options or Herbalife securities, and he sold several other securities to fund his purchase of the Herbalife Options. Szymik did not trade in Herbalife securities.

25. At 1:58 pm EST on December 19, 2012, after Peixoto had purchased the Herbalife Options, CNBC reported that Pershing had acquired a significant short position in Herbalife stock and that Pershing would present its thesis -- that Herbalife was operating an illegal pyramid scheme -- at a conference the next day (the "CNBC Report"). At 2:04 p.m. on December 19, the New York Stock Exchange temporarily halted Herbalife stock trading due to its high volatility in the wake of the CNBC Report.

26. At the December 20, 2012 Pershing Presentation -- a three-hour, 334-slide presentation entitled "Who wants to be a Millionaire?" -- Ackman publicly accused Herbalife of operating an illegal pyramid scheme and disclosed that Pershing held a \$1 billion short position in Herbalife stock.

27. Following the CNBC Report, the price of Herbalife stock decreased approximately 12%, from \$42.50 per share at the close on December 18, 2012, to \$37.34 per share at the close on December 19, 2012.

28. After the CNBC Report and the Pershing Presentation, Herbalife's stock price declined by approximately 39%, from \$42.50 per share at the close on December 18, 2012, to a low of \$26.06 per share at the close on December 24, 2012.

29. As of the market close on Friday, December 21, 2012, the market value of Peixoto's Herbalife Options had increased by approximately \$339,421, and he ultimately obtained \$47,100 in actual profits from his illicit trading in Herbalife Options. Peixoto requested that his brokerage firms permit a number of his profitable Herbalife Options to expire without exercising them. However, one of Peixoto's securities brokers refused his request, resulting in the exercise of certain of the Herbalife Options and his obtaining \$47,100 in illicit trading profits.

H. VIOLATIONS

30. As a result of the conduct described above, Peixoto violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it appropriate that cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it

is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Commissioner Aguilar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73262 / September 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16183

In the Matter of

FILIP SZYMIK

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 21C OF THE
SECURITIES EXCHANGE
ACT OF 1934, MAKING FINDINGS,
AND IMPOSING A CEASE-AND-
DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Filip Szymik ("Szymik" or the "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

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SUMMARY

1. Szymik engaged in insider trading in connection with the securities of Herbalife, Ltd. ("Herbalife") by tipping confidential information to his friend, Jordan Peixoto ("Peixoto").

2. In 2012, Szymik's roommate was employed as an analyst at Pershing Square Management, L.P. ("Pershing"), a hedge fund headed by well-known activist investor William Ackman ("Ackman"). Prior to December 19, 2012, Szymik's roommate ("the Analyst") informed Szymik of an upcoming Pershing public presentation regarding its negative view of Herbalife (the "Pershing Presentation"). The Analyst also told Szymik, and Szymik understood and agreed, that any information that Szymik might learn from the Analyst concerning Pershing (including concerning the Pershing Presentation) was highly confidential and that Szymik should not trade securities on the basis of any such information.

3. Nonetheless, in breach of his duty of trust or confidence with the Analyst, Szymik informed his friend Peixoto of the essential substance, and date, of the upcoming Pershing Presentation, which ultimately took place on December 20, 2012. Peixoto and Szymik knew or recklessly disregarded that that information was material and nonpublic, and both understood that, once publicized, Pershing's negative view of Herbalife likely would cause Herbalife's stock price to fall.

4. On December 19, 2012, prior to any such public announcement, Peixoto purchased a number of Herbalife put options. Later that day, CNBC reported Pershing would be announcing publicly a negative view of Herbalife in a presentation the following day. Immediately following both the CNBC announcement and the Pershing Presentation the following day, Herbalife's stock price dropped considerably, falling a total of 39% by the close of trading on December 24. The market value of Peixoto's Herbalife's put options increased by approximately \$339,421 (as of December 21, 2012), and he ultimately obtained \$47,100 in actual profits from Herbalife options that he purchased prior to the CNBC report.

5. By providing Peixoto material nonpublic information concerning the upcoming Pershing Presentation, in breach of his duty of trust or confidentiality to the Analyst, Szymik violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

RESPONDENT

6. **Szymik**, age 28 and a resident of New York City, is a Polish citizen. Since 2008, Szymik has worked as a consultant or senior consultant at a consulting firm. Szymik has never been registered with the Commission.

OTHER RELEVANT INDIVIDUALS AND ENTITIES

7. **Peixoto**, age 30 and a resident of Toronto, is a Canadian citizen. During December 2012, Peixoto was employed as a research analyst at Deloitte in New York, New York. Peixoto has never been registered with the Commission.

8. **The Analyst**, age 28 and a resident of New York City, is a Polish citizen. The Analyst began working for Pershing in April 2010, as an intern, and later became a research analyst. The Analyst left Pershing in September 2013.

