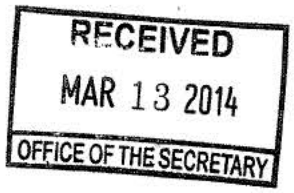
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION




**ADMINISTRATIVE PROCEEDING**
**File No. 3-15671**

**In the Matter of**

**PATRICK G. ROONEY**

**Respondent.**

**DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT PATRICK G. ROONEY**

Daniel J. Hayes
Andrew Shoenthal
Securities and Exchange Commission
175 West Jackson Boulevard, Suite 900
Chicago, Illinois 60604
Telephone: 312.353.4947
Fax: 312.353.7398

*Counsel for the Division of Enforcement*

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## INTRODUCTION

The public interest weighs heavily in favor of barring Respondent Patrick G. Rooney ("Respondent") from the securities industry, as reflected by the undisputed facts and analysis of the *Steadman* factors. Pursuant to Respondent's Consent, the United States District Court enjoined Respondent from future violations of the antifraud and other provisions of the federal securities laws. The facts alleged in the SEC's Complaint, upon which the District Court's injunctions are based, demonstrate that a collateral bar is the most appropriate remedy.

As alleged in the Complaint, Respondent and his company Solaris Management, LLC ("Solaris Management") – the investment adviser to a hedge fund called the Solaris Opportunity Fund, LP ("Solaris Fund" or the "Fund") – radically changed the Fund's investment strategy by becoming wholly invested in Positron Corp. ("Positron"), a financially troubled microcap company. The Fund's investors did not know that since 2004 Respondent was Chairman of Positron and received a salary and stock options from the company. Respondent not only hid his relationship with Positron, he also misused the Fund's money by investing over $3.6 million in Positron through both private transactions and market purchases of company stock. Many of the private transactions were undocumented loans to Positron at 0% interest. Respondent and Solaris Management hid the Positron investments and Respondent's relationship with the company from the Solaris Fund's investors for over four years. Although Respondent finally told investors about the Positron investments in a March 2009 newsletter, he lied by telling them he became Chairman to safeguard the Solaris Funds' investment.

Although Respondent does not contest many of the allegations in the OIP or the Complaint, in his Answer he argues that "he consented to the entry of the judgment without admitting or denying liability and without findings of fact or conclusions of law having been entered." But this

argument is not entirely accurate. When the District Court – with Respondent's consent – enjoined him from violating the federal securities laws, he agreed that he ***could not and would not contest*** the factual allegations in the complaint in ***a disciplinary proceeding*** before the Commission. He, therefore, is prohibited from contesting the Complaint's factual allegations in this proceeding. Moreover, as a 51 year-old who has worked in the securities industry for nearly three decades and is currently a Chief Executive Officer of a public company, Respondent has a continued interest in the industry and will have opportunities to violate the securities laws. It is therefore imperative that he be collaterally barred from the securities industry in order to protect the public.

## STATEMENT OF UNDISPUTED FACTS

### A. The Entry of the District Court Injunction Against Respondent.

On November 18, 2011, the Commission filed a civil injunctive action in the United States District Court for the Northern District of Illinois against Respondent and Solaris Management, captioned *SEC v. Patrick G. Rooney, et al.,* Case No. 11-CV-8264 (N.D. Ill.) (the "District Court Action"). (Exhibit 1.)[1] The Commission sought disgorgement, prejudgment interest, a civil penalty, an officer and director bar, and permanent injunctions restraining Respondent and Solaris Management from violating Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-6(1), 80b-6(2), and 80b-6(4)] and Rules 206(4)-8(a)(1) and (a)(2) thereunder [17 C.F.R. § 275.206(4)-8(a)(1) and (a)(2)]; Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)]; and Sections 10(b) and 13(d)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") [15

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[1] Pursuant to Rule 323 of the Commission's Rules of Practice, the Division requests that this Court take official notice of this exhibit as well as all exhibits cited in this memorandum. All of these exhibits were filed in either the District Court Action, in this proceeding, or with the Commission.

U.S.C. § 78j(b) and 78m(d)(1)] and Rules 10b-5 and 13d-1 thereunder [17 C.F.R. § 240.10b-5 and 240.13d-1].

On December 12, 2013, the District Court entered, with Respondent's consent (Exhibit 2), a judgment against him and Solaris Management ("Judgment") permanently enjoining them from violating the antifraud provisions of the Advisers Act and Securities Act. The Judgment did not – at the time – impose disgorgement or civil penalties against Defendants or an officer and director bar against Respondent. (Exhibit 3.) The parties agreed that after limited discovery the Commission would file a motion asking the Court to determine whether Respondent should be prohibited from acting as an officer or director of a public company and whether Respondent and Solaris Management should pay disgorgement of ill-gotten gains and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b- 9(e)] and, if so, the amounts of the disgorgement and civil penalty. (Exhibit 3 at Sections VI and VII.) The SEC will file such a motion in the near future, along with supporting materials to prove up the Commission's claim for disgorgement, a civil penalty, and an officer and director bar.

In his Consent filed in the District Court Action, Respondent acknowledges that the entry of permanent injunctions has collateral consequences. (Exhibit 2 at ¶ 10.) Respondent agrees that he "shall not be permitted [in a Commission disciplinary proceeding] to contest the factual allegations of the complaint in [the District Court] action." (*Id.*) He also "understand[s] and agree[s] to comply with the Commission's policy 'not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the Complaint or order for proceedings.'" (*Id.* at ¶ 11, *quoting* 17 C.F.R. § 202.5(e).) Respondent also agrees "not to take any action or make or permit to be made any public statement denying, directly

or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis." (*Id.*)

Therefore, in determining the appropriate remedial relief to be imposed against Respondent this proceeding, the following material facts alleged in the Complaint are undisputed:

- Respondent is the founder, sole owner, and managing partner of Solaris Management which is the investment adviser to the Solaris Fund. (Exhibit 1 at ¶¶ 11, 13-14, and 18.) As the sole owner and officer of Solaris Management, Respondent handled the day-to-day management of the Fund and made all investment decisions for the Fund. *(Id.* at ¶ 18.)

- To market the Solaris Fund, Respondent created marketing materials and Private Placement Memorandums ("PPMs") which he distributed to investors. (*Id.* at ¶¶ 21-22.) According to these documents, the Solaris Fund was "non-directional" - that is, the investment strategy was to "trade and establish long, short, and neutral positions in equities and indices. Through the use of options and futures, the fund is able to offset or hedge a significant amount of risk ... [and] is able to capitalize on shorter timeframes thereby generating income on a month to month basis while maintaining equity growth over the mid to long-term." (*Id.* at ¶ 23.) Respondent led investors to believe that the Fund traded in a diverse range of securities using hedging techniques designed to insulate investors from market movements. (*Id.* at ¶¶ 23 and 63.)

- While serving as the Fund's investment adviser, Respondent was also Chairman and later CEO of Positron, a financially troubled penny stock company. (*Id.* at ¶¶ 11, 15, and 29-30.) Positron has a long history of losses and has not been profitable – it had an accumulated deficit of $102.3 million as of December 31, 2010. (*Id.* at ¶ 29.) During the time of the Solaris Fund's investments, Positron reported significant losses – a $3.8 million net loss in 2005, a $6.6 million net loss in 2006, a $7.8 million net loss in 2007, and an $8.9 million net loss in 2008. (*Id.*) And since 2004, Positron's auditors have expressed substantial doubt as to Positron's ability to continue as a going concern. (*Id.* at ¶ 30.)

- Respondent had a substantial role in raising capital for Positron. (*Id.* at ¶ 33.) Positron was in desperate need of cash as other sources of financing were practically non-existent. From February 2005 and continuing through November 2008, Respondent

funneled the Fund's assets into Positron without any disclosure to investors of (a) Respondent's conflict of interest due to his dual roles with Positron and Solaris Management, or (b) the fact that, contrary to its stated "non-directional" strategy, the Solaris Fund was amassing a large, unhedged, and effectively illiquid position in a single penny stock company. (*Id.* at ¶¶ 35-43, and 47-48.)

- Many of the Fund's investments in Positron were undocumented and several investments were in the form of loans that did not benefit the Fund. (*Id.* at ¶¶ 36-38.) For example, beginning in June 2008, Respondent invested $625,000 of the Solaris Fund's cash in three Positron promissory notes which were unsecured, and had a six-month term at 0% interest. (*Id.* at ¶ 137.)

- By 2008, Positron was in precarious financial condition and could not pay off its debts. (*Id.* at ¶ 39.) Rooney kept Positron afloat using the Solaris Fund's cash. Between August 5, 2008 and October 30, 2008, Rooney caused the Solaris Fund to invest an additional $480,000 in Positron in a series of undocumented, interest-free loans. (*Id.* at ¶¶ 40-41.)

- All told, Respondent had the Fund provide over $3.2 million in undisclosed loans to Positron – many of which Rooney later converted into Positron preferred stock. (*Id.* at ¶¶ 42-43.) In addition, between January and November 2008, Respondent and Solaris Management liquidated all of the Fund's remaining non-Positron investments and used the proceeds to buy more Positron stock on the open market. (*Id.* at ¶ 43.) As a result of these investments, by November 2008, the Fund's only investment was Positron.

- Throughout 2006 to March 2009, as the Solaris Fund's Positron investments increased, Respondent did not disclose to investors his role at Positron or the Solaris Fund's larger and larger investments in Positron. (*Id.* at ¶ 62.) Compounding matters, when Respondent finally revealed his relationship with Positron to investors in March 2009, he lied in an attempt to hide his conduct. (*Id.* at ¶¶ 53-62.) In a March 24, 2009 newsletter, he deliberately misled investors by telling them that Positron "is a company that I have known and now serve as its Chairman," and claimed that he "assumed this position to gain insight into the dynamics of the company for the benefit of the Fund's position." (*Id.* at ¶ 56.)

- Respondent knowingly or recklessly engaged in the fraudulent conduct alleged in the Complaint. (*Id.* at ¶¶ 79, 83, 91.)

- Respondent benefitted from his fraud. While hiding his conflict – and the radical changes to the Solaris Fund's investing strategy- Rooney continued to reap management and performance fees from the Fund's investors. (*Id.* at ¶ 25.) And, by keeping Positron afloat with the Solaris Fund's assets, Rooney could continue to draw his salary and stock options from Positron. (*Id.* at ¶¶ 32 and 49.)

**B. The Order Instituting Proceedings Against Respondent.**

On January 28, 2013, the Commission issued an Order Instituting Proceedings ("OIP") in this matter. The OIP alleges:

A. RESPONDENT

1. Respondent, 51 years old, is the founder, sole owner, and managing partner of Solaris Management LLC ("Solaris Management"), a Delaware limited liability company and unregistered investment adviser. Since 2003, Solaris Management has been the general partner and investment adviser to the Solaris Opportunity Fund, LP ("Solaris Fund"), a Delaware limited partnership and a pooled investment vehicle. The Solaris Fund is not registered as an investment company in reliance on Section 3(c)(1) of the Investment Company Act of 1940. Along with its offshore feeder fund, the Solaris Offshore Fund ("Offshore Fund"), Respondent handled the day-to-day management of the Solaris Fund and the Offshore Fund and made all investment decisions for the funds on behalf of Solaris Management.

B. ENTRY OF THE INJUNCTION

2. On December 19, 2013, a judgment was entered by consent against Respondent enjoining him from future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rules 206(4)-8(a)(1) and (a)(2) thereunder; Section 17(a) of the Securities Act of 1933; and Sections 10(b) and 13(d)(1) of the Securities Exchange Act of 1934 and Rules 10b-5 and 13d-1 thereunder, in the civil action entitled Securities and Exchange Commission v. Patrick G. Rooney, et al., Civil Action Number 11-CV-8264, in the United States District Court for the Northern District of Illinois (the "District Court Action").

3. The Commission's complaint in the District Court Action alleged, among other things, that Respondent and Solaris Management radically changed the Solaris Fund's investment strategy, contrary to its offering documents and marketing materials, by becoming wholly invested in Positron Corp. ("Positron"), a financially troubled microcap company. Respondent, who has been Chairman of Positron since 2004 and received salary and stock options from Positron since September 2005, misused the Solaris Fund's money by investing more than $3.6 million in Positron through both private transactions and market purchases.

> Many of the private transactions were undocumented while other investments were interest-free loans to Positron. Respondent and Solaris Management hid the Positron investments and Respondent's relationship with the company from the Solaris Fund's investors for over four years and never disclosed Respondent's conflict of interest to investors. Although Respondent finally told Solaris Fund's investors about the Positron investments in a March 2009 newsletter, the complaint alleged that Respondent lied in telling them he became Chairman to safeguard the Solaris Fund's investments. The Solaris Fund's investments only benefited Positron and Respondent while providing the Solaris Fund with a concentrated, undiversified, and illiquid position in a cash-poor company with a lengthy track record of losses. The Commission's complaint in the District Court Action further alleged that Respondent and Solaris Management acted knowingly or with reckless disregard for the truth.

(Exhibit 4.) Respondent answered the OIP on January 27, 2014, in which he admits many of the above allegations.[2] (Exhibit 5 at ¶¶ 1-3.) Nonetheless, Respondent contends that "he consented to the entry of the judgment [in the District Court Action] without admitting or denying liability and without findings of fact or conclusions of law having been entered." (*Id.* at ¶¶ 2-3.)

## ARGUMENT

### A. Summary Disposition Standard.

Rule 250(b) of the Commission's Rules of Practice [17 C.F.R. § 201.250(b)] expressly provides that summary disposition may be granted "if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." Summary disposition is particularly well-suited to proceedings that are based on the entry of an injunction against a respondent, such as the instant case. *See In the Matter of Jeffery L. Gibson,*

[2] In his Answer, Respondent denies that the Complaint alleged he "never disclosed Respondent's conflict of interest to investors. The complaint makes clear that respondent eventually disclosed his conflict of interest." (Exhibit 5 at ¶ 3.) Respondent's reading of the Complaint and the OIP is tortured. The Complaint alleged that Respondent did not disclose his conflict of interest or the Fund's investments in Positron until March 2009 – which was after the Fund invested all of its money in Positron. (Exhibit 1 at ¶¶ 47, 53, and 62.) And when Respondent finally told investors about his relationship to Positron and the Fund's investments in the company, he lied by claiming he became Positron's Chairman "to gain insight into the dynamics of the company for the benefit of the Fund's position." (Exhibit 1 at ¶¶ 56-61.)

Exchange Act Rel. No. 57266, Advisers Act Rel. No. 2700, 2008 WL 294717, at *5 (Feb. 4, 2008) ("Use of the summary procedure has been repeatedly upheld in cases such as this one where respondent has been enjoined or convicted, and the sole determination concerns the appropriate sanction.") (citations omitted), *aff'd, Gibson v. SEC*, 561 F.3d 548 (6th Cir. 2009); *In the Matter of Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *3 (July 25, 2003) ("the Commission has concluded that a consent injunction, 'no less than one issued after trial upon a determination of the allegations, may furnish the ***sole basis*** for remedial action... if such action is in the public interest'") (citation omitted; emphasis added).

### B. The Undisputed Material Facts Compel Summary Disposition in Favor of the Division.

Based on the record before it, the Commission should conclude as a matter of law that remedial sanctions are in the public interest and for the protection of investors. No genuine issue of material fact exists precluding summary disposition for the Division. Respondent admits he has been enjoined from violating the federal securities laws, including the antifraud provisions. (Exhibit 4 at ¶ 2; Exhibit 5 at ¶ 2.) Except for denying that the Complaint alleges that "the Fund's investments only benefited Positron and Respondent" (*id.* at ¶ 3), he admits that the OIP correctly summarizes allegations of the Complaint, including allegations that:

- Respondent and Solaris Management radically changed the Solaris Fund's investment strategy, contrary to its offering documents and marketing materials, by becoming wholly invested in Positron.

- Respondent misused the Solaris Fund's money by investing more than $3.6 million in Positron through both private transactions and market purchases. Many of these investments were undocumented while others were interest-free loans to Positron.

- Respondent hid the Positron investments and Respondent's relationship with the company from the Solaris Fund's investors for over four years

- Although Respondent finally told Solaris Fund's investors about the Positron investments in a March 2009 newsletter, Respondent lied in telling them he became Chairman to safeguard the Solaris Fund's investments.

(Exhibit 4 at ¶ 3; Exhibit 5 at ¶ 3.) Under the terms of Respondent's Consent and the Judgment, Respondent may not contest those allegations in this proceeding. These material facts, then, are undisputed for purposes of this motion. *See In the Matter of Vladimir Boris Bugarski et al.*, Exchange Act Release No. 66842, 2012 WL 1377357, at *4 (Apr. 20, 2012) ("Respondents argue that it is 'blatantly unfair' for the Commission to use their Consents to prevent them from contesting the allegations in the Complaint. But this is expressly what Respondents agreed to when they voluntarily entered into their Consents: they acknowledged that the entry of an injunction against them 'may have collateral consequences' and agreed that 'in any disciplinary proceeding before the Commission' they would 'not be permitted to contest the factual allegations of the Complaint.' It is hardly unfair for the Commission to hold them to the terms of their Consents.").

In his Answer, Respondent claims that the District Court Judgment was entered with his consent and "without admitting or denying liability and without any findings of fact or conclusions of law having been entered." (Exhibit 5 at ¶ 3.) Respondent is correct, but his argument is irrelevant. Although the Judgment was entered without any findings of fact or conclusions of law, the Judgment has collateral consequences which include preventing him from "contest[ing] the factual allegations of the complaint in [the District Court] action" in this proceeding. (Exhibit 2 at ¶¶ 10-11.)

### C. The Commission Should Impose a Collateral Bar Against Respondent.

Section 203(f) of the Advisers Act authorizes the Commission to bar a person from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization if the person has been, among other things, enjoined from any conduct or practice in connection with the purchase or sale of a security. *See Bugarski*, 2012 WL 1377357, at *6 (imposing collateral bar).[3]

To determine whether sanctions are in the public interest, and if so what sanctions are appropriate, the Commission considers the factors enumerated in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). As the Commission has previously stated:

> When considering whether an administrative sanction serves the public interest, we consider the factors identified in *Steadman v. SEC*: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

*In the Matter of Gary M. Kornman*, Exchange Act Rel. No. 59403, Advisers Act Rel. No. 2840, 2009 WL 367635, at *6 (Feb. 13, 2009). The inquiry is a flexible one and no one factor is dispositive. *Id.* (citations omitted).

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[3] Although Respondent's conduct occurred prior to the July 22, 2010 effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission has authority to impose, and should impose, a collateral bar. *See In the Matter of John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *10 (Dec. 13, 2012) ("collateral bars imposed pursuant to Section 925 of Dodd-Frank are not impermissibly retroactive as applied in follow-on proceedings addressing pre-Dodd-Frank conduct").

The injunction entered against Respondent by the District Court provides ample basis for imposing the requested sanctions. The Commission articulated its view as follows:

> Indeed, "conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." As we have previously held, an injunction against violations of the antifraud provisions of the securities laws "has especially serious implications for the public interest," and "ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to ... suspend or bar from participation in the securities industry, or prohibit from participation in an offering of penny stock, a respondent who is enjoined from violating the antifraud provisions."

*Bugarski*, 2012 WL 1377357, at *6 (quoting *Marshall E. Melton*, 2003 WL 21729839, at *9). Historically, respondents who have been enjoined from violating the antifraud provisions are routinely barred from the securities industry. *In the Matter of Stefan H. Benger*, Exchange Act Rel. No. 499, Advisers Act Rel. No. 2840, 2013 WL 3832276, at *4 (Jul. 15, 2013) (counting cases). Based on Commission precedent generally and an analysis of the *Steadman* factors in this case specifically, the Court should impose the sanctions requested by the Division.

**1. Respondent's actions were egregious, done with a high degree of scienter, and repeated over a substantial period of time.**

As alleged in the Complaint, Respondent committed numerous violations of the antifraud provisions that continued for years. Respondent's scheme victimized the Fund's investors by diverting over $3.6 million from the Fund and "investing" in Positron, often at terms that only benefited Positron. Moreover, these investments were inconsistent from the Fund's investing strategy that was advertised in the Fund's offering and marketing materials. These were not technical violations of law. Rather, Respondent's conduct was egregious, repeated over a substantial period of time, and reflects that he acted with a high degree of scienter. *See e.g., In the Matter of GEI Financial Services, Inc. et* al, Advisers Act Rel. No. 524, 2013 WL 6057053, at * 2

(Nov. 15, 2013) (imposing industry bars on owners of investment adviser based on the entry of permanent injunctions involving Advisers Act Sections 206(1), 206(2), and 206(4) and Rule 206(4)-8 thereunder); *In the Matter of Michael Battern et al*, Release No. 246, 2004 WL 2387487, at * 9 (Feb. 12, 2004) (investment adviser who misrepresented the financial status of a fund justified the imposition of an industry bar).

**2. Respondent has the opportunity for future violations.**

Respondent's significant experience in the securities industry and his apparent intention to continue to work in the industry strongly suggests that, if allowed, he will remain in an occupation that will give ample him opportunities for future violations of the securities laws. (*See, e.g.*, Exhibit 6 at p. 30) (summarizing – in a Positron Form 10-K signed and certified by Respondent – his over 25 year career in the securities industry.)[4] Accordingly, this *Steadman* factor also supports the conclusion that a collateral bar should be imposed. *See In the Matter of Brian S. Cherry*, Exchange Act Release No. 66826, 2012 WL 1339060, at *2 (Apr. 19, 2012) ("Application of the *Steadman* factors show that Cherry presents a threat to the public interest because of the likelihood of future violations. Cherry participated for over two years in an organized securities sales operation that was blatantly illegal and raised more than $10 million from investors. Cherry received well over a quarter of a million dollars in sales commissions."); *Gibson*, 2008 WL 294717, at *5 (Commission Opinion) ("We believe [respondent's] twenty-five year career in the securities industry and professional credentials suggest that [respondent] would, if permitted, continue to work in the securities industries, and that, in doing so, would be presented with further opportunities to engage in misconduct.").

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[4] A full version of Positron's Form 10-K filing is available on EDGAR at http://www.sec.gov/Archives/edgar/data/844985/000114420413021904/v337875_10k.htm.

### 3. The remaining Steadman factors confirm the need to impose a collateral bar against the Respondent.

Aside from consenting to a settlement (in which he neither admitted nor denied wrongdoing), Respondent has not taken any action to acknowledge his wrongful conduct. Nor has he given any assurances that he will not engage in similar conduct in the future. This reinforces the need for sanctions. *See, e.g., In the Matter of Currency Trading Int'l et al.*, Exchange Act Rel. No. 263, 2004 WL 2297418, at *4 (Oct. 12, 2004) (noting, in the course of applying the *Steadman* factors, that the respondent "never admitted the violations during the underlying district court action, or in this proceeding.... The nature of the violations, coupled with [his] refusal to recognize the magnitude of his misconduct, supports an inference that such violations may be repeated."); *In the Matter of Michael Studer*, Exchange Act Rel. No. 50411, 2004 WL 2104496, at *4 (Sept. 20, 2004) (respondent claimed that he did not understand he engaged in any wrongdoing and admitted only that he made "mistakes in judgment;" in upholding a bar, the Commission opined that "there is a significant risk that his continued presence in the securities business will give rise to further violations, despite his assurances to the contrary").

Respondent has demonstrated his proclivity for violating a multitude of securities laws over an extended period of time. Further, the Respondent's relative youth (51) supports the need for a bar, since he apparently has a long business life ahead of him, with the attendant potential for mischief. *See Currency Trading Int'l,* 2004 WL 2297418, at *4 ("Although Cunningham is not currently involved in the securities industry, he is relatively young (age forty-seven) and has a long business life ahead of him."). In short, the best way to protect the investing public from Respondent's behavior is to bar him from the securities industry.

## CONCLUSION

For the reasons explained herein, the Division respectfully submits that Respondent should be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Dated: March 12, 2014

Respectfully Submitted,

By: _____

Daniel J. Hayes
Andrew Shoenthal
Securities and Exchange Commission
175 West Jackson Boulevard, Suite 900
Chicago, Illinois 60604
Telephone: 312.353.4947
Fax: 312.353.7398

*Counsel for the Division of Enforcement*

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| UNITED STATES SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>PATRICK G. ROONEY and SOLARIS MANAGEMENT, LLC | ) | No. 11-cv-8264<br><br>Hon. |

# COMPLAINT

Plaintiff United States Securities and Exchange Commission (the "Commission") alleges as follows:

## NATURE OF THE ACTION

1. Patrick G. Rooney ("Rooney") and Solaris Management, LLC ("Solaris Management"), investment advisers to the Solaris Opportunity Fund, LP (the "Solaris Fund" or the "Fund"), a hedge fund, have defrauded the Fund and its investors by misusing the Fund's assets to further their own interests. From February 2005 to November 2008 – contrary to the Solaris Fund's stated investment strategy and to the best interests of the Solaris Fund and its investors – Rooney and Solaris Management invested over $3.6 million of the Fund's money in Positron Corporation ("Positron"), a financially troubled microcap company of which Rooney has been Chairman since July 2004.

2. In essence, Rooney and Solaris Management used the Fund as Positron's piggy bank, and caused the Fund to finance Positron when it had no other sources of funding. Rooney

and Solaris Management invested the Fund's assets in Positron through both private transactions and market purchases of Positron's common stock. Many of the private transactions were undocumented while other investments were loans to Positron at 0% interest. By November 2008, the Fund had all its assets invested in Positron. The Fund now owns over 1.1 billion shares of Positron -- over 60% of the company.

3. Rooney hid the Positron investment – and his affiliation with Positron – from Solaris Fund investors for four years, until March 2009. All the while, Rooney and Solaris Management misled investors into believing that they were invested in a diversified hedge fund which protected them from market movements and that the Fund's money was being invested by a disinterested investment adviser acting in their best interests.

4. Although Rooney eventually revealed to investors his relationship with Positron, he lied in telling them that he became Chairman to safeguard the Solaris Funds' investment.

5. In making the Positron investment, Rooney and Solaris Management radically changed the Fund's non-directional investment strategy, and saddled the Fund with a concentrated, undiversified, and illiquid position in a cash poor company with a lengthy track record of losses. Notwithstanding that radical change, Rooney and Solaris Management (a) continued to distribute offering materials to prospective and existing investors in the Solaris Fund – and in the Fund's offshore feeder fund – that misrepresented the funds' investment strategy, and (b) failed to disclose to prospective and existing investors the true nature of the Fund.

## JURISDICTION AND VENUE

6. The Commission brings this action pursuant to the authority conferred on it by Section 20(b) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77t(b)], Sections 21(d) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u(d) and 78u(e)], and Section 209(d) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. § 80b-9(d)].

7. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214(a) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-14] and 28 U.S.C. § 1331.

8. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. §78aa], and Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14].

9. All of the Defendants reside in the Northern District of Illinois, and the acts, practices, and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Northern District of Illinois and elsewhere.

10. Rooney and Solaris Management, directly and indirectly, have made, and are making, use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices and courses of business alleged herein in the Northern District of Illinois and elsewhere.

## DEFENDANTS

11. Patrick G. Rooney, age 48, a resident of Oakbrook, Illinois, is the founder, sole owner, and managing partner of Solaris Management. From July 2004 to the present, he has served as Chairman of the Board of Positron, and since February 2009 he has also been Positron's Chief Executive Officer.

12. Solaris Management, LLC is a Delaware limited liability company with its principal place of business in Oakbrook, Illinois. It is the general partner and investment adviser of the Solaris Fund and the Solaris Offshore Fund.

## RELATED ENTITIES

13. The Solaris Opportunity Fund, LP is a Delaware limited partnership and a hedge fund that promotes itself as using a "non-directional" strategy (*i.e.* using long, short, and neutral positions to hedge risk, generate income, and maintain equity growth over the long term) to trade in equity, options, and futures. It has no officers, directors, or trustees.

14. The Solaris Offshore Fund is a Cayman Islands corporation and mutual fund company that feeds into the Solaris Fund and its sole investment is in the Solaris Fund. Rooney and Solaris Management generally treated the Solaris Offshore Fund and the Solaris Fund as one and the same, and investors in the Solaris Offshore Fund were generally treated as investors in the Solaris Fund.

15. Positron Corporation is a Texas corporation with its principal place of business in Fishers, Indiana. It is a molecular imaging company which manufactures and sells medical imaging devices and radiopharmaceuticals. Positron's stock is registered pursuant to Section 12(g) of the Exchange Act [U.S.C. § 78l(g)] and trades on the NASDAQ OTC Bulletin Board.

Its average daily volume in 2008 was 90,214 shares and its market capitalization was around $8 million.

## FACTS

### Background: The Fund, Its Investment Strategy, and Operations

16. Rooney formed the Solaris Fund in mid-2003 and its offshore feeder fund -- the Solaris Offshore Fund -- in mid-2005. As of December 2008, the last time the Solaris Fund issued financial statements, it had approximately 30 investors and reported assets of $16,277,780.

17. The Solaris Fund is a pooled investment vehicle. It was not registered as an investment company in reliance on Section 3(c)(1) of the Investment Company Act of 1940.

18. Solaris Management is the general partner of and investment adviser to the Fund. Rooney, as sole owner and managing partner of Solaris Management, was exclusively responsible for the business of Solaris Management. He handled the day-to-day management of the Solaris Fund and made all investment decisions for the Fund on behalf of Solaris Management.

19. As investment advisers to the Fund, Rooney and Solaris Management had an obligation to act in the best interests of the Solaris Fund, exercise the utmost good faith, and disclose all material facts.

20. Rooney and Solaris Management, by email, U.S. mail, and through listings on websites, offered and sold limited partnership interests in the Solaris Fund from at least August 2003 through July 2008 and in the Solaris Offshore Fund from at least June 2005 through September 2008. The limited partnership interests are securities within the definition of Section

2(a)(1) of the Securities Act [15 U.S.C. § 77b(a)(1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. §78c(a)(10)].

21. To market the Fund, Rooney created the Fund's Private Placement Memorandum ("PPM") and provided it to prospective investors in the Solaris Fund by email and U.S. mail. The first PPM Rooney prepared for the Fund was dated July 1, 2003. Rooney prepared three subsequent versions of the PPM: October 1, 2004, August 1, 2006, and June 1, 2007.

22. To market the Solaris Offshore Fund, Rooney created a PPM and provided it to prospective investors by email and U.S. mail. The first PPM was dated June 2005, which Rooney updated in August 2007.

23. According to the PPMs, the Solaris Fund (and the Solaris Offshore Fund that feeds into it) was "non-directional" – that is, its strategy was to "trade and establish long, short, and neutral positions in equities and indices. Through the use of options and futures, the fund is able to offset or hedge a significant amount of risk. . . [and] is able to capitalize on shorter timeframes thereby generating income on a month to month basis while maintaining equity growth over the mid to long-term."

24. Solaris Management provided Solaris Fund investors with periodic newsletters. The newsletters were drafted and controlled by Rooney, and went out over his signature block.

25. From the inception of the Solaris Fund through December 2008, Solaris Management, as the general partner of the Solaris Fund, charged and took a monthly management fee of 2% of the net asset value of the Solaris Fund and a yearly performance fee of 20% of any net new profits. In December 2008, Solaris Management stopped taking a management fee and increased its performance fee to 25%. The fees charged by Solaris

Management belonged to Rooney as sole owner of Solaris Management. Rooney has received over $1.4 million in fees from the Fund over the lifetime of the Fund.

26. Between August 2003 and September 2008, 23 investors invested nearly $30 million in the Solaris Fund. In 2008, the year in which the Solaris Fund made its largest investments in Positron, six investors put in over $5.7 million into the Fund.

27. One of the investors in the Solaris Fund was the Solaris Offshore Fund which effectively served as a feeder fund for the Solaris Fund. Between June 2005 and September 2008, seven investors invested approximately $15,783,000 in the Solaris Offshore Fund. All of those assets were subsequently invested in the Solaris Fund.

28. At first, Rooney and Solaris Management caused the Fund to trade in accordance with its stated strategy. However, as shown below, Rooney abandoned the Fund's non-directional strategy by investing all the Fund's assets in just one company – Positron.

**Positron and Rooney's Relationship with Positron**

29. Positron has never been profitable, and had an accumulated deficit of $102.3 million as of December 31, 2010. During the time of the Solaris Fund's investments, Positron reported significant losses – a $3.8 million net loss in 2005, a $6.6 million net loss in 2006, a $7.8 million net loss in 2007, and an $8.9 million net loss in 2008.

30. Beginning with the audit for year end December 31, 2004, Positron's auditor has expressed substantial doubt as to Positron's ability to continue as a going concern, and opined that the company needed to increase its system sales or obtain additional capital in order to be profitable.

31. Rooney was appointed to the board of directors of Positron in 2004 and has been Chairman since June 26, 2004. Rooney's appointments were in connection with financing

provided to Positron by Imagin Diagnostic Centres, Inc. ("Imagin"). Rooney's father, Patrick J. Rooney, was Director of Corporation Development of Imagin.

32. Beginning in at least September 2005, Rooney received a salary from Positron. Beginning in at least 2006, Rooney received options from Positron.

33. Rooney's work for Positron went beyond the traditional duties of a chairman. He was involved in financing, strategic planning, road shows, sales meetings and sales calls, hiring and firing, and generally building the business. He worked more than 40 hours a week on behalf of Positron. He also had a role in raising funds for Positron, and decided how Positron was going to raise money. As Chairman of Positron, Rooney had an obligation to maximize shareholder value and obtain financing at the lowest possible cost.

**The Solaris Fund's Undisclosed Investments in Positron**

34. The Solaris Fund made numerous, significant, and undisclosed investments in Positron while Rooney (a) was the company's Chairman, (b) was receiving compensation from Positron, and (c) was involved in obtaining financing for Positron.

35. In February 2005 and May 2005, the Solaris Fund paid $1 million and $400,000 respectively to Positron for convertible secured promissory notes with a 10% annual interest rate.

36. Between October 2005 and March 2008, Rooney caused the Solaris Fund to invest $670,000 in Positron in undocumented "investments." Rooney cannot recall the terms of these investments, which were as follows:

| Date | Amount |
|---|---|
| October 31, 2005 | $200,000 |
| January 18, 2006 | $100,000 |
| January 28, 2006 | $120,000 |

| | |
|---|---|
| February 14, 2008 | $75,000 (two transfers of $70,000 and $5,000) |
| February 26, 2008 | $53,000 |
| February 28, 2008 | $72,000 |
| March 10, 2008 | $50,000 |

37. In addition, beginning in June 2008, Rooney caused the Solaris Fund to invest an additional $625,000 in Positron, which was documented in three promissory notes: (a) a June 5, 2008 note for $275,000; (b) a July 1, 2008 note for $200,000, and (c) a July 22, 2008 note or $150,000. All of these notes were due on December 31, 2008, carried an interest rate of 0%, and were unsecured. Positron never paid these notes back.

38. Rooney, as Positron's Chairman, together with Positron's chief financial officer, approved these transactions on behalf of Positron. Rooney selected an interest rate of 0% because it was best for Positron. Rooney, as the sole principal of Solaris Management, also approved these transactions on behalf of the Solaris Fund. As such, he was on both sides of these transactions.

39. Positron was almost always in need of cash. In 2008, Positron was in precarious financial condition and could not pay off its debts. At some point in 2008, Positron was unable to find a financial institution or investor to infuse capital.

40. Starting in August 2008, Rooney again caused the Solaris Fund to transfer money to Positron in a series of undocumented investments at 0% interest. Between August 5, 2008 and October 30, 2008, the Solaris Fund invested an additional $480,000 in Positron as follows:

| Date | Amount |
|---|---|
| August 5, 2008 | $25,000 |
| August 12, 2008 | $50,000 |
| August 22, 2008 | $75,000 |
| September 9, 2008 | $50,000 |
| September 29, 2008 | $30,000 |
| October 2, 2008 | $70,000 |
| October 13, 2008 | $30,000 |
| October 24, 2008 | $20,000 |
| October 30, 2008 | $130,000 |

41. In November 2008, the Solaris Fund made three more investments in Positron: $14,200 on November 4, 2008, $20,000 on November 13, 2008, and $24,000 on November 14, 2008. These amounts were consolidated into a promissory note for $58,200 dated November 15, 2008 at 0% interest. Rooney made these investments on behalf of the Solaris Fund because Positron needed the money. Positron paid off $5,200 of the $58,000 and the remainder of the debt was converted into preferred shares of Positron.

42. On November 18, 2008, the Solaris Fund, Positron, and another Rooney-related company, Imagin Molecular Corporation ("IMC"), entered into a securities exchange agreement ("SEA") whereby the parties restructured their obligations to each other and the Solaris Fund gained a controlling interest in Positron. According to the SEA, the Solaris Fund held certain shares of IMC stock and IMC owed it money. Further, Positron owed money to the Solaris Fund pursuant to documented and undocumented loans. Positron owed IMC pursuant to two promissory notes. Pursuant to the SEA, IMC transferred its rights to payments on the notes to

the Solaris Fund, and the Solaris Fund returned IMC stock to IMC and canceled any payment due from Positron on the money the Solaris Fund had "invested" to that point in exchange for 100,000 shares of Positron convertible preferred stock.

43. In addition to directing $3,233,200 in loans from the Fund to Positron, Rooney and Solaris Management also caused the Solaris Fund to purchase Positron stock on the open market. In 2007, the Fund spent $138,537 to purchase Positron stock. Between January and November 2008, Rooney and Solaris Management caused the Solaris Fund to liquidate all of its remaining non-Positron investments and spent $235,590 to purchase more Positron stock.

44. Through its private transactions and public market purchases, the Solaris Fund acquired a majority interest in Positron, and held 60% of Positron's stock by November 2008.

45. The Solaris Fund currently owns over 1.1 billion shares of Positron stock.

**Rooney's and Solaris Management's Misuse of Fund Assets**

46. Rooney and Solaris Management misused the Fund's assets for Rooney's personal benefit by causing the Solaris Fund to provide capital to Positron when it was unable to otherwise obtain financing and at terms that disadvantaged the Solaris Fund.

47. As of the Solaris Fund's first investment in Positron in February 2005, Rooney had a conflict of interest between his duties and responsibilities to Positron as its Chairman, and his fiduciary duties and responsibilities to the Solaris Fund and its investors as the investment adviser to the Solaris Fund. Rooney and Solaris Management engaged in self-dealing in violation of their fiduciary obligations to the Solaris Fund by misusing the Fund's assets to make undisclosed investments in a financially distressed company to which Rooney had personal and economic ties.

**Rooney's and Solaris Management's Misrepresentations and Omissions to the Fund and its Investors**

53. After four years, Rooney and Solaris Management finally disclosed the Solaris Fund's investment in Positron and his relationship with Positron in a March 24, 2009 newsletter to Solaris Fund investors. The newsletter closed with the typed words "Sincerely, Patrick Rooney, Solaris Opportunity Fund." Rooney made the statements that appear in the March 24, 2009 newsletter and controlled its dissemination to investors.

54. In the March 24, 2009 newsletter, Rooney stated: "Solaris trades stocks, options and futures. Since the Fund began in 2003, we have always had a mix of daily/weekly/monthly/yearly positions. Our trading has always been focused on generating income on a monthly basis and taking a longer term hold in individual stocks."

55. In the March 24, 2009 newsletter, Rooney disclosed that the Solaris Fund had acquired a significant investment in Positron over the years, and that at the end of 2008, the Solaris Fund acquired a 60% majority interest in Positron which represented 80% of the Solaris Fund's assets.

56. In the March 24, 2009 newsletter, Rooney represented that Positron "is a company that I have known and now serve as its Chairman," and claimed he "assumed this position to gain insight into the dynamics of the company for the benefit of the Fund's position."

57. The representations in paragraph 56 were false when made.

58. At the time Rooney drafted the March 24, 2009 newsletter, Rooney did not just "now" become Chairman; he had been Chairman of Positron since July 2004, prior to the Solaris Fund's investment in Positron.

59. Rooney did not become Chairman to benefit the Solaris Fund's investment in Positron. He became Chairman many months before the Fund's first investment in Positron, and

was appointed in connection not with any Fund investment, bur rather in connection with an investment made by a company with which his father was associated.

60. The misrepresentations in the March 24, 2009 newsletter were material in that reasonable investors, in making their investment decisions, would find it important that Rooney had been Chairman of Positron since 2004, during the time he caused the Solaris Fund to become fully invested in Positron. Investors would find it material that Rooney was making investment decisions for the Solaris Fund based not on the best interests of the Solaris Fund or its investors, but rather on his relationship with Positron.

61. At the time Rooney drafted and sent out the March 24, 2009 newsletter, Rooney and Solaris Management knew, or recklessly disregarded, the facts set forth in paragraphs 56 to 60 above.

62. Prior to receiving the March 24, 2009 newsletter, investors in the Solaris Fund did not know of the Solaris Fund's investment in Positron, that it was the Fund's sole investment, or that Rooney was Chairman of Positron.

63. In the PPMs for the Solaris Fund and the Solaris Offshore Fund, Rooney and Solaris Management continued to represent to investors and prospective investors that the Solaris Fund (and its offshore feeder) were non-directional hedge funds that used options and futures to offset risk, generate monthly income, and maintain equity growth.

64. These representations were false. At the time Rooney and Solaris Management disseminated the PPMs to certain prospective investors for the Solaris Fund and the Solaris Offshore Fund, the Solaris Fund and its offshore feeder had radically shifted its strategy and no longer employed a non-directional strategy.

65. Rooney failed to revise the Solaris Fund's or the Solaris Offshore Fund's PPM to disclose to certain investors and prospective investors the fundamental and radical change in the Fund's investment strategy.

66. The misrepresentations and omissions in the PPMs were material in that reasonable investors, in making their investment decisions, would find it important that the fundamental nature of the fund in which they were investing was different than what they had been told and expected.

67. At the time Rooney and Solaris disseminated the PPMs to certain prospective investors, they knew, or recklessly disregarded, the facts set forth in paragraphs 63 to 66 above.

68. In light of their representations to investors regarding the Solaris Fund's non-directional strategy, Rooney and Solaris Management's failure to disclose to investors the fundamental change in the nature and strategy of the Solaris Fund was fraudulent, deceptive, and manipulative.

69. Rooney at no time sought the consent of the Solaris Fund or its investors to make the investments in Positron.

## COUNT I

### Violations of Sections 206(1) and 206(2) of the Advisers Act (Against Rooney and Solaris Management)

70. Paragraphs 1 through 69 are realleged and incorporated by reference as though fully set forth herein.

71. Rooney and Solaris Management are investment advisers, as they were engaged in the business of making investment decisions for the Solaris Fund regarding its investments in securities in exchange for compensation.

72. As set forth in paragraphs 1-69, Rooney and Solaris Management, while acting as investment advisers, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly have employed and are employing devices, schemes and artifices to defraud its clients and prospective clients; and have engaged and are engaging in transactions, practices and courses of business which operate as a fraud or deceit upon their clients and prospective clients.

73. Rooney and Solaris Management intentionally or recklessly employed and are employing devices, schemes and artifices to defraud its clients and prospective clients.

74. By reason of the foregoing, Rooney and Solaris Management have violated Sections 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6(1) and 80b-6(2)].

**COUNT II**

**Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(1) and 206(4)-8(a)(2) Thereunder (Against Rooney and Solaris Management)**

75. Paragraphs 1 through 69 are realleged and incorporated by reference as though fully set forth herein.

76. As set forth in paragraphs 1 to 69, Rooney and Solaris Management, while acting as investment advisers to a pooled investment vehicle, have made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to an investor or prospective investor in the pooled investment vehicle or otherwise engaged in acts, practices, or courses of business that are fraudulent, deceptive or manipulative with respect to an investor or prospective investor in the pooled investment vehicle.

77. By reason of the foregoing, Rooney and Solaris Management have violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8(a)(1) and (a)(2) thereunder [17 C.F.R. § 275.206(4)-8(a)(1) and (a)(2)].

## COUNT III

**Aiding and Abetting**
**Violations of Section 206(4) of the Advisers Act**
**and Rule 206(4)-8(a)(1) Thereunder**
**(Against Rooney)**

78. Paragraphs 1 through 69 are realleged and incorporated by reference as though fully set forth herein.

79. As set forth in paragraphs 1 to 69, Rooney has knowingly provided substantial assistance to Solaris Management who, while acting as an investment adviser to a pooled investment vehicle, by the use of the means and instrumentalities of interstate commerce and of the mails, made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to an investor or prospective investor in the pooled investment vehicle and otherwise engaged in acts, practices, or courses of business that are fraudulent, deceptive or manipulative with respect to an investor or prospective investor in the pooled investment vehicle.

80. By reason of the foregoing, Rooney aided and abetted Solaris Management's violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8(a)(1) thereunder [17 C.F.R. § 275.206(4)-8(a)(1)].

91. Rooney and Solaris Management knew or recklessly disregarded the facts and circumstances described above.

92. By reason of the foregoing, Rooney and Solaris Management have violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a), (b), and (c) thereunder [17 C.F. R. § 240.10b-5(a), (b), and (c)].

**COUNT VII**

**Aiding and Abetting**
**Violations of Section 10(b) of the Exchange Act and**
**Rule 10b-5(b) Thereunder**
**(Against Rooney and Solaris Management)**

93. Paragraphs 1 through 69 are realleged and incorporated by reference as though fully set forth herein.

94. As set forth in paragraphs 1 to 69, Rooney and Solaris Management have knowingly provided substantial assistance to the Solaris Fund, who, in connection with the purchase and sale of securities, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly, knowingly or recklessly, made untrue statements of material fact and have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

95. By reason of the foregoing, Rooney and Solaris aided and abetted the Solaris Fund's violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

## COUNT VIII

**Aiding and Abetting**
**Violations of Section 13(d)(1) of the Exchange Act**
**and Rule 13d-1 Thereunder**
**(Against Rooney and Solaris Management)**

96. Paragraphs 1 through 69 are realleged and incorporated by reference as though fully set forth herein.

97. Rooney and Solaris Management have knowingly provided substantial assistance to the Solaris Fund who, after acquiring directly or indirectly a beneficial ownership interest of more than 5% of a class of securities of Positron, did not file within ten days after such acquisition, a Schedule 13D with the Commission.

98. By reason of the foregoing, Rooney and Solaris Management aided and abetted Solaris Fund's violation of Section 13(d)(1) of the Exchange Act [15 U.S.C. § 78m(d)(1)] and Rule 13d-1 thereunder [17 C.F.R. § 240.13d-1].

## RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

A. Find that Rooney and Solaris Management committed the violations charged and alleged above;

B. Enter an Order permanently restraining and enjoining Rooney and Solaris Management from violating Sections 206(1), 206(2), 206(4) of the Advisers Act [15 U.S.C. § 80b-6(1), 80b-6(2), and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8], Section 17(a)(1), (a)(2), and (a)(3) of the Securities Act [15 U.S.C. § 77q(a)(1), (a)(2) and (a)(3)], and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a), (b), and (c) thereunder [17 C.F. R. § 240.10b-5(a), (b), and (c)];

C. Enter an Order permanently restraining and enjoining Rooney from aiding and abetting any violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8(a)(1) thereunder [17 C.F.R. § 275.206(4)-8(a)(1)];

D. Enter an Order permanently restraining and enjoining Rooney and Solaris Management from aiding and abetting any violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F. R. § 240.10b-5(b)], and Section 13(d)(1) of the Exchange Act [15 U.S.C. § 78m(d)(1)] and Rule 13d-1 thereunder [17 C.F.R. § 240.13d-1];

E. Enter an Order requiring Rooney and Solaris Management to disgorge all profits or proceeds that they have received as a result of the acts and courses of conduct complained of herein, with prejudgment interest;

F. Enter an Order, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)], requiring Rooney and Solaris Management to pay a civil penalty;

G. Enter an Order, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e) and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], barring Rooney from serving as an officer or director of a public company;

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

I. Grant such other relief as this Court deems just and proper.

Dated: November 18, 2011

Respectfully submitted,

**UNITED STATES SECURITIES & EXCHANGE COMMISSION**

By: s/Timothy S. Leiman

Timothy S. Leiman (IL Bar No. 6270153)
Linda T. Ieleja (IL Bar No. 6204335)
Andrew Shoenthal (IL Bar No. 6279795)
U.S. Securities & Exchange Commission
Chicago Regional Office
175 W. Jackson Blvd., Suite 900
Chicago, IL 60604
Telephone: (312) 353-7390
Facsimile: (312) 353-7398

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**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PATRICK G. ROONEY and SOLARIS MANAGEMENT, LLC

Defendants.

Case No.: 11-CV-8264

Judge Charles P. Kocoras

**CONSENT OF PATRICK G. ROONEY**

1. Defendant Patrick G. Rooney ("Defendant") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to jurisdiction and for the purposes identified in Sections VI and VII of the Judgment as to Patrick G. Rooney and Solaris Management, LLC in the form attached hereto (the "Judgment")), Defendant hereby consents to the entry of the Judgment and incorporated by reference herein, which, among other things, permanently restrains and enjoins Defendant from violation of Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-6(1), 80b-6(2), and 80b-6(4)] and Rules 206(4)-8(a)(1) and (a)(2) thereunder [17 C.F.R. § 275.206(4)-8(a)(1) and (a)(2)]; Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)]; and Sections 10(b) and 13(d)(1) of the Securities

Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b) and 78m(d)(1)] and Rules 10b-5 and 13d-1 thereunder [17 C.F.R. § 240.10b-5 and 240.13d-1].

3. Defendant agrees that upon motion of the Securities and Exchange Commission ("Commission") the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] and, if so, the amounts of the disgorgement and civil penalty. Defendant further agrees that if disgorgement is ordered, Defendant shall pay prejudgment interest thereon, calculated from August 1, 2008, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendant further agrees that in connection with the Commission's motion for disgorgement and civil penalties, and at any hearing on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and civil penalties, the parties may take discovery, including discovery from appropriate non-parties, for sixty (60) days from entry of the Judgment.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges

that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; and (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Judgment and

restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Dated: 12/03/13

Patrick G. Rooney

On December 3, 2013, Patrick Rooney, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Janeen M. Brzeczek
Notary Public
Commission expires:

OFFICIAL SEAL
JANEEN M BRZECZEK
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:06/22/14

Approved as to form:

Gerald Miller
Gerald Miller, Esq.
33 N LaSalle St, Suite 2200
Chicago, IL 60602

**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PATRICK G. ROONEY and SOLARIS MANAGEMENT, LLC

Defendants.

Case No.: 11-CV-8264

Judge Charles P. Kocoras

**JUDGMENT AS TO**
**PATRICK G. ROONEY AND SOLARIS MANAGEMENT, LLC**

The Securities and Exchange Commission ("Commission") having filed a Complaint and Defendants Patrick G. Rooney ("Rooney") and Solaris Management, LLC (collectively, "Defendants") having entered general appearances; consented to the Court's jurisdiction over Defendants and the subject matter of this action; consented to entry of this Judgment (without admitting or denying the allegations of the Complaint, except as to jurisdiction and for the purposes identified in Sections VI and VII below); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

**I.**

**IT IS ORDERED, ADJUDGED, AND DECREED** that Defendants and Defendants' agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-6(1) and (2)] by, while

acting as an investment adviser, by the use of the means and instrumentalities of interstate commerce and of the mails, directly or indirectly, employing devices, schemes, and artifices to defraud its clients and prospective clients, or engaging in transactions, practices, and courses of business which operate as a fraud or deceit upon its clients and prospective clients.

**II.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants and Defendants' agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8(a)(1) and (a)(2) thereunder [17 C.F.R. § 275.206(4)-8(a)(1) and (a)(2)] by, while acting as an investment adviser to a pooled investment vehicle, by the use of the means and instrumentalities of interstate commerce and of the mails, making untrue statements of material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in a pooled investment vehicle or otherwise engaging in acts, practices, or courses of business that are fraudulent, deceptive or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.

**III.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any

security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(1) to employ any device, scheme, or artifice to defraud;

(2) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

**IV.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(1) to employ any device, scheme, or artifice to defraud;

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

V.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(d)(1) of the Exchange Act [15 U.S.C. § 78m(d)(1)] and Rule 13d-1 thereunder [17 C.F.R. § 240.13d-1], after acquiring directly or indirectly a beneficial ownership of more than five (5) percent of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or any other equity security described in Section 13(d)(1) of the Exchange Act or Rule 13d-1 thereunder, does not file within ten (10) days after such acquisition a Schedule 13D with the Commission.

VI.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that – upon motion of the Commission – this Court shall determine if Rooney, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e) and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], should be 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. § 78*l*] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]. In connection with the Commission's motion for an officer or director bar against Rooney, (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in the Complaint; (b) Defendants may not challenge the validity of the Consents or this

Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for an officer and director bar, the parties may take discovery, including discovery from appropriate non-parties, for sixty (60) days from entry of the Judgment.

**VII.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] from Defendants and, if so, the amounts of the disgorgement and civil penalty. If disgorgement is ordered, Defendant shall pay prejudgment interest thereon, calculated from August 1, 2008, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in the Complaint; (b) Defendants may not challenge the validity of the Consents or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and

documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and civil penalties, the parties may take discovery, including discovery from appropriate non-parties, for sixty (60) days from entry of the Judgment.

**VIII.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Consents are incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein.

**IX.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment and for adjudicating the appropriateness of an officer and director bar and the amounts of disgorgement (if appropriate), including prejudgment interest thereon, and civil penalties (if appropriate).

**X.**

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

Dated: _____, _____

_____
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PATRICK G. ROONEY and SOLARIS MANAGEMENT, LLC

Defendants.

Case No.: 11-CV-8264

Judge Charles P. Kocoras

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**JUDGMENT AS TO**
**PATRICK G. ROONEY AND SOLARIS MANAGEMENT, LLC**

The Securities and Exchange Commission ("Commission") having filed a Complaint and Defendants Patrick G. Rooney ("Rooney") and Solaris Management, LLC (collectively, "Defendants") having entered general appearances; consented to the Court's jurisdiction over Defendants and the subject matter of this action; consented to entry of this Judgment (without admitting or denying the allegations of the Complaint, except as to jurisdiction and for the purposes identified in Sections VI and VII below); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

**I.**

**IT IS ORDERED, ADJUDGED, AND DECREED** that Defendants and Defendants' agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-6(1) and (2)] by, while

acting as an investment adviser, by the use of the means and instrumentalities of interstate commerce and of the mails, directly or indirectly, employing devices, schemes, and artifices to defraud its clients and prospective clients, or engaging in transactions, practices, and courses of business which operate as a fraud or deceit upon its clients and prospective clients.

**II.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants and Defendants' agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8(a)(1) and (a)(2) thereunder [17 C.F.R. § 275.206(4)-8(a)(1) and (a)(2)] by, while acting as an investment adviser to a pooled investment vehicle, by the use of the means and instrumentalities of interstate commerce and of the mails, making untrue statements of material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in a pooled investment vehicle or otherwise engaging in acts, practices, or courses of business that are fraudulent, deceptive or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.

**III.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

V.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(d)(1) of the Exchange Act [15 U.S.C. § 78m(d)(1)] and Rule 13d-1 thereunder [17 C.F.R. § 240.13d-1], after acquiring directly or indirectly a beneficial ownership of more than five (5) percent of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or any other equity security described in Section 13(d)(1) of the Exchange Act or Rule 13d-1 thereunder, does not file within ten (10) days after such acquisition a Schedule 13D with the Commission.

VI.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that – upon motion of the Commission – this Court shall determine if Rooney, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e) and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], should be 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. § 78*l*] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]. In connection with the Commission's motion for an officer or director bar against Rooney, (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in the Complaint; (b) Defendants may not challenge the validity of the Consents or this

Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for an officer and director bar, the parties may take discovery, including discovery from appropriate non-parties, for sixty (60) days from entry of the Judgment.

**VII.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] from Defendants and, if so, the amounts of the disgorgement and civil penalty. If disgorgement is ordered, Defendant shall pay prejudgment interest thereon, calculated from August 1, 2008, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in the Complaint; (b) Defendants may not challenge the validity of the Consents or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and

documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and civil penalties, the parties may take discovery, including discovery from appropriate non-parties, for sixty (60) days from entry of the Judgment.

**VIII.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Consents are incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein.

**IX.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment and for adjudicating the appropriateness of an officer and director bar and the amounts of disgorgement (if appropriate), including prejudgment interest thereon, and civil penalties (if appropriate).

**X.**

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

Dated: December 19, 2013

Charles P. Kocoras

UNITED STATES DISTRICT JUDGE

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3751 / January 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15671

| | |
|---|---|
| In the Matter of<br><br>PATRICK G. ROONEY,<br><br>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 Patrick G. Rooney ("Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent, 51 years old, is the founder, sole owner, and managing partner of Solaris Management LLC ("Solaris Management"), a Delaware limited liability company and unregistered investment adviser. Since 2003, Solaris Management has been the general partner and investment adviser to the Solaris Opportunity Fund, LP ("Solaris Fund"), a Delaware limited partnership and a pooled investment vehicle. The Solaris Fund is not registered as an investment company in reliance on Section 3(c)(1) of the Investment Company Act of 1940. Along with its offshore feeder fund, the Solaris Offshore Fund ("Offshore Fund"), Respondent handled the day-to-day management of the Solaris Fund and the Offshore Fund and made all investment decisions for the funds on behalf of Solaris Management.

B. ENTRY OF THE INJUNCTION

2. On December 19, 2013, a judgment was entered by consent against Respondent enjoining him from future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rules 206(4)-8(a)(1) and (a)(2) thereunder; Section 17(a) of the Securities Act

of 1933; and Sections 10(b) and 13(d)(1) of the Securities Exchange Act of 1934 and Rules 10b-5 and 13d-1 thereunder, in the civil action entitled Securities and Exchange Commission v. Patrick G. Rooney, et al., Civil Action Number 11-CV-8264, in the United States District Court for the Northern District of Illinois (the "District Court Action").

3. The Commission's complaint in the District Court Action alleged, among other things, that Respondent and Solaris Management radically changed the Solaris Fund's investment strategy, contrary to its offering documents and marketing materials, by becoming wholly invested in Positron Corp. ("Positron"), a financially troubled microcap company. Respondent, who has been Chairman of Positron since 2004 and received salary and stock options from Positron since September 2005, misused the Solaris Fund's money by investing more than $3.6 million in Positron through both private transactions and market purchases. Many of the private transactions were undocumented while other investments were interest-free loans to Positron. Respondent and Solaris Management hid the Positron investments and Respondent's relationship with the company from the Solaris Fund's investors for over four years and never disclosed Respondent's conflict of interest to investors. Although Respondent finally told Solaris Fund's investors about the Positron investments in a March 2009 newsletter, the complaint alleged that Respondent lied in telling them he became Chairman to safeguard the Solaris Fund's investments. The Solaris Fund's investments only benefited Positron and Respondent while providing the Solaris Fund with a concentrated, undiversified, and illiquid position in a cash-poor company with a lengthy track record of losses. The Commission's complaint in the District Court Action further alleged that Respondent and Solaris Management acted knowingly or with reckless disregard for the truth.

## 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.

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

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

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UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15671

**In the Matter of**

**PATRICK G. ROONEY,**

**Respondent.**

## RESPONDENT'S ANSWER TO ORDER INSTITUTING ADMINISTRATIVE PROCEDINGS

For his Answer to the Order Instituting Administrative Proceedings, pursuant to Rule 220 of the Commission's Rules of Practice, Respondent, Patrick G. Rooney, states as follows:

### A. RESPONDENT

1. Respondent, 51 years old, is the founder, sole owner, and managing partner of Solaris Management LLC ("Solaris Management"), a Delaware limited liability company and unregistered investment adviser. Since 2003, Solaris Management has been the general partner and investment adviser to the Solaris Opportunity Fund, LP ("Solaris Fund"), a Delaware limited partnership and a pooled investment vehicle. The Solaris Fund is not registered as an investment company in reliance on Section 3{c)(I) of the Investment Company Act of 1940. Along with its offshore feeder fund, the Solaris Offshore Fund ("Offshore Fund"), Respondent handled the day-to-day management of the Solaris Fund and the Offshore Fund and made all investment decisions for the funds on behalf of Solaris Management.

**ANSWER: Admit.**

### B. ENTRY OF THE INJUNCTION

2. On December 19, 2013, a judgment was entered by consent against Respondent enjoining him from future violations of Sections 206(1),206(2), and 206(4) of the Advisers Act and Rules 206(4)-8(a)(1) and (a)(2) thereunder; Section 17(a) of the Securities Act of 1933; and Sections 10(b) and 13(d)(1) of the Securities Exchange Act of 1934 and Rules 10b-5 and 13d-1 thereunder, in the civil action entitled Securities and Exchange Commission v. Patrick G. Rooney, et al., Civil Action Number 11-CV-8264, in the United States District Court for the Northern District of Illinois (the "District Court Action").

**ANSWER: Respondent admits agreeing to a settlement in the matter entitled *Securities and Exchange Commission v. Patrick G. Rooney, et al.*, Case No. 11-CV-8264 (N.D.Ill.) (the "District Court Action"), pursuant to which he consented to entry of a judgment, without admitting or denying liability and without findings of fact or conclusions of law having been entered. (*See* 11-CV-8264, Dkt. #59, 62.)**

3. The Commission's complaint in the District Court Action alleged, among other things, that Respondent and Solaris Management radically changed the Solaris Fund's investment strategy, contrary to its offering documents and marketing materials, by becoming wholly invested in Positron Corp. ("Positron"), a financially troubled microcap company. Respondent, who has been Chairman of Positron since 2004 and received salary and stock options from Positron since September 2005, misused the Solaris Fund's money by investing more than $3.6 million in Positron through both private transactions and market purchases. Many of the private transactions were undocumented while other investments were interest-free loans to Positron. Respondent and Solaris Management hid the Positron investments and Respondent's relationship with the company from the Solaris Fund's investors for over four years and never disclosed Respondent's conflict of interest to investors. Although Respondent finally told Solaris Fund's investors about the Positron investments in a March 2009 newsletter, the complaint alleged that Respondent lied in telling them he became Chairman to safeguard the Solaris Fund's investments. The Solaris Fund's investments only benefited Positron and Respondent while providing the Solaris Fund with a concentrated, undiversified, and illiquid position in a cash-poor company with a lengthy track record of losses. The Commission's complaint in the District Court Action further alleged that Respondent and Solaris Management acted knowingly or with reckless disregard for the truth.

**ANSWER: Respondent denies that the Commission's complaint in the District Court Action alleged that Respondent "never disclosed Respondent's conflict of interest to investors." The complaint actually makes clear that Respondent eventually did disclose the alleged conflict of interest. (Dkt. #1. ¶¶ 53-56.) Respondent further denies that the complaint alleges that "the Solaris Fund's investments only benefited Positron and Respondent." Respondent admits the Commission's complaint contained the remainder of the allegations described in paragraph 3, above. Respondent states further that he consented to entry of a judgment, without admitting or denying liability and without findings of fact or conclusions of law having been entered. (*See* 11-CV-8264, Dkt. #59, 62.)**

Respectfully submitted,

PATRICK G. ROONEY

By: _____
One of his Attorneys

Gerald M. Miller
Matthew M. Showel
Vanasco Genelly & Miller
33 N. LaSalle St., Suite 2200
Chicago IL 60602
(312) 786-5100

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**U.S. SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

# FORM 10-K

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

**FOR THE YEAR ENDED DECEMBER 31, 2012**
Commissions file number: 000-24092

Positron

Positron Corporation
A Texas Corporation

530 Oakmont Lane, Westmont, IL 60559 (317) 576-0183

IRS Employer Identification Number: [redacted]

Securities registered under Section 12(b) of the Exchange Act: None.

Securities registered under Section 12(g) of the Exchange Act: Common Stock, $0.01 par value.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by a check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. ☐

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer", "accelerated filer", or "smaller reporting company in Rule 12b-2 of the Exchange Act (check one):

| | |
|---|---|
| Large accelerated filer ☐ | Accelerated filer ☐ |
| Non-accelerated filer ☐ | Smaller reporting Company ☒ |

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.). Yes ☐ No☒

The aggregate market value of voting common stock held by non-affiliates of the registrant (assuming, for purposes of this calculation, without conceding, that all executive officers and directors are "affiliates") was $12,739,773.72 as of June 30, 2012, based on the closing sale price of such common stock as reported on the OTC Bulletin Board.

There were 1,451,927,262 shares of the registrant's common stock, par value $0.01 per share, outstanding as of April 15, 2013.

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## PART III

### Item 10. Directors, Executive Officers, and Corporate Governance

The following table sets forth: (1) names and ages of all persons who presently are and who have been selected as directors and executive officers of the Registrant; (2) all positions and offices with the Registrant held by each such person; (3) any period during which he or she has served as such:

| Name | Age | Position with the Company |
|---|---|---|
| Patrick G. Rooney | 50 | Chief Executive Officer and Chairman of the Board |
| Joseph G. Oliverio | 43 | Chief Technical Officer and Executive Director of PET and Director |
| Jason J. Kitten | 40 | Executive Director of Radioisotopes |
| Charles S. Conroy | 43 | Chief Operating Officer, Executive Director of Sale and Marketing |
| Corey N. Conn | 50 | Chief Financial Officer, Director |
| Timothy M. Gabel | 43 | Vice President of Engineering & Service |
| Scott Stiffler | 43 | General Manager of Pharmaceutical Automation and Product Development |
| Sachio Okamura | 62 | Director |
| Dr. Anthony C. Nicholls | 65 | Director |

Directors are elected annually and serve until the next annual meeting and until his successor has been elected and qualified, or until his earlier death, resignation or removal.

***Patrick G. Rooney***. Mr. Rooney has served as Chairman of the Company since July 26, 2004 and has served as Chief Executive Officer since 2009. Mr. Rooney serves on the Board of Directors of Neusoft Positron Medical Systems Co., Ltd., a joint venture with Neusoft Medical Systems of China that manufactures the Company's PET products. Since March 2003, Mr. Rooney has been the Managing Director of Solaris Opportunity Fund L.P. ("Solaris"). On November 18, 2011, the U.S. Securities and Exchange Commission commenced a civil action against Mr. Rooney and Solaris Management, LLC, the General Partner of Solaris ("Solaris Management"). The action alleges, among other things, Solaris' investment concentration in Positron was a misuse of Solaris' funds and that Rooney failed to sufficiently disclose his role in Positron to Solaris' investors. Through 1985-2000, Patrick G. Rooney and/or Rooney Trading were members of The Chicago Board of Options Exchange, The Chicago Board of Trade and The Chicago Mercantile Exchange. In September 1998 through March 2003, Mr. Rooney was the Managing Director of Digital Age Ventures, Ltd., a venture capital investment company. From August 19, 2003 to December 31, 2005, Mr. Rooney served as Chief Executive Officer and Director of Imagin Molecular Corporation. The Company's Officers and Directors concluded Mr. Rooney's extensive experience in financing and background in early stage companies make him an ideal candidate to serve on the Board of Directors.

***Joseph G. Oliverio***. Mr. Oliverio was appointed by the Board of Directors to serve as the Company's Chief Technical Officer on May 14, 2009. From 2005 to 2009, Mr. Oliverio served as President of the Company. From August 18, 2006 to June 3, 2010, Mr. Oliverio served on the Board of Directors and Chief Executive Officer of Imagin Molecular Corporation, a publicly-owned Delaware corporation, and affiliate of the Registrant. Prior to April 15, 2009, Mr. Oliverio served on the Board of Directors of Neusoft Positron Medical Systems Co., Ltd., a joint venture with Neusoft Medical Systems of China that manufactures the Company's PET products. Prior to joining Positron, Mr. Oliverio was the Chief Operating Officer of Michael E. Merhige, M.D., LLC, a renowned coronary disease reversal and prevention center. Mr. Oliverio earned an MBA from the University of Phoenix and a BS in Nuclear Medicine Technology from State University of New York at Buffalo, and is a certified nuclear medicine technologist. Mr. Oliverio has performed more than 13,000 combined heart and cancer PET scans using Positron devices and brings to the Company a valuable combination of business, clinical and technical skill sets. The Company's Officers and Directors concluded Mr. Oliverio's extensive clinical and technical PET experience and industry background make him an ideal candidate to serve on the Board of Directors.

***Jason J. Kitten.*** Jason Kitten is the founder and President of Manhattan Isotope Technology, LLC (MIT), which he founded in 2009 and was acquired by Positron in January of 2012. Mr. Kitten was appointed by the Board of Directors to serve as the Company's Executive Director of Radioisotopes. Prior thereto, Mr. Kitten worked at the Los Alamos National Laboratory from 1995 to 2010. Mr. Kitten holds a Master of Science degree in Radiopharmaceutical Science and has led projects in production of radioisotopes for medical, industrial, power, and military applications as well as Initiatives for Proliferation Prevention radioisotope projects abroad. The Company's Officers and Board of Directors concluded Mr. Kitten's experience and distinguished achievements in the radiopharmaceutical industry made him an ideal candidate to serve as

Executive Director of Radioisotopes.

## SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the Registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

POSITRON CORPORATION

Date: April 15, 2013

By: */s/ Patrick G. Rooney*
Patrick G. Rooney
Chief Executive Officer and Chairman of the Board
(principal executive officer)

By: */s/ Corey N. Conn*
Corey N. Conn
Chief Financial Officer
(principal financial officer)

By: */s/ Joseph G. Oliverio*
Joseph G. Oliverio
Chief Technology Officer and Director

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|---|---|
| /s/ PATRICK G. ROONEY<br>Patrick G. Rooney | Chairman and Chief Executive Officer<br>(Principal Executive Officer) | April 15, 2013 |
| /s/COREY N. CONN<br>Corey N. Conn | Chief Financial Officer and Director<br>(Principal Financial Officer) | April 15, 2013 |
| /s/JOSEPH G. OLIVERIO<br>Joseph G. Oliverio | Chief Technical Officer and Director | April 15, 2013 |
| /s/JASON KITTEN<br>Jason Kitten | Executive Director of Radioisotopes | April 15, 2013 |
| /s/CHARLES CONROY<br>Charles Conroy | Chief Operating Officer and Executive Director of Sales and Marketing | April 15, 2013 |
| /s/SCOTT STIFFLER<br>Scott Stiffler | General Manager of Pharmaceutical Automation | April 15, 2013 |
| /s/SACHIO OKAMURA<br>Sachio Okamura | Director | April 15, 2013 |
| /s/ANTHONY C. NICHOLLS<br>Dr. Anthony Nicholls | Director | April 15, 2013 |