UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9394 / March 19, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 69171 / March 19, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3569 / March 19, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30428 / March 19, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15249

In the Matter of

CRAIG BERKMAN, d/b/a VENTURES TRUST LLC, JOHN B. KERN, FACE OFF ACQUISITIONS, LLC, FACE OFF MANAGEMENT, LLC, a/k/a FACE OFF ACQUISITIONS MANAGEMENT, LLC, VENTURES TRUST II LLC, VENTURES TRUST III LLC, VENTURES TRUST IV LLC, VENTURES TRUST V LLC, VENTURES TRUST VI LLC, VENTURES TRUST ASSET FUND LLC, VENTURES TRUST MANAGEMENT LLC, VENTURES TRUST ASSET MANAGEMENT, LLC, a/k/a VENTURES TRUST II ASSET MANAGEMENT, LLC, ASSENSUS CAPITAL, LLC AND ASSENSUS CAPITAL MANAGEMENT, LLC,

Respondents.

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, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, 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 8A of the Securities Act of 1933 ("Securities Act"), Section 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") against Craig Berkman, d/b/a Ventures Trust LLC ("Berkman"), John B. Kern ("Kern"), Face Off Acquisitions, LLC ("Face Off Acquisitions"), Face Off Management, LLC, a/k/a Face Off Acquisitions Management, LLC ("Face Off Management"), Ventures Trust II LLC ("Ventures II"), Ventures Trust III LLC ("Ventures III"), Ventures Trust IV LLC ("Ventures IV"), Ventures Trust V LLC ("Ventures V"), Ventures Trust VI LLC ("Ventures VI"), Ventures Trust Asset Fund LLC ("Ventures Asset Fund"), Ventures Trust Management LLC, Ventures Trust Asset Management, LLC a/k/a Ventures Trust II Asset Management, LLC (Ventures Trust Management LLC and Ventures Trust Asset Management, LLC are collectively referred to hereinafter as "Ventures Trust Management"), Assensus Capital, LLC ("Assensus Capital"), Assensus Capital Management, LLC ("Assensus Management") (all collectively referred to hereinafter as "Respondents").

II.

After an investigation, the Division of Enforcement (the "Division") alleges that:

A. SUMMARY

1. From approximately October 2010 through September 2012, Berkman fraudulently raised at least $13.2 million from approximately 120 investors by selling membership interests in limited liability companies ("LLCs") that Berkman controlled, including Face Off Acquisitions, Assensus Capital and several LLCs with the words "Ventures Trust" in their names.

2. Berkman made material misrepresentations he knew were false to investors in three different sets of offerings. In one set of offerings, Berkman told investors in Ventures II, III, IV, V, and VI (collectively, the "Ventures LLCs") that their funds would be used to acquire highly coveted, pre-initial public offering ("pre-IPO") shares of Facebook, Inc., LinkedIn, Inc., Groupon, Inc., and Zynga Inc. In another offering, Berkman told investors in Face Off Acquisitions that their money would be used either to purchase pre-IPO shares of Facebook or to acquire a company that held pre-IPO Facebook shares. In a third offering, Berkman told investors in Assensus Capital that he would use their money to fund various new, large-scale, technology ventures.

3. Instead of using the investor funds to acquire pre-IPO shares or fund technology ventures, Berkman misappropriated most of the offering proceeds. Berkman used most of the money to make payments to investors in his earlier investment schemes and to some of the victims of this fraud in Ponzi –scheme fashion, including approximately $5.43 million to satisfy a prior judgment against him and another $4.8 million to investors who had invested either in this pre-IPO scheme or in other schemes. Berkman also used approximately $1.6 million to fund his own personal expenses, including large cash withdrawals and dining and travel expenses.

4. Of the $13.2 million raised, Berkman used $600,000 to purchase a small interest in an unrelated fund that had acquired pre-IPO Facebook stock. That purchase did not provide any of

the Ventures LLCs, or any other company affiliated with Berkman, with ownership of Facebook shares. Berkman and/or one of his associates nevertheless used a forged letter about that investment to falsely represent to investors that Ventures II owned nearly half a million shares of Facebook stock. Upon discovering the forgery, the fund informed Berkman that it was immediately terminating and liquidating the Ventures II interest, leaving Ventures II without even an indirect interest in Facebook shares.

5. To aid and abet the fraud, Kern, a lawyer and general counsel to the Ventures LLCs and Face Off Acquisitions, made certain material misstatements to investors that he knew or recklessly disregarded were false and misleading.

B. <u>RESPONDENTS</u>

6. **Berkman**, age 71, resides in Odessa, Florida. At all relevant times, Berkman controlled each of the Respondent entities. Berkman served as Oregon's state Republican Party chairman from 1989 to 1993 and ran unsuccessfully for the Republican nomination for Governor of Oregon in 1994.

7. **Kern**, age 49, resides in Charleston, South Carolina. Kern is an attorney licensed to practice law in South Carolina and has an office in the Republic of San Marino. Kern is or was Ventures II's general counsel and Face Off Acquisitions' general counsel. Kern represented Ventures II in the staff's investigation.

8. **Face Off Acquisitions** is a Delaware LLC formed on May 24, 2011. Face Off Acquisitions purports to be a private equity firm with offices in Tampa, Florida and New York, New York and "an expected capitalization of $100,000,000" for a "Special Opportunity Facebook Stock Purchase Fund."

9. **Face Off Management** is a Delaware LLC formed on May 24, 2011. It purports to serve as Face Off Acquisitions' Managing Member and to be "responsible for sourcing, selection, structuring and oversight of the Facebook investment."

10. **Ventures II** is a Delaware LLC formed on June 15, 2010. Ventures II purports to have offices in Tampa, Florida, Los Angeles, California, and New York, New York. Ventures II purports to be a private equity firm with a "unique opportunity to purchase discounted shares of Facebook." The majority of the investor funds at issue were deposited into Ventures II bank accounts and comingled with investor funds initially deposited into accounts held in the names of the other Ventures LLCs.

11. **Ventures Trust Asset Management** is a Delaware LLC formed on March 7, 2007. It purports to serve as the managing member for the Ventures LLCs and to be "responsible for the sourcing, structuring and oversight of the portfolio investments." Berkman owns or owned 100% of the membership interests of Ventures Trust Asset Management.

12. **Ventures Trust Management** is a Delaware LLC formed on August 8, 2011. It purports to serve as the Managing Member for the Ventures LLCs.

13. **Ventures III** is a Delaware LLC formed on December 28, 2010. Ventures III purports to have offices in Los Angeles, California. It purports to be a private equity firm with a "unique opportunity to purchase discounted shares" and whose "first investment will be made in LinkedIn." Ventures Trust Management purports to be Ventures III's Managing Member.

Ventures III holds a bank account through which Berkman funneled investor funds. Berkman is listed as a signatory on the bank account.

14. **Ventures IV** is a Delaware LLC formed on January 27, 2011. Ventures IV purports to have offices in Los Angeles, California. Ventures IV purports to be a private equity firm with a "unique opportunity to purchase discounted shares," whose "first investment will be made in Groupon." Ventures Trust Management purports to be Ventures IV's Managing Member. Ventures IV holds a bank account through which Berkman funneled investor funds and whose title is "Ventures Trust IV Groupon." Berkman is listed as a signatory on the bank account.

15. **Ventures V** is a Delaware LLC formed on January 27, 2011. It also holds a bank account through which Berkman funneled investor funds. Berkman is listed as a member and signatory on the bank account.

16. **Ventures VI** is a Delaware LLC formed on January 27, 2011. It similarly holds a bank account through which Berkman funneled investor funds. Berkman is the managing director of Ventures VI. Berkman is listed as a signatory to Ventures VI's bank account, entitled "Ventures Trust VI Zynga."

17. **Ventures Trust Asset Fund** is a Washington LLC formed on January 11, 2007. Berkman is its manager. A portion of the misappropriated investor funds at issue were transferred to Ventures Trust Asset Fund.

18. **Assensus Capital** is a Delaware LLC formed on July 14, 2011. Assensus Capital purports to have offices in Tampa, Florida and New York, New York. It purports to be a private equity firm focused on "funding affiliated, groundbreaking companies in surgical technology fields and in the forefront of a new generation of nuclear power plant design."

19. **Assensus Management** is a Delaware LLC formed on July 14, 2011. It purports to serve as Assensus Capital's Managing Member and to be "responsible for the sourcing, structuring and oversight of the portfolio investments."

C. OTHER RELEVANT PERSON AND ENTITIES

20. **The Manager**, age 49, resides in Encinitas, California. At all relevant times, the Manager managed and provided "day-to-day leadership" for the respective managing members of Face Off Acquisitions, Ventures Trust, and Assensus Capital.

21. **Actual Facebook Funds** are two single-purpose, pooled investment vehicles associated with a registered broker-dealer in New York City. The two Actual Facebook Funds both held pre-IPO Facebook stock during the relevant period.

22. **The Law Firm** is a large law firm that served as corporate counsel to the Actual Facebook Funds.

23. **Actual Facebook Fund 2** is a Delaware LLC (unrelated to the Actual Facebook Funds) formed to acquire pre-IPO securities of Facebook. Actual Facebook Fund 2 held only pre-IPO Facebook stock during the relevant period.

24. **The Broker-Dealer** is a registered broker-dealer in New York City. The Broker-Dealer has not acquired or tried to acquire pre-IPO Facebook securities or interests in pre-IPO Facebook securities or operated single-purpose funds holding Facebook securities.

D. FACTS

Berkman's Prior Securities Violations and Bankruptcy

25. In 2001, the Oregon Division of Finance and Securities issued a cease-and-desist order against Berkman for offering and selling convertible promissory notes without a brokerage license to Oregon residents between 1983 and 1997. Berkman received a $50,000 fine.

26. In June 2008, an Oregon jury found Berkman liable in a private action for breach of fiduciary duty, conversion of investor funds, and misrepresentation to investors, among other things, arising from Berkman's involvement with a series of purported venture capital funds known as Synectic Ventures (collectively "Synectic"). Berkman's improper use of Synectic funds included more than $5 million in purported "personal loans" and the misuse of investor funds to cover personal expenses and execute personal stock purchases. The court entered a $28 million judgment against Berkman ("2008 Oregon Judgment").

27. In March 2009, Synectic filed an involuntary Chapter 7 bankruptcy petition against Berkman in the Middle District of Florida alleging that he owed more than $15.4 million in unpaid debts arising from the 2008 Oregon Judgment. On August 11, 2010, the court entered three judgments against Berkman totaling nearly $15 million, plus 9% interest and costs, deemed non-dischargeable in bankruptcy.

28. The parties to the bankruptcy proceeding then reached a settlement in which Berkman was required to pay $4.75 million in seven installments, beginning on November 30, 2010. After making the first four payments, totaling $1.5 million, Berkman failed to make the fifth payment, due on March 17, 2011. He defaulted on several subsequent revised payment schedules, which also included 5% annual interest. The Chapter 7 Trustee recommenced adversary proceedings, leading to a further revised settlement agreement with a final payment date of May 11, 2012. On May 9, 2012, Berkman paid the remaining balance of more than $3.2 million and the pending adversary proceedings against him were dismissed with prejudice.

29. As detailed below, Berkman used a substantial part of the proceeds of his pre-IPO offering fraud (and none of his own money) to pay the Florida bankruptcy claims.

The Ventures Fraud

30. From approximately October 2010 through February 2012, Berkman and the Manager made numerous misrepresentations to Ventures LLC investors when offering and selling membership interests in the various Ventures LLCs, both orally and in writing, including in the formal offering documents.

31. Berkman and the Manager falsely told investors that each of the Ventures LLCs would use their funds to acquire highly coveted, pre-IPO shares in one or more social media companies that were planning IPOs at the time, including Facebook, LinkedIn, Groupon or Zynga. For example, Berkman and the Manager falsely told certain investors that Ventures II was going to purchase pre-IPO Facebook shares and falsely told other investors that Ventures II had already purchased such shares.

32. At a hotel meeting with a group of California investors in approximately 2010, Berkman and the Manager told investors that Berkman had access to Facebook employees who

wanted to sell their shares of Facebook prior to Facebook's IPO and had formed an LLC to purchase shares from Facebook employees.

33. In an e-mail to an investor in November 2011, the Manager similarly misrepresented that "[w]e have been notified that we can purchase up to 5 million of Facebook common at 30.00 per share."

34. Berkman orally told a prospective investor in approximately January 2012 that he could immediately purchase $2 million worth of pre-IPO Facebook shares at $25 per share because another Ventures II investor needed to sell his position to satisfy an $18 million tax liability. Berkman also falsely claimed in an email to the same prospective investor the next month that Ventures II "currently ha[s] $2 million [of Facebook shares] at $25 per share [and] I may be able to secure another $1.8 million at $25 per share as long as I have your firm commitment to purchase it."

35. The Manager told another investor in approximately February 2012 that Facebook shares were reserved for Ventures II and that Ventures II had over $1 million worth of pre-IPO Facebook shares available to sell at $25 per share through a partnership with another fund. That month, the Manager e-mailed the same investor and copied Berkman: "We have been notified that we can purchase up to $3.0 million of Facebook common stock. Priced at $25.00 per share."

36. Berkman and the Manager sent prospective investors offering documents that similarly contained a host of materially false statements.

37. Berkman and the Manager provided investors with at least three different versions of a private placement memorandum ("Memorandum") for Ventures II and other formal offering materials, all of which contained false statements about acquiring Facebook shares. For example, Berkman provided a February 2012 Ventures II Memorandum to at least one potential investor, and the Manager provided Memoranda dated November 2010 and September 2011 to other investors. These Memoranda all represent that "investment proceeds will be used to purchase Facebook shares" and that "Facebook shares will be purchased" at various prices per share.

38. Berkman and the Manager also provided investors with the Ventures II operating agreement, which states that "the purpose of the Company is to acquire Facebook stock." Both Berkman and the Manager signed Ventures LLC membership certificates falsely stating that the investor is a "registered holder of one unit invested in Facebook." The Manager provided these certificates to investors.

39. Berkman signed letters to Ventures II investors acknowledging receipt of their investment proceeds and falsely stating, among other things, that the "investment was used to purchase . . . shares of Facebook stock at a cost basis of [a certain amount] per share." In addition, Berkman signed Ventures II "Quarterly Reports" and a "Letter of Ownership," which the Manager provided to investors, falsely stating that their Ventures II investment purchased a specific number of shares of pre-IPO Facebook shares at a specific price. The Manager further provided investors with a Ventures II "Facebook Opportunity Fund Overview," which falsely stated that their "investment is solely allocated to the purchase of Facebook stock."

40. Berkman also lied to Ventures II investors about the annual interest rate they would receive. The Ventures II Memoranda and other documents represented that members "will receive a 5% annual simple interest return on the investment until 100% of their principal and accumulated interest has been returned." Berkman signed a quarterly report falsely stating that the value of the

investment had increased, apparently due to the 5% annual interest. Berkman had the Manager give the quarterly report to Ventures II investors.

41. Berkman knew all of these statements were false, because he knew that none of the Ventures LLCs owned pre-IPO Facebook, LinkedIn, Groupon or Zynga shares and because he was personally misappropriating the investors' funds.

42. To further solicit certain investors, the Manager used a forged letter.

43. In late 2010, Ventures II used $600,000 of investor funds to acquire an interest in the Actual Facebook Funds. This acquisition did not entitle Ventures II to the ownership of Facebook shares owned by the Actual Facebook Funds, but it did entitle Ventures II to an approximately 3.19% interest in the Actual Facebook Funds. At most, Ventures II's $600,000 interest in the Actual Facebook Funds represented an indirect interest equivalent to approximately 22,253 shares of Facebook.

44. In September 2011, Kern asked the Law Firm, counsel to the Actual Facebook Funds, for a letter on the firm's letterhead describing Ventures II's interest in the Actual Facebook Funds and Facebook. In response, an associate at the Law Firm sent a letter with his signature to a purported Ventures II office in Manhattan at an address Kern provided. The letter, dated October 19, 2011, was addressed to Berkman and the Manager. The letter accurately stated that Ventures II held a 3.1899% interest in the Actual Facebook Funds and that the Actual Facebook Funds held an unspecified amount of Facebook shares. The letter did not state that Ventures II actually owned any Facebook shares.

45. Berkman, the Manager, Kern and/or someone working with them later altered the letter. The altered version was dated February 22, 2012. It was printed on the Law Firm's letterhead and had a forged version of the Law Firm associate's signature on it. The letter falsely represented that the Actual Facebook Funds "ha[ve] allocated 497,625 shares of Facebook, Inc. in Ventures Trust II LLC['s] capital account."

46. In or prior to February 2012, a prospective investor, who happened to be a securities attorney, asked the Manager for some assurance that Ventures II had acquired the pre-IPO Facebook shares that the Manager had claimed it acquired. In approximately February 2012, the Manager showed the forged letter to the investor, who then invested $108,000 in Ventures II. The Manager refused to let the investor retain a copy of the letter.

47. On February 27, 2012, the Manager sent an email to another prospective investor with a copy of the forged letter attached.

48. On March 1, 2012, the Law Firm wrote a letter addressed to Berkman and the Manager. The letter enclosed a copy of the forged letter and stated that the forged letter "constitutes a fraudulent misrepresentation of your participation and interest in" the Actual Facebook Funds, "since your investment represents only 22,253 shares of Facebook, Inc. stock." The letter continued: "[The forged letter] was not drafted, executed or distributed by this law firm, is an unlawful and unauthorized use of this law firm's name and letterhead and contains a forged signature of an attorney at this law firm." The letter further informed Berkman and the Manager that "[y]our misconduct is consistent with a general pattern of deceit" and therefore that Ventures II's interest in the Actual Facebook Funds "is hereby terminated effective as of the dates of your initial investments."

49. On March 9, 2012, Kern, "as counsel to Ventures [II]," wrote back to the Law

Firm. Kern's letter claimed that Ventures II "is the victim of some other party's fabrication of the letter" and "we do not know the source of that letter." Kern's letter took issue with the termination of "important legal and economic rights of Ventures [II]" and threatened to file an NASD complaint.

50. On approximately March 12, 2012, a partner at the Law Firm informed Kern by telephone that Ventures II's $600,000 interest in the Actual Facebook Funds had been rescinded and that the proceeds would be held in a segregated account to satisfy potential future claims. In other words, Ventures II no longer held even an indirect interest in Facebook shares.

51. Despite Kern's threats of legal action, neither Kern nor anyone else associated with Ventures II took legal action against the Actual Facebook Funds. The Actual Facebook Funds transferred Ventures II's interest to another investor and placed the cash proceeds in a segregated account.

52. In total, Berkman and the Manager raised more than $9.9 million from all the Ventures LLC investors. Of that amount, approximately $6.56 million was deposited in various Ventures II bank accounts, purportedly to be used to acquire pre-IPO Facebook shares; approximately $1.68 million was deposited in a Ventures III account, purportedly to be used to acquire pre-IPO LinkedIn shares; approximately $624,000 was deposited in a Ventures IV account, purportedly to be used to acquire pre-IPO Groupon shares; and approximately $1.07 million was deposited in a Ventures VI account, purportedly to be used to acquire pre-IPO Zynga shares.

53. Besides the $600,000 that was used to purchase the later-terminated interest in the Actual Facebook Funds, none of the Ventures LLCs' investor funds were ever used to purchase pre-IPO shares of Facebook, LinkedIn, Groupon, Zynga, or any other company, as Berkman knew.

The Face Off Acquisition Fraud

54. From approximately 2011 through July 2012, while he was conducting the Ventures fraud, Berkman fraudulently raised approximately $2.6 million by selling membership interests in Face Off Acquisitions.

55. Actual Facebook Fund 2 owned a significant amount of pre-IPO Facebook shares.

56. Berkman told prospective investors over the telephone and in face-to-face meetings that Face Off Acquisitions would use its investor funds to acquire Actual Facebook Fund 2 or would otherwise acquire pre-IPO Facebook shares.

57. Berkman's effort to acquire Actual Facebook Fund 2 was perfunctory, at best. Berkman approached Actual Facebook Fund 2 about a proposal to purchase it, and Actual Facebook Fund 2's manager told Berkman in approximately April 2011 that it would cost at least $28 million. Because Berkman and his entities never had the money, a deal was never likely or imminent.

58. Yet Berkman and Kern falsely portrayed the Actual Facebook Fund 2 deal as imminent to prospective investors.

59. In a letter dated April 14, 2012, Kern sent Berkman a letter that described the status of negotiations between Face Off Acquisitions and Actual Facebook Fund 2 and falsely implied that Face Off Acquisitions' purchase of Actual Facebook Fund 2 was likely and imminent. Kern captioned his letter "Memorandum of Understanding for Investors in Face Off Acquisitions, LLC

to acquire [Actual Facebook Fund 2] (1,012,500 shares of Facebook)." Kern's letter stated:

- "I am writing to confirm that yesterday afternoon I spoke with . . . legal counsel for [Actual Facebook Fund 2]. . . and the Company's Managing Director . . . about the prospect for a timely acquisition of the Company by Face Off Acquisitions;"
- "The purpose of this letter is to provide direction for completing [Face Off Acquisitions'] purchase of [Actual Facebook Fund 2]."
- "[Counsel for [Actual Facebook Fund 2] confirms that under the right set of circumstances, [Actual Facebook Fund 2] is willing to enter into a transaction in the coming few days with Face Off Acquisitions."
- "[T]he sole assets of [Actual Facebook Fund 2] are 1,012,500 shares of Class B Common shares of Facebook, Inc."
- "With proof of funds, a summary Term Sheet will be prepared and we will immediately set upon organizing a 'Securities Transaction Agreement' for the purchase and sale of the ownership interests of [Actual Facebook Fund 2]. Because the Facebook IPO is expected to be effective in early May[,] the [Actual Facebook Fund 2] purchase must occur on or before April 24, 2012."

60. Berkman knew the letter was misleading. The seemingly urgent negotiations were a charade, because Berkman knew Face Off Acquisitions could not possibly pay $28 million (or any amount even close to $28 million) to purchase Actual Facebook Fund 2.

61. In approximately April 2012, Berkman provided at least one prospective investor with Kern's letter.

62. Berkman also provided at least one other Face Off Acquisitions investor with an Actual Facebook Fund 2 Memorandum and Actual Facebook Fund 2's due diligence materials to lend the purported acquisition the appearance of legitimacy.

63. In an email on May 15, 2012, Berkman told yet another Face Off Acquisitions investor that Berkman was "[i]n NY for the closing. We have agreed on a $35.00 per [s]hare price. Will check in with you when the deal is done." In fact, as Berkman knew, there was no closing, no agreement on a share price, and no money to close any such deal.

64. Berkman also provided prospective investors with Face Off Acquisitions Memoranda and other formal offering materials that contained false statements regarding the use of investor funds to purchase pre-IPO Facebook shares or to purchase Actual Facebook Fund 2.

65. Berkman sent at least one investor an April 2012 Face Off Acquisitions Memorandum stating that "Face Off Acquisitions is focused on generating above average financial returns by purchasing up to 1,012,500 pre IPO Facebook common shares, and significant preferred shareholder interest in five proprietary medical technology, capacitor, and water treatment companies."

66. Berkman sent at least one other investor a May 2012 Face Off Acquisitions Memorandum stating that "investment proceeds will be used solely to acquire up to 1,012,500 pre IPO Facebook shares at a $35.00 per share cost basis," and described the "use of proceeds [as] one hundred percent invested in pre Facebook IPO stock."

67. In addition to the Memoranda, Berkman provided investors with other documents that contained similar misrepresentations, including:

- A Face Off Acquisitions operating agreement, which claimed that Face Off Acquisitions "has been formed to acquire, hold and/or dispose of all the issued and outstanding limited liability interests in [Actual Facebook Fund 2];"
- A Face Off Acquisitions memorandum dated April 11, 2012, which thanks the investor for his "willingness to review the Face Off Acquisitions investment opportunity to acquire 1,012,500 series B common pre IPO Facebook shares;" and
- A letter dated May 8, 2012, in which Berkman acknowledges receipt of a $250,000 investment and tells the investor that it was "for the purpose of purchasing seven thousand one hundred forty two Facebook Series B common Rule 144 shares at a cost basis of $35.00 per share."

68. Berkman knew that each of these statements in the offering documents was false and misleading, because he intended to and did misappropriate all the funds invested in Face Off Acquisitions.

The Assensus Capital Fraud

69. After Facebook's IPO on May 18, 2012, Berkman shifted gears and began focusing on another phony investment vehicle called Assensus Capital. Berkman made similar misrepresentations to prospective investors in Assensus Capital: The investors' money would be invested in some new cutting edge venture, when Berkman was in fact misappropriating the offering proceeds.

70. Berkman sent one investor a June 2012 Assensus Capital Memorandum that stated: "Investment proceeds will be used to acquire significant equity interest in unique enterprises that serve large and growing markets, with superior profit margins [through] investing in state-of-the-art medical devise, infrastructure (water), distressed debt, and advanced nanotechnology materials companies."

71. Berkman also wrote memoranda to prospective Assensus Capital investors that named specific companies in which Assensus Capital would invest and extended an investment "guaranty" purportedly backed up by cash or shares from one of its "portfolio" companies, including Facebook.

72. One such memorandum to a prospective investor, dated August 27, 2012, stated: "Upon making [an] Assensus Capital LLC investment, you will receive a 5% simple interest from the date of your investment, which will be returned together with your principal investment [in cash] or the equivalent in Facebook shares." That investor later invested approximately $150,000.

73. Afterwards, Berkman tried to solicit another investment from the same investor by again offering a "guaranty" linked to Facebook stock, this time making the following representations about the nature and basis for the guaranty:

- "Assensus Capital LLC and Face Off Acquisitions LLC will obtain the removal of all Facebook share legends upon the expiration of the Facebook November lock-up period in order to allow all or a portion of the shares to be sold as soon as allowed after the expiration date;"

- "Assensus Capital is willing to provide this guaranty for two specific reasons: (1) a high degree of confidence that [EVI] will be acquired within the next 6-12 months; and (2) the value of my carried interest in previous investment activities relating to the acquisition of Facebook shares, that is represented by share certificates for 165,713,000 common shares that I am holding as part of my compensation;" and
- "If you decide to exercise the investment guaranty, you can elect to receive the amount of your prospective investment together with the accumulated five percent annual simple interest or, a partial or complete distribution of 6,500 [Facebook] shares in addition to the 51,666 Facebook shares that are in your capital account as the result of your initial $150,000 [investment] with a cost basis of $7.74 per share."

74. As Berkman knew, each of these representations was false. He intended to and did misappropriate all of the funds invested in Assensus Capital and knew neither he nor Assensus Capital had Facebook shares with which to guaranty investments.

75. Despite Berkman's assurances, the investor declined to invest additional funds.

76. In total, Berkman raised approximately $718,000 from Assensus Capital investors.

The Misappropriation of Investor Funds

77. None of the statements made by Berkman and the Manager about the use of the funds invested in the Venture LLCs, Face Off Acquisitions, or Assensus Capital were true. Other than the $600,000 investment in the Actual Facebook Funds, none of the offering proceeds were used to make any investments at all, much less the purchase of pre-IPO shares in Facebook, LinkedIn, Groupon or Zynga.

78. In light of Berkman's checkered past, the Manager falsely told investors that any withdrawals from the Ventures LLCs' bank accounts would require both his and Berkman's signature and consent and that Berkman would not have sole access to the bank accounts. Yet Berkman and the Manager each made countless withdrawals from the Ventures LLCs' bank accounts without the other's signature.

79. Berkman personally transferred approximately $5.1 million of investor funds to his personal bank account. Berkman used most of that $5.1 million, plus a $925,000 direct transfer from a Ventures LLC account, to pay his judgment creditors in the bankruptcy proceeding.

80. Berkman used the remaining money that he had transferred to his personal account (approximately $600,000) and another approximately $1 million taken directly from the Ventures LLC accounts to make large cash withdrawals, pay legal fees, fund his own travel and other personal expenses and make numerous other payments unrelated to the purported business of the Ventures LLCs, Face Off Acquisitions or Assensus Capital. For example, Berkman spent approximately $300,000 on dining, travel, retail and healthcare expenses and withdrew at least another $165,000 in cash or cash equivalents.

81. In addition, Kern received approximately $293,000 from the Ventures LLC accounts.

82. The Manager received approximately $502,000 from accounts into which investor funds were deposited.

83. The majority of the rest of the offering proceeds, approximately $4.8 million, was used to make payments to earlier investors in the pre-IPO scheme or, in some cases, to investors in Berkman's prior investment schemes. For example, in 2010 and 2011, Berkman transferred $400,000 from a Ventures LLC account to two individuals to whom Berkman owed money from investments they had made in unrelated Berkman ventures in approximately 2004.

Misrepresentations To Conceal The Scheme

84. As the end of the lock up period for pre-IPO Facebook stock approached and investors began making requests for their distributions, the fraud began to unravel. In response, Berkman, Kern, and the Manager knowingly or recklessly made, or caused to be made, misrepresentations to investors to keep them from learning of the fraud and demanding the return of their funds.

85. For example, in August 2012, Kern wrote and signed a "Memorandum to Investors About Ventures Trust II LLC Efforts to Secure and Protect Interests with Our Trading Counterparties." Kern's memorandum stated that he was writing "to advise [investors] on the status of our efforts to address concerns that have been raised about the integrity of the funds."

86. Kern's memorandum represented that "Ventures Trust II has utilized two separate counterparties in securing the investments in privately held Facebook stock," and that "we are in the process of attempting to secure the transfer of these shares to our own trading account in order to avoid any complications arising out of the counterparty's trading practices."

87. Kern's memorandum represented that with respect to the first counterparty, "which involves approximately 20% of the investment capital of Ventures Trust II in Facebook stock," the counterparty "and its counsel have repeatedly affirmed that it has the requisite shares and reconfirmed to us that we have the securities interests to which we subscribed." The memorandum then suggested that the counterparty may have "more-or-less fabricated" the price of the shares, creating a "collateral issue," but assured investors that Ventures II would "address this in due course on behalf of our investors," if necessary.

88. Kern's memorandum further represented that the second counterparty "holds approximately 80% of our investments in Facebook."

89. The memorandum also stated that Ventures II "is subject to non-disclosure agreements with [both] counterparties which prevent us from disclosing the identity of these New York based groups at this time" and that Ventures II "is not a Ponzi scheme and absolutely and affirmatively rejects this assertion as false and malicious."

90. As Kern knew or at least recklessly disregarded, his statements were false. The Actual Facebook Funds were the first counterparty described in Kern's memorandum. As set forth above, Kern had learned five months earlier that the Actual Facebook Funds had terminated and liquidated Ventures II's interest in the Actual Facebook Funds based on the forged letter and that Ventures II therefore held no Facebook shares based on its transaction with the Actual Facebook Funds. Kern therefore knew that his representations about the first counterparty were false. The Broker-Dealer was the second counterparty described in Kern's memorandum. The Broker-Dealer never received an investment from, or engaged in any transactions with, Ventures II or any other entity associated with Berkman. Had Kern contacted the Broker-Dealer or conducted even the most cursory inquiry, he would have known for certain that this representation was false. In fact,

contrary to Kern's representation, no non-disclosure agreement existed between the Broker-Dealer and Ventures II (or any of the other Respondent entities).

91. For the same reasons, the Manager knew or recklessly disregarded that these statements were false.

92. For the same reasons and because he had misappropriated virtually all of the Ventures II investors' funds, Berkman knew these statements were false.

93. Nevertheless, in August 2012, the Manager emailed Kern's memorandum to certain investors, with a copy to Berkman. Berkman thereafter told investors that he had decided to liquidate the fund investments and that the funds would soon start making distributions. As Berkman knew, such statements were false and, as recently as in or around March 2013, Berkman gave investors a series of false excuses for why the distributions were still being delayed.

E. VIOLATIONS

94. As a result of the conduct described in paragraphs 1 through 93 above, Berkman, Face Off Acquisitions, Face Off Management, Ventures II, Ventures III, Ventures IV, Ventures V, Ventures VI, Ventures Trust Asset Fund, Ventures Trust Management, Ventures Trust Asset Management, Assensus Capital, and Assensus Management committed or caused violations of, and Berkman willfully violated, Sections 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.

95. As a result of the conduct described in paragraphs1 through 93 above, Berkman, Face Off Management, Ventures Trust Management, Ventures Trust Asset Management and Assensus Management committed or caused violations of, and Berkman willfully violated, Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8, which prohibit certain fraudulent conduct by an investment adviser.

96. Berkman willfully aided and abetted (a) the violations committed by Ventures II, Ventures III, Ventures IV, Ventures V, Ventures VI, Ventures Trust Asset Fund, Ventures Trust Management, Ventures Trust Asset Management, Face Off Acquisitions, Face Off Management, Assensus Capital, and Assensus Management of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and (b) the violations committed by Ventures Trust Management, Ventures Trust Asset Management, Face Off Management, Assensus Management, and the Manager of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8, which prohibit certain fraudulent conduct by an investment adviser.

97. Kern was a cause of, and willfully aided and abetted, violations committed by Berkman, Ventures Trust Management, and the Manager of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8, which prohibit certain fraudulent conduct by an investment adviser.

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 pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement pursuant to Section 203(j) and civil penalties pursuant to Section 203(i) of the Advisers Act;

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

D. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Kern should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(1), (2) and (4) of the Advisers Act and Rule 206(4)-8; whether the other 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, Sections 206(1), (2) and (4) of the Advisers Act, and Rule 206(4)-8; and whether Respondents should be ordered to pay disgorgement, plus prejudgment interest thereon, pursuant to Section 8A(e) of the Securities Act, Section 21C(e) of the Exchange Act, and/or Section 203(j) of the Advisers Act, and civil penalties pursuant to Section 21B(a)(2) of the Exchange Act and/or Section 203(i)(B) 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.

Elizabeth M. Murphy
Secretary