9. **Pershing**, a limited partnership, was formed in New York, New York. Pershing was founded by William Ackman in 2004 and operates as a hedge fund. Pershing is registered with the Commission as an investment adviser. As of December 2012, it had approximately \$11 billion in assets under management.

10. **Herbalife**, a Cayman Islands corporation, is headquartered in Los Angeles, California. Herbalife's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange. Herbalife common stock options are traded on various exchanges.

BACKGROUND

11. The Analyst began working at Pershing as an intern in April 2010 and became a research analyst and full-time employee in March 2011. Pershing's employee compliance manual states in part that "[Pershing] generates, maintains and possesses information that we view as proprietary, and it must be kept confidential by our Employees"; and that such information includes "investment positions that have not otherwise been publicly disclosed; research analyses that have not otherwise been publicly disclosed ..." Pershing's written compliance policies further state: "Employees may not disclose proprietary information to anyone outside the Firm ..." Upon becoming a full-time Pershing employee, the Analyst acknowledged to Pershing in writing that he had received, read, and understood Pershing's compliance manual and confidentiality policy.

12. As a Pershing employee, the Analyst also attended routine mandatory training seminars hosted by Pershing, which included training concerning Pershing's compliance manual, code of ethics, and insider trading.

13. Beginning in the first quarter of 2012, through at least September 2013, the Analyst was a member of Pershing's investment team assigned to research Herbalife. In that capacity, prior to December 2012, the Analyst learned that Pershing had concluded that Herbalife was operating an illicit pyramid scheme and that Pershing had acquired a substantial short position in Herbalife stock. The Analyst also knew that Pershing intended to publicly disclose its Herbalife thesis through a presentation at the Sohn Conference Foundation (the Pershing Presentation) ultimately scheduled for, and which occurred on, December 20, 2012.

14. All information concerning Pershing's Herbalife research -- including its negative view of Herbalife, its thesis that Herbalife was operating as an illicit pyramid scheme, its short position in Herbalife stock, and the timing of its disclosure of that information -- constituted material nonpublic information. As a Pershing employee, the Analyst knew that such information was nonpublic and highly confidential.

THE ANALYST'S RELATIONSHIP WITH SZYMIK

15. In 2012, the Analyst and Szymik were very close friends who had grown up together in Poland. From 2008 to April 2013, they shared an apartment as roommates in New York, New York. The Analyst and Szymik had a relationship of mutual trust or confidence in which they shared both personal and professional confidences.

16. In 2012, Szymik knew that the Analyst was a Pershing research analyst and that his work there was highly confidential.

17. Prior to December 2012, the Analyst expressly cautioned Szymik, and Szymik understood, that all of the Analyst's work at Pershing was highly confidential; that Szymik should not disclose anything regarding Pershing that he might hear or learn from the Analyst to anybody else; and that Szymik should not trade securities using any such information. Prior to December 2012, Szymik explicitly promised the Analyst that he would neither trade on any information he learned from the Analyst concerning Pershing nor disclose such information to anyone else.

18. Prior to December 19, 2012, in violation of Pershing's confidentiality policy, the Analyst disclosed material nonpublic information about his work regarding Herbalife to Szymik. The Analyst told Szymik, at the least, that he was researching Herbalife for Pershing and that Pershing had a negative view of Herbalife. The Analyst also told Szymik that Pershing would present its thesis concerning Herbalife at the Pershing Presentation, and he informed Szymik of the date of the presentation. As described in the preceding paragraph, Szymik had agreed with the Analyst to maintain the confidentiality of such information. Furthermore, given Szymik's and the Analyst's history, pattern, and practice of sharing confidences, Szymik knew or reasonably should have known that the Analyst expected Szymik to maintain the confidentiality of such information.

SZYMIK TIPPED PEIXOTO

19. In 2012, Szymik and Peixoto were close friends who lived within a block of each other in New York, New York and spent time socializing together nearly every weekend.

20. Peixoto knew that Szymik and the Analyst were roommates and very close friends, having known each other since childhood. Peixoto also knew that the Analyst worked at Pershing as a research analyst, and Peixoto knew or had reason to know that the Analyst's work at Pershing was highly confidential.

21. In a series of communications prior to December 19, 2012, Szymik breached his duty of trust or confidence to the Analyst by telling Peixoto, at the least, that the Analyst was researching Herbalife for Pershing; that Pershing had a negative view of Herbalife; that Pershing would publicly disclose its Herbalife thesis; and the date that disclosure would occur. At the time of those communications, both Szymik and Peixoto either knew or recklessly disregarded that the information was material and non-public.

22. When Szymik gave Peixoto the confidential information concerning the Pershing Presentation described in paragraph 21 above, Szymik knew or recklessly disregarded both that he was violating his duty of trust or confidence to the Analyst and that Peixoto intended to trade Herbalife securities based on that information. Szymik received a personal benefit by gifting confidential information to his friend, Peixoto.

