

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3278 / September 14, 2011**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14550**

**In the Matter of**  
  
**JAMES DAVIS RISHER,**  
  
**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 James Davis Risher (“Respondent” or “Risher”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. RESPONDENT**

1. From no later than January 2007 through July 2010, Risher was the sole trader for a purported private equity fund operating under various names including the Safe Harbor Private Equity Fund, Managed Capital Fund, and Preservation of Principal Fund (collectively the “Fund”). During the relevant time period, Risher acted as an unregistered investment adviser to the Fund.

2. Risher falsely represented to investors that the Fund earned annual returns ranging from 14% to 124% by investing in public equity securities through a FINRA-regulated broker-dealer. Only a fraction of the money raised was actually invested; Risher instead misappropriated a large portion for his personal use. He also misrepresented that the Fund was registered in Bermuda and that it was audited annually by a Bermudan auditor. Risher boasted to

investors that he had substantial experience in trading equities and providing wealth and asset management services. In reality, Risher had no such experience but rather a lengthy criminal history, spending 11 of the last 21 years in jail instead of growing a thriving retail brokerage business as he claimed.

**B. ENTRY OF GUILTY PLEA**

3. On September 9, 2011, Risher pled guilty to one count of mail fraud, one count of money laundering, and one count of engaging in an illegal monetary transaction, in violation of Title 18 United States Code, Sections 1341 and 2, Sections 1956(a)(1)(A)(i) and 2, and Sections 1957 and 2, respectively, before the United States District Court for the Middle District of Florida in the criminal case entitled United States v. James Davis Risher, Case No. 8:11-CR-343-T-23TGW.

4. Count one of the criminal information to which Risher pled guilty alleged, among other things, that Risher defrauded investors and obtained money and property by means of materially false and misleading statements which caused investors to invest their funds with him in the Fund. Count two of the criminal information alleged, among other things, that Risher knowingly conducted a financial transaction involving proceeds from the unlawful activity of mail fraud. Count three alleged, among other things, that Risher knowingly engaged in a monetary transaction involving funds that were the proceeds of his criminal activity of mail fraud.

**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 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.

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy  
Secretary