23. When Peixoto received the confidential information from Szymik described in paragraph 21 above, Peixoto knew or had reason to know that Szymik provided the information to him improperly, in breach of a duty of trust or confidence.

PEIXOTO TRADED HERBALIFE OPTIONS

24. On the basis of the confidential information that Szymik had provided to him, Peixoto purchased Herbalife put options in advance of the Pershing Presentation. On December 19, 2012, from approximately 12:00 p.m. to 1:23 p.m. Peixoto purchased eight out-of-the-money Herbalife put options (the "Herbalife Options"). Peixoto previously had never traded options or Herbalife securities, and he sold several other securities to fund his purchase of the Herbalife Options. Szymik did not trade in Herbalife securities.

25. At 1:58 pm EST on December 19, 2012, after Peixoto had purchased the Herbalife Options, CNBC reported that Pershing had acquired a significant short position in Herbalife stock and that Pershing would present its thesis -- that Herbalife was operating an illegal pyramid scheme -- at a conference the next day (the "CNBC Report"). At 2:04 p.m. on December 19, the New York Stock Exchange temporarily halted Herbalife stock trading due to its high volatility in the wake of the CNBC Report.

26. At the December 20, 2012 Pershing Presentation -- a three-hour, 334-slide presentation entitled "Who wants to be a Millionaire?" -- Ackman publicly accused Herbalife of operating an illegal pyramid scheme and disclosed that Pershing held a \$1 billion short position in Herbalife stock.

27. Following the CNBC Report, the price of Herbalife stock decreased approximately 12%, from \$42.50 per share at the close on December 18, 2012, to \$37.34 per share at the close on December 19, 2012.

28. After the CNBC Report and the Pershing Presentation, Herbalife's stock price declined by approximately 39%, from \$42.50 per share at the close on December 18, 2012, to a low of \$26.06 per share at the close on December 24, 2012.

29. As of the market close on Friday, December 21, 2012, the market value of Peixoto's Herbalife Options had increased by approximately \$339,421, and he ultimately obtained \$47,100 in actual profits from his illicit trading in Herbalife Options. Peixoto requested that his brokerage firms permit a number of his profitable Herbalife Options to expire without exercising them. However, one of Peixoto's securities brokers refused his request, resulting in the exercise of certain of the Herbalife Options and his obtaining \$47,100 in illicit trading profits.

VIOLATIONS

30. As a result of the conduct described above, Szymik violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

UNDERTAKINGS

31. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice, including to give testimony at any deposition, trial or hearing in this matter; (ii) will accept service by mail, email or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials in this matter, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives any territorial limits on service contained in the Commission's Rules of Practice and Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Szymik's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Sections 21C of the Exchange Act, Respondent Szymik cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent shall pay a civil money penalty in the amount of \$47,100 to the Securities and Exchange Commission. Payment shall be made in the following

installments: \$25,000 within ten days of the entry of this Order, and the remaining \$22,100 to be paid in equal monthly installments of \$613.89 over 36 months, beginning thirty days after the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance, plus any additional interest shall accrue pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Filip Szymik as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sanjay Wadhwa, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

*Commissioner Aguilar
Not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73270 / September 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16185

In the Matter of

Gloria Solomon,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Gloria Solomon ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over her and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that

1. Solomon, 72 years old, is a resident of Dallas, Texas, and is currently an inmate of the Federal Bureau of Prisons. She was the Chief Administrative Officer of Global

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Corporate Alliance, Inc. During the relevant period, Solomon acted as an unregistered broker in violation of Section 15(a) of the Exchange Act.

2. On August 8, 2013, an agreed partial judgment was entered by consent against Solomon, permanently enjoining her from future violations of Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder in the civil action entitled Securities and Exchange Commission v. Duncan J. MacDonald, III, et al., Civil Action Number 3:13-cv-2275, in the United States District Court for the Northern District of Texas.

3. The Commission's complaint alleged that, in connection with the sale of investment contracts, Solomon directly and indirectly made misrepresentations to investors about the state and success of the business, its history, the use of the investors' funds, and that she otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors. The complaint also alleged that Solomon, while not registered as a broker or associated with a registered broker, sold unregistered securities.

4. On July 2, 2013, Solomon pled guilty to one count of conspiracy to commit wire fraud in violation of Title 18 United States Code, Sections 371 and 1343, before the United States District Court for the Northern District of Texas, in United States v. Gloria Ann Solomon, No. 3:13-cr-219. On April 17, 2014, a judgment in the criminal case was entered against Solomon. She was sentenced to a prison term of 60 months followed by two years of supervised release and ordered to make restitution in an amount to be determined, but not less than \$ 8.5 million.

5. The counts of the criminal information to which Solomon pled guilty alleged, inter alia, that Solomon intentionally defrauded investors and obtained money and property by means of materially false and misleading statements and that she used the interstate wire communications facilities or caused another to use interstate wire communications facilities for the purpose of carrying out the scheme.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Solomon's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Solomon be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a

broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary