UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16013

In the Matter of

NICHOLAS D. SKALTSOUNIS,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Dated: October 17, 2014.

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The Division of Enforcement moves for summary disposition of the claims in the Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing (the "OIP") brought against Respondent Nicholas D. Skaltsounis ("Skaltsounis" or "Respondent") and seeks relief as described herein.

Skaltsounis has been permanently enjoined from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

In this administrative proceeding, and through this Motion for Summary Disposition, the Division of Enforcement requests that Skaltsounis be permanently barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and be permanently barred from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock (i.e., a full and permanent collateral bar).

I. INTRODUCTION

After a nearly three-week-long trial in the U.S. District Court for the Eastern District of Tennessee, the jury returned a verdict against Skaltsounis, as well as two of his companies, on all counts. Specifically, Skaltsounis was found liable for violations of Section 17(a) of the Securities Act and Sections 10(b) and 20(e) of the Exchange Act and Rule 10b-5 thereunder. Before trial, the

district court entered summary judgment against Skaltsounis and his companies on the Commission's claims under Sections 5(a) and 5(c) of the Securities Act.

In short, Skaltsounis, the founder, President, and Chief Executive Officer of Richmond, Virginia–based AIC, Inc. ("AIC"), was found liable for orchestrating an approximately $7 million offering fraud and scheme that targeted elderly and unsophisticated investors across several states. Skaltsounis's scheme operated through the sale of millions of dollars of AIC promissory notes and stock through misleading and false representations and disclosures that masked the underlying financial hardship of AIC and its inability to pay promised returns without using new investor money.

Following the trial, the district court imposed permanent injunctions on Skaltsounis, AIC, and Community Bankers Securities, LLC ("CB Securities"), an AIC subsidiary and registered broker-dealer of which Skaltsounis was President and Chief Executive Officer and with which he was associated as a registered representative, as well as orders of full disgorgement and prejudgment interest. The district court also imposed third-tier civil penalties of $27,950,000 each against AIC and CB Securities and $1,505,000 against Skaltsounis.

As explained in more detail in the district court's memorandum opinion issued contemporaneously with the final judgments, the conduct in this case was egregious, recurrent (over the course of almost four years and involving at least forty-three different investors), and conducted with a high degree of scienter. Further, the district court noted that, instead of recognizing the wrongful nature of his conduct, Skaltsounis contended that his actions were taken on the advice of his former attorney, Thomas A. Grant, Esquire, of Troutman Sanders LLP. However, the evidence at trial not only did not support Skaltsounis's reliance on counsel argument,

it actually showed that Mr. Grant rendered advice about proper disclosures but that Skaltsounis and his companies "disregarded the advice of their counsel." SEC v. AIC, Inc., No. 3:11-CV-176-TAV-HBG, 2014 WL 3810667, at *4 (E.D. Tenn. Aug. 1, 2014) [Ex. A, slip op. at 9].[1]

All of this, according to the district court, "support[ed] an inference that, absent a permanent injunction, [Skaltsounis, AIC, and CB Securities] are likely to engage in future violations of the securities laws." Id. at *3 [Ex. A, slip op. at 7]. Based on the district court's permanent injunction (and the evidence underlying it) and for the public interest, the Division of Enforcement seeks a permanent collateral bar against Skaltsounis.

II. FACTS

A. The Commission Alleged That Skaltsounis and His Companies Committed Serious Violations of the Federal Securities Laws, and Prevailed—Whether on Summary Judgment or at Trial—on Every One of Its Claims.

The Commission filed its complaint against Skaltsounis, AIC, CB Securities, and others in the U.S. District Court for the Eastern District of Tennessee on April 15, 2011, and filed an amended complaint on October 25, 2012. The Commission charged Skaltsounis, AIC, and CB Securities with violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule

[1] Copies of the district court's post-trial opinion on remedies (as well as the final judgments against Skaltsounis and his companies) are attached hereto as Exhibits A through G, respectively. The post-trial opinion is also available at 2014 WL 3810667. A declaration of Michael J. Rinaldi, regarding the attached documents, accompanies this Motion for Summary Disposition.

10b-5 thereunder, 17 C.F.R. § 240.10b-5.[2] Skaltsounis was also charged, under Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), with aiding and abetting the violations of AIC, CB Securities, and CB Securities registered representatives John B. Guyette ("Guyette"), John R. Graves ("Graves"), and Carol LaRue ("LaRue").[3]

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[2] Copies of the complaint and the amended complaint are attached hereto as Exhibits H and I, respectively. Also named were three relief defendants, all which were related to Skaltsounis and to which Skaltsounis funneled in excess of $1.1 million in fraudulently obtained funds over the course of approximately four years: Allied Beacon Partners, Inc. (f/k/a Waterford Investor Services, Inc.) ("Waterford"); Advent Securities, Inc. ("Advent"); and CL Wealth Management, LLC (f/k/a Allied Beacon Wealth Management, LLC and CBS Advisors, LLC) ("CBS Advisors"). During the relevant period (January 2006 to November 2009): Waterford was a registered broker-dealer with which Skaltsounis was associated and of which he was the Chairman of the board of directors; Advent (which was acquired by AIC in April 2006) was a registered broker-dealer with which Skaltsounis was associated and of which he was President and Chief Executive Officer; and CBS Advisors was a state-registered investment adviser with which Skaltsounis was associated and of which Skaltsounis was President and Chief Executive Officer. Waterford, Advent, and CBS Advisors, along with CB Securities, were subsidiaries of AIC. These and other background facts were established in the pretrial order entered in this case, a copy of which is attached hereto as Exhibit J, or set forth in the OIP. Prior to trial, the district court entered contingent summary judgment against the relief defendants, and, post-trial, entered orders of disgorgement and prejudgment interest against the relief defendants of over $1.2 million. A copy of the district court's memorandum opinion granting partial summary judgment is attached hereto as Exhibit K and is also available at 2013 WL 5134411.

[3] Guyette and Graves were also charged under Securities Act Sections 5(a), 5(c), and 17(a) and Exchange Act Section 10(b) and Rule 10b-5, and, in addition, Graves was charged with violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and 80b-6(2). LaRue passed away before the Commission filed its action. Among other things, Skaltsounis used Guyette, Graves, and LaRue to fraudulently sell AIC investments to brokerage and advisory clients, including customers of CB Securities. Shortly before trial, Guyette and Graves settled to the Commission's claims and were permanently enjoined and ordered to pay civil penalties. Further, Guyette, who received approximately $21,490 in the scheme, was ordered to disgorge that amount and pay prejudgment interest. Subsequently, settled administrative proceedings were instituted against Guyette and Graves, resulting in permanent bars being imposed.

Whether at summary judgment or at trial, the Commission prevailed on each of its claims against Skaltsounis and the other defendants.[4] Post-trial, the district court imposed permanent injunctions upon the defendants, ordered full disgorgement (including of nearly $1 million in fraudulently obtained funds that Skaltsounis had paid himself over the course of four years), and levied over $57 million in civil penalties.

B. Skaltsounis's Fraud Was Egregious, Targeted the Elderly and Unsophisticated, and Was Repeated Over and Over Again During a Four-Year Period.

As set forth in the OIP, and as discussed in more detail in the district court's August 1, 2014, memorandum opinion and the Commission's amended complaint (to which the OIP refers), Skaltsounis devised and orchestrated a multi-million-dollar and multi-state offering fraud and scheme that operated through the fraudulent sale of AIC common and preferred stock and promissory notes to a mainly elderly and unsophisticated investor pool, largely located in eastern Tennessee. As reflected in the Commission's Section 5(a) and 5(c) claims, related to the unregistered sale of securities by Skaltsounis and his companies, certain of these sales were made to investors who were obviously unaccredited, a matter upon which the district court specifically remarked:

> AIC received investments in the form of promissory notes and subscription agreements from individuals who were unaccredited investors without registering their securities under Section 5 of the Securities Act. At least some of the account forms completed by investors showed on their face that the investors were not accredited.

AIC, 2014 WL 3810667, at *2 [Ex. A, slip op. at 5–6] (citing prior summary judgment decision).

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[4] In addition to the claims identified supra, the Commission also asserted controlling person claims, under Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), against AIC and CB Securities. On these, too, the jury returned a verdict for the Commission.

Over the course of nearly four years, Skaltsounis solicited and obtained millions of dollars in investments in AIC, mainly from CB Securities brokerage customers, through the use of fraudulent subscription agreements and promissory notes. These documents omitted crucial information regarding the risks of investing in AIC, including that neither AIC nor any of its subsidiaries had ever been profitable, that AIC was deeply in debt and suffering mounting losses, and that an investment in AIC would be used to pay off prior investors. Indeed—besides omissions—the offering documents contained outright misstatements about these matters.

And, when AIC became unable to lure enough new investors into the scheme to repay old investors, Skaltsounis devised another method—"rollover letters"—to further defraud his investors and to forestall the collapse of the scheme. Through these rollover letters, promissory note investors were asked to renew or "rollover" their investments, with the assurance that AIC had enough money to repay them their principal and interest. In reality, what Skaltsounis wrote in the rollover letters was false and fraudulent: AIC was broke, deeply indebted, and incapable of repaying even the principal, let alone the accumulated interest. Here, again, the district court's post-trial opinion well summarizes the matter:

> In this case, having examined the evidence presented to the jury during the trial and the evidence presented in support of the SEC's summary judgment motion, the Court concludes that consideration of the relevant factors supports the issuance of a permanent injunction as to each of the AIC defendants [defined as AIC, CB Securities, and Skaltsounis]. Regarding the egregiousness of the violations, the Court notes that the AIC defendants engaged in various violations of the securities laws during the course of their offerings from 2006–2009, during which time the AIC defendants received approximately $6.6 million from investors. . . . Trial evidence also showed that the AIC defendants failed to disclose to [the unaccredited investors identified in the summary judgment opinion] or any other investors various financial information about AIC, including the fact that it was in debt, that the company was

absorbing losses on an annual basis, having never had a profitable year, and that AIC was reliant upon new funds in order to pay its obligations. In addition, the AIC defendants misrepresented AIC's ability to pay off rollover letters in the amount of time set forth in the letters given their weak financial position. Although only eleven investors testified at trial, the majority of whom purchased securities from one of CB Securities' brokers, the SEC has submitted into evidence the promissory notes and subscription agreements for the forty-three investors who were either never told of AIC's financial problems or received false information relating to AIC's ability to repay its debts. The Court also notes that this conduct took place over the course of four years, during which time Mr. Skaltsounis, as AIC's chief executive, could have corrected the omissions and misinformation going to investors. As trial testimony showed, Mr. Skaltsounis oversaw the issuance of each of the promissory notes and subscription agreements at issue, as well as the rollover letters, during which time he had various opportunities to correct the misinformation being given to investors yet failed to do so.

These facts not only speak to the egregiousness of the violations, but also support a finding that a permanent injunction is appropriate under the second [SEC v.] Youmans[, 729 F.2d 413 (6th Cir. 1984)] factor, that is, the repeated and extensive nature of the defendants' violations of both the Securities and Exchange Acts, respectively. Although the acts in question were part of the same overall fundraising effort, Mr. Skaltsounis repeatedly failed to correct the misinformation given to investors, as previously discussed. With at least some of the investors, such as Claire Barrett, Alfred Holden, and Clarice Newman, who received multiple promissory notes after rolling over their investment, evidence presented at trial showed that Mr. Skaltsounis failed to disclose AIC's true financial state and inability to pay its obligations when issuing either the rollover letter or new promissory note to these investors. In addition, when the AIC defendants issued subscription agreements obtained by Mr. Graves, they did so knowing each time that his investors were not provided with AIC's financial information. The Court thus finds that the actions of the AIC defendants, including Mr. Skaltsounis, indicate that they were engaged not in isolated but rather repeated violations.

Id. at *2–*3 (footnote omitted) [Ex. A, slip op. at 5–7].

Nor can there be any doubt about the scienter with which Skaltsounis acted. In addition to being found liable for scienter-based violations of Exchange Act Section 10(b) and Rule 10b-5, he was also found liable under Section 20(e), which required a jury finding that he acted knowingly. Id. at *3 [Ex. A, slip op. at 8] ("[A]s the SEC points out, the jury's finding of liability as to Mr. Skaltsounis under the aiding-and-abetting provisions of Section 20(e) required it to find that he knowingly assisted another in a violation of the securities laws."). Further, with respect to scienter, the district court cited trial evidence that:

- Skaltsounis and his companies "disregarded the advice of their counsel," id. at *4 [Ex. A, slip op. at 9];
- "while issuing promissory notes and soliciting investors to renew their promissory notes, the AIC defendants knew that they were unable to satisfy their outstanding note obligations, much less take on more debt," id. [Ex. A, slip op. at 9];
- "[Skaltsounis] signed various promissory notes and subscription letters knowing or, at the least, recklessly disregarding the fact that investors were not aware and were not informed of AIC's true financial state, and did so over the course of four years," id. at *8 [Ex. A, slip op. at 18–19]; and
- with respect to unaccredited investors, "without any verification as to their accredited status, they received AIC notes signed by Mr. Skaltsounis," id. at *4 [Ex. A, slip op. at 10].

C. Skaltsounis Made No Assurances Against Future Misconduct; to the Contrary, He Insists, Including in This Administrative Proceeding, That He Did No Wrong.

In addition, Skaltsounis made no assurances against future violations, nor did he recognize the wrongful nature of his conduct. To the contrary, he launched a campaign to blame others. In addition to blaming his former lawyer, he also blamed the Commission's examination staff (as well as the Financial Industry Regulatory Authority, or "FINRA"), contending through a variety of

affirmative defenses that the examination staff blessed and approved AIC's securities offerings or otherwise acted in a manner that would serve to bar the Commission's civil enforcement action. But, as with his accusations against Mr. Grant, these had no basis in fact. The district court dismissed on summary judgment the affirmative defenses of estoppel, waiver, and unclean hands and noted, with respect to Skaltsounis's claims that the Commission staff "engaged in numerous acts of misconduct," that "the defendants have not presented any evidence to substantiate these claims." SEC v. AIC, Inc., No. 3:11-CV-176, 2013 WL 5134411, at *6 (E.D. Tenn. Sept. 12, 2013) [Ex. K, slip op. at 14].

Skaltsounis's posture in this regard continues to this day. In post-trial briefing—after the jury had returned a verdict against him and the other defendants on all counts—Skaltsounis dismissed his investors as "so-called 'victims'" and a "parade . . . of little old ladies, a pastor, and other 'sympathic' [sic] witnesses" and rejected the verdict as one made by a jury that "could not possibly have followed the law and/or considered the evidence." (Defs.' Opp'n at 2 (attached as Ex. L).) And, in his August 31, 2014, letter answering the OIP, he wrote:

> . . . I disagree with the allegations against me and the outcome of the civil action filed by the Securities and Exchange Commission in the United States District Court for the Eastern District of Tennessee. My defense hasn't been properly considered. The Jury got it wrong. Any further remedial action by the Commission will compound that error.

(8/31/2014 Letter from Nicholas D. Skaltsounis at 1.)

III. LEGAL STANDARD

Under Rule 250 of the SEC Rules of Practice, in an enforcement or disciplinary proceeding, a motion for summary disposition may be filed after the respondent has answered and after documents have been made available for inspection and copying pursuant to Rule 230. See

17 C.F.R. § 201.250(a). Such a motion may be granted "if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." § 201.250(b). The applicable standard of proof is preponderance of the evidence. See Frank Bluestein, Release No. 534, 2013 WL 6175649, at *2 (ALJ Nov. 26, 2013) (citing Steadman v. SEC, 450 U.S. 91, 101–04 (1981)).

IV. ARGUMENT

A. This Matter Is Ripe for Summary Disposition.

Skaltsounis has answered the OIP, and the Division of Enforcement has made documents available for inspection and copying pursuant to Rule 230 (8/20/2014 Letter from Michael J. Rinaldi to Steven S. Biss, Esq., with copy to Nicholas D. Skaltsounis, at 1 (attached as Ex. M)). Further, in light of the final judgments of the district court, there is no genuine issue as to any material fact, and the Division of Enforcement is entitled to summary disposition as a matter of law. E.g., Frank Bluestein, 2013 WL 6175649, at *2 ("The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction."). Indeed, "[u]nder Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate 'will be rare.'" Id. (quoting John S. Brownson, 55 S.E.C. 1023, 1028 n.12 (2002), pet. denied, 66 F. App'x 687 (9th Cir. 2003)).

In that regard, the facts alleged in Paragraph II. of the OIP are true, and official notice may be taken of the proceeding in and docket entries from SEC v. AIC, Inc., No. 3:11-cv-00176 (E.D. Tenn.). See 17 C.F.R. § 201.323; Frank Bluestein, 2013 WL 6175649, at *2 & n.4.

B. Here, the Appropriate Sanction is a Full and Permanent Collateral Bar.

The Commission has a statutory mandate to sanction a respondent if (i) the respondent, at the time of the alleged misconduct, was associated with a broker, dealer, or investment adviser; (ii) the respondent has been enjoined from any action specified in Exchange Act Section 15(b)(4)(C) or Advisers Act Section 203(e)(4); and (iii) the sanction is in the public interest. 15 U.S.C. §§ 78o(b)(6)(A)(iii), 80b-3(f); Frank Bluestein, 2013 WL 6175649, at *4.

Here, Skaltsounis does not dispute that, at the time of the misconduct, he was a registered representative associated with broker-dealers CB Securities, Waterford, and Advent, that he was the President and Chief Executive Officer of CB Securities and Advent, that he was the Chairman of the board of directors of Waterford, and that he was associated with and President and Chief Executive Officer of investment adviser CBS Advisors. In addition, Skaltsounis cannot dispute that he has been permanently enjoined, by the U.S. District Court for the Eastern District of Tennessee, "from engaging in or continuing any conduct or practice in connection with any such [securities industry] activity, or in connection with the purchase or sale of any security." 15 U.S.C. §§ 78o(b)(4)(C), 80b-3(e)(4).

Also, the relief requested by the Division of Enforcement is in the public interest. The determination of whether the sanction is in the public interest is guided by the factors set forth in Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981), "namely: 1) the egregiousness of the respondent's actions; 2) the isolated or recurrent nature of the infraction; 3) the degree of scienter involved; 4) the sincerity of the respondent's assurances against future violations; 5) the respondent's recognition of the wrongful nature of his conduct; and 6) the likelihood of future violations." Frank Bluestein, 2013 WL 6175649, at *6; see Eric S.

Butler, Release No. 3262, 2011 WL 3792730, at *3 (Aug. 26, 2011) (Commission opinion applying Steadman factors); cf. AIC, 2014 WL 3810667, at *2, *7 [Ex. A, slip op. at 4–5, 16] (considering similar factors in assessing the appropriateness of injunctive relief and civil penalties). The imposition of a collateral bar, pursuant to Section 925 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), is permissible, even where the conduct at issue predated Dodd-Frank's enactment. E.g., John W. Lawton, Release No. 3515, 2012 WL 6208750, at *10 (Dec. 13, 2012) (opinion of the Commission) ("[W]e find that 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 because such bars are prospective remedies whose purpose is to protect the investing public from future harm."); Omar Ali Rizvi, Release No. 479, 2013 WL 64626, at *5–*8 (ALJ Jan. 7, 2013) (granting summary disposition and imposing full collateral bar, where conduct predated Dodd-Frank).

1. Skaltsounis's Conduct Was Egregious.

As previously recognized by the Honorable Thomas A. Varlan of the U.S. District Court for the Eastern District of Tennessee, "Mr. Skaltsounis's actions in this case were egregious in that he signed various promissory notes and subscription letters knowing or, at the least, recklessly disregarding the fact that investors were not aware and were not informed of AIC's true financial state, and did so over the course of four years." AIC, 2014 WL 3810667, at *8 [Ex. A, slip op. at 18–19]. The amount of money taken in from investors (approximately $6.6 million) also speaks to the egregiousness of Skaltsounis's acts. See id. at *2 [Ex. A, slip op. at 5]. The majority of these investors "lost their entire investment." Id. at *7 [Ex. A, slip op. at 17]. Chief Judge Varlan also identified, as evidence of egregiousness, Skaltsounis's sale of AIC investments to investors whose

account forms "showed on their face" that the investors were unaccredited. Id. at *2 [Ex. A, slip op. at 5].

Skaltsounis and his companies also made outright misrepresentations to investors, including about AIC's ability to pay its obligations. See id. [Ex. A, slip op. at 6]. And during the time he was soliciting investments and signing promissory notes, subscription agreements, and rollover letters, "he had various opportunities to correct the misinformation being given to investors yet failed to do so." Id. [Ex. A, slip op. at 6].

Even worse, Skaltsounis's illegal and fraudulent acts were taken against the advice of counsel. See id. at *7 [Ex. A, slip op. at 18] ("[C]ontrary to defendants' assertions, the defendants did not adhere to the advice of their outside counsel and failed to disclose material information to investors."). All of these facts—including the scienter with which the violations were committed and the substantial losses suffered by investors—led the district court to impose significant, third-tier penalties in this case. See id. at *7–*8 [Ex. A, slip op. at 18–20].

2. Skaltsounis's Violations Were Committed Over and Over Again—During the Course of Four Years.

The second Steadman factor, too, counsels in favor of the Division of Enforcement's requested relief. As Chief Judge Varlan found, the violations here were "repeated and extensive." Id. at *3 [Ex. A, slip op. at 6]. Skaltsounis, given his high-ranking role at the broker-dealers and investment adviser at issue, understood his obligations, under the law, to his customers. Yet, he repeatedly violated those obligations over the course of 4 years, with at least 43 different investors, involving over 100 subscription agreements, promissory notes, and rollover letters, and taking in nearly $7 million. The public interest is, thus, best served by a collateral bar. See, e.g., Jenny E. Coplan, Release No. 595, 2014 WL 1713067, at *1–*2 (ALJ May 1, 2014) (imposing industry-

wide, collateral bar in follow-on proceeding following issuance of injunction, where respondent engaged in unlawful conduct over the course of almost three years, with "hundreds of thousands of dollars" being misappropriated).

3. Skaltsounis's Violations Involved a Very High Degree of Scienter.

Skaltsounis wasn't involved at the periphery. He orchestrated the fraudulent scheme: overseeing the issuance of the securities, signing the operative documents, and deciding what disclosures would (and, more critically, wouldn't) be made. He had the benefit of legal advice regarding proper disclosure and chose to disregard that advice. Not only was he found liable of the Commission's scienter-based charges, but the jury's verdict—as well as the district court's post-trial opinion—establish that he acted knowingly.

4. Skaltsounis Made No Assurances Against Future Violations and, Indeed, Insisted He Did No Wrong.

The fourth and fifth Steadman factors also counsel in favor of the requested relief. Skaltsounis made no assurances against future violations, let alone sincere ones, nor has he recognized the wrongful nature of his conduct. Rather, he mounted an extensive campaign to blame others, including Mr. Grant, the Commission staff, and FINRA.

To be clear, the Division of Enforcement is not contending that Skaltsounis was not entitled to defend against the claims, including by asserting legitimate affirmative defenses. But, here, the defenses asserted by Skaltsounis had no basis in fact, as reflected in the district court's dismissal of them on summary judgment. Moreover, even after the jury returned its unanimous verdict, he continued to deny any wrongdoing and to point the finger at others. See AIC, 2014 WL 3810667, at *4 [Ex. A, slip op. at 10–11] ("The defendants' response to the SEC's motion for final judgment, in large part, reiterates the argument made throughout the course of this litigation but which has

been rejected by the Court and by the finder of fact, that the actions attributed to AIC were approved by AIC defendants' legal counsel. Such argument, particularly at this stage of the litigation, does not indicate that the AIC defendants recognize the wrongfulness of their actions."). This obstinance continues in this administrative proceeding and is suggestive of the fact that Skaltsounis has learned nothing and would repeat his misconduct, if given the chance.

5. Unless He Is Barred, Skaltsounis Is Likely to Reoffend.

The district court noted that its conclusion about the conduct here "supports an inference that, absent a permanent injunction, the AIC defendants are likely to engage in future violations of the securities laws." Id. at *3 [Ex. A, slip op. at 7]. Moreover, throughout this litigation, Skaltsounis has repeatedly expressed a desire to rejoin the industry. Among other things, one of the bases of his putative unclean hands defense was that the Commission, through its lawsuit, had deprived him of his ability to be in the industry. (E.g., 3/22/2013 Skaltsounis/AIC/CB Securities Dep. at 603–09 (attached as Ex. N) (describing a previously proposed settlement as "pretty devastating" because "[i]t would disbar me from the industry" and would "get rid of AIC through a default judgment").)

Here, the record and well-established legal authority support a finding that it is in the public interest that Skaltsounis not be afforded the opportunity to reoffend but, rather, be subject to a full and permanent collateral bar.

V. CONCLUSION

For all of the foregoing reasons, the Division of Enforcement's Motion for Summary Disposition should be granted.

Respectfully submitted,

Dated: October 17, 2014.

Michael J. Rinaldi,
Counsel for the Division of Enforcement

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC., COMMUNITY BANKERS SECURITIES, LLC, and NICHOLAS D. SKALTSOUNIS, Defendants, and ALLIED BEACON PARTNERS, INC., (f/k/a Waterford Investment Services, Inc.), ADVENT SECURITIES, INC., and ALLIED BEACON WEALTH MANAGEMENT, LLC (f/k/a CBS Advisors, LLC), Relief Defendants.	)	No.: 3:11-CV-176-TAV-HBG

MEMORANDUM OPINION

This matter is before the Court on plaintiff Securities and Exchange Commission's ("SEC") Motion for Entry of Final Judgment [Doc. 205], in which the SEC moves the Court for the entry of judgments against defendants AIC, Inc. ("AIC"), Community Bankers Securities, LLC ("CB Securities"), and Nicholas D. Skaltsounis ("Skaltsounis") (collectively, "AIC defendants"), seeking permanent injunctive relief, disgorgement and prejudgment interest, as well as the assessment of statutory civil penalties. In addition, the SEC seeks disgorgement against the relief defendants in this matter, Allied Beacon

Partners, Inc. (formerly known as "Waterford Investment Services, Inc."), Advent Securities, Inc. ("Advent"), and Allied Beacon Wealth Management ("ABWM") (formerly known as CBS Advisors, LLC) (collectively, "relief defendants"), in light of the jury's finding of liability as to the AIC defendants. The AIC defendants and relief defendants submitted a response [Doc. 207], opposing the requested relief, to which the SEC submitted a reply [Doc. 208]. Having considered the arguments of the parties, in light of the record in this case and the prevailing case law, the SEC's motion will be granted in part and denied in part to the extent discussed herein.

I. Relevant Background[1]

The SEC commenced this civil enforcement action in 2011, claiming that the AIC defendants, along with others,[2] committed numerous violations of the federal securities laws from the offering of promissory notes and stock in AIC, a Virginia holding company, by orchestrating an offering fraud that defrauded investors of millions of dollars in multiple states, with the proceeds distributed amongst the AIC defendants and relief defendants [Doc. 65]. Prior to the start of trial in this matter, the Court issued a Memorandum Opinion and Order [Doc. 159], in which the Court, in ruling on plaintiff's motion for partial summary judgment [Doc. 93], concluded that the AIC defendants were liable for violating Section 5 of the Securities Act of 1933, 15 U.S.C. §§ 77e(a) and (c),

[1] Although discussed to the extent necessary for the Court's analysis of the present motion, the Court presumes familiarity with the facts and circumstances of this case.

[2] The SEC also alleged various claims against former co-defendants Mr. John Guyette and Mr. John Graves, former securities brokers with CB Securities, both of whom settled their claims with the SEC prior to trial in this matter [*See* Docs. 146, 156].

and that the relief defendants would be subject to disgorgement pending a finding of liability against the AIC defendants on the SEC's fraud claims. At the conclusion of the trial held from September 23, 2013 through October 10, 2013, the jury found the following: (1) that the AIC defendants were liable under Section 17(a) of the Securities Act of 1933; (2) that the AIC defendants were liable under Section 10(b) of the Exchange Act of 1934, and Rule 10b-5 thereunder; (3) that AIC and CB Securities were liable as control persons under Section 20(a) of the Exchange Act; and (4) that Skaltsounis was liable for aiding and abetting violations of the securities laws under Section 20(e) of the Exchange Act.

II. Analysis

In support of their motion, the SEC submits that a permanent injunction, disgorgement along with prejudgment interest, and civil penalties are appropriate based on the nature of the AIC defendants' scheme. The SEC contends that the evidence at trial showed that the AIC defendants raised over $6 million from investors, and in doing so, omitted relevant financial information regarding AIC's financial state and made misrepresentations regarding AIC's ability to repay on its notes and other information about the company. As confirmed by the jury's finding of liability, the SEC argues, the AIC defendants also acted with scienter, knowingly engaging in fraud over a period of four years. In light of the fact that the AIC defendants have failed to make assurances against future violations, the SEC submits, injunctive relief, disgorgement, and a third-tier statutory penalty for each of the AIC defendants are the only sufficient remedies to

punish misconduct and afford both specific and general deterrence against future acts of securities fraud.

The AIC and relief defendants respond that the amount of any judgment against the defendants should be limited to the proven loss of the investors who testified during the course of the trial, because there is no evidence that any investors, other than those who testified at trial, were defrauded by the AIC defendants. The AIC defendants also highlight the fact that Mr. Skaltsounis invested a large amount of his own money in AIC, that the majority of the investors never personally spoke with Mr. Skaltsounis, and that Mr. Skaltsounis had no prior violations of the securities laws during the course of his career in the financial industry. In addition, the AIC defendants argue that there should not be any civil penalty in this case given the lack of proof as to the number of violations alleged by the SEC.

A. Permanent Injunctive Relief

The SEC first argues for a permanent injunction enjoining each of the AIC defendants from future violations of Securities Act Sections 5(a), 5(c), and 17(a), along with Exchange Act Section 10(b) and Rule 10b-5 thereunder. "A permanent injunction is appropriate where the SEC has shown 'a reasonable and substantial likelihood that [the defendant], if not enjoined, would violate the securities laws in the future.'" *SEC v. Sierra Brokerage Servs., Inc.*, 712 F.3d 321, 332 (6th Cir. 2013) (quoting *SEC v. Youmans*, 729 F.2d 413, 415 (6th Cir. 1984)). The Sixth Circuit has identified seven

relevant factors for determining whether there is a reasonable and substantial likelihood of future violations:

> (1) the egregiousness of the violations; (2) the isolated or repeated nature of the violations; (3) the degree of scienter involved; (4) the sincerity of the defendant's assurances, if any, against future violations; (5) the defendant's recognition of the wrongful nature of his conduct; (6) the likelihood that the defendant's occupation will present opportunities (or lack thereof) for future violations; and (7) the defendant's age and health.

SEC v. Quinlan, 373 F. App'x 581, 858-86 (6th Cir. 2010) (quoting *Youmans*, 729 F.2d at 415) (internal quotation marks omitted). "No single factor is determinative," *Sierra Brokerage*, 712 F.3d at 332, and the Court is "'vested with broad discretion in deciding whether to grant injunctive relief,'" *id.* (quoting *SEC v. Lawbaugh*, 359 F. Supp. 2d 418, 424 (D. Md. 2005)).

In this case, having examined the evidence presented to the jury during the trial and the evidence presented in support of the SEC's summary judgment motion, the Court concludes that consideration of the relevant factors supports the issuance of a permanent injunction as to each of the AIC defendants. Regarding the egregiousness of the violations, the Court notes that the AIC defendants engaged in various violations of the securities laws during the course of their offerings from 2006-2009, during which time the AIC defendants received approximately $6.6 million from investors. AIC received investments in the form of promissory notes and subscription agreements from individuals who were unaccredited investors without registering their securities under Section 5 of the Securities Act. At least some of the account forms completed by investors showed on their face that the investors were not accredited [*See* Doc. 159 at 30-

33 (describing investors who did not qualify as accredited at the time they purchased securities)]. Trial evidence also showed that the AIC defendants failed to disclose to these or any other investors various financial information about AIC, including the fact that it was in debt, that the company was absorbing losses on an annual basis, having never had a profitable year, and that AIC was reliant upon new funds in order to pay its obligations. In addition, the AIC defendants misrepresented AIC's ability to pay off rollover letters in the amount of time set forth in the letters given their weak financial position. Although only eleven investors testified at trial, the majority of whom purchased securities from one of CB Securities' brokers, the SEC has submitted into evidence the promissory notes and subscription agreements for the forty-three investors who were either never told of AIC's financial problems or received false information relating to AIC's ability to repay its debts. The Court also notes that this conduct took place over the course of four years, during which time Mr. Skaltsounis, as AIC's chief executive, could have corrected the omissions and misinformation going to investors. As trial testimony showed, Mr. Skaltsounis oversaw the issuance of each of the promissory notes and subscription agreements at issue, as well as the rollover letters, during which time he had various opportunities to correct the misinformation being given to investors yet failed to do so.

These facts not only speak to the egregiousness of the violations, but also support a finding that a permanent injunction is appropriate under the second *Youmans* factor, that is, the repeated and extensive nature of the defendants' violations of both the

Securities and Exchange Acts, respectively. Although the acts in question were part of the same overall fundraising effort, Mr. Skaltsounis repeatedly failed to correct the misinformation given to investors, as previously discussed. With at least some of the investors, such as Claire Barrett, Alfred Holden, and Clarice Newman,[3] who received multiple promissory notes after rolling over their investment, evidence presented at trial showed that Mr. Skaltsounis failed to disclose AIC's true financial state and inability to pay its obligations when issuing either the rollover letter or new promissory note to these investors. In addition, when the AIC defendants issued subscription agreements obtained by Mr. Graves, they did so knowing each time that his investors were not provided with AIC's financial information. The Court thus finds that the actions of the AIC defendants, including Mr. Skaltsounis, indicate that they were engaged not in isolated but rather repeated violations.

This conclusion, in turn, supports an inference that, absent a permanent injunction, the AIC defendants are likely to engage in future violations of the securities laws. *See Sierra Brokerage*, 608 F. Supp. 2d at 972 (noting that existence of past violations may create inference as to future violations). While the AIC defendants argue that a permanent injunction is unnecessary, given that Mr. Skaltsounis had never previously violated the securities laws, the Court nonetheless concludes that the extended and repeated nature of the AIC defendants' acts of omission and misinformation support permanent injunctive relief. *See SEC v. Bravata*, --- F. Supp. 2d. ---, 2014 WL 897348,

[3] The Court also notes that the SEC submitted undisputed evidence that Ms. Newman was an unaccredited investor, as discussed in the Court's Memorandum Opinion and Order finding in favor of the SEC on its claim that the AIC defendants violated Section 5 of the Securities Act [*See* Doc. 159 at 32].

at *21 (E.D. Mich. Mar. 6, 2014) (finding permanent injunction appropriate where, among other factors considered, violations of securities laws took place over period of three years and involved hundreds of investors).

Turning to the degree of scienter involved, which "bears heavily on the decision to issue an injunction[,]" *SEC v. Marker*, 427 F. Supp. 2d 583, 591 (M.D.N.C. 2006), the Court initially notes that the jury's finding of liability on the SEC's Section 10(b) and Rule 10b-5 claims both required a finding of scienter. In addition, as the SEC points out, the jury's finding of liability as to Mr. Skaltsounis under the aiding-and-abetting provisions of Section 20(e) required it to find that he knowingly assisted another in a violation of the securities laws. In addition to the jury's conclusions, the Court finds the evidence of record indicates a degree of scienter that supports the imposition of permanent injunctive relief.

Throughout the course of this litigation, including in their brief opposing the SEC's request for final judgment, the defendants have argued that they acted based upon the advice and with the approval of their outside counsel, Mr. Tom Grant. In granting the SEC's motion for partial summary judgment, however, the Court noted that the AIC defendants, as well as AIC's board members and employees, failed to point to specific times at which Mr. Grant was consulted or specific advice that was provided to them by Mr. Grant [*See* Doc. 159 at 18]. The Court also found that Mr. Grant was not consulted nor did he individually review the specific subscription agreements and promissory notes later found to have been issued to unaccredited investors [*Id.* at 17]. Moreover, during

his testimony at trial, Mr. Grant indicated he had in fact given advice to the AIC defendants, including Mr. Skaltsounis, but that, often, his advice was not followed or he was not consulted before actions were taken. In particular, Mr. Grant testified that he had reviewed a disclosure document that was to be given to noteholders in 2006, yet there was no evidence presented either by defendants or by noteholders that any disclosures about AIC's financial condition were actually received. The SEC also submitted evidence of various draft subscription agreements to which Mr. Grant testified he had made edits and changes in February 2009, particularly noting that AIC was not a newly formed company, that it had not been profitable, and that there needed to be assurances that the subscriber had read the proposed risk disclosures. These edits, however, were not incorporated into subscription agreements that were being signed by Mr. Skaltsounis and issued to investors as late as September 2009.

In addition to evidence indicating that the AIC defendants disregarded the advice of their counsel, there was also evidence presented that, while issuing promissory notes and soliciting investors to renew their promissory notes, the AIC defendants knew that they were unable to satisfy their outstanding note obligations, much less take on more debt. The undisputed financial evidence presented by the SEC indicated that, for many of the promissory notes issued, throughout the duration of the note and up to its maturity, defendant lacked the available assets to pay what investors were owed. One of the most common ways in which AIC "paid off" its notes, as indicated by the rollover letters, was by issuing new notes to be cashed in at a later date, information which was not disclosed

to investors. Finally, with regard to the AIC defendants' violations of Section 5 of the Securities Act, defendants argued that they relied upon the experience and knowledge of CB Securities' brokers, such as Mr. Graves, who solicited investments, to assure that investors were accredited. Several of the account forms from these investors, however, show, on their face, that the investors were unaccredited [*See* Doc. 159 at 30-31], and yet, without any verification as to their accredited status, they received AIC notes signed by Mr. Skaltsounis. Viewing this evidence in light of the entire record, the Court finds that the level of scienter among the AIC defendants favors issuance of permanent injunctive relief.

Turning to the remaining factors, that is, the defendants' recognition of wrongdoing, their assurances against future violations, and the likelihood of their committing future violations, the Court notes that there has been no evidence indicating that the AIC defendants have recognized their wrongdoing or made assurances that they would not commit future violations of the securities laws, if given the opportunity. The defendants' response to the SEC's motion for final judgment, in large part, reiterates the argument made throughout the course of this litigation but which has been rejected by the Court and by the finder of fact, that the actions attributed to AIC were approved by AIC defendants' legal counsel. Such argument, particularly at this stage of the litigation, does

not indicate that the AIC defendants recognize the wrongfulness of their actions.[4] Although there was evidence at trial of Mr. Skaltsounis being unable to make a living in the securities industry based on his reputation being damaged by the SEC's allegations, as well as his age, the Court finds that such evidence does not outweigh the other factors in considering whether to impose a permanent injunction.[5]

Accordingly, in consideration of all the *Youmans* factors as to each of the defendants and in light of the evidence of record, the Court finds that a permanent injunction is appropriate as to AIC, CB Securities, and Mr. Skaltsounis.

B. Disgorgement and Pre-Judgment Interest

The SEC next moves for disgorgement against the AIC and relief defendants. In support of its position in this regard, the SEC submitted a report from its expert witness, Mr. Ray Stephens, containing his conclusions as to the amount by which the AIC

[4] While the AIC defendants raise several arguments as to the sufficiency of the evidence, in that the jury could not have properly applied the law given the time in which they returned a verdict, the Court finds these arguments more appropriate in the context of an appeal or other request for post-trial relief, rather than in deciding, based on the jury's verdict, the appropriate relief at this juncture.

[5] The AIC defendants also argue that a permanent injunction would act as a permanent ban on Mr. Skaltsounis from participating in the securities industry; however, this question is not before the Court, and the scope of any injunction would be to enjoin Mr. Skaltsounis, and the corporate defendants, from future violations of the securities laws for which they were found to have violated. The Court thus makes no finding as to whether Mr. Skaltsounis should be banned from any future involvement in the securities industry. *See* 15 U.S.C. § 80b-3(f) (granting SEC authority to censure, suspend, or bar member of investment adviser or securities dealer following notice and opportunity for hearing).

defendants and relief defendants benefitted from the AIC defendants' violations of the securities laws.[6]

"Disgorgement is an equitable remedy which removes ill-gotten gain by forcing surrender of profits." *SEC v. Zada*, 2014 WL 354502, No. 10-CV-14498, at *2 (E.D. Mich. Jan. 31, 2014) (citing *United States v. Universal Servs. Mgmt.*, 191 F.3d 750, 760, 763 (6th Cir. 1999)). "The purpose of disgorgement is to force a defendant to give up the amount by which he was unjustly enriched rather than to compensate the victims of fraud." *SEC v. Blavin*, 760 F.2d 706, 713 (6th Cir. 1985) (internal quotations and citation omitted).

> The amount of 'disgorgement need only be a reasonable approximation of profits causally connected to the violation,' and once the government has offered sufficient evidence to establish that reasonable approximation, the defendant is 'then obliged clearly to demonstrate that the disgorgement figure was not a reasonable approximation.'

Bravata, 2014 WL 897348, at *20 (quoting *SEC v. First City Fin. Corp., Ltd.*, 890 F.2d 1215, 1231-32 (D.C. Cir. 1989)). A court may also include prejudgment interest to the disgorgement amount "to avoid a defendant benefitting for the use of his ill-gotten gains interest free." *SEC v. Conaway*, 697 F. Supp. 2d 733, 747 (E.D. Mich. 2010) (citing *SEC v. Blatt*, 583 F.2d 1325, 1335 (5th Cir. 1978)).

In this case, the SEC's expert witness examined the financial records of both AIC and its subsidiaries, CB Securities, Waterford, Advent, and CBS Advisors, as well as payments made to Mr. Skaltsounis, to determine the amount by which each of the

[6] The Court notes that the defendants' written response does not address the issue of disgorgement.

defendants profited from AIC's misrepresentations and other violations. Having reviewed Mr. Stephens's report, as well as the other arguments of the SEC, the Court finds that the proposed disgorgement amounts and prejudgment interest amounts are a reasonable approximation of the benefits conferred upon the defendants and relief defendants. In reaching this conclusion, the Court makes several observations, taken both from Mr. Stephens's report and the record as a whole. First, the companies' financial records indicate that AIC and all of its subsidiaries were operating at a loss during the 2006-2009 time period and that AIC's debt obligations substantially outweighed its assets. Next, all of the cash AIC had on hand during this time period was obtained by raising capital in the forms of selling stocks and notes [Doc. 206-2 at 16] and approximately $6.6 million was raised during this time period [*Id.* at 12]. As the evidence at trial showed, other than some de minimis business from insurance commissions, AIC had no other means to generate cash because its subsidiaries were also operating at a loss and were unable to transfer funds to AIC. Rather, AIC had to transfer funds to the subsidiaries in order to keep them in operation, since they too had no other source of income [*See id.* at 12]. Thus, given that AIC had no other source of consistent revenue other than through the sale of stock and notes, the funds received by the subsidiaries during this time period were derived from the proceeds of these sales and are subject to disgorgement. The undisputed amounts of capital contributions made to each of the subsidiaries during the relevant time period, that is, January 2006 through November 2009, were as follows: (1) $2,830,946.00 to CB Securities; (2) $516,150.00 to

Advent; (3) $541,000.00 to Waterford; and (4) $58,687.00 to CBS Advisors [*See* Doc. 159 at 38; Doc. 206-2 at 6].[7] The Court finds these amounts to be subject to disgorgement, as well as prejudgment interest, along with the $6,647,540.00 attributable to AIC.

In addition to funds distributed to the subsidiaries, the SEC also seeks disgorgement and interest of the funds distributed to Mr. Skaltsounis in the form of salary, advances, loans, and the distribution of dividends and interest over the same time period. Mr. Stephens's report includes each transfer to Mr. Skaltsounis from January 1, 2006 through November 30, 2009, not only from AIC but also from the subsidiaries. The total amount of funds, Mr. Stephens concluded, came to $948,389.13. Having reviewed this portion of the report, the exhibits attached thereto, and the record, the Court finds this amount to be a reasonable approximation of the benefits Mr. Skaltsounis received as a result of the securities violations. Again, the evidence shows that the only source of revenue available to pay Mr. Skaltsounis was from the issuance of notes and stocks.

Accordingly, disgorgement will be entered along with prejudgment interest as to each of the defendants and relief defendants in the amounts requested by the SEC.

C. Civil Penalties

Finally, the SEC requests third-tier civil penalties against each of the AIC defendants, amounting to totals of $27,950,000 each for AIC and CB Securities, and

[7] Although the relief defendants attempted to argue they had a legitimate claim to these funds, and thus are not subject to disgorgement, the Court rejected this argument in granting the SEC's motion for partial summary judgment [Doc. 159 at 38].

$5,590,000 for Mr. Skaltsounis. The SEC argues that such amounts are appropriate because they represent the equivalent of a civil penalty being afforded for each of the forty-three investors who were defrauded and reflect the egregiousness of the violations. The AIC defendants argue, in response, that no civil penalty should be imposed in this case and that to do so in the amounts requested by the SEC would constitute the imposition of punitive damages.

Section 20(d) of the Securities Act and Section 21 of the Exchange Act authorize the imposition of civil penalties, which serve to deter violations of the securities laws. 15 U.S.C. § 77t(d)(1)(c); 15 U.S.C. § 77u(d)(3)(B)(iii); *see SEC v. Salyer*, No. 2:08-cv-179, 2010 WL 3283026, at *5 (E.D. Tenn. Aug. 18, 2010) (noting that civil penalties serve purpose of deterrence); *SEC v. Moran*, 944 F. Supp. 286, 296 (S.D.N.Y. 1996) ("Civil penalties are designed to punish the individual violator and deter future violations of the securities laws."). Section 20(d) establishes three tiers of penalties: the first-tier penalty allows up to a maximum of $6,500 per violation for natural persons and $60,000 per violation for corporations; the second-tier penalty allows up to a maximum of $65,000 for individuals and $325,000 for corporations for an act involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and the third-tier penalty allows provides for a maximum of $130,000 per violation for individuals and $650,000 for corporations for an act involving fraud or deceit and if the

violation directly or indirectly resulted in substantial losses or created a significant risk of loss. 15 U.S.C. §§ 77t(d)(2)(A)-(C).[8]

Although the statutory tier determines the maximum penalty, the "actual amount of the penalty [is] left up to the discretion of the district court." *SEC v. Kern*, 425 F.3d 143, 153 (2d Cir. 2005); *SEC v. Tourre*, --- F. Supp. 2d ---, 2014 WL 969442, at *11 (S.D.N.Y. Mar. 12, 2014). Courts consider various factors in determining the appropriate penalty, including but not limited to:

> (1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition.

SEC v. Murray, No. OS-CV-4643 (MKB), 2013 WL 839840, at *4 (E.D.N.Y. Mar. 6, 2013) (quoting *SEC v. Pentagon Capital Mgmt. PLC*, No. 08 Civ. 3324 (RWS), 2012 WL 1036087, at *2 (S.D.N.Y. Mar. 28, 2012), *vacated in part on other grounds*, 725 F.3d 279 (2d Cir. 2013)). These factors, however, merely provide guidance, as "the civil penalty framework is of a 'discretionary nature' and each case 'has its own particular facts and circumstances which determine the appropriate penalty to be imposed.'" *SEC v. Opulentia, LLC*, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007) (quoting *Moran*, 944 F. Supp. at 296-97).

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[8] The Court notes that these amounts reflect the penalty amounts set forth in the regulations adjusting the civil penalties for violations occurring after February 14, 2005, as noted by the SEC in its brief [Doc. 206 at 20 (citing 17 C.F.R. § 201.1003, tbl. III)].

Turning first to the corporate defendants, AIC and CB Securities, the Court finds that a third-tier penalty in the maximum amount of $650,000 per violation is warranted by the facts and circumstances of the case. As to how "per violation" should be interpreted, the Court notes that other courts have interpreted the phrase to mean: (1) per claim brought against the defendant; (2) per misrepresentation made by the defendant; or (3) per investor defrauded by the defendant. *Bravata*, 2014 WL 897348, at *22 (citing cases). Here, the Court finds that calculating the number of violations by the number of investors is appropriate as doing so balances the need to punish the corporate defendants and deter future violations against the practical difficulty in ascertaining each of the misrepresentations or material omissions made to AIC's investors. *See id.* (noting difficulty in determining discrete misrepresentations where there were 440 individual investors). Although defendant argues that there is no way to determine which of the forty-three investors proffered by the SEC were defrauded, as only eleven of these investors testified at trial, the SEC submitted the promissory notes, rollover notes, and/or subscription agreements for each of the forty-three non-insider investors. These documents, along with the oral statements made to investors by Mr. Skaltsounis, co-defendants Mr. Graves and Mr. Guyette, as well as broker Carol LaRue, all contain the same basic misrepresentations and omissions. In other words, none of the investors were given the proper disclosures, and were in fact led to believe that they would receive a strong return on their money when, in fact, the majority lost their entire investment.

As to the various factors courts use to determine the appropriate penalty amount, the Court has already discussed the egregiousness of the violations, their recurrent nature, as well as the level of scienter with which both of the corporate defendants acted, all of which the Court incorporates into its analysis regarding the statutory penalty. Over the course of four years, the defendants raised over $6 million, giving investors the impression that AIC was a newly formed company that would begin reaping profits from its subsidiaries in the near future, when, in reality, AIC had been operating at a loss since its inception and was dependent upon raising capital to keep itself and its subsidiaries in operation. In doing so, and contrary to defendants' assertions, the defendants did not adhere to the advice of their outside counsel and failed to disclose material information to investors. The AIC defendants also solicited promissory notes from individuals knowing that AIC lacked the assets to pay those notes back. Regarding the loss involved in this case, the evidence at trial showed that many of AIC's investors lost their total investment, and, at the very least, defendants' acts of taking on debt that it would not be able to repay and failing to disclose such facts to investors created a risk of substantial losses. Thus, the Court finds a penalty of $650,000 for each of the forty-three investors, for a total of $27,950,000, is appropriate as to AIC and CB Securities.

Although the Court finds that a third-tier level penalty is also appropriate for Mr. Skaltsounis, the Court concludes that a lesser amount than the maximum $130,000 is appropriate under the circumstances of this case. As previously discussed, Mr. Skaltsounis's actions in this case were egregious in that he signed various promissory

notes and subscription letters knowing or, at the least, recklessly disregarding the fact that investors were not aware and were not informed of AIC's true financial state, and did so over the course of four years. These actions, in conjunction with Mr. Skaltsounis's lack of apology or assurances that he would not engage in such conduct again, illustrate the need for a civil penalty that not only serves as punishment in this case but also serves as a deterrent for future violations. At the same time, however, other factors weigh in favor of a lesser penalty than the $5,590,000 requested by the SEC. The Court first notes that this proposed penalty amount is more than five times the disgorgement amount requested by the SEC, which represents the actual benefit Mr. Skaltsounis received. Unlike those cases where defendants use the proceeds of their schemes to live a "lavish lifestyle," *see SEC v. Zada*, 2014 WL 354502, at *4, Mr. Skaltsounis's benefits in this case merely represent his salary, dividends and interest which would have otherwise been earned in the normal course of his occupation. There is no evidence to support the conclusion that Mr. Skaltsounis's actions were so egregious, or the benefit derived from his actions so great, as to warrant a penalty which is only slightly less than the total amount of funds raised by the defendants' violations.

In addition, the Court notes that, given the fact that Mr. Skaltsounis has never before been convicted or found liable for a violation of the securities laws, the disgorgement judgment and permanent injunction, combined with a lesser penalty, will, collectively, serve as meaningful punishment and have a meaningful deterrent effect in preventing future violations. Mr. Skaltsounis did not submit specific evidence of his

financial condition in response to the SEC's motion for judgment, but there was testimony and evidence of his financial difficulties presented at trial. Mr. Skaltsounis's financial difficulties do not obviate the need for a civil penalty entirely, *see SEC v. Kane*, No. 97 Civ. 2931, 2003 WL 1741293, at *4 (S.D.N.Y. Apr. 1, 2003), but are a factor the Court may consider in reducing a penalty, *SEC v. Hedgelender*, 786 F. Supp. 2d 1365, 373 (S.D. Ohio 2011) (reducing penalty to second-tier for individual defendants, based on financial condition, but imposing third-tier penalty for corporate defendants). In light of the facts of this case, the Court finds a third-tier penalty in the amount of $35,000 per investor appropriate as to Mr. Skaltsounis, resulting in a total civil penalty of $1,505,000.

III. Conclusion

For the reasons previously stated, the SEC's Motion for Entry of Final Judgment [Doc. 205] will be **GRANTED in part** and **DENIED in part** to the extent discussed herein and as more fully set forth in the orders of Final Judgment as to each defendant which will be contemporaneously entered with this Memorandum Opinion. The Court finds that the SEC is entitled to a permanent injunction as to the AIC defendants, that both the AIC and relief defendants are subject to disgorgement, and that the AIC defendants are also each subject to a statutory penalty in the amounts previously discussed.

ORDER ACCORDINGLY.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC., COMMUNITY BANKERS SECURITIES, LLC, and NICHOLAS D. SKALTSOUNIS, Defendants, and ALLIED BEACON PARTNERS, INC., (f/k/a Waterford Investment Services, Inc.), ADVENT SECURITIES, INC., and ALLIED BEACON WEALTH MANAGEMENT, LLC (f/k/a CBS Advisors, LLC), Relief Defendants.	)	No.: 3:11-CV-176-TAV-HBG

FINAL JUDGMENT AS TO DEFENDANT NICHOLAS D. SKALTSOUNIS

For the reasons stated in the memorandum opinion filed contemporaneously herewith, it is hereby **ORDERED** that, as to Defendant Nicholas D. Skaltsounis ("Defendant"):

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Clerk of Court shall enter Final Judgment in favor of the Commission and against the Defendant.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, in light of the findings of this Court and of the jury in this case, Defendant is liable for violations of: Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5; and Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, 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:

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

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

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

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act 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:

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

(b) 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

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

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act by, directly or indirectly, in the absence of any applicable exemption:

(a) unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

(b) unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

(c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of **$948,389.13**, representing profits gained as a result of the conduct alleged in the Complaint (including as amended), together with prejudgment interest thereon in the amount of **$138,282.35**, jointly and severally with defendant AIC, Inc., and a civil penalty in the amount of **$1,505,000** pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendant shall satisfy this obligation by paying **$2,591,671.48** to the Securities and Exchange Commission within **30 days** after entry of this Final Judgment.

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

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

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

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

interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty

imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint (including as amended) in this action.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

ENTER:

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT

s/ Debra C. Poplin
CLERK OF COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC., COMMUNITY BANKERS SECURITIES, LLC, and NICHOLAS D. SKALTSOUNIS, Defendants, and ALLIED BEACON PARTNERS, INC., (f/k/a Waterford Investment Services, Inc.), ADVENT SECURITIES, INC., and ALLIED BEACON WEALTH MANAGEMENT, LLC (f/k/a CBS Advisors, LLC), Relief Defendants.	)	No.: 3:11-CV-176-TAV-HBG

AMENDED[1] FINAL JUDGMENT AS TO DEFENDANT AIC, INC.

For the reasons stated in the memorandum opinion filed contemporaneously herewith, it is hereby **ORDERED** that, as to Defendant AIC, Inc. ("Defendant"):

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Clerk of Court shall enter Final Judgment in favor of the Commission and against the Defendant.

[1] This Amended Final Judgment as to Defendant AIC, Inc. is substantively identical to the Final Judgment as to Defendant AIC, Inc. [Doc. 226] entered August 1, 2014, except that a typographical error on page 4 has been corrected. The error consisted of the phrase "jointly and severally with defendant AIC, Inc.," which was deleted.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, in light of the findings of this Court and of the jury in this case, Defendant is liable for violations of: Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5; and Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, 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:

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

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

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

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act 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:

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

(b) 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

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

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act by, directly or indirectly, in the absence of any applicable exemption:

(a) unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

(b) unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

(c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of **$6,647,540.00**, representing profits gained as a result of the conduct alleged in the Complaint (including as amended), together with prejudgment interest thereon in the amount of **$969,262.10**, and a civil penalty in the amount of **$27,950,000.00** pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendant shall satisfy this obligation by paying **$35,566,802.10** to the Securities and Exchange Commission within **30 days** after entry of this Final Judgment.

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

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

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

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

interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty

imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint (including as amended) in this action.

Any payment by Defendant shall be applied first to the civil penalty amount set forth above, and, then (after the $27,950,000 civil penalty for Defendant is fully satisfied, plus any applicable post judgment interest), to the disgorgement and prejudgment interest amounts set forth above. After the full civil penalty (plus any applicable post judgment interest) and $2,007,876.64 of disgorgement and prejudgment interest (plus any applicable post judgment interest) is paid by Defendant, further payments, in addition to partially satisfying this Final Judgment, shall be credited to disgorgement and prejudgment interest amounts owed by defendants Community Bankers Securities, LLC ("CB Securities") and Nicholas D. Skaltsounis ("Skaltsounis") and relief defendants Allied Beacon Partners, Inc. (f/k/a Waterford Investor Services, Inc.) ("Allied Beacon Partners"), Advent Securities, Inc. ("Advent"), CL Wealth Management, LLC (f/k/a Allied Beacon Wealth Management, LLC and CBS Advisors, LLC) ("CL Wealth Management") (collectively, the "Other Defendants and Relief Defendants"), according to the following ratios:

CB Securities—0.5783

Skaltsounis—0.1937

Allied Beacon Partners—0.1105

Advent—0.1055

CL Wealth Management—0.0120

To the extent that the disgorgement and prejudgment interest amount owed by any of the Other Defendants and Relief Defendants (by virtue of the respective final judgments entered against him or it in this matter) is already fully satisfied or becomes fully satisfied by any such credit or otherwise, the remaining Other Defendants and Relief Defendants (i.e., those with a disgorgement and prejudgment interest amount not fully satisfied) shall additionally share (on a pro rata basis, based on the ratios set forth above) in the credit that would have been received by the party with the disgorgement and prejudgment interest amount already fully satisfied or that becomes fully satisfied.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

ENTER *NUNC PRO TUNC* August 1, 2014.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT

s/ Debra C. Poplin
CLERK OF COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC., COMMUNITY BANKERS SECURITIES, LLC, and NICHOLAS D. SKALTSOUNIS, Defendants, and ALLIED BEACON PARTNERS, INC., (f/k/a Waterford Investment Services, Inc.), ADVENT SECURITIES, INC., and ALLIED BEACON WEALTH MANAGEMENT, LLC (f/k/a CBS Advisors, LLC), Relief Defendants.	)	No.: 3:11-CV-176-TAV-HBG

FINAL JUDGMENT AS TO DEFENDANT COMMUNITY BANKERS SECURITIES, LLC

For the reasons stated in the memorandum opinion filed contemporaneously herewith, it is hereby **ORDERED** that, as to Defendant Community Bankers Securities, LLC ("Defendant"):

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Clerk of Court shall enter Final Judgment in favor of the Commission and against the Defendant.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, in light of the findings of this Court and of the jury in this case, Defendant is liable for violations of: Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5; and Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, 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:

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

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

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

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act 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:

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

(b) 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

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

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act by, directly or indirectly, in the absence of any applicable exemption:

(a) unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

(b) unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

(c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of **$2,830,946.00**, representing profits gained as a result of the conduct alleged in the Complaint (including as amended), together with prejudgment interest thereon in the amount of **$412,773.53**, jointly and severally with defendant AIC, Inc., and a civil penalty in the amount of **$27,950,000.00** pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendant shall satisfy this obligation by paying **$31,193,719.53** to the Securities and Exchange Commission within **30 days** after entry of this Final Judgment.

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

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

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

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

interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty

imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint (including as amended) in this action.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

ENTER:

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT

s/ Debra C. Poplin
CLERK OF COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC., COMMUNITY BANKERS SECURITIES, LLC, and NICHOLAS D. SKALTSOUNIS, Defendants, and ALLIED BEACON PARTNERS, INC., (f/k/a Waterford Investment Services, Inc.), ADVENT SECURITIES, INC., and ALLIED BEACON WEALTH MANAGEMENT, LLC (f/k/a CBS Advisors, LLC), Relief Defendants.	)	No.: 3:11-CV-176-TAV-HBG

FINAL JUDGMENT AS TO RELIEF DEFENDANT ALLIED BEACON PARTNERS, INC. (F/K/A WATERFORD INVESTOR SERVICES, INC.)

For the reasons stated in the memorandum opinion filed contemporaneously herewith, it is hereby **ORDERED** that, as to Relief Defendant Allied Beacon Partners, Inc. (f/k/a Waterford Investor Services, Inc.) ("Relief Defendant"):

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Clerk of Court shall enter Final Judgment in favor of the Commission and against Relief Defendant.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Relief Defendant has been unjustly enriched.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Relief Defendant is liable for disgorgement of **$541,000.00**, representing profits gained as a result of the conduct alleged in the Commission's Complaint (including as amended), together with prejudgment interest thereon in the amount of **$78,881.92**, jointly and severally with defendant AIC, Inc. Relief Defendant shall satisfy this obligation by paying **$619,881.92** to the Commission within **30 days** after entry of this Final Judgment.

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

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Allied Beacon Partners, Inc. (f/k/a Waterford Investor Services, Inc.)

as a relief defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Relief Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Relief Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Relief Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Relief Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

ENTER:

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT

s/ Debra C. Poplin
CLERK OF COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC., COMMUNITY BANKERS SECURITIES, LLC, and NICHOLAS D. SKALTSOUNIS, Defendants, and ALLIED BEACON PARTNERS, INC., (f/k/a Waterford Investment Services, Inc.), ADVENT SECURITIES, INC., and ALLIED BEACON WEALTH MANAGEMENT, LLC (f/k/a CBS Advisors, LLC), Relief Defendants.	)	No.: 3:11-CV-176-TAV-HBG

FINAL JUDGMENT AS TO RELIEF DEFENDANT ADVENT SECURITIES, INC.

For the reasons stated in the memorandum opinion filed contemporaneously herewith, it is hereby **ORDERED** that, as to Relief Defendant Advent Securities, Inc. ("Relief Defendant"):

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Clerk of Court shall enter Final Judgment in favor of the Commission and against Relief Defendant.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Relief Defendant has been unjustly enriched.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Relief Defendant is liable for disgorgement of **$516,150.00**, representing profits gained as a result of the conduct alleged in the Commission's Complaint (including as amended), together with prejudgment interest thereon in the amount of **$75,258.64**, jointly and severally with defendant AIC, Inc. Relief Defendant shall satisfy this obligation by paying **$591,408.64** to the Commission within **30 days** after entry of this Final Judgment.

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

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

Relief Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Relief Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Relief Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Relief Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

ENTER:

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT

s/ Debra C. Poplin
CLERK OF COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC., COMMUNITY BANKERS SECURITIES, LLC, and NICHOLAS D. SKALTSOUNIS, Defendants, and ALLIED BEACON PARTNERS, INC., (f/k/a Waterford Investment Services, Inc.), ADVENT SECURITIES, INC., and ALLIED BEACON WEALTH MANAGEMENT, LLC (f/k/a CBS Advisors, LLC), Relief Defendants.	)	No.: 3:11-CV-176-TAV-HBG

FINAL JUDGMENT AS TO RELIEF DEFENDANT CL WEALTH MANAGEMENT, LLC (F/K/A ALLIED BEACON WEALTH MANAGEMENT, LLC AND CBS ADVISORS, LLC)

For the reasons stated in the memorandum opinion filed contemporaneously herewith, it is hereby **ORDERED** that, as to Relief Defendant Allied Beacon Wealth Management, LLC (f/k/a CBS Advisors, LLC), and now known as CL Wealth Management, LLC ("Relief Defendant"):

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Clerk of Court shall enter Final Judgment in favor of the Commission and against Relief Defendant.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Relief Defendant has been unjustly enriched.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Relief Defendant is liable for disgorgement of **$58,687**, representing profits gained as a result of the conduct alleged in the Commission's Complaint (including as amended), together with prejudgment interest thereon in the amount of **$8,557.02**, jointly and severally with defendant AIC, Inc. Relief Defendant shall satisfy this obligation by paying **$67,244.02** to the Commission within **30 days** after entry of this Final Judgment.

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

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

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; CL Wealth Management, LLC (f/k/a Allied Beacon Wealth Management, LLC and CBS Advisors, LLC) as a relief defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Relief Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Relief Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Relief Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Relief Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the

Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

ENTER:

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT

s/ Debra C. Poplin
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC., COMMUNITY BANKERS SECURITIES, LLC, NICHOLAS D. SKALTSOUNIS, JOHN B. GUYETTE, and JOHN R. GRAVES, Defendants, and ALLIED BEACON PARTNERS, INC. (f/k/a Waterford Investor Services, Inc.), ADVENT SECURITIES, INC., and CBS ADVISORS, LLC, Relief Defendants.	:	Civil Action No. _____

COMPLAINT

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

SUMMARY

1. This matter involves an offering fraud and Ponzi scheme devised and orchestrated by Defendant Nicholas D. Skaltsounis ("Skaltsounis"), founder and President of Defendant AIC, Inc. ("AIC"), a privately-held holding company for three registered broker-dealers and a state-registered investment adviser. The scheme operated through the sale of millions of dollars of AIC promissory notes and stock through misleading and false representations and disclosures that

masked the underlying financial hardship of AIC and its inability to pay promised returns without using new investor money.

2. From at least January 2006 through November 2009 (the "relevant period"), AIC and Skaltsounis, directly and through registered representatives, including Defendant John B. Guyette ("Guyette") and Defendant John R. Graves ("Graves"), offered and sold more than $7.7 million in AIC common stock, preferred stock, and promissory notes (collectively, the "AIC Investments") to at least 74 investors in at least 14 states, including the State of Tennessee. Guyette and Graves were associated with Defendant Community Bankers Securities, LLC ("CB Securities"), one of the AIC-owned broker-dealers.

3. AIC promised to pay interest and dividends ranging from 9 to 12.5 percent on the promissory notes and preferred stock, knowing that it did not have the ability to pay those returns. Indeed, during the relevant period, AIC and its subsidiaries were never profitable. AIC earned de minimus revenue, and its subsidiaries did not earn sufficient revenue to meet expenses. AIC's debt grew each year as a result of the money owed to investors, and the only significant source of money available to pay investor principal, interest, and dividends was money raised from the sale of new AIC Investments.

4. Defendants never disclosed to investors the true nature of AIC's financial condition or provided adequate disclosure documentation with its offerings. In those instances in which written materials were provided (including a set of "Executive Summaries" created by Skaltsounis and AIC), the materials contained a myriad of material misrepresentations about AIC and its subsidiaries and their financial condition and otherwise omitted material information regarding these subjects.

5. In offering and selling these investments, Skaltsounis, Guyette, Graves, and at least one other individual (a now deceased CB Securities registered representative who will be referred to as "Broker A") misrepresented and omitted material information relating to, inter alia, the safety or risk associated with the investments, the rates of return on the investments, and how AIC would use the proceeds of the investments. Throughout this Complaint, Guyette, Graves, and Broker A are referred to as the "CBS Brokers."

6. In early December 2009, Defendants' scheme collapsed when they could no longer solicit investments or recruit new investors to pay back existing investors. As a result, the vast majority of AIC investors—many of who were elderly and unsophisticated investors who put their trust in Skaltsounis, Guyette, Graves, and Broker A—did not receive their promised returns and, in fact, lost their entire principal investments.

7. As a result of the conduct described in this Complaint, Defendants Skaltsounis, Guyette, Graves, AIC, and CB Securities violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. In addition, Defendants AIC and CB Securities are liable as controlling persons under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)]. Defendant Graves also violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

8. As a result of the conduct described in this Complaint, Relief Defendants Allied Beacon Partners, Inc. (referred to herein as "Allied" or "Waterford," the latter being short for Waterford Investor Services, Inc., the name by which Allied Beacon Partners, Inc., was formerly known), Advent Securities, Inc. ("Advent"), and CBS Advisors, LLC ("CBS Advisors"), each of

which is or was a subsidiary of AIC, received ill-gotten gains to which they have no legitimate claim.

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-9(e)] to enjoin such acts, transactions, practices, and courses of business, to obtain disgorgement and civil penalties, and for other appropriate relief.

10. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Sections 209(d), 209(e), and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), and 80b-14].

11. Venue lies in this judicial district 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 of the Advisers Act [15 U.S.C. § 80b-14]. Transactions constituting the violations of the federal securities laws charged herein occurred within this judicial district. Among other things, a significant number of AIC investors are and were residents of this judicial district, Defendant Skaltsounis and Broker A met with investors and prospective investors in this judicial district, fraudulent written materials relating to the AIC Investments were sent to investors in this judicial district, oral misrepresentations were directed to investors in this judicial district, and Defendant CB Securities had an office in this judicial district (in Maryville, Tennessee) from which AIC Investments were fraudulently offered and sold.

12. In connection with the conduct alleged in this Complaint, the Defendants, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in, or instrumentalities of, interstate commerce, or the mails, or the facilities of a national securities exchange.

DEFENDANTS

13. **AIC, Inc.**, is a Virginia corporation headquartered in Richmond, Virginia. During the relevant period, AIC was a holding company for three registered broker-dealers (Defendant CB Securities and Relief Defendants Allied and Advent) and a state-registered investment adviser (Relief Defendant CBS Advisors), which entities are discussed in more detail in paragraphs 14 and 18–20, below. Skaltsounis established AIC in 2000 and owns approximately thirty percent of AIC's common stock.

14. **Community Bankers Securities, LLC**, is a limited liability company organized in the State of Colorado and headquartered in Richmond, Virginia. CB Securities was registered as a broker-dealer with the Commission from 1997 until December 23, 2009, when it filed a Broker-Dealer Withdrawal Form ("Form BDW") with the Financial Industry Regulatory Authority ("FINRA"). CB Securities primarily employed independent brokers who had office locations across the country, including in this judicial district. CB Securities supervised and employed the CBS Brokers. AIC owns approximately an eighty-eight percent interest in CB Securities. Before withdrawing its broker-dealer registration, CB Securities had approximately 7,000 customer accounts. In addition to providing broker-dealer services, CB Securities was approved by the Small Business Administration (the "SBA") as a pooler of SBA loans and other guaranteed loans.

15. **Nicholas D. Skaltsounis**, age 66, resides in Richmond, Virginia. During the relevant period, he was the President and Chief Executive Officer of AIC and three of its

subsidiaries, CB Securities, Advent, and CBS Advisors. He was also a member of the board of directors of AIC and Chairman of the board of directors of Waterford Investor Services, Inc. (now known as Allied Beacon Partners, Inc.), a registered broker-dealer and AIC subsidiary. Skaltsounis holds Series 4, 5, 7, 12, 24, 27, and 63 securities licenses. Skaltsounis has been in the securities industry since 1976.

16. **John B. Guyette**, age 70, resides in Greeley, Colorado. During the relevant period, he was employed as a registered representative with CB Securities in its Greeley, Colorado, office. He holds Series 3, 7, 24, 27, and 63 securities licenses. Guyette has been in the securities industry since 1987. Before his association with CB Securities, Guyette was the founder and Chief Executive Officer of Elite Investments, LLC, a registered broker-dealer that was purchased by AIC in 2003 and renamed Community Bankers Securities, LLC.

17. **John R. Graves**, age 51, resides in Pensacola, Florida. From about August 2009 to December 2009, Graves was employed by AIC as the Vice President of Business Development and by CB Securities as a registered representative. He holds Series 4, 6, 7, 24, 26, 53, and 65 securities licenses. Also, from about January 2009 to about April 2010, Graves was the President of Compass Financial Advisors, LLC ("Compass"), an investment adviser registered with the Commission. In addition, Graves is a certified financial planner and the founder and President of Brooke Point Management, Inc. ("Brooke Point Management"), a private company that provides fixed insurance products, estate planning, and tax preparation services.

RELIEF DEFENDANTS

18. **CBS Advisors, LLC**, is a limited liability company organized in the Commonwealth of Virginia, with its headquarters in Virginia. During the relevant period, it was an investment adviser registered with ten different States, including Tennessee. As of May 2010, CBS

Advisors reported having approximately $14 million in assets under management. In 2005, AIC acquired a ninety percent ownership interest in CBS Advisors.

19. **Allied Beacon Partners, Inc.**, is a Florida corporation headquartered in Clearwater, Florida. At all relevant times, Allied operated under the name Waterford Investor Services, Inc., or "Waterford." On or around February 7, 2011, Waterford was renamed Allied Beacon Partners, Inc. Waterford (and then Allied) has been registered as a broker-dealer with the Commission since 1999, and registered with the State of Tennessee to sell securities since 2006. It is also an investment adviser registered with the State of Florida. In 2005, AIC acquired a ninety percent ownership interest in Waterford.

20. **Advent Securities, Inc.**, is a Virginia corporation headquartered in Richmond, Virginia. Advent was registered as a broker-dealer with the Commission from 2004 until approximately January 2011 when it filed a Form BDW withdrawing its registration as a broker-dealer. In 2006, AIC acquired a ninety percent interest in Advent. Advent has never had any customer accounts or conducted any business. In 2006, Advent applied with the State of Tennessee for a registration to sell securities.

OTHER RELEVANT INDIVIDUAL

21. **Broker A** was, during the relevant period, a member of AIC's board of directors, a registered representative at CB Securities, and an investment adviser associated with CBS Advisors. She held Series 6, 7, 24, 63, and 65 securities licenses. Broker A is deceased.

FACTS

I. AIC's Constant Need for Capital and the Defendants' Fraudulent Means of Raising That Capital from Investors

22. At all relevant times, AIC and its subsidiaries (CB Securities, CBS Advisors, Advent, and Waterford) acted by and through Skaltsounis and AIC's board of directors and AIC's

and the subsidiaries' employees. CB Securities acted by and through Skaltsounis as well as its registered representatives. Defendants Skaltsounis, Guyette, and Graves and Broker A were employees of AIC and/or CB Securities and were acting in the course and scope of their respective employment when they committed the violations set forth in this Complaint.

23. AIC has never been profitable since it was formed in 2000. During the relevant period, AIC had almost no revenue from business operations, generating nominal revenue from the sale of insurance policies and through interest income. AIC's subsidiaries were also never profitable and did not earn sufficient revenue to meet expenses.

24. As a result, AIC and its subsidiaries were in constant need of capital to fund their operations.

25. AIC's need to raise capital was discussed at AIC board meetings that Skaltsounis and Broker A attended.

26. In order to raise capital, AIC and Skaltsounis issued and offered promissory notes and common and preferred stock to investors. As expenses continued to mount and obligations grew—including the obligation to pay interest and dividends and to return principal to investors—AIC and Skaltsounis met those obligations by seeking new investors and by selling (and offering to sell) more and more of the AIC Investments.

27. Skaltsounis directly sold—and used a select group of brokers from CB Securities, including the CBS Brokers—to sell the AIC Investments. Skaltsounis, through AIC and CB Securities, paid the CBS Brokers commissions in the form of cash and AIC common stock.

28. As described in more detail below, in offering and selling these investments, the Defendants made false and misleading disclosures and omitted material facts relating to the risks of

investing in AIC, AIC's financial performance (including the financial performance of its subsidiaries), and how AIC would use the investment proceeds.

29. AIC raised approximately $7,744,351 from at least 74 investors in at least 14 states, including Tennessee. At least thirty of these investors were retail brokerage customers of CB Securities. Many of the investors were unsophisticated and elderly.

30. The Defendants sold and offered to sell the AIC Investments even though they were unregistered securities, in violation of the registration requirements of the Securities Act. The Defendants' sales and offers to sell the AIC Investments were also in violation of the antifraud provisions of the federal securities laws. Among other things, Defendants AIC and Skaltsounis created and distributed to investors or prospective investors investment materials that contained numerous material misrepresentations regarding the financial condition of AIC and its subsidiaries, their past financial performance, and AIC's ability to repay investors. The Defendants also omitted material information relating to the AIC Investments in investment materials, while, at the same time, making oral misrepresentations to investors, including reassurances that their investments in AIC were "safe" and "secure." Defendants AIC, CB Securities, and Skaltsounis materially misrepresented the nature of CB Securities' SBA pooling business, leading investors to believe that it was a significant part of CB Securities' business from which it derived substantial revenues, when, in fact, CB Securities only derived nominal revenue from a single SBA pooling transaction.

31. At the times these misrepresentations and omissions were made, the Defendants knew that they were false and fraudulent, or were reckless in not knowing. The Defendants targeted elderly and unsophisticated investors, and, as a result of the Defendants' activities, dozens of investors have lost significant portions of their hard-earned savings, including retirement funds on which they were depending for their future financial security.

32. Defendants' fraud operated in the nature of a Ponzi scheme whereby new investor money was used to pay back existing investors' principal, interest, and dividends. Specifically, during the relevant period, approximately $2,532,434 of new investor money was distributed back to investors. Skaltsounis also used investor money to pay himself $952,258 in salary, advances, loans, interest, and dividends during the relevant period. Approximately $3,629,282 was used, during the relevant period, to keep the subsidiary broker-dealers solvent and to allow them to meet "net capital" requirements.[1] During the relevant period, Skaltsounis directed AIC to make payments of $2,568,445 to CB Securities, $516,150 to Advent, $486,000 to Waterford, and $58,687 to CBS Advisors. These payments to Skaltsounis and the subsidiaries were made from the account holding investor money from the sales of AIC Investments secured by Defendants' fraud.

II. The AIC Investment Offerings

A. Promissory Notes

33. From at least January 2006 through November 2009, AIC raised approximately $5,438,100 through the sale of at least 47 promissory notes ("notes") to both accredited and unaccredited investors. The notes set forth the investment amount and other terms, including, for instance, the interest rate and maturity date. The notes stated that the proceeds would be used for "business purposes only." The notes did not discuss any investment risks or the sources of payment of principal or interest. Nor did the notes disclose that the proceeds from the sale of the notes would be used to pay off prior AIC investors. Also, no financial reports or other similar written financial information was provided in connection with the sale of the notes.

[1] Rule 15c3-1, issued pursuant to the Exchange Act, provides that broker-dealers are required to maintain sufficient "net capital" reserves in order to operate [17 C.F.R. § 240.15c3-1]. If a broker-dealer is not in net capital compliance, it can no longer accept and execute customer securities orders.

34. The notes had interest rates ranging from 9% to 12.5% annually, and the maturity of the notes ranged from one month to three years. Some of the notes offered convertible features whereby the noteholder could convert the note into AIC common stock.

35. Given that AIC only earned nominal business income during its nearly decade-long existence and given that AIC's subsidiaries were never profitable and never distributed funds back to their parent (AIC) for the purpose of repaying investors, the only way AIC could repay the notes (including accumulated interest) was through the recruitment of new investors and the sale of AIC Investments to them. Despite this knowledge of AIC's precarious financial straits—and its, at a minimum, Ponzi-like characteristics—AIC never distributed materials reflecting AIC's financial condition to noteholders or prospective noteholders, nor informed them that their investments (or, at least, a substantial part of their investments) would be used to pay obligations to other investors.

36. AIC, CB Securities, Skaltsounis, Broker A, and Guyette also used another means to prop up AIC, so that it could continue its fraud without collapsing. AIC, through Skaltsounis, Broker A, and Guyette, convinced investors to extend the terms of—or "rollover," "renew," or "reinvest"—at least eighteen AIC notes. AIC and Skaltsounis sent noteholders letters presenting them with three choices: (a) reinvest the principal and interest at the prevailing rate; (b) receive interest earned and reinvest principal only; or (c) liquidate the note. AIC and Skaltsounis further represented in the letters that the proceeds and/or new note would be issued within ten days.

37. The only written documentation that AIC provided in connection with this rollover decision was the one-page rollover letter itself. There were no financial reports provided, nor was there any other written information provided regarding AIC's worsening financial condition, AIC's inability to repay the interest or principal without new investments, or the risks associated with renewing a note.

38. The only thing that AIC told noteholders in the rollover letters was that they could renew their notes (in whole or just with respect to principal), or they could liquidate their notes and receive their interest and principal in full. But AIC lacked the ability to repay the notes—even though investors were told that they could receive payment in full in ten days. This did not prove to be an immediate problem for AIC, because the majority of the noteholders renewed their notes. To induce a high rate of rollovers, Broker A and Guyette contacted noteholders and verbally assured them of the safety and security of their investments in AIC. This allowed AIC to the continue the fraud without immediately collapsing.

39. Thus, the aforementioned actions relating to the rollovers represent both written and oral misrepresentations to investors: noteholders were told that they could receive payment within ten days (even though AIC lacked sufficient cash to make good on that offer), and investors were further lulled through these reassurances.

40. Each of the rollover letters was signed by Defendant Skaltsounis.

41. By November 2009, AIC had approximately $4 million in note obligations on its books as a result of issuing new notes and rolling over old notes.

B. Preferred and Common Stock

42. From at least January 2006 through November 2009, AIC also raised $430,000 through the sale of Series A preferred stock, $820,000 through the sale of Series B preferred stock, and approximately $1,056,251 through the sale of common stock.

43. The preferred stock purported to pay annual dividends ranging from 10% to 12.5% and was convertible into common stock. The common stock did not pay a dividend.

44. The preferred stock was sold pursuant to subscription agreements. In addition, the preferred shareholders were required to complete a questionnaire attesting to their financial net worth.

45. The subscription agreements for the Series A and Series B preferred stock identified the terms of the purchase, purported to identify "risk factors," and contained an acknowledgement of receipt of company materials, including information purportedly contained on AIC's website. However, the risk factors set forth in the subscription agreements were general in nature, and none of the risk factors stated that the company earned only nominal revenue, that it had no ability to pay investors without new investor funds coming in, or that new investments would be used to pay other investors' interest, dividends, and principal. Also, the acknowledgement of receipt of materials was meaningless. Other than the subscription agreement itself, no AIC materials, including financial statements, were provided to preferred stockholders or prospective preferred stockholders.

46. There was no securities purchase agreement or other kind of agreement evidencing the purchase or sale of AIC common stock. Nor were there any other disclosure materials provided in connection with the purchase or sale of AIC common stock.

III. The AIC Investments Are Securities

47. The AIC Investments sold to investors by the Defendants are securities within the meaning 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)], and the fraud and other misconduct described herein was in the offer of, and/or in connection with the purchase or sale of securities.

IV. The Sales and Offers to Sell the AIC Investments Were in Violation of the Registration Requirements of the Securities Act

48. The Defendants sold or offered the AIC Investments, even though no registration statement was in effect as to AIC Investments and the AIC Investments were not exempt from the

registration requirements of the Securities Act. In connection with these sales or offers to sell, the Defendants made use of means or instruments of interstate transportation, or communication, or of the mails.

49. Although AIC purported to have offered AIC Investments pursuant to Rule 506 of Regulation D under the Securities Act [17 C.F.R. § 230.506], these offerings are subject to integration under Rule 502(a) [17 C.F.R. § 230.502(a)]. During the relevant period, there was no period of six months or more in which there was no offer or sale of securities by AIC.

V. Skaltsounis and AIC Created and Distributed to Investors or Prospective Investors "Executive Summaries" That Contained Numerous Material Misrepresentations Relating to AIC and Its Subsidiaries

50. Skaltsounis solicited AIC investments through the use of a March 2009 Executive Summary and a June 2009 Executive Summary (collectively, the "Executive Summaries"). The Executive Summaries contained material misrepresentations and omissions concerning, inter alia, AIC's business operations and its financial condition. For instance, the Executive Summaries depicted AIC and its subsidiaries as being on the verge of financial profitability and success, with the ability to capitalize on the economic downturn by acquiring distressed broker-dealers at all time lows. In reality, AIC's subsidiaries were themselves distressed broker-dealers that struggled to maintain net capital requirements each month. AIC omitted from the Executive Summaries that it had accumulated nearly $4 million in debt and that its expenses exceeded revenue each year.

51. Further, there are several false statements in the Executive Summaries concerning the subsidiaries' ability to increase margins. AIC claimed that its subsidiaries increased margins in three ways: (1) through its SBA pooling business; (2) through its ability to generate investment banking fees; and (3) through its origination and offering of proprietary private placements. Each of these statements is false. As discussed above, the SBA pooling business was unsuccessful. AIC

and its subsidiaries generated less than $39,000 in investment banking fees, and they never offered or sold any proprietary products. Skaltsounis knew that each of these statements was false.

52. In addition, the Executive Summaries contained several other false and misleading statements, including that: (a) AIC had proven its ability to increase bottom line profits in companies it acquires; (b) AIC was able to partly offset the cost of acquisitions and quickly reach a break-even cash flow, often within six months of acquiring a broker-dealer; (c) AIC offered institutional investors a significant discount to prevailing prices for SBA pooled products in exchange for additional institutional business from banks; and (d) AIC had over $300 million in private proprietary placements to offer to investors. Skaltsounis knew that each of these statements was false and misleading.

VI. The Failure to Provide Adequate Offering Materials in Connection with the Offer or Sale of the AIC Investments

53. Skaltsounis and the CBS Brokers orally solicited their customers and other investors through telephone calls or in person. They falsely misrepresented the financial condition of AIC and its subsidiaries and the safety and security of an investment in AIC. These oral misrepresentations were often made where inadequate disclosure materials (or no disclosure materials) were provided to investors or prospective investors.

54. Skaltsounis and the CBS Brokers did not provide prospective investors with appropriate materials describing AIC or its offerings or other material information about the risks associated with the investments and how the proceeds would be used. The only documentation provided were the notes themselves, an inadequate subscription agreement for the preferred stockholders, and the stock certificates themselves for the preferred and common stockholders.

55. Investors were not provided financial statements or offered access to financial information concerning AIC or its subsidiaries.

VII. The Defendants' Material Misrepresentations and Omissions

56. As noted above, each of the Defendants made material misrepresentations and omitted material information in offering and selling the AIC Investments. Each knew, or was reckless in not knowing, about the lack of capital at AIC and its inability to meet its obligations to current investors while soliciting new investors with promises of high rates of return and safety of principal.

57. The Defendants' misrepresentations and omissions alleged herein, individually and in the aggregate, are material. A reasonable investor would consider the misrepresented facts and the omitted information important, or disclosure of the omitted facts or accurate information would have altered the "total mix" of information made available to investors. In particular, the Defendants made misrepresentations and omissions concerning, inter alia, the financial health of AIC and its ability to meet its expenses and pay its obligations. These issues are material.

58. In connection with the conduct described below, the Defendants acted knowingly or recklessly. Among other things, the Defendants knew or were reckless in not knowing that they were making material misrepresentations and omitting material information when they offered, sold, and/or solicited the purchase of AIC Investments. Indeed, as members of AIC's board of directors, Skaltsounis and Broker A were aware of the precarious financial situation of AIC and its use of new investors' funds to pay existing investors. The other CBS Brokers were, at a minimum, reckless in failing to undertake the actions necessary to allow them to inform investors about the risks associated with the AIC Investments and to determine whether AIC was an appropriate investment. Despite this lack of knowledge, Guyette and Graves made statements to investors regarding AIC's then current financial health, its prospects, and its suitability as a safe investment. The particular conduct of each pertinent individual is described below.

A. **Defendant Nicholas D. Skaltsounis**

59. Defendant Skaltsounis directed and controlled AIC and its subsidiaries, and he had significant influence over the actions of AIC's board of directors. Among other things, he often conducted and presided over meetings of AIC's board (after a short introduction by AIC's actual board Chairman), and his decisions regarding company business and how the AIC Investments would be marketed and sold (and the terms of those investments) were oftentimes simply ratified after-the-fact by AIC's board.

60. Skaltsounis was involved with every aspect of the offerings of the AIC Investments, including establishing the nature and terms of the investments and signing investor checks, subscription agreements for the preferred stock, and promissory notes.

61. Skaltsounis directly solicited and made representations to investors through telephone calls, investor meetings in this judicial district and elsewhere, and annual shareholder meetings, as well as indirectly, by causing certain registered representatives at CB Securities (including the CBS Brokers) to sell AIC Investments and through written misrepresentations.

62. Skaltsounis knew the precarious financial condition of AIC and its subsidiaries, particularly AIC's need to raise capital for the purpose of paying back existing investors and to keep its subsidiaries solvent. Skaltsounis knew that AIC did not have the ability to pay the principal and the promised returns on the notes. Despite this knowledge, Skaltsounis omitted this and other material information from communications with investors and made affirmative misstatements to convince investors to purchase AIC Investments or to rollover their investments to delay payment of those obligations and to otherwise conceal the scheme from the investors.

63. In oral and written communications with investors and prospective investors, Skaltsounis misrepresented the financial stability and sustainability of the company—even though

he knew throughout the relevant period that AIC was on the verge of financial collapse. Skaltsounis created the impression of financial stability by misrepresenting AIC's past and current financial performance and by depicting an extremely optimistic picture of AIC's future financial prospects that was unreasonable when made. Moreover, Skaltsounis never disclosed that AIC had accumulated millions of dollars in debt as a result of the various securities offerings, had never been profitable, and that its subsidiaries were never profitable and even struggled to meet net capital requirements. Moreover, he never disclosed that he was using new investor money to pay back principal and returns to existing investors—and to pay himself.

64. In addition, AIC, through Skaltsounis, issued false and misleading rollover or reinvestment letters to investors. These letters created the misleading impression that AIC had the ability to pay the principal and interest on the notes upon maturity and had the ability to pay the promised future returns.

65. For example, on April 29, 2009, three investors who invested a total of $91,000 were issued letters providing them with the opportunity to (a) rollover their original notes; (b) receive their accrued interest but otherwise rollover the notes; or (c) liquidate the notes. But these "options" were false promises. AIC had no ability to pay even the accrued interest and certainly had no cash available to liquidate the notes and to pay the investors their principal and interest. At the time AIC and Skaltsounis made these representations, AIC only had approximately $18,000 in its bank account and it owed approximately $3.5 million in note obligations. Through these rollover letters Skaltsounis falsely lulled investors into believing that their investments were safe, that AIC could pay back investors within the ten-day period set forth in the rollover letters, and that AIC could otherwise meet its obligations under the notes.

66. In or around March 2009, when several AIC notes were scheduled to mature, Skaltsounis persuaded a broker at CB Securities to renew her own AIC notes and to reach out to her retail brokerage customers to see if they would renew their notes. During that conversation, Skaltsounis falsely stated to the broker that AIC's revenues had grown by twelve percent in 2008 and told the broker that AIC would be sold in three years, which purportedly would enable noteholders to be paid off in full and which would otherwise be a benefit to AIC investors. As a result of that conversation, the broker renewed her own notes, and she communicated that same information to her customers, all of whom renewed their notes.

67. Skaltsounis also led investors to believe that CB Securities' status as an SBA pooler generated significant revenue for the firm. This was false. In reality, since January 2006, CB Securities sold only one SBA pooled loan which generated $11,797 in revenue for CB Securities. But Skaltsounis nontheless told investors that, based on the company's performance, its future plans, and its status as an SBA pooler, AIC was financially secure and their investments were safe. Guyette and Graves, both of whom offered and sold AIC securities, relied on Skaltsounis' representations, which they then repeated to investors without reviewing any financial records or other documents to substantiate their employer's claims.

68. AIC, through Skaltsounis, also misrepresented the rate of return on the notes and the preferred stock that the investors could expect to receive. AIC promised to pay 9% to 12.5% returns when the company had little or no ability to pay such returns. The promise of payment of those returns led investors to believe that the company had the ability to pay those returns and that those returns were being generated from the legitimate business activities of the company. Skaltsounis was responsible for establishing the rates of returns on the investments, and he intentionally offered those rates to attract investors.

69. Skaltsounis, directly and through AIC and the CBS Brokers, misrepresented how AIC used the proceeds of its investments. For example, he told investors and the CBS Brokers who were soliciting the AIC Investments that the proceeds would be used to grow and expand AIC's business. However, from at least January 2006 on, AIC never expanded its business in any meaningful way.

70. By way of further illustration, in or around August 2009, Skaltsounis told Graves, who at the time was a newly hired CB Securities broker, that any proceeds Graves raised from investors from the sale of AIC Investments would be used to purchase another broker-dealer. Graves told investors this when he sold them AIC preferred stock and promissory notes. However, AIC never used the money raised by Graves to purchase a broker-dealer.

71. Skaltsounis also signed the promissory notes issued to investors that falsely stated that proceeds from the notes would be used for "business purposes only." In reality, AIC used large portions of the proceeds of the sales of AIC Investments to pay back principal and returns to existing investors and to provide Skaltsounis with personal loans and advances, none of which was disclosed to investors.

B. Broker A

72. During the relevant period, Broker A, like Skaltsounis, was a member of AIC's board of directors. She was also a registered representative at CB Securities and an investment adviser associated with CBS Advisors. She held Series 6, 7, 24, 63, and 65 securities licenses. Broker A is now deceased. Broker A's office, which was an office of CB Securities, was located in or around Maryville, Tennessee.

73. As a member of the AIC board, Broker A knew or was reckless in not knowing that AIC was in poor financial condition and in constant need of cash not only to meet the expenses of its subsidiaries but also to pay existing investors.

74. However, despite this knowledge, Broker A sold approximately $2.8 million in AIC promissory notes to her brokerage customers, almost all of whom were elderly and unsophisticated, and at least two of whom were unaccredited. The fact that investments were sold to unaccredited investors is significant because, even if AIC were offering investments pursuant to a valid exception to the Securities Act's registration requirements (which it was not), such sales could only be made to "accredited" investors, meaning, inter alia, investors with a certain level of net worth or annual income.

75. Broker A earned a ten percent commission for the sale of the notes, which was paid in the form of AIC common stock.

76. In selling the AIC Investments, Broker A knowingly misrepresented the safety of the investment and the financial condition of the company and failed to disclose to investors the material risks associated with the investments. Broker A told investors that their investments were safe and secure and that AIC was a profitable business. Broker A told investors that the AIC notes were similar to certificates of deposit ("CDs"), representing that the notes were safe like a CD but paid a higher rate of interest. These statements were false. Broker A also falsely led investors to believe that the notes would provide a steady stream of income for them in retirement.

C. Defendant John B. Guyette

77. Guyette was a registered representative in CB Securities' Greeley, Colorado, office, which operates under the trade name Elite Investments.

78. From May 2006 to July 2006, Guyette offered, sold, and solicited the purchase of $207,000 in AIC Series A preferred stock and $100,000 in AIC notes. He solicited these investments from six investors, five of whom were his retail brokerage customers. In or around March 2009, he also convinced at least one investor to rollover or reinvest a $25,000 AIC note. He solicited these investments by telephone, in person, and in writing.

79. Guyette was paid $21,490 in commissions by AIC, or 7% of the total investment amount, for his offer and sale of these AIC Investments.

80. Guyette made material misrepresentations and omissions to investors concerning the safety of the investments, the financial condition of AIC, and the company's reasonable financial prospects when he offered, sold, and solicited these investments.

81. Guyette also failed to disclose to investors the material risks associated with their AIC Investments. He never discussed the speculative nature of the investments or the likelihood of loss on the investments. Instead, Guyette misled investors by telling them that AIC Investments were safe and that AIC was well-financed and financially secure—all without any reasonable basis. Guyette also told investors that the interest and dividend rates on the notes and stock were achievable because they were only slightly higher than what banks were paying on CDs. This, too, was false.

82. For example, in June 2006, Guyette wrote a false and misleading letter to a potential investor, a charitable foundation that was a brokerage customer of his, soliciting the purchase of AIC preferred stock. This letter contained numerous misstatements suggesting the safety of the investment and incorrectly guaranteeing future events about which Guyette had no firsthand knowledge. Shortly after Guyette sent this letter to the charitable foundation, it purchased $100,000 worth of AIC Series A preferred stock.

83. Guyette knew that these representations were false or was reckless in making these oral and written misrepresentations and omissions, because he had no reasonable basis to make such statements or to solicit or recommend such investments. Despite his duties as the customers' broker, Guyette did not conduct a reasonable investigation of the AIC Investments or reasonable due diligence prior to offering, selling, or recommending the AIC Investments. He never knew AIC's financial condition, the purpose of its business operations, or how the proceeds from the sale of AIC Investments would be used.

84. Guyette also made unsuitable investment recommendations when he offered and sold AIC preferred stock and promissory notes to his brokerage customers. The AIC Investments were risky and illiquid. He sold these investments to his retail brokerage customers with average to conservative risk tolerance and short-term investment objectives.

85. For example, Guyette made an unsuitable recommendation to a charitable foundation (referenced in paragraph 82, above) that purchased $100,000 in AIC Series A preferred stock. Guyette knew or was reckless in not knowing that this investment was unsuitable given the charitable foundation's stated investment objectives and risk tolerance. The charitable foundation had indicated that it had a low risk tolerance and told Guyette that it wanted safe, conservative investments.

D. Defendant John R. Graves

86. In or around August 2009, Graves was hired by CB Securities as a registered representative and by AIC as Vice President of Business Development. At the time of his employment with CB Securities and AIC, he was also the President of Compass, an investment adviser registered with the Commission, through which he provided investment advice in exchange for management fees.

87. During the relevant period, Graves had a fifty to seventy-five percent indirect ownership interest in Compass through his ownership of Financial Action Holding Group LLC ("FAHG"), the holding company of Compass. Graves acquired his ownership interest in FAHG by raising money through sales of common stock in his other business, Brooke Point Management.

88. Graves first met Skaltsounis in or around June 2009. Graves was trying to sell Compass (along with another broker-dealer in which Graves had invested approximately $100,000) to AIC. Graves reached a verbal agreement with Skaltsounis that AIC would purchase Compass and the other broker-dealer if Graves could raise the money to fund the purchase.

89. Skaltsounis promised that AIC would pay Graves a seven percent commission on the sale of any AIC securities. Skaltsounis also promised to pay Graves a salary of $85,000 per year.

90. From about September 2009 to about October 2009, Graves offered, sold, and/or solicited the purchase of $715,000 in AIC Series B preferred stock and $110,000 in AIC notes. He solicited these investments from eight investors, five of whom were his retail brokerage customers, the other three being investment advisory clients of his at Compass. At least three of the eight investors were unaccredited. Graves solicited these investments in person and over the telephone. Graves approached some of his investors by either visiting them at their homes or taking them to lunch.

91. In recommending and soliciting investments in AIC, Graves made material misrepresentations and omissions concerning the safety of the investments and the financial condition of the company. For example, Graves told investors that AIC was a safe investment that could provide a steady stream of supplemental income. He also reassured investors that AIC had the ability to pay the promised returns because it was a reliable company.

92. Graves failed to disclose to investors that AIC did not have sufficient capital to pay the promised returns on the preferred stock and the notes. He also failed to disclose the investment risks associated with purchasing the AIC preferred stock and notes.

93. Several of the investors did not understand the nature of the investment but trusted Graves' judgment to invest their money in safe and reliable companies. For example, one unaccredited investor, who at the time of the investment was unemployed and had very little savings, invested $30,000 in AIC because Graves told her that her money would be safe and that she could get back more money at maturity than she invested. This investment represented a significant portion of the investor's savings, and she would not have invested the money had she known there was even a small risk of losing the investment.

94. Graves also failed to disclose to brokerage customers and investment advisory clients that he had a personal financial interest in AIC. Skaltsounis had represented that the investor funds he raised would be used by AIC to purchase a broker-dealer and investment adviser in which he had a personal and financial stake.

95. Graves knew or was reckless in not knowing that he made material misrepresentations and omissions when he offered, sold, recommended, and/or solicited the purchase of AIC Investments. Although Graves himself believed that there was significant risk involved with the investment and that AIC was a speculative investment, he did not disclose these facts to investors.

96. Despite his duties to investors, Graves also did not conduct any reasonable due diligence on the AIC Investments. He relied only upon conversations he had with Skaltsounis and his physical observation of AIC's office location. Prior to offering, selling, recommending, and/or soliciting the AIC Investments, Graves:

a. did not know the financial condition of AIC;

b. asked Skaltsounis for the financial statements for AIC and its subsidiaries, a request refused by Skaltsounis;

c. believed that the AIC investment was unusual because he had never sold any investments with the rates of return offered by AIC; and

d. never sold a private placement without an offering document such as a private placement memorandum.

FIRST CLAIM FOR RELIEF
Violations of Sections 5(a) and 5(c) of the Securities Act
(Against All Defendants)

97. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 96, above, as if the same were fully set forth herein.

98. As a result of the conduct alleged herein, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale.

99. No valid registration statement has been filed with the Commission or has been in effect with respect to any offering or sale alleged herein.

100. By engaging in the foregoing conduct, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

SECOND CLAIM FOR RELIEF
Violations of Section 17(a) of the Securities Act
(Against All Defendants)

101. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 100, above, as if the same were fully set forth herein.

102. From at least 2006 through November 2009, as a result of the conduct alleged herein, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves knowingly or recklessly, in the offer or sale of securities, directly or indirectly, singly or in concert, by the use of the means or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

a. employed devices, schemes or artifices to defraud;

b. obtained money or property by means of, or made, untrue statements of material fact, or 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; or

c. engaged in acts, transactions, practices, or courses of business that operated as a fraud or deceit upon offerees, purchasers, and prospective purchasers of securities.

103. By engaging in the foregoing conduct, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
(Against All Defendants)

104. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 103, above, as if the same were fully set forth herein.

105. From at least 2006 through November 2009, as a result of the conduct alleged herein, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use of the means or instrumentality of interstate commerce or of the mails, or a facility of a national securities exchange:

a. employed devices, schemes or artifices to defraud;

b. made untrue statements of material fact, or 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; or

c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

106. By engaging in the foregoing conduct, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

FOURTH CLAIM FOR RELIEF
Violations of Sections 206(1) and 206(2) of the Advisers Act
(Against Defendant Graves)

107. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 106, above, as if the same were fully set forth herein.

108. As a result of the conduct alleged herein, Defendant Graves, directly or indirectly, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, while acting as an investment adviser:

a. with scienter, employed devices, schemes, or artifices to defraud advisory clients or prospective advisory clients; and

b. engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon clients or prospective clients.

109. By engaging in the foregoing conduct, Defendant Graves violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

FIFTH CLAIM FOR RELIEF
Controlling Person Liability Under Section 20(a) of the Exchange Act
(Against Defendants AIC and CB Securities)

110. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 109, above, as if the same were fully set forth herein.

111. In addition to their liability under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, AIC and CB Securities also are liable as controlling persons under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

112. Defendant AIC is, or was at the time acts and conduct set forth herein were committed, directly or indirectly, a person who controlled Skaltsounis and Broker A. As detailed above, Skaltsounis and Broker A sold AIC securities in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

113. Defendant CB Securities is, or was at the time acts and conduct set forth herein were committed, directly or indirectly, a person who controlled Skaltsounis and the CBS Brokers. As

detailed above, Skaltsounis and the CBS Brokers sold AIC securities in violation of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

114. By reason of the foregoing conduct, AIC and CB Securities are joint and severally liable with, and to the same extent as, the persons they controlled for violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

SIXTH CLAIM FOR RELIEF
Claims with Respect to Relief Defendants
(Against Relief Defendants)

115. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 114, above, as if the same were fully set forth herein.

116. Relief Defendants Allied, Advent, and CBS Advisors each received proceeds of the fraud described herein, over which they each have no legitimate claim.

117. By reason of the foregoing conduct, Relief Defendants Allied, Advent, and CBS Advisors have been unjustly enriched and must be compelled to disgorge the amount of their unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining Defendants AIC, CB Securities, Skaltsounis, and Guyette from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

II.

Permanently restraining and enjoining Defendant Graves from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R.§ 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

III.

Ordering Defendants AIC, CB Securities, Skaltsounis, and Guyette and Relief Defendants Allied, Advent, and CBS Advisors to disgorge any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this Complaint.

IV.

Ordering Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

V.

Ordering Defendant Graves to pay civil penalties pursuant to Section 217 of the Advisers Act [15 U.S.C. § 80b-17];

VI.

Retaining jurisdiction of this action for purposes of enforcing any final judgments and orders; and

VII.

Granting such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

Dated: April 15, 2011.

s/ Michael J. Rinaldi
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC., COMMUNITY BANKERS SECURITIES, LLC, NICHOLAS D. SKALTSOUNIS, JOHN B. GUYETTE, and JOHN R. GRAVES, Defendants, and ALLIED BEACON PARTNERS, INC. (f/k/a Waterford Investor Services, Inc.), ADVENT SECURITIES, INC., and ALLIED BEACON WEALTH MANAGEMENT, LLC (f/k/a CBS Advisors, LLC), Relief Defendants.	:	No. 3:11-cv-00176

FIRST AMENDED COMPLAINT

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

SUMMARY

1. This matter involves an offering fraud and Ponzi scheme devised and orchestrated by Defendant Nicholas D. Skaltsounis ("Skaltsounis"), founder and President of Defendant AIC, Inc. ("AIC"), a privately-held holding company for three registered broker-dealers and a state-registered investment adviser. The scheme operated through the sale of millions of dollars of AIC promissory notes and stock through misleading and false representations and disclosures that

masked the underlying financial hardship of AIC and its inability to pay promised returns without using new investor money.

2. From at least January 2006 through November 2009 (the "relevant period"), AIC and Skaltsounis, directly and through registered representatives, including Defendant John B. Guyette ("Guyette") and Defendant John R. Graves ("Graves"), offered and sold more than $7.7 million in AIC common stock, preferred stock, and promissory notes (collectively, the "AIC Investments") to at least 74 investors in at least 14 states, including the State of Tennessee. Guyette and Graves were associated with Defendant Community Bankers Securities, LLC ("CB Securities"), one of the AIC-owned broker-dealers.

3. AIC promised to pay interest and dividends ranging from 9 to 12.5 percent on the promissory notes and preferred stock, knowing that it did not have the ability to pay those returns. Indeed, during the relevant period, AIC and its subsidiaries were never profitable. AIC earned de minimus revenue, and its subsidiaries did not earn sufficient revenue to meet expenses. AIC's debt grew each year as a result of the money owed to investors, and the only significant source of money available to pay investor principal, interest, and dividends was money raised from the sale of new AIC Investments.

4. Defendants never disclosed to investors the true nature of AIC's financial condition or provided adequate disclosure documentation with its offerings. In those instances in which written materials were provided (including a set of "Executive Summaries" created by Skaltsounis and AIC), the materials contained a myriad of material misrepresentations about AIC and its subsidiaries and their financial condition and otherwise omitted material information regarding these subjects.

5. In offering and selling these investments, Skaltsounis, Guyette, Graves, and at least one other individual (a now deceased CB Securities registered representative who will be referred to as "Broker A") misrepresented and omitted material information relating to, inter alia, the safety or risk associated with the investments, the rates of return on the investments, and how AIC would use the proceeds of the investments. Throughout this Complaint, Guyette, Graves, and Broker A are referred to as the "CBS Brokers."

6. In early December 2009, Defendants' scheme collapsed when they could no longer solicit investments or recruit new investors to pay back existing investors. As a result, the vast majority of AIC investors—many of who were elderly and unsophisticated investors who put their trust in Skaltsounis, Guyette, Graves, and Broker A—did not receive their promised returns and, in fact, lost their entire principal investments.

7. As a result of the conduct described in this Complaint, Defendants Skaltsounis, Guyette, Graves, AIC, and CB Securities violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. In addition, Defendants AIC and CB Securities are liable as controlling persons under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)]. Defendant Graves also violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]. Defendant Skaltsounis is also liable, under Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], for aiding and abetting the violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by AIC, CB Securities, Guyette, Graves, and Broker A.

8. As a result of the conduct described in this Complaint, Relief Defendants Allied Beacon Partners, Inc. (referred to herein as "Allied Beacon Partners" or "Waterford," the latter being short for Waterford Investor Services, Inc., the name by which Allied Beacon Partners, Inc., was formerly known), Advent Securities, Inc. ("Advent"), and Allied Beacon Wealth Management, LLC ("ABWM" or "CBS Advisors," the latter being short for CBS Advisors, LLC, the name by which Allied Beacon Wealth Management, LLC, was formerly known), each of which is or was a subsidiary of AIC, received ill-gotten gains to which they have no legitimate claim.

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-9(e)] to enjoin such acts, transactions, practices, and courses of business, to obtain disgorgement and civil penalties, and for other appropriate relief.

10. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Sections 209(d), 209(e), and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), and 80b-14].

11. Venue lies in this judicial district 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 of the Advisers Act [15 U.S.C. § 80b-14]. Transactions constituting the violations of the federal securities laws charged herein occurred within this judicial district. Among other things, a significant number of AIC investors are and were residents of this judicial district, Defendant Skaltsounis and Broker A met with investors and prospective investors in this judicial district, fraudulent written materials

relating to the AIC Investments were sent to investors in this judicial district, oral misrepresentations were directed to investors in this judicial district, Defendant CB Securities had an office in this judicial district (in Maryville, Tennessee) from which AIC Investments were fraudulently offered and sold, and Relief Defendants Advent and Allied Beacon Partners also had an office in this judicial district (in Maryville, Tennessee).

12. In connection with the conduct alleged in this Complaint, the Defendants, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in, or instrumentalities of, interstate commerce, or the mails, or the facilities of a national securities exchange.

DEFENDANTS

13. **AIC, Inc.**, is a Virginia corporation headquartered in Richmond, Virginia. During the relevant period, AIC was a holding company for three registered broker-dealers (Defendant CB Securities and Relief Defendants Allied Beacon Partners and Advent) and a state-registered investment adviser (Relief Defendant ABWM), which entities are discussed in more detail in paragraphs 14 and 18–20, below. Skaltsounis established AIC in 2000 and owns approximately thirty percent of AIC's common stock.

14. **Community Bankers Securities, LLC**, is a limited liability company organized in the State of Colorado and headquartered in Richmond, Virginia. CB Securities was registered as a broker-dealer with the Commission from 1997 until December 23, 2009, when it filed a Broker-Dealer Withdrawal Form ("Form BDW") with the Financial Industry Regulatory Authority ("FINRA"). CB Securities primarily employed independent brokers who had office locations across the country, including in this judicial district. CB Securities supervised and employed the CBS Brokers. AIC owns approximately an eighty-eight percent interest in CB Securities. Before

withdrawing its broker-dealer registration, CB Securities had approximately 7,000 customer accounts. In addition to providing broker-dealer services, CB Securities was approved by the Small Business Administration (the "SBA") as a pooler of SBA loans and other guaranteed loans.

15. **Nicholas D. Skaltsounis**, age 68, resides in Richmond, Virginia. During the relevant period, he was the President and Chief Executive Officer of AIC and three of its subsidiaries, CB Securities, Advent, and CBS Advisors. He was also a member of the board of directors of AIC and Chairman of the board of directors of Waterford Investor Services, Inc. (now known as Allied Beacon Partners, Inc.), a registered broker-dealer and AIC subsidiary. Skaltsounis holds Series 4, 5, 7, 12, 24, 27, and 63 securities licenses. Skaltsounis has been in the securities industry since 1976.

16. **John B. Guyette**, age 72, resides in Greeley, Colorado. During the relevant period, he was employed as a registered representative with CB Securities in its Greeley, Colorado, office. He holds Series 3, 7, 24, 27, and 63 securities licenses. Guyette has been in the securities industry since 1987. Before his association with CB Securities, Guyette was the founder and Chief Executive Officer of Elite Investments, LLC, a registered broker-dealer that was purchased by AIC in 2003 and renamed Community Bankers Securities, LLC.

17. **John R. Graves**, age 53, resides in Pensacola, Florida. From about August 2009 to December 2009, Graves was employed by AIC as the Vice President of Business Development and by CB Securities as a registered representative. He holds Series 4, 6, 7, 24, 26, 53, and 65 securities licenses. Also, from about January 2009 to about April 2010, Graves was the President of Compass Financial Advisors, LLC ("Compass"), an investment adviser registered with the Commission. In addition, Graves is a certified financial planner and the founder and President of Brooke Point

Management, Inc. ("Brooke Point Management"), a private company that provides fixed insurance products, estate planning, and tax preparation services.

RELIEF DEFENDANTS

18. **Allied Beacon Wealth Management, LLC**, is a limited liability company organized in the Commonwealth of Virginia, with its headquarters in Virginia. Previously, ABWM operated under the name CBS Advisors, LLC, or "CBS Advisors." During the relevant period, it was an investment adviser registered with ten different States, including Tennessee. As of May 2010, CBS Advisors reported having approximately $14 million in assets under management. In 2005, AIC acquired a ninety percent ownership interest in CBS Advisors.

19. **Allied Beacon Partners, Inc.**, is a Florida corporation headquartered in Clearwater, Florida. At all relevant times, Allied Beacon Partners operated under the name Waterford Investor Services, Inc., or "Waterford." On or around February 7, 2011, Waterford was renamed Allied Beacon Partners, Inc. Waterford (and then Allied Beacon Partners) has been registered as a broker-dealer with the Commission since 1999, and registered with the State of Tennessee to sell securities since 2006. It is also an investment adviser registered with the State of Florida. In 2005, AIC acquired a ninety percent ownership interest in Waterford.

20. **Advent Securities, Inc.**, is a Texas corporation headquartered in Richmond, Virginia. Advent was registered as a broker-dealer with the Commission from 2004 until approximately January 2011 when it filed a Form BDW withdrawing its registration as a broker-dealer. In 2006, AIC acquired a ninety percent interest in Advent. In 2006, Advent applied with the State of Tennessee for a registration to sell securities.

OTHER RELEVANT INDIVIDUAL

21. **Broker A** was, during the relevant period, a member of AIC's board of directors, a registered representative at CB Securities, and an investment adviser associated with CBS Advisors. She held Series 6, 7, 24, 63, and 65 securities licenses. Broker A is deceased.

FACTS

I. AIC's Constant Need for Capital and the Defendants' Fraudulent Means of Raising That Capital from Investors

22. At all relevant times, AIC and its subsidiaries (CB Securities, CBS Advisors, Advent, and Waterford) acted by and through Skaltsounis and AIC's board of directors and AIC's and the subsidiaries' employees. CB Securities acted by and through Skaltsounis as well as its registered representatives. Defendants Skaltsounis, Guyette, and Graves and Broker A were employees of AIC and/or CB Securities and were acting in the course and scope of their respective employment when they committed the violations set forth in this Complaint.

23. AIC has never been profitable since it was formed in 2000. During the relevant period, AIC had almost no revenue from business operations, generating nominal revenue from the sale of insurance policies and through interest income. AIC's subsidiaries were also never profitable and did not earn sufficient revenue to meet expenses.

24. As a result, AIC and its subsidiaries were in constant need of capital to fund their operations.

25. AIC's need to raise capital was discussed at AIC board meetings that Skaltsounis and Broker A attended.

26. In order to raise capital, AIC and Skaltsounis issued and offered promissory notes and common and preferred stock to investors. As expenses continued to mount and obligations grew—including the obligation to pay interest and dividends and to return principal to investors—

AIC and Skaltsounis met those obligations by seeking new investors and by selling (and offering to sell) more and more of the AIC Investments.

27. Skaltsounis directly sold—and used a select group of brokers from CB Securities, including the CBS Brokers, to sell—the AIC Investments. Skaltsounis, through AIC and CB Securities, paid the CBS Brokers commissions in the form of cash and AIC common stock.

28. As described in more detail below, in offering and selling these investments, the Defendants made false and misleading disclosures and omitted material facts relating to the risks of investing in AIC, AIC's financial performance (including the financial performance of its subsidiaries), and how AIC would use the investment proceeds.

29. AIC raised approximately $7,744,351 from at least 74 investors in at least 14 states, including Tennessee. At least thirty of these investors were retail brokerage customers of CB Securities. Many of the investors were unsophisticated and elderly.

30. The Defendants sold and offered to sell the AIC Investments even though they were unregistered securities, in violation of the registration requirements of the Securities Act. The Defendants' sales and offers to sell the AIC Investments were also in violation of the antifraud provisions of the federal securities laws. Among other things, Defendants AIC and Skaltsounis created and distributed to investors or prospective investors investment materials that contained numerous material misrepresentations regarding the financial condition of AIC and its subsidiaries, their past financial performance, and AIC's ability to repay investors. The Defendants also omitted material information relating to the AIC Investments in investment materials, while, at the same time, making oral misrepresentations to investors, including reassurances that their investments in AIC were "safe" and "secure." Defendants AIC, CB Securities, and Skaltsounis materially misrepresented the nature of CB Securities' SBA pooling business, leading investors to believe that

it was a significant part of CB Securities' business from which it derived substantial revenues, when, in fact, CB Securities only derived nominal revenue from a single SBA pooling transaction.

31. At the times these misrepresentations and omissions were made, the Defendants knew that they were false and fraudulent, or were reckless in not knowing. The Defendants targeted elderly and unsophisticated investors, and, as a result of the Defendants' activities, dozens of investors have lost significant portions of their hard-earned savings, including retirement funds on which they were depending for their future financial security.

32. Defendants' fraud operated in the nature of a Ponzi scheme whereby new investor money was used to pay back existing investors' principal, interest, and dividends. Specifically, during the relevant period, approximately $2,532,434 of new investor money was distributed back to investors. Skaltsounis also used investor money to pay himself $952,258 in salary, advances, loans, interest, and dividends during the relevant period. Approximately $3,629,282 was used, during the relevant period, to keep the subsidiary broker-dealers solvent and to allow them to meet "net capital" requirements.[1] During the relevant period, Skaltsounis directed AIC to make payments of $2,568,445 to CB Securities, $516,150 to Advent, $486,000 to Waterford, and $58,687 to CBS Advisors. These payments to Skaltsounis and the subsidiaries were made from the account holding investor money from the sales of AIC Investments secured by Defendants' fraud.

II. The AIC Investment Offerings

A. Promissory Notes

33. From at least January 2006 through November 2009, AIC raised approximately $5,438,100 through the sale of at least 47 promissory notes ("notes") to both accredited and

[1] Rule 15c3-1, issued pursuant to the Exchange Act, provides that broker-dealers are required to maintain sufficient "net capital" reserves in order to operate [17 C.F.R. § 240.15c3-1]. If a broker-dealer is not in net capital compliance, it can no longer accept and execute customer securities orders.

unaccredited investors. The notes set forth the investment amount and other terms, including, for instance, the interest rate and maturity date. The notes stated that the proceeds would be used for "business purposes only." The notes did not discuss any investment risks or the sources of payment of principal or interest. Nor did the notes disclose that the proceeds from the sale of the notes would be used to pay off prior AIC investors. Also, no financial reports or other similar written financial information was provided in connection with the sale of the notes.

34. The notes had interest rates ranging from 9% to 12.5% annually, and the maturity of the notes ranged from one month to three years. Some of the notes offered convertible features whereby the noteholder could convert the note into AIC common stock.

35. Given that AIC only earned nominal business income during its nearly decade-long existence and given that AIC's subsidiaries were never profitable and never distributed funds back to their parent (AIC) for the purpose of repaying investors, the only way AIC could repay the notes (including accumulated interest) was through the recruitment of new investors and the sale of AIC Investments to them. Despite this knowledge of AIC's precarious financial straits—and its, at a minimum, Ponzi-like characteristics—AIC never distributed materials reflecting AIC's financial condition to noteholders or prospective noteholders, nor informed them that their investments (or, at least, a substantial part of their investments) would be used to pay obligations to other investors.

36. AIC, CB Securities, Skaltsounis, Broker A, and Guyette also used another means to prop up AIC, so that it could continue its fraud without collapsing. AIC, through Skaltsounis, Broker A, and Guyette, convinced investors to extend the terms of—or "rollover," "renew," or "reinvest"—at least eighteen AIC notes. AIC and Skaltsounis sent noteholders letters presenting them with three choices: (a) reinvest the principal and interest at the prevailing rate; (b) receive

interest earned and reinvest principal only; or (c) liquidate the note. AIC and Skaltsounis further represented in the letters that the proceeds and/or new note would be issued within ten days.

37. The only written documentation that AIC provided in connection with this rollover decision was the one-page rollover letter itself. There were no financial reports provided, nor was there any other written information provided regarding AIC's worsening financial condition, AIC's inability to repay the interest or principal without new investments, or the risks associated with renewing a note.

38. The only thing that AIC told noteholders in the rollover letters was that they could renew their notes (in whole or just with respect to principal), or they could liquidate their notes and receive their interest and principal in full. But AIC lacked the ability to repay the notes—even though investors were told that they could receive payment in full in ten days. This did not prove to be an immediate problem for AIC, because the majority of the noteholders renewed their notes. To induce a high rate of rollovers, Broker A and Guyette contacted noteholders and verbally assured them of the safety and security of their investments in AIC. This allowed AIC to continue the fraud without immediately collapsing.

39. Thus, the aforementioned actions relating to the rollovers represent both written and oral misrepresentations to investors: noteholders were told that they could receive payment within ten days (even though AIC lacked sufficient cash to make good on that offer), and investors were further lulled through these reassurances.

40. Each of the rollover letters was signed by Defendant Skaltsounis.

41. By November 2009, AIC had approximately $4 million in note obligations on its books as a result of issuing new notes and rolling over old notes.

B. Preferred and Common Stock

42. From at least January 2006 through November 2009, AIC also raised $430,000 through the sale of Series A preferred stock, $820,000 through the sale of Series B preferred stock, and approximately $1,056,251 through the sale of common stock.

43. The preferred stock purported to pay annual dividends ranging from 10% to 12.5% and was convertible into common stock. The common stock did not pay a dividend.

44. The preferred stock was sold pursuant to subscription agreements. In addition, the preferred shareholders were required to complete a questionnaire attesting to their financial net worth.

45. The subscription agreements for the Series A and Series B preferred stock identified the terms of the purchase, purported to identify "risk factors," and contained an acknowledgement of receipt of company materials, including information purportedly contained on AIC's website. However, the risk factors set forth in the subscription agreements were general in nature, and none of the risk factors stated that the company earned only nominal revenue, that it had no ability to pay investors without new investor funds coming in, or that new investments would be used to pay other investors' interest, dividends, and principal. Also, the acknowledgement of receipt of materials was meaningless. Other than the subscription agreement itself, no AIC materials, including financial statements, were provided to preferred stockholders or prospective preferred stockholders.

46. Generally, there was no securities purchase agreement or other kind of agreement evidencing the purchase or sale of AIC common stock. Nor generally were there any other disclosure materials provided in connection with the purchase or sale of AIC common stock.

III. The AIC Investments Are Securities

47. The AIC Investments sold to investors by the Defendants are securities within the meaning 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)], and the fraud and other misconduct described herein was in the offer of, and/or in connection with the purchase or sale of securities.

IV. The Sales and Offers to Sell the AIC Investments Were in Violation of the Registration Requirements of the Securities Act

48. The Defendants sold or offered the AIC Investments, even though no registration statement was in effect as to AIC Investments and the AIC Investments were not exempt from the registration requirements of the Securities Act. In connection with these sales or offers to sell, the Defendants made use of means or instruments of interstate transportation, or communication, or of the mails.

49. Although AIC purported to have offered AIC Investments pursuant to Rule 506 of Regulation D under the Securities Act [17 C.F.R. § 230.506], these offerings are subject to integration under Rule 502(a) [17 C.F.R. § 230.502(a)]. During the relevant period, there was no period of six months or more in which there was no offer or sale of securities by AIC.

V. Skaltsounis and AIC Created and Distributed to Investors or Prospective Investors "Executive Summaries" That Contained Numerous Material Misrepresentations Relating to AIC and Its Subsidiaries

50. Skaltsounis, Graves, and others solicited investments in AIC through the use of a March 2009 Executive Summary and/or a June 2009 Executive Summary (collectively, the "Executive Summaries"). The Executive Summaries contained material misrepresentations and omissions concerning, inter alia, AIC's business operations and its financial condition. For instance, the Executive Summaries depicted AIC and its subsidiaries as being on the verge of financial profitability and success, with the ability to capitalize on the economic downturn by

acquiring distressed broker-dealers at all time lows. In reality, AIC's subsidiaries were themselves distressed broker-dealers that struggled to maintain net capital requirements each month. AIC omitted from the Executive Summaries that it had accumulated nearly $4 million in debt and that its expenses exceeded revenue each year. Defendant Skaltsounis actively participated in the creation of the Executive Summaries (including the drafting of the Executive Summaries and the provision of substantive information for inclusion in the Executive Summaries) and the distribution of the Executive Summaries.

51. Further, there are several false statements in the Executive Summaries concerning the subsidiaries' ability to increase margins. AIC claimed that its subsidiaries increased margins in three ways: (1) through its SBA pooling business; (2) through its ability to generate investment banking fees; and (3) through its origination and offering of proprietary private placements. Each of these statements is false. As discussed above, the SBA pooling business was unsuccessful. AIC and its subsidiaries generated less than $39,000 in investment banking fees, and they never offered or sold any proprietary products. Skaltsounis knew that each of these statements was false.

52. In addition, the Executive Summaries contained several other false and misleading statements, including that: (a) AIC had proven its ability to increase bottom line profits in companies it acquires; (b) AIC was able to partly offset the cost of acquisitions and quickly reach a break-even cash flow, often within six months of acquiring a broker-dealer; (c) AIC offered institutional investors a significant discount to prevailing prices for SBA pooled products in exchange for additional institutional business from banks; and (d) AIC had over $300 million in private proprietary placements to offer to investors. Skaltsounis knew that each of these statements was false and misleading.

VI. The Failure to Provide Adequate Offering Materials in Connection with the Offer or Sale of the AIC Investments

53. Skaltsounis and the CBS Brokers orally solicited their customers and other investors through telephone calls or in person. They falsely misrepresented the financial condition of AIC and its subsidiaries and the safety and security of an investment in AIC. These oral misrepresentations were often made where inadequate disclosure materials (or no disclosure materials) were provided to investors or prospective investors.

54. Skaltsounis and the CBS Brokers did not provide prospective investors with appropriate materials describing AIC or its offerings or other material information about the risks associated with the investments and how the proceeds would be used. The only documentation provided were the notes themselves, an inadequate subscription agreement for the preferred stockholders, and the stock certificates themselves for the preferred and common stockholders.

55. Investors were not provided financial statements or offered access to financial information concerning AIC or its subsidiaries.

VII. The Defendants' Material Misrepresentations and Omissions

56. As noted above, each of the Defendants made material misrepresentations and omitted material information in offering and selling the AIC Investments. Each knew, or was reckless in not knowing, about the lack of capital at AIC and its inability to meet its obligations to current investors while soliciting new investors with promises of high rates of return and safety of principal.

57. The Defendants' misrepresentations and omissions alleged herein, individually and in the aggregate, are material. A reasonable investor would consider the misrepresented facts and the omitted information important, or disclosure of the omitted facts or accurate information would have altered the "total mix" of information made available to investors. In particular, the

Defendants made misrepresentations and omissions concerning, inter alia, the financial health of AIC and its ability to meet its expenses and pay its obligations. These issues are material.

58. In connection with the conduct described below, the Defendants acted knowingly or recklessly. Among other things, the Defendants knew or were reckless in not knowing that they were making material misrepresentations and omitting material information when they offered, sold, and/or solicited the purchase of AIC Investments. Indeed, as members of AIC's board of directors, Skaltsounis and Broker A were aware of the precarious financial situation of AIC and its use of new investors' funds to pay existing investors. The other CBS Brokers were, at a minimum, reckless in failing to undertake the actions necessary to allow them to inform investors about the risks associated with the AIC Investments and to determine whether AIC was an appropriate investment. Despite this lack of knowledge, Guyette and Graves made statements to investors regarding AIC's then current financial health, its prospects, and its suitability as a safe investment. The particular conduct of each pertinent individual is described below.

A. Defendant Nicholas D. Skaltsounis

59. Defendant Skaltsounis directed and controlled AIC and its subsidiaries, and he had significant influence over the actions of AIC's board of directors. Among other things, he often conducted and presided over meetings of AIC's board (after a short introduction by AIC's actual board Chairman), and his decisions regarding company business and how the AIC Investments would be marketed and sold (and the terms of those investments) were oftentimes simply ratified after-the-fact by AIC's board. Skaltsounis also provided false information to AIC's board of directors (of which Broker A was a member), Guyette, and Graves. This information at times formed the basis of AIC's, CB Securities', Broker A's, Guyette's, and Graves' misstatements and omissions to investors.

60. Skaltsounis was involved with every aspect of the offerings of the AIC Investments, including establishing the nature and terms of the investments and signing investor checks, subscription agreements for the preferred stock, and promissory notes.

61. Skaltsounis directly solicited and made representations to investors through telephone calls, investor meetings in this judicial district and elsewhere, and annual shareholder meetings, as well as indirectly, by causing certain registered representatives at CB Securities (including the CBS Brokers) to sell AIC Investments and through written misrepresentations.

62. Skaltsounis knew the precarious financial condition of AIC and its subsidiaries, particularly AIC's need to raise capital for the purpose of paying back existing investors and to keep its subsidiaries solvent. Skaltsounis knew that AIC did not have the ability to pay the principal and the promised returns on the notes. Despite this knowledge, Skaltsounis omitted this and other material information from communications with investors and made affirmative misstatements to convince investors to purchase AIC Investments or to rollover their investments to delay payment of those obligations and to otherwise conceal the scheme from the investors.

63. In oral and written communications with investors and prospective investors, Skaltsounis misrepresented the financial stability and sustainability of the company—even though he knew throughout the relevant period that AIC was on the verge of financial collapse. Skaltsounis created the impression of financial stability by misrepresenting AIC's past and current financial performance and by depicting an extremely optimistic picture of AIC's future financial prospects that was unreasonable when made. Moreover, Skaltsounis never disclosed that AIC had accumulated millions of dollars in debt as a result of the various securities offerings, had never been profitable, and that its subsidiaries were never profitable and even struggled to meet net capital

requirements. Moreover, he never disclosed that he was using new investor money to pay back principal and returns to existing investors—and to pay himself.

64. In addition, AIC, through Skaltsounis, issued false and misleading rollover or reinvestment letters to investors. These letters created the misleading impression that AIC had the ability to pay the principal and interest on the notes upon maturity and had the ability to pay the promised future returns.

65. For example, on April 29, 2009, three investors who invested a total of $91,000 were issued letters providing them with the opportunity to (a) rollover their original notes; (b) receive their accrued interest but otherwise rollover the notes; or (c) liquidate the notes. But these "options" were false promises. AIC had no ability to pay even the accrued interest and certainly had no cash available to liquidate the notes and to pay the investors their principal and interest. At the time AIC and Skaltsounis made these representations, AIC only had approximately $18,000 in its bank account and it owed approximately $3.5 million in note obligations. Through these rollover letters Skaltsounis falsely lulled investors into believing that their investments were safe, that AIC could pay back investors within the ten-day period set forth in the rollover letters, and that AIC could otherwise meet its obligations under the notes.

66. In or around March 2009, when several AIC notes were scheduled to mature, Skaltsounis persuaded a broker at CB Securities to renew her own AIC notes and to reach out to her retail brokerage customers to see if they would renew their notes. During that conversation, Skaltsounis falsely stated to the broker that AIC's revenues had grown by twelve percent in 2008 and told the broker that AIC would be sold in three years, which purportedly would enable noteholders to be paid off in full and which would otherwise be a benefit to AIC investors. As a

result of that conversation, the broker renewed her own notes, and she communicated that same information to her customers, all of whom renewed their notes.

67. Skaltsounis also led investors to believe that CB Securities' status as an SBA pooler generated significant revenue for the firm. This was false. In reality, since January 2006, CB Securities sold only one SBA pooled loan which generated $11,797 in revenue for CB Securities. But Skaltsounis nontheless told investors that, based on the company's performance, its future plans, and its status as an SBA pooler, AIC was financially secure and their investments were safe. Guyette and Graves, both of whom offered and sold AIC securities, relied on Skaltsounis' representations, which they then repeated to investors without reviewing any financial records or other documents to substantiate their employer's claims.

68. AIC, through Skaltsounis, also misrepresented the rate of return on the notes and the preferred stock that the investors could expect to receive. AIC promised to pay 9% to 12.5% returns when the company had little or no ability to pay such returns. The promise of payment of those returns led investors to believe that the company had the ability to pay those returns and that those returns were being generated from the legitimate business activities of the company. Skaltsounis was responsible for establishing the rates of returns on the investments, and he intentionally offered those rates to attract investors.

69. Skaltsounis, directly and through AIC and the CBS Brokers, misrepresented how AIC used the proceeds of its investments. For example, he told investors and the CBS Brokers who were soliciting the AIC Investments that the proceeds would be used to grow and expand AIC's business. However, from at least January 2006 on, AIC never expanded its business in any meaningful way.

70. By way of further illustration, in or around August 2009, Skaltsounis told Graves, who at the time was a newly hired CB Securities broker, that any proceeds Graves raised from investors from the sale of AIC Investments would be used to purchase another broker-dealer. Graves told investors this when he sold them AIC preferred stock and promissory notes. However, AIC never used the money raised by Graves to purchase a broker-dealer.

71. Skaltsounis also signed the promissory notes issued to investors that falsely stated that proceeds from the notes would be used for "business purposes only." In reality, AIC used large portions of the proceeds of the sales of AIC Investments to pay back principal and returns to existing investors and to provide Skaltsounis with personal loans and advances, none of which was disclosed to investors.

B. Broker A

72. During the relevant period, Broker A, like Skaltsounis, was a member of AIC's board of directors. She was also a registered representative at CB Securities and an investment adviser associated with CBS Advisors. She held Series 6, 7, 24, 63, and 65 securities licenses. Broker A is now deceased. Broker A's office, which was an office of CB Securities, was located in or around Maryville, Tennessee.

73. As a member of the AIC board, Broker A knew or was reckless in not knowing that AIC was in poor financial condition and in constant need of cash not only to meet the expenses of its subsidiaries but also to pay existing investors.

74. However, despite this knowledge, Broker A sold approximately $2.8 million in AIC promissory notes to her brokerage customers, almost all of whom were elderly and unsophisticated, and at least two of whom were unaccredited. The fact that investments were sold to unaccredited investors is significant because, even if AIC were offering investments pursuant to a valid exception

to the Securities Act's registration requirements (which it was not), such sales could only be made to "accredited" investors, meaning, inter alia, investors with a certain level of net worth or annual income.

75. Broker A earned a ten percent commission for the sale of the notes, which was paid in the form of AIC common stock.

76. In selling the AIC Investments, Broker A knowingly misrepresented the safety of the investment and the financial condition of the company and failed to disclose to investors the material risks associated with the investments. Broker A told investors that their investments were safe and secure and that AIC was a profitable business. Broker A told investors that the AIC notes were similar to certificates of deposit ("CDs"), representing that the notes were safe like a CD but paid a higher rate of interest. These statements were false. Broker A also falsely led investors to believe that the notes would provide a steady stream of income for them in retirement.

C. Defendant John B. Guyette

77. Guyette was a registered representative in CB Securities' Greeley, Colorado, office, which operates under the trade name Elite Investments.

78. From May 2006 to July 2006, Guyette offered, sold, and solicited the purchase of $207,000 in AIC Series A preferred stock and $100,000 in AIC notes. He solicited these investments from six investors, five of whom were his retail brokerage customers. In or around March 2009, he also convinced at least one investor to rollover or reinvest a $25,000 AIC note. He solicited these investments by telephone, in person, and in writing.

79. Guyette was paid $21,490 in commissions by AIC, or 7% of the total investment amount, for his offer and sale of these AIC Investments.

80. Guyette made material misrepresentations and omissions to investors concerning the safety of the investments, the financial condition of AIC, and the company's reasonable financial prospects when he offered, sold, and solicited these investments.

81. Guyette also failed to disclose to investors the material risks associated with their AIC Investments. He never discussed the speculative nature of the investments or the likelihood of loss on the investments. Instead, Guyette misled investors by telling them that AIC Investments were safe and that AIC was well-financed and financially secure—all without any reasonable basis. Guyette also told investors that the interest and dividend rates on the notes and stock were achievable because they were only slightly higher than what banks were paying on CDs. This, too, was false.

82. For example, in June 2006, Guyette wrote a false and misleading letter to a potential investor, a charitable foundation that was a brokerage customer of his, soliciting the purchase of AIC preferred stock. This letter contained numerous misstatements suggesting the safety of the investment and incorrectly guaranteeing future events about which Guyette had no firsthand knowledge. Shortly after Guyette sent this letter to the charitable foundation, it purchased $100,000 worth of AIC Series A preferred stock.

83. Guyette knew that these representations were false or was reckless in making these oral and written misrepresentations and omissions, because he had no reasonable basis to make such statements or to solicit or recommend such investments. Despite his duties as the customers' broker, Guyette did not conduct a reasonable investigation of the AIC Investments or reasonable due diligence prior to offering, selling, or recommending the AIC Investments. He never knew AIC's financial condition, the purpose of its business operations, or how the proceeds from the sale of AIC Investments would be used.

84. Guyette also made unsuitable investment recommendations when he offered and sold AIC preferred stock and promissory notes to his brokerage customers. The AIC Investments were risky and illiquid. He sold these investments to his retail brokerage customers with average to conservative risk tolerance and short-term investment objectives.

85. For example, Guyette made an unsuitable recommendation to a charitable foundation (referenced in paragraph 82, above) that purchased $100,000 in AIC Series A preferred stock. Guyette knew or was reckless in not knowing that this investment was unsuitable given the charitable foundation's stated investment objectives and risk tolerance. The charitable foundation had indicated that it had a low risk tolerance and told Guyette that it wanted safe, conservative investments.

D. Defendant John R. Graves

86. In or around August 2009, Graves was hired by CB Securities as a registered representative and by AIC as Vice President of Business Development. At the time of his employment with CB Securities and AIC, he was also the President of Compass, an investment adviser registered with the Commission, through which he provided investment advice in exchange for management fees.

87. During the relevant period, Graves had a fifty to seventy-five percent indirect ownership interest in Compass through his ownership of Financial Action Holding Group LLC ("FAHG"), the holding company of Compass. Graves acquired his ownership interest in FAHG by raising money through sales of common stock in his other business, Brooke Point Management.

88. Graves first met Skaltsounis in or around June 2009. Graves was trying to sell Compass (along with another broker-dealer in which Graves had invested approximately $100,000)

to AIC. Graves reached a verbal agreement with Skaltsounis that AIC would purchase Compass and the other broker-dealer if Graves could raise the money to fund the purchase.

89. Skaltsounis promised that AIC would pay Graves a seven percent commission on the sale of any AIC securities. Skaltsounis also promised to pay Graves a salary of $85,000 per year.

90. From about September 2009 to about October 2009, Graves offered, sold, and/or solicited the purchase of $715,000 in AIC Series B preferred stock and $110,000 in AIC notes. He solicited these investments from eight investors, five of whom were his retail brokerage customers, the other three being investment advisory clients of his at Compass. At least three of the eight investors were unaccredited. Graves solicited these investments in person, over the telephone, and by e-mail and through the use of the Executive Summaries. Graves approached some of his investors by either visiting them at their homes or taking them to lunch.

91. In recommending and soliciting investments in AIC, Graves made material misrepresentations and omissions concerning the safety of the investments and the financial condition of the company. For example, Graves told investors that AIC was a safe investment that could provide a steady stream of supplemental income. He also reassured investors that AIC had the ability to pay the promised returns because it was a reliable company.

92. Graves failed to disclose to investors that AIC did not have sufficient capital to pay the promised returns on the preferred stock and the notes. He also failed to disclose the investment risks associated with purchasing the AIC preferred stock and notes.

93. Several of the investors did not understand the nature of the investment but trusted Graves' judgment to invest their money in safe and reliable companies. For example, one unaccredited investor, who at the time of the investment was unemployed and had very little

savings, invested $30,000 in AIC because Graves told her that her money would be safe and that she could get back more money at maturity than she invested. This investment represented a significant portion of the investor's savings, and she would not have invested the money had she known there was even a small risk of losing the investment.

94. Graves also failed to disclose to brokerage customers and investment advisory clients that he had a personal financial interest in AIC. Skaltsounis had represented that the investor funds he raised would be used by AIC to purchase a broker-dealer and investment adviser in which he had a personal and financial stake.

95. Graves knew or was reckless in not knowing that he made material misrepresentations and omissions when he offered, sold, recommended, and/or solicited the purchase of AIC Investments. Although Graves himself believed that there was significant risk involved with the investment and that AIC was a speculative investment, he did not disclose these facts to investors.

96. Despite his duties to investors, Graves also did not conduct any reasonable due diligence on the AIC Investments. He relied only upon conversations he had with Skaltsounis and his physical observation of AIC's office location. Prior to offering, selling, recommending, and/or soliciting the AIC Investments, Graves:

a. did not know the financial condition of AIC;

b. asked Skaltsounis for the financial statements for AIC and its subsidiaries, a request refused by Skaltsounis;

c. believed that the AIC investment was unusual because he had never sold any investments with the rates of return offered by AIC; and

d. never sold a private placement without an offering document such as a private placement memorandum.

FIRST CLAIM FOR RELIEF
Violations of Sections 5(a) and 5(c) of the Securities Act
(Against All Defendants)

97. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 96, above, as if the same were fully set forth herein.

98. As a result of the conduct alleged herein, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale.

99. No valid registration statement has been filed with the Commission or has been in effect with respect to any offering or sale alleged herein.

100. By engaging in the foregoing conduct, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves violated, and unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

SECOND CLAIM FOR RELIEF
Violations of Section 17(a) of the Securities Act
(Against All Defendants)

101. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 100, above, as if the same were fully set forth herein.

102. From at least 2006 through November 2009, as a result of the conduct alleged herein, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves knowingly or recklessly, in the offer or sale of securities, directly or indirectly, singly or in concert, by the use of the means

or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

a. employed devices, schemes or artifices to defraud;

b. obtained money or property by means of, or made, untrue statements of material fact, or 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; or

c. engaged in acts, transactions, practices, or courses of business that operated as a fraud or deceit upon offerees, purchasers, and prospective purchasers of securities.

103. By engaging in the foregoing conduct, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
(Against All Defendants)

104. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 103, above, as if the same were fully set forth herein.

105. From at least 2006 through November 2009, as a result of the conduct alleged herein, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use of the means or instrumentality of interstate commerce or of the mails, or a facility of a national securities exchange:

a. employed devices, schemes or artifices to defraud;

b. made untrue statements of material fact, or 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; or

c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

106. By engaging in the foregoing conduct, Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

FOURTH CLAIM FOR RELIEF
Violations of Sections 206(1) and 206(2) of the Advisers Act
(Against Defendant Graves)

107. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 106, above, as if the same were fully set forth herein.

108. As a result of the conduct alleged herein, Defendant Graves, directly or indirectly, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, while acting as an investment adviser:

a. with scienter, employed devices, schemes, or artifices to defraud advisory clients or prospective advisory clients; and

b. engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon clients or prospective clients.

109. By engaging in the foregoing conduct, Defendant Graves violated, and unless restrained and enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

FIFTH CLAIM FOR RELIEF
Controlling Person Liability Under Section 20(a) of the Exchange Act
(Against Defendants AIC and CB Securities)

110. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 109, above, as if the same were fully set forth herein.

111. In addition to their liability under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, AIC and CB Securities also are liable as controlling persons under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

112. Defendant AIC is, or was at the time acts and conduct set forth herein were committed, directly or indirectly, a person who controlled Skaltsounis, Broker A, Graves, and CB Securities. As detailed above, Skaltsounis, Broker A, Graves, and CB Securities sold AIC securities in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

113. Defendant CB Securities is, or was at the time acts and conduct set forth herein were committed, directly or indirectly, a person who controlled Skaltsounis and the CBS Brokers. As detailed above, Skaltsounis and the CBS Brokers sold AIC securities in violation of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

114. By reason of the foregoing conduct, AIC and CB Securities are joint and severally liable with, and to the same extent as, the persons they controlled for violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

SIXTH CLAIM FOR RELIEF
Aiding and Abetting Liability Under Section 20(e) of the Exchange Act
(Against Defendant Skaltsounis)

115. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 114, above, as if the same were fully set forth herein.

116. AIC, CB Securities, Guyette, Graves, and Broker A violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

117. Defendant Skaltsounis aided and abetted the violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by AIC, CB Securities, Guyette, Graves, and Broker A.

118. Defendant Skaltsounis was aware that his role was part of an overall activity that was improper.

119. Defendant Skaltsounis knowing and substantially assisted AIC, CB Securities, Guyette, Graves, and Broker A in their respective violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SEVENTH CLAIM FOR RELIEF
Claims with Respect to Relief Defendants
(Against Relief Defendants)

120. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 119, above, as if the same were fully set forth herein.

121. Relief Defendants Allied Beacon Partners, Advent, and ABWM each received proceeds of the fraud described herein, over which they each have no legitimate claim.

122. By reason of the foregoing conduct, Relief Defendants Allied Beacon Partners, Advent, and ABWM have been unjustly enriched and must be compelled to disgorge the amount of their unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining Defendants AIC, CB Securities, Skaltsounis, and Guyette from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

II.

Permanently restraining and enjoining Defendant Graves from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R.§ 240.10b-5], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

III.

Ordering Defendants AIC, CB Securities, Skaltsounis, and Guyette and Relief Defendants Allied Beacon Partners, Advent, and ABWM to disgorge any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this Complaint.

IV.

Ordering Defendants AIC, CB Securities, Skaltsounis, Guyette, and Graves to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

V.

Ordering Defendant Graves to pay civil penalties pursuant to Section 217 of the Advisers Act [15 U.S.C. § 80b-17];

VI.

Retaining jurisdiction of this action for purposes of enforcing any final judgments and orders; and

VII.

Granting such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

Dated: October 25, 2012.

s/ Michael J. Rinaldi

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Michael J. Rinaldi
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC. et al., Defendants, and ALLIED BEACON PARTNERS, INC. (f/k/a Waterford Investor Services, Inc.) et al., Relief Defendants.	:	No. 3:11-cv-176 (VARLAN/GUYTON)

AGREED PRETRIAL ORDER

This matter is scheduled for a pretrial conference on Friday, September 13, 2013, and pursuant to Federal Rule of Civil Procedure 16, and Michael J. Rinaldi, Esquire, and John V. Donnelly, Esquire, having appeared as counsel for the plaintiff and Steven S. Biss, Esquire, and Heather G. Anderson, Esquire, having appeared as counsel for defendants AIC, Inc. ("AIC"), Community Bankers Securities, LLC ("CB Securities"), and Nicholas D. Skaltsounis ("Skaltsounis") and relief defendants Allied Beacon Partners, Inc. (f/k/a Waterford Investor Services, Inc.) ("Allied Beacon Partners" or "Waterford"), Advent Securities, Inc. ("Advent"), and Allied Beacon Wealth Management, LLC (f/k/a CBS Advisors, LLC) ("ABWM," "CBS

Advisors"),[1] it appearing to the Court by the endorsement of counsel below that the parties hereby agree to the following action:

1. Jurisdiction. This is a civil enforcement action brought by Plaintiff Securities and Exchange Commission ("Plaintiff" or the "Commission") pursuant to the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act"), and the Investment Advisers Act of 1940 ("Advisers Act") to remedy alleged violations of the federal securities laws by the AIC Defendants and Defendants Guyette and Graves. The Commission seeks the entry of injunctive relief, disgorgement and prejudgment interest, and civil penalties against the AIC Defendants and Defendants Guyette and Graves and disgorgement and prejudgment interest against the Relief Defendants, as well as such other and further relief as the Court may deem just and appropriate. The AIC Defendants and the Relief Defendants deny that they violated any securities laws or that plaintiff is entitled to any relief at all. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa, and Sections 209(d), 209(e), and 214 of the Advisers Act, 15 U.S.C. §§ 80b-9(d), 80b-9(e), and 80b-14. Each of the AIC Defendants, Defendant Guyette, Defendant Graves, and each of the Relief Defendants is subject to the personal jurisdiction of this Court. The court has subject matter jurisdiction over this matter.

2. Pleadings. The pleadings are amended to conform to this Agreed Pretrial Order.

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[1] Defendants AIC, CB Securities, and Skaltsounis are collectively referred to as the "AIC Defendants." Relief defendants Waterford, Advent, and CBS Advisors are collectively referred to as the "Relief Defendants." Defendants John B. Guyette ("Guyette") and John R. Graves ("Graves") have signed consents to the entry of final judgments against them, respectively. (Docs. 132 & 133.) Relief defendant Allied Beacon Wealth Management, LLC (f/k/a CBS Advisors, LLC) changed its name to CL Wealth Management, LLC, in 2013.

3. Short summary of plaintiff's theory. This matter involves an offering fraud devised and orchestrated by defendant Skaltsounis, founder and President of defendant AIC, a privately-held holding company for three registered broker-dealers (defendant CB Securities and relief defendants Waterford and Advent) and a state-registered investment adviser (relief defendant CBS Advisors). The scheme operated through the sale of millions of dollars of AIC promissory notes and stock through misleading and false representations and disclosures that masked the underlying financial hardship of AIC and its inability to pay promised returns without using new investor money. From at least January 2006 through November 2009 (the "relevant period"), AIC and Skaltsounis, directly and through CB Securities registered representatives, including defendants Guyette and Graves, offered and sold millions of dollars of AIC common stock, preferred stock, and promissory notes to dozens of investors in multiple states, including the State of Tennessee.

AIC promised to pay interest and dividends generally ranging from 9 to 12½ percent on the promissory notes and preferred stock, knowing that it did not have the ability to pay those returns. Indeed, during the relevant period, AIC and its subsidiaries were never profitable. AIC earned de minimus revenue, and its subsidiaries did not earn sufficient revenue to meet expenses. AIC's debt grew each year as a result of the money owed to investors, and the only significant source of money available to pay investor principal, interest, and dividends was money raised from the sale of new AIC investments. The defendants never disclosed to investors the true nature of AIC's financial condition or provided adequate disclosure documentation with its offerings. In those instances in which written materials were provided (including a set of "Executive Summaries" created by Skaltsounis and AIC), the materials contained a myriad of

material misrepresentations about AIC and its subsidiaries and their financial condition and otherwise omitted material information regarding these subjects.

In offering and selling the AIC investments, the defendants misrepresented and omitted material information relating to, inter alia, the safety or risk associated with the investments, the rates of return on the investments, and how AIC would use the proceeds of the investments. In late 2009, the defendants' scheme collapsed when they could no longer solicit investments or recruit new investors to pay back existing investors. As a result, the vast majority of AIC investors—many of whom were elderly and unsophisticated investors—did not receive their promised returns and, in fact, lost their entire principal investments.

Defendants Skaltsounis, AIC, CB Securities, Guyette, and Graves violated Sections 5(a), 5(c), and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5. In addition, Defendants AIC and CB Securities are liable as controlling persons under Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a). Defendant Graves also violated Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2). Defendant Skaltsounis is also liable, under Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), for aiding and abetting the violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, by AIC, CB Securities, Guyette, Graves, and Carol LaRue ("LaRue"), a now-deceased former AIC board member and CB Securities registered representative.

Finally, the Commission asserts claims for disgorgement and prejudgment interest against the Relief Defendants. Before the scheme collapsed, defendant AIC made cash transfers of over $1 million to the Relief Defendants, and the Relief Defendants provided nothing of value in

exchange for these transfers. The Relief Defendants have no legitimate claim to these funds and were named in this action in aid of recovery of the proceeds of defendants' illegal conduct.

4. Short Summary of AIC Defendants and Relief Defendants' Theories. Defendants did not offer or sell any securities to any alleged "investor" in violation of either the Securities Act of 1933 or the Securities and Exchange Act of 1934. Rather, Defendants and Relief Defendants, and their hard-working officers, directors, employees and registered representatives, acted honestly and in good faith on advice of legal counsel in pursuit of a business model that worked for nine (9) years. Defendants had no motive to defraud anyone or to violate any securities laws. Defendant, Skaltsounis, had an untarnished reputation in the industry. AIC's Board of Directors included Lawyer, Thomas A. Grant, Esquire, Dr. Paula Collier, retired banker Douglas Mussler, and retired Air Force Colonel Thomas B. Miller. The AIC Board of Directors had no reason to jeopardize their professional and personal reputations or to defraud anyone. In fact, they invested millions upon millions of dollars of their own money in AIC, and recommended AIC to their family members because they honestly believed in AIC and its chances for success.

Further, AIC was represented both before and during the relevant period by the International Law Firm of Troutman Sanders and by the prestigious CPA accounting firm, Keiter Stephens, Hurst, Gary & Shreaves ("Keiter Stephens"). Defendants had no opportunity whatsoever to operate a "ponzi" scheme or to defraud anyone. Indeed, AIC's subsidiary broker-dealers were subject to many audits and examinations by the Commission and by the Financial Industry Regulatory Authority ("FINRA") over the years. Neither the Commission nor FINRA ever once suggested that AIC's capitalization of CBS, Waterford, Advent and CBS Advisors violated any securities laws. The Commission also approved Form D Notice of Sales of

Securities filed both before and during the relevant period by Troutman Sanders on behalf of AIC. The Commission never once questioned AIC's Board of Directors on any securities sales. In addition to legal advice from Troutman Sanders and Thomas A. Grant that AIC's securities offerings complied fully with federal securities laws, AIC and its Board relied upon the Commission/FINRA's express and/or tacit approval of the offerings.[2]

Consistent with its stated business model, AIC purchased distressed securities broker-dealers[3] and created an investment advisory firm and, thereafter, made capital contributions to its subsidiaries broker-dealers – the Relief Defendants. The capital contributions were fully disclosed to the Commission in audited financial statements and Focus Reports. The purpose of the capital contributions was to expand the legitimate businesses of the Relief Defendants, to grow revenues, and, when needed, to generally assist the Relief Defendants in the operation of their legitimate broker-dealer businesses, all consistent with AIC's stated business model. AIC's capital contributions allowed CBS and Waterford to substantially increase revenues between 2003 and 2009. In return for the capital contributions, CBS and Waterford – and the hundreds of employees and registered representatives who worked for these companies – provided services that created real value for AIC's investors.

AIC's stated intention of selling one or all of its broker-dealer subsidiaries for a profit was destroyed in the fall of 2009, when the Commission precipitously accused AIC of being a "ponzi" scheme.

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[2] It was not until 2009 – after it was revealed that Bernard Madoff had perpetrated the largest ponzi scheme in United States history – that the Commission questioned AIC about its offerings.

[3] CB Securities was owned by AIC and CBS Holdings, LLC. CBS Holdings was an independent consortium of state-chartered banks. CBS Holdings never advised anyone that AIC was a "ponzi" scheme.

AIC's Board of Directors acted at all times as a Board. AIC acted at all times upon the advice of its legal counsel, Troutman Sanders. AIC's subsidiaries were audited by Keiter Stephens and examined regularly by the Commission and FINRA. Defendants and Relief Defendants emphatically deny plaintiff's false charges.

5. Issues to be submitted to the trial judge or jury

Plaintiff's position. A jury trial has been demanded by the AIC Defendants and Relief Defendants. As a general matter, the jury will decide issues of liability and, if liability is found, the trial judge will decide the remedy and will issue any injunction and orders for disgorgement (and prejudgment interest) and civil penalties, and will set the amount of any disgorgement (and prejudgment interest) and civil penalties.

The Commission has asserted seven claims: Violations of Section 5(a) and (c) of the Securities Act (First Claim for Relief); Violations of Section 17(a) of the Securities Act (Second Claim for Relief); Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (Third Claim for Relief); Violations of Sections 206(1) and 206(2) of the Advisers Act (Fourth Claim for Relief); Controlling person liability under Section 20(a) of the Exchange Act (Fifth Claim for Relief); Aiding and abetting liability under Section 20(e) of the Exchange Act (Sixth Claim for Relief); and Claims with respect to Relief Defendants (Seventh Claim for Relief). In its proposed Special Jury Instructions (Doc. No. 125), the Commission set forth detailed proposed jury instructions, with citations of legal authority, explaining the questions that should be put to the jury concerning the claims. In the interest of efficiency, the Commission will not repeat each of those questions here. Importantly, the Commission does not agree with the recitation of the AIC Defendants and Relief Defendants as to the triable issues to be submitted to the jury submitted within this proposed order. Among other things, it is the Commission's view

that the AIC Defendants and Relief Defendants' questions are based on incorrect legal standards, contain incorrect factual assertions and assumptions, and suggest putting issues to the jury that are properly matters for the Court.

In addition, there are several matters which could affect the matters to be submitted to the jury. First, the Commission has filed a motion for partial summary judgment. If that motion is granted, the strict liability Section 5 claim (First Claim) and the claim against Relief Defendants (Seventh Claim) would be established, and numerous of the purported affirmative defenses would be found insufficient as a matter of law (including the claimed advice of counsel defense). Second, defendants Guyette and Graves have signed consents, which have been filed with the Court and by which they have settled to the Commission's claims. Among other things, defendant Guyette has consented to the entry of injunctive relief and orders of disgorgement (plus prejudgment interest) and civil penalties against him, and defendant Graves has consented to the entry of injunctive relief and an order for civil penalties against him. As to both defendant Guyette and defendant Graves, the injunctions and other relief would be based on all of the securities violations alleged against them, respectively.[4] Based on the resolution of these issues, the issues to be submitted to the jury may be reduced.

AIC Defendants' and Relief Defendants' Position. The AIC Defendants and Relief Defendants contend that the following triable issues should be submitted to the Jury.

a. ***Plaintiffs First Claim for Relief***

1. Whether Defendants sold any securities in violation of § 5 of the Securities Act of 1933 (the "33 Act")?

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[4] Because the Fourth Claim is only asserted against defendant Graves, to the extent that his settlement is accepted by the Court, the Fourth Claim would be fully resolved.

2. Whether one or more classes of securities offered by AIC are exempted securities within the meaning of the 33 Act?

3. Whether the AIC Investments are exempt from registration pursuant to § 4 of the 33 Act?

4. Whether Defendants relied upon advice of counsel – Troutman Sanders LLP and Thomas A. Grant – in the offer and sale of the AIC Investments?

5. Whether all or part of plaintiff's claims are barred by the applicable statute of limitations?

b. ***Plaintiff's Second Claim for Relief***

1. Whether any Defendant violated § 17(a) of the 33 Act?

2. Whether any Defendant acted with the requisite scienter?

3. Whether Skaltsounis and CBS are "makers" of any untrue statements?

4. Whether CBS and Skaltsounis obtained money or property by means of any untrue statement of a material fact or any omission to state a material fact securities in violation of § 17(a)(2) of the Securities Act?

5. Whether Plaintiff's second claim for relief is barred by the doctrines of unclean hands, waiver and estoppel?

6. Whether Defendants relied upon advice of counsel – Troutman Sanders LLP and Thomas A. Grant – in the offer and sale of the AIC Investments?

7. Whether all or part of plaintiff's claims are barred by the applicable statute of limitations?

c. ***Plaintiff's Third Claim for Relief***

1. Whether any Defendant violated § 10(b) of the Securities and Exchange Act of 1934 (the "34 Act") or Rule 10b-5 promulgated by the SEC thereunder?

2. Whether any Defendant acted with the requisite scienter?

3. Whether Skaltsounis and CBS are "makers" of any untrue statements?

4. Whether Plaintiff's third claim for relief is barred by the doctrines of unclean hands, waiver and estoppel?

5. Whether Defendants relied upon advice of counsel – Troutman Sanders LLP and Thomas A. Grant – in the offer and sale of the AIC Investments?

6. Whether all or part of plaintiff's claims are barred by the applicable statute of limitations?

d. ***Plaintiff's Fifth Claim for Relief***

1. Whether AIC and/or CBS are liable as "controlling persons" under § 20(a) of the 34 Act?

2. Whether AIC and/or CBS acted in good faith?

3. Whether AIC and/or CBS directly or indirectly induced the act or acts constituting the violation or cause of action alleged in plaintiff's first amended complaint?

4. Whether Defendants relied upon advice of counsel – Troutman Sanders LLP and Thomas A. Grant – in the offer and sale of the AIC Investments?

5. Whether all or part of plaintiff's claims are barred by the applicable statute of limitations?

d. ***Plaintiff's Sixth Claim for Relief***

1. Whether Skaltsounis aided and abetted a violation of § 10(b) by AIC, CBS, Carol LaRue, Guyette, and/or Graves?

2. Whether Skaltsounis relied upon advice of counsel – Troutman Sanders LLP and Thomas A. Grant – in the management and operation of AIC and in offer and sale of the AIC Investments?

3. Whether all or part of plaintiff's claims are barred by the applicable statute of limitations?

e. ***Plaintiff's Seventh Claim for Relief***

1. Whether any Relief Defendant is liable to disgorge the capital contributions lawfully made by AIC in return for bona fide, legitimate services rendered?

2. Whether the Relief Defendants provided valuable consideration in return for the capital contributions made by AIC between 2003 and 2009?

3. Whether plaintiff's seventh claim for relief is barred by the doctrines of unclean hands, waiver and estoppel?

4. Whether the Relief Defendants relied upon advice of counsel – Troutman Sanders LLP and Thomas A. Grant – in the management and operation of their legitimate businesses.

f. ***Additional Triable Issue***

1. Whether the AIC Investments are securities"?

2. Whether issuance of debt securities to pay off matured and/or maturing debt and/or to funds dividends is illegal, or a "Ponzi" scheme?

3. Whether AIC and CBS can be both the primary securities law violators and the control persons?

6. Stipulations of fact. The parties stipulate to the following:

a. During the relevant period, AIC was a holding company for three registered broker-dealers (CB Securities and Relief Defendants Waterford and Advent) and a state-registered investment adviser (Relief Defendant CBS Advisors).

b. During the relevant period, CB Securities, Waterford, CBS Advisors, and Advent were subsidiaries of AIC.

c. AIC was established in 2000.

d. CB Securities was registered as a broker-dealer with the Commission from 1997 until December 23, 2009, when it filed a Broker-Dealer Withdrawal Form ("Form BDW") with the Financial Industry Regulatory Authority ("FINRA").

e. During the relevant period, Skaltsounis was the President and Chief Executive Officer of AIC and an officer and director of CB Securities, Advent, and CBS Advisors. Skaltsounis was also a member of the board of directors of AIC and Chairman of the board of directors of Waterford. During the relevant period, Skaltsounis held Series 4, 5, 7, 12, 24, 27, and 63 securities licenses.

f. From February 2003 through December 2009, Skaltsounis was a registered representative associated with CB Securities.

g. From July 2005 through September 2010, Skaltsounis was a registered representative associated with Waterford.

h. From July 2006 through September 2010, Skaltsounis was a registered representative associated with Advent.

i. From July 1997 through December 2009, Guyette was a registered representative associated with CB Securities.

j. During the relevant period, Guyette held Series 3, 7, 24, 27, and 63 securities licenses.

k. From about August 2009 to December 2009, Graves held the title, "Vice President of Business Development" for AIC.

l. From August 2009 through December 2009, Graves was a registered representative associated with CB Securities.

m. During the relevant period, Graves held Series 4, 6, 7, 24, 26, 53, and 65 securities licenses.

n. During the relevant period, AIC made cash capital contributions to CB Securities, Waterford, CBS Advisors, and Advent, at the times and in the amounts, reflected on the general ledgers of AIC, CB Securities, and the Relief Defendants (marked with production numbers AIC-GL 000001 to AIC-GL-002579).

o. During the relevant period, LaRue was a member of AIC's board of directors and a registered representative associated with CB Securities.

p. During the relevant period, LaRue held Series 6, 7, 24, 63, and 65 securities licenses.

q. AIC and its subsidiaries paid at least $948,389 to Skaltsounis in salary, advances, loans, interest, and dividends.

r. During the relevant period, CB Securities paid $21,490 to Guyette in connection with the sale of AIC securities.

s. During the relevant period, AIC offered and sold common stock, preferred stock, and promissory notes.

t. AIC common stock and preferred stock are securities.

u. During the relevant period, no registration statement was in effect as to AIC's common stock, preferred stock, and/or promissory notes.

v. Means of interstate transportation or communication were used in connection with the offer and sale of AIC common stock, preferred stock, and promissory notes.

w. The following are authentic business records, as that term is used and understood by the Federal Rules of Evidence, and are true and correct copies of what they purport to be: (i) general ledgers of AIC, CB Securities, or any of the Relief Defendants (marked with production numbers AIC-GL-000001 to AIC-GL-002579); (ii) financial statements, including but not limited to, income statements, balance sheets, profit/loss statements, and statements of cash flow, for AIC, CB Securities, or any of the Relief Defendants (produced by any of the AIC Defendants or Relief Defendants or Keiter, Stephens, Hurst, Gary & Shreaves, PC); (iii) tax returns for any of the AIC Defendants or Relief Defendants (produced by any of the AIC Defendants or Relief Defendants or Keiter, Stephens, Hurst, Gary & Shreaves, PC); (iv) bank statements for any of the AIC Defendants or Relief Defendants (produced by any of the AIC Defendants

or Relief Defendants or any bank or financial institution); (v) signed stock certificates (produced by any of the AIC Defendants or Relief Defendants); (vi) signed subscription agreements (produced by any of the AIC Defendants or Relief Defendants); (vii) signed promissory notes (produced by any of the AIC Defendants or Relief Defendants); (viii) letters to investors concerning options upon the maturity of their promissory notes (the "rollover letters") (produced by any of the AIC Defendants or Relief Defendants); (ix) CB Securities direct account forms and customer agreements (produced by any of the AIC Defendants or Relief Defendants); and (x) documents produced by CBIZ Benefits & Insurance Services, Inc. (marked with production numbers CBIZ-0001 to CBIZ-1607).

x. The principal outstanding on AIC's promissory notes was approximately $871,000, $1,111,000, $2,385,000, $3,104,000, and $3,978,000, as of December 31, 2005, 2006, 2007, 2008, and September 30, 2009, respectively.

y. Neither Keiter, Stephens, Hurst, Gary & Shreaves, PC, nor any other accounting or audit firm, ever provided audit services to AIC.

z. That purporting to be Skaltsounis's signature on any of the documents produced by any of the AIC Defendants or Relief Defendants is an authentic signature of Skaltsounis.

aa. Paula Collier, Thomas Grant, Carol LaRue, Harry MacDougal, Thomas Miller, Douglas Mussler, Edward Norris, and Nicholas Skaltsounis are, or were, members of the board of directors of AIC.

bb. Troutman Sanders LLP was legal counsel for AIC.

7. Novel or unusual questions of law or evidence. The parties are not presently aware of any novel or unusual questions of law or evidence.

8. Estimated length of trial. It is the Commission's position that a trial of this matter will last approximately fifteen working days. But, as discussed in more detail in the Commission's Motion for Partial Summary Judgment (Doc. 93), the Commission believes that a trial of this matter would be simplified to the extent that the Motion for Partial Summary Judgment is granted, resulting in a trial of significantly shorter length. In particular and among

other things, by eliminating baseless affirmative defenses asserted by the AIC Defendants and the Relief Defendants, the resources of the Court and the parties will be conserved.

It is the AIC Defendants and the Relief Defendants' position that the matter can be tried in under ten (10) working days. The AIC Defendants and the Relief Defendants oppose the Commission's Motion for Partial Summary Judgment. It is the AIC Defendants and the Relief Defendants' position that, for the reasons set forth in the Response and Opposition to Plaintiff's Motion for Partial Summary Judgment (Doc. 98), there are genuine issues of material fact concerning each and every affirmative defense, including, without limitation, the advice of counsel defense and the Relief Defendants' defense that they provided valuable consideration and services in return for the capital contributions by AIC.

9. Settlement Prospects. Defendants Guyette and Graves have settled to the Commission's claims against them, and their respective consents to the entry of final judgment have been filed with the Court. Among other things, defendant Guyette has consented to the entry of injunctive relief and orders of disgorgement (plus prejudgment interest) and civil penalties against him, and defendant Graves has consented to the entry of injunctive relief and an order for civil penalties against him. As to both defendant Guyette and defendant Graves, the injunctions and other relief would be based on all of the securities violations alleged against them, respectively, in the amended complaint. As to the AIC Defendants and the Relief Defendants, currently there are no settlement discussions ongoing.

10. Miscellaneous matters. The only pending dispositive motion is the Commission's Motion for Partial Summary Judgment. (Doc. 93.) Other than the Stipulations of Fact above, the

AIC Defendants and the Relief Defendants do not believe there are any miscellaneous matters that may contribute to the just, speedy, and inexpensive determination of this case.

ENTER:

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

Endorsement of Counsel on Next Page

APPROVED AS TO FORM AND SUBSTANCE:

Dated: September 9, 2013.

s/ Michael J. Rinaldi
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SECURITES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC., COMMUNITY BANKERS SECURITIES, LLC, and NICHOLAS D. SKALTSOUNIS, Defendants, and ALLIED BEACON PARTNERS, INC., (f/k/a Waterford Investment Services, Inc.), ADVENT SECURITIES, INC., and ALLIED BEACON WEALTH MANAGEMENT, LLC (f/k/a CBS Advisors, LLC), Relief Defendants.	)	No.: 3:11-CV-176 (VARLAN/GUYTON)

MEMORANDUM OPINION & ORDER

This matter is before the Court on plaintiff Securities and Exchange Commission's ("SEC") Motion for Partial Summary Judgment [Doc. 93], in which the SEC moves the Court to grant summary judgment against defendants AIC, Inc. ("AIC"), Community Bankers Securities, LLC ("CB Securities"), and Nicholas D. Skaltsounis ("Skaltsounis") (collectively, "AIC defendants") on the AIC defendants' estoppel, waiver, unclean hands, and advice of counsel defenses to the SEC's claims, and also moves the Court to grant summary judgment against the AIC defendants for violating §§ 5(a) and 5(c) of the

Securities Act of 1933, 15 U.S.C. §§ 77e(a) & (c). In addition, the SEC seeks summary judgment against the relief defendants in this matter, Allied Beacon Partners, Inc., Advent Securities, Inc. ("Advent"), and Allied Beacon Wealth Management ("ABWM") (collectively, "relief defendants"), on its disgorgement claim, contingent upon a finding of liability against the AIC defendants. The AIC defendants and relief defendants submitted a response [Doc. 98], to which the SEC submitted a reply [Doc. 101]. The parties have also submitted various affidavits and exhibits in support of their respective positions. Having considered the arguments of the parties, in light of the record in this case and the prevailing case law, the SEC's motion will be granted.

I. Relevant Background

This dispute arises from the offering of promissory notes and stock in AIC, a Virginia-based holding company for several registered broker-dealers (co-defendant CB Securities and relief defendants Allied Beacon Partners, and Advent), and a state-registered investment adviser (ABWM), by the AIC defendants from 2006 through 2009 [Doc. 65 ¶ 13]. CB Securities, a registered broker-dealer with the SEC until 2009, employed independent brokers throughout the country, including an office located in Maryville, Tennessee [*Id.* ¶ 14]. At all times relevant to this matter AIC owned an eighty-eight percent interest in CB Securities [*Id.*]. Similarly, AIC owned a ninety percent interest in ABWM (formerly known as CBS Advisors), Allied Beacon Partners (formerly known as Waterford Investment Services, or "Waterford"), and Advent, all of

which were registered in Tennessee, among other states, to sell securities [*Id.* ¶¶ 18-20].[1] Co-defendant Skaltsounis founded AIC in 2000, and during the period in question, served as AIC's president and CEO and held similar positions in CB Securities, Advent, and CBS Advisors, in addition to serving as Chairman of the Board of Directors of Waterford [*Id.* ¶ 15]. The SEC alleges that the AIC defendants orchestrated an offering fraud that defrauded investors of millions of dollars in multiple states, with the proceeds distributed amongst the AIC defendants and to the relief defendants.

As neither AIC nor its subsidiaries were profitable, AIC had a constant need for capital in order to fund their operations, which AIC met by offering and issuing securities in the form of promissory notes as well as common and preferred stock [*Id.* ¶¶ 23-25]. Through sales of both notes and stock, AIC raised over $7 million from at least seventy-four investors in fourteen states during the relevant time period [Doc. 65 ¶ 29]. The SEC claims that in the process of offering and selling these securities, the AIC defendants made material misrepresentations about AIC's business and omitted disclosures regarding the risks associated with investing [Doc. 94-1 at 5].[2] As set forth in the SEC's brief in support of its motion for summary judgment, potential note holders would receive the relevant promissory note, stockholders would receive a subscription agreement, and occasionally, the AIC defendants would use other material to solicit investors, such as

[1] The parties do not dispute that all four entities associated with AIC were operated as subsidiaries of AIC.

[2] These omissions include the fact that AIC had never been profitable, that AIC had no revenue from business operations, and that AIC's ability to pay returns to investors was dependent upon attracting new investors [Doc. 94-1 at 5].

executive summaries, which also contained material misstatements and omissions [*Id.* at 6]. These investments were sold without a registration statement in effect as to AIC, as required by the Securities Act of 1933. In order to maintain the fraud, the SEC claims, the AIC defendants induced investors to reinvest or renew their AIC investments, making further misstatements in the process. As a result, many of these investors did reinvest their funds by rolling over their investments into new promissory notes. Of the funds raised, $948,389 was distributed to Skaltsounis, approximately $2.8 million was distributed to CB Securities, and approximately $1 million was distributed to the relief defendants [*Id.* at 7]. In its First Amended Complaint, the SEC alleges that another $2.5 million of new investor funds were distributed back to investors, so that the fraud was operated as a Ponzi scheme [Doc. 65 ¶ 32].

The SEC commenced this civil enforcement action in 2011, and in its First Amended Complaint claims numerous violations of the federal securities laws, including: (1) violations of § 5 of the Securities Act of 1933 for selling unregistered, non-exempt securities without proper registration as to the AIC defendants; (2) violations of § 17 of the Securities Act for offering and selling securities by fraudulent means as to the AIC defendants; and (3) violations of § 10(b) of the Exchange Act of 1934, and Rule 10b-5 thereunder, for engaging in fraud in connection with the sale of AIC's securities as to the

AIC defendants.[3] The Commission seeks permanent injunctive relief against the AIC defendants as well as disgorgement from both the AIC and relief defendants.

II. Standard of Review

Summary judgment under Rule 56 of the Federal Rules of Civil Procedure is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the burden of establishing that no genuine issues of material fact exist. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 n.2 (1986); *Moore v. Phillip Morris Cos.*, 8 F.3d 335, 339 (6th Cir. 1993). All facts and all inferences to be drawn therefrom must be viewed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Burchett v. Kiefer*, 301 F.3d 937, 942 (6th Cir. 2002). "Once the moving party presents evidence sufficient to support a motion under Rule 56, the non-moving party is not entitled to a trial merely on the basis of allegations." *Curtis Through Curtis v. Universal Match Corp., Inc.*, 778 F. Supp. 1421, 1423 (E.D. Tenn. 1991) (citing *Catrett*, 477 U.S. at 317). To establish a genuine issue as to the existence of a particular element, the non-moving party must point to evidence in the record upon which a reasonable finder of fact could find in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The genuine issue must also

[3] The SEC has settled all claims with defendants Graves and Guyette [Docs. 146, 156]. The SEC has also brought additional claims against AIC, CB Securities, and Skaltsounis for their specific roles in the alleged scheme [Doc. 65 ¶¶ 107-119].

be material; that is, it must involve facts that might affect the outcome of the suit under the governing law. *Id.*

The Court's function at the point of summary judgment is limited to determining whether sufficient evidence has been presented to make the issue of fact a proper question for the factfinder. *Anderson*, 477 U.S. at 250. The Court does not weigh the evidence or determine the truth of the matter. *Id.* at 249. Nor does the Court search the record "to establish that it is bereft of a genuine issue of material fact." *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479–80 (6th Cir. 1989). Thus, "the inquiry performed is the threshold inquiry of determining whether there is a need for a trial—whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson*, 477 U.S. at 250.

III. Analysis

A. The AIC Defendants' Affirmative Defenses

In their amended answer [Doc. 84], the AIC defendants assert several affirmative defenses to some or all of the SEC's claims. First, the AIC defendants claim that the SEC's claims "are barred, in whole or part, by the doctrines of unclean hands, waiver, and estoppel" [*Id.* at 5]. Second, the AIC defendants claim that they relied upon the advice of counsel during the offer and sale of all AIC investment products. In support of their motion for summary judgment, the SEC claims that, in light of the evidence of

record, the AIC defendants cannot create a genuine issue of material fact as to the availability of any of the asserted defenses.

1. Equitable Defenses of Estoppel, Waiver, and Unclean Hands[4]

The AIC defendants base their defenses of estoppel, waiver, and unclean hands on the SEC's conduct and statements made while examining the relevant companies at issue prior to the investigation in this case, as well as conduct and statements made during the course of the investigation which led to the filing of this action. The AIC defendants contend that the SEC knew that AIC was raising capital through the issuance of debt and equity, and that the SEC, along with the Financial Industry Regulatory Authority ("FINRA"), and its predecessor, the National Association of Securities Dealers ("NASD"), approved these transactions. In doing so, the AIC defendants argue, the SEC waived its ability to file suit based upon any shortcomings in the transactions. The AIC defendants submit that their estoppel defense is similarly based on the fact that during the course of a 2006 audit of CB Securities, the SEC represented that "everything was fine," and did so again in 2009 during the investigation of AIC that led to the present action [Doc. 98 at 10]. The AIC defendants also rely upon the fact that during this time period, the SEC did not take any action with regards to various reports and audited financial statements received from AIC and its subsidiaries. AIC believed that the SEC's lack of pointing out deficiencies and other lack of action constituted approval of AIC's stock and note offerings [Doc. 96-10 at 7-12].

[4] Given the overlap of both the factual bases and legal analysis for these defenses, the Court will address them together.

Waiver has generally been defined as the "the voluntary relinquishment by a party of a known right." *Chattem, Inc. v. Provident Life & Accidental Ins. Co.*, 676 S.W.2d. 953, 955 (Tenn. 1984) (citation omitted). To constitute a waiver of a benefit there must be clear, unequivocal, and decisive acts of the party showing an intention not to have the benefit/right conferred. *Jenkins Subway, Inc., v. Jones*, 990 S.W.2d 713, 722 (Tenn. Ct. App. 1999). Waiver may be proved by any number of ways, including the following: express declarations; acts and declarations manifesting an intent not to claim the benefit; a course of acts and conduct; or "by so neglecting and failing to act, as to induce a belief that it was the party's intention and purpose to waive." *Id.* (quotation omitted). While waiver represents an intentional relinquishment of a known right, estoppel involves a misrepresentation relied upon by another to his detriment. *Id.* at 723. The elements of estoppel include: (1) words or actions that amount to a false or misleading representation by the party against whom estoppel is asserted; (2) reasonable reliance on the misrepresentation by the party asserting estoppel; and (3) a detriment or "deleterious change" to the party asserting estoppel. *Id.*; *see, e.g. Osborne v. Mountain Life Ins. Co.*, 130 S.W.3d 769, 774 (Tenn. 2004); *see also Kosakow v. New Rochelle Raidology Assocs., P.C.*, 274 F.3d 706, 725 (2d Cir. 2001) (noting that the doctrine of equitable estoppel applies when "the enforcement of the rights of one party would work an injustice upon the other party due to the latter's justifiable reliance upon the former's words or conduct"). The doctrine of unclean hands similarly may be used "'to deny injunctive relief where the party applying for such relief is guilty of conduct involving

fraud, deceit, unconscionability, or bad faith related to the matter at issue to the detriment of the other party.'" *Performance Unltd., Inc. v. Questar Publishers, Inc.*, 52 F.3d 1373, 1383 (6th Cir. 1995) (quoting *Novus Franchising, Inc. v. Taylor*, 795 F. Supp. 122, 126 (M.D. Pa.1992)). The party claiming an equitable defense has the burden of proving it by a preponderance of the evidence. *Jenkins Subway*, 990 S.W.3d at 722, 723.

In general "equitable defenses against government agencies are strictly limited." *SEC v. Elecs. Warehouse, Inc.*, 689 F. Supp. 53, 73 (D. Conn. 1988). With respect to the estoppel defense in particular, although the SEC must treat those subject to its regulation fairly, "'the government may not be estopped on the same terms as any other litigant.'" *SEC v. Blavin*, 760 F.2d 706, 712 (6th Cir. 1985) (quoting *Heckler v. Cmty. Health Servs.*, 467 U.S. 51, 60 (1984)). This principle stems from "the interest of the citizenry as a whole in obedience to the rule of law." *Heckler*, 467 U.S. at 60. "The doctrine of equitable estoppel is not available against the government except in the most serious of circumstances, and is applied with the utmost caution and restraint." *Rojas-Reyes v. INS*, 235 F.3d 115, 126 (2d Cir. 2000). In *Graham v. SEC*, 222 F.3d 994 (2d Cir. 2000), where the SEC had initially reviewed a company's activities before later conducting an investigation which led to the filing of a complaint, the Second Circuit noted that "the SEC's failure to prosecute at an earlier stage does not estop the agency from proceeding once it finally accumulated sufficient evidence to do so," *id.* at 1008. *See, e.g. Investors Research Corp. v. SEC*, 628 F.2d 168, 174 (D.C. Cir. 1980) (noting that, when specific facts of improper activity were not revealed until later, the fact that the SEC was aware of

transactions was insufficient basis for estoppel defense). Courts have applied these same principles with respect to the waiver defense. *See SEC v. KPMG*, No. 03 Civ. 671, 2003 WL 21976733, at *3 (S.D.N.Y. 2003) (noting that conversations between SEC and defendant were "insufficient as a matter of law to reflect an intentional relinquishment by the SEC of its right and duty under the law to file charges when it finds that charges are appropriate under the laws passed by the Congress"). Similarly, courts addressing the availability of the unclean hand defense have limited its application, finding that in order for a party to rely upon the defense "the SEC's misconduct must be egregious, the misconduct must occur before the SEC files the enforcement action, and the misconduct must result in prejudice to the defense of the enforcement action that rises to a constitutional level and is established through a direct nexus between the misconduct and the constitutional injury." *SEC v. Cuban*, 798 F. Supp. 2d 783, 794 (N.D. Tex. 2011) (citing cases).

The AIC defendants assert that the defenses of waiver and estoppel are available in this case based upon the SEC's 2006 audit of CB Securities, the SEC's investigation/examination of AIC in 2009 (which served as the genesis of the current action), and various filings AIC and its subsidiaries made with the SEC and FINRA, including Form D filings, FOCUS reports, and audited financial statements.[5] Upon

[5] The Court notes that to the extent the AIC defendants seek to rely upon their dealings with FINRA or the NASD to act as a waiver or estoppel on the part of the SEC, such reliance is meritless, as FINRA is a private, non-profit corporation which conducts its own investigatory and disciplinary actions, and is independent from the SEC. *See Graham*, 222 F.3d at 1007 n.25 (noting the same in describing the NASD).

reviewing the material, and the relevant deposition testimony related to them, however, the Court concludes that these cannot serve as the basis for a waiver or estoppel defense in this case.

In June 2006, the SEC conducted a broker-dealer examination of CB Securities and discovered several violations of the rules pertaining to the Exchange Act and rules of the National Association of Securities Dealers ("NASD"), the predecessor to FINRA, as noted in a letter from the SEC sent to Skaltsounis [Doc. 96-11]. The examination did not involve CB Securities' involvement in the sale of AIC stock and notes, and none of the violations involve the sale of securities at issue in this case. One violation pertains to continuing education for CB Securities' representatives, while the other two addressed various items used in calculating the firm's net capital [*Id.* at 2]. The end of the report includes several statements and disclaimers related to the investigation. The first indicates that the findings in the letter are "based on the staff's examination, and are not findings or conclusions of the Commission" [*Id.*]. The letter also warns to "not assume that your firm's activities not discussed in this letter are in full compliance with the federal securities laws or other applicable obligations" [*Id.*]. Given the letter's subject matter, pertaining to the examination of an AIC subsidiary at the beginning of the offerings in question, and the disclaimers contained therein, the Court concludes that there is nothing from the 2006 examination indicating a voluntary relinquishment of the SEC's ability to bring suit for violations of various statutory provisions of the Securities and Exchange Acts for the purposes of waiver. The AIC defendants have also not

presented any argument or evidence that this letter constitutes a misrepresentation sufficient for estoppel, when the letter issued at the beginning of the relevant time period does not reference the sale of securities or promissory notes in question and contains express language that it is not a final decision does not pertain to activities not discussed in the letter. Thus, the 2006 examination of CB Securities cannot serve as the basis for the equitable defenses asserted by the AIC defendants.

In late 2009, the SEC visited AIC and conducted an investigation pertaining to the offering of securities that culminated in the filing of the instant complaint. During the visit, Skaltsounis testified that the analysts made several statements that the SEC "didn't find anything alarming or out of whack," that AIC "was in good shape" [Doc. 96-10 at 8] and similar comments. AIC's Executive Vice President at the time, Paula Collier, similarly stated that the SEC's analysts present claimed they "really [were] not finding anything" [Doc. 96-12 at 4]. In addition, however, Collier testified that she never received express approval of the securities offerings by the SEC, and that the analysts informed her that they were not finished with their examination [*Id.*].

The facts of this case are analogous to the facts at issue in *KPMG*, a case involving violations of the securities laws in connection with audits conducted by the defendant, 2003 WL 21976733 at *1. During the course of an SEC investigation, the SEC had shown the defendant several documents pertaining to its client, the Xerox Corporation, which prompted a meeting and several communications between the defendant and the SEC. The SEC did not advise the defendant of any problems with Xerox's accounting

methodology, and in response to an inquiry by the defendant of whether there were other issues needed to be addressed, the SEC answered that the defendant had "hit them all." *Id.* When the defendant attempted to raise these conversations as a defense based on waiver or estoppel, the court granted the SEC's motion to strike, finding that the statements did not indicate that the SEC would not bring a civil suit, or that the SEC was waiving its right to bring such a suit. *Id.* at *3. The court noted that "the SEC must be able to conduct reasonable investigations without the risk that oral communications such as those alleged here will create a bar to the agency's pursuit of claims." *Id.* at *4.

The same reasoning applies in this case, in that the SEC's informal statements made during the course of investigation cannot serve to preclude an action when the SEC later has sufficient evidence to file a complaint. Moreover, unlike the SEC's statements in *KPMG*, here the SEC did not affirm that AIC's offerings were compliant, but merely commented, during the course of their investigation, that they were not really finding anything.

The AIC defendants also rely upon their filings, and the filings of the relief defendants, as evidence that the SEC knew about the offerings in question and, by failing to take action sooner, showed the agency's approval of them. The Court disagrees. The filings in question, such as the Form D filings for unregistered securities, as well as the audited financial statements, were made by the AIC defendants themselves, and the defendants have not presented any case law supporting their claim that the SEC's acceptance of documents indicating the occurrence of securities sales precludes the SEC

from filing an action when it subsequently learns that those sales violated the securities laws. The AIC defendants have similarly not presented evidence that the SEC was made aware of the facts underlying the present allegations and made a conscious decision not to act. Thus, the Court concludes that the materials relied upon by the defendants do not create a genuine issue of material fact as to the availability of the estoppel or waiver defenses.

Although the AIC defendants do not address their unclean hands defense in response to the SEC's motion for summary judgment, in his deposition testimony, Skaltsounis claims that the SEC engaged in numerous acts of misconduct, including accusing AIC of running a Ponzi scheme, jumping to conclusions with regards to its allegations, and bringing the present suit in Tennessee rather than Virginia, where AIC is headquartered [Doc. 96-10 at 17-18]. Although the Court notes that the defendants have not presented any evidence to substantiate these claims, more importantly, even taken as true, defendants have not created a genuine issue of material fact that the SEC's actions leading up to the filing of this complaint were egregious, or resulted in prejudice rising to a constitutional level.[6] Accordingly, the Court finds that there is no genuine issue of material fact as to the availability of the equitable defenses raised by defendants, and summary judgment in favor of the SEC is appropriate.

[6] With respect to the AIC defendants' arguments concerning venue, the Court notes that the AIC defendants have previously filed a motion based on improper venue, which was denied in an Order by the magistrate judge in this case [Doc. 30].

2. Advice of Counsel

The AIC defendants also assert their good faith reliance on the advice of counsel as an affirmative defense, specifically related to the advice given by Tom Grant and the law firm of Troutman Sanders. The SEC, in support of its motion, presented various deposition testimony of office assistants, board members, Skaltsounis, and others, to show that the defendants cannot point to any specific legal advice that was given in relation to the disputed transactions. In response, the AIC defendants submitted an interrogatory response in which they listed the scope of advice received by Grant and Troutman Sanders and the manner in which Grant and Troutman Sanders advised AIC with respect to various transactions. The AIC defendants also submitted a collection of promissory notes and subscription agreements with issuance dates ranging from 2002 through 2006 bearing footnotes with the letters "TS," which the AIC defendants claim stands for Troutman Sanders [Doc. 98-6].

To establish good faith reliance on the advice of counsel, defendants must prove that they "(1) made a complete disclosure to counsel; (2) requested counsel's advice as to the legality of the contemplated action; (3) received advice that it was legal; and (4) relied in good faith on that advice." *SEC v. Goldfield Deep Mines Co.*, 758 F.2d 459, 467 (9th Cir. 1985) (citing *SEC v. Savory Industries, Inc.*, 665 F.2d 1310, 1314 n.28 (D.C. Cir. 1981)); *see also United States v. Kindo*, 52 F.3d 1373, 1383-84 (6th Cir. 1995) ("The elements of a reliance on counsel defense are (1) full disclosure of all pertinent facts to counsel, and (2) good faith reliance on counsel's advice."). While good faith reliance on

advice of counsel by a criminal defendant may rebut evidence of criminal intent, in the context of a securities action, reliance on counsel "is not a complete defense, but only one factor for consideration." *Markowski v. SEC*, 34 F.3d 99, 105 (2d Cir. 1994). "Good faith reliance on the advice of counsel means more than simply supplying counsel with information." *SEC v. Enters. Solutions, Inc.*, 142 F. Supp.2d 561, 576 (S.D.N.Y. 2001). "'Compliance with federal securities laws cannot be avoided by simply retaining outside counsel to prepare required documents.'" *Id.* (quoting *Savoy*, 665 F.2d at 1315 n.28). The burden is on the defendant to establish each element of a reliance on counsel defense. *SEC v. CMKM Diamonds, Inc.*, No. 2:08-cv-437, 2011 WL 30447476, at *3 (D. Nev. Jul. 25, 2011).

The Court finds that the promissory notes and subscriptions bearing the Troutman Sanders initials do not create a genuine issue of material fact as to the AIC defendants' good faith reliance on the advice of Grant or Troutman Sanders. There is no indication, from reviewing the documents in question, that an actual attorney, be it Grant or another attorney at Troutman Sanders, drafted the particular note, or whether an attorney rendered advice or otherwise approved the underlying transactions. There is no evidence that the AIC defendants specifically requested an attorney's advice prior to entering into a specific transaction or that an attorney stated that a specific transaction was legal. The SEC, in contrast, has presented evidence contesting the claim that attorneys prepared each of the documents in question. Della Tabar, who served as Skaltsounis's executive assistant during the relevant time period, testified that once Grant sent "the initial draft,"

prior to the issuance of the securities in question, Tabar would prepare a promissory note or subscription agreement for a particular investor at Skaltsounis's direction, filling in the requisite form which was stored on her computer [Doc. 96-17 at 19-20]. With specific regard to the footnotes, Tabar testified that she would change the footnotes to reflect the date, and then would save the document on her computer with the relevant investor's name in the filename [Doc. 104 at 4-5]. Ultimately, however, whether Troutman Sanders's attorneys prepared each form is immaterial to the issue of whether AIC made a full disclosure of its activities to the law firm's attorneys for the specific reason of verifying their legality, as the drafting of documents does not constitute rendering legal advice on a specific transaction.

Tabar testified that, to her knowledge, neither Grant nor Troutman Sanders were consulted prior to filling out each promissory note or subscription agreement, or before the documents were sent to an investor [Doc. 96-17 at 24]. Tabar, in fact, did not recall any time in which Mr. Skaltsounis sought specific advice from any attorney regarding the preparation of the notes, subscription agreements, and reinvestment letters at issue in this case [*Id.* at 18]. Similarly, Skaltsounis testified that, although Grant provided a draft subscription agreement and draft promissory note in or before 2006, Grant was not consulted before Skaltsounis signed each subscription agreement [Doc. 96-10 at 22], and that he could not recall any conversations pertaining to a specific promissory note [Doc. 96-28 at 10]. Nor have the AIC defendants presented evidence on any advice rendered as to what materials should be given to potential investors, or that AIC was selling securities

to purchasers without verifying their accredited status. Thus, the Court finds that, with respect to the issuance of promissory notes and subscription agreements, the AIC defendants cannot meet their burden of showing that they requested advice after fully disclosing the pertinent facts to counsel and relied upon that advice in good faith.

The Court reaches the same conclusion with regard to the AIC defendants' use of reliance upon counsel as a defense to the SEC's allegations that made AIC material misstatements and omissions in the documents sent to investors. While AIC asserts that it relied upon Grant and Troutman Sanders to ensure that "company materials, confidential corporate information, executive summaries, financial statements, and other information" complied with the securities laws [Doc. 98 at 12], AIC has not presented evidence that it solicited an attorney's advice with respect to the preparation of any of these documents, or that an attorney prepared them. Skaltsounis, in contrast, testified that he prepared drafts of executive summaries, pulling information from various departments of AIC, and subsequently sent the documents to Grant and Troutman Sanders for review [Doc. 96-29 at 50]. Skaltsounis also testified that the documents may have been further revised after any such review, and could not recall any specific recommendations provided by Grant or Troutman Sanders [*Id.*]. This does not indicate that AIC's attorneys were aware of the omissions alleged in the relevant documents, nor does it indicate that an attorney concluded the specific activity was compliant with the securities laws. Similarly, with regard to verbal disclosures which the SEC claims were misleading,

Skaltsounis testified that Grant never provided guidance on verbal disclosure, other than stating what disclosures were required [*Id.* at 4].

The AIC defendants rely upon Grant's status as a member of the board of directors as evidence that he approved the offerings and sales in question, and the documents associated with those sales. While the AIC defendants argue that they relied upon Grant, as "the one Board member who held himself out as an expert in securities matters" [Doc. 98 at 13], the AIC defendants have failed to present evidence as to what advice Grant gave the board, after being asked for specific advice and being fully informed of a given issue. At least one board member, Douglas Mussler, who served during the time period in question, testified that, although he assumed Grant and Skaltsounis had additional conversations, Grant did not render specific legal advice during board meetings [Doc. 96-15 at 6]. Mussler stated that any specific discussion related to required disclosures and the specific sales of securities would not likely occur at a board meeting because that was an "operational function" rather than a function of the board [*Id.* at 4].

In this case, the SEC has cited to deposition testimony from eight former employees and executive officers of AIC and its subsidiaries indicating that none of the eight could testify that Grant or Troutman Sanders gave specific legal advice with regard to the offerings at issue in this case [Doc. 94-1 at 21-22]. Viewing the evidence provided by the AIC defendants in response, and all evidence, in a light most favorable to the AIC defendants, does not create a genuine issue of material fact as to the advice of counsel defense. As "the party who raises an affirmative defense has the burden of proof as to

those defenses," *United States v. Baker*, No. 3:08-CV-374, 2009 WL 1407018, at *2 (E.D. Tenn. May 19, 2009), and the AIC defendants have not presented evidence that they can sustain that burden, the Court finds that summary judgment in favor of the SEC as to this defense is appropriate. *See SEC v. George*, 426 F.3d 786, 798 (6th Cir. 2005) (noting that to survive summary judgment in light of SEC's evidence, the "defendants needed to present affirmative evidence, not just affirmative assertions, demonstrating a disputed issue of material fact"). Accordingly, the SEC's motion on this defense will be granted.

B. Violation of Section 5 of the Securities Act

The SEC also seeks summary judgment on its claim that the AIC defendants violated §§ 5(a) and 5(c) of the Securities Act for the unregistered sale of securities from 2006 through 2009. The AIC defendants do not dispute that securities were sold during the relevant time period which were not registered; rather, the AIC defendants argue that every sale of securities was made pursuant to one of the exemptions provided for by the statute.

"The Securities Act and the required filing of registration statements under Section 5 exist to protect investors by requiring they receive sufficient information to make informed investment decisions." *SEC v. Sierra Brokerage Servs., Inc.*, 712 F.3d 321, 329 (6th Cir. 2013) (citing *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953)). Taken together, §§ 5(a) and 5(c) require that securities be registered with the SEC before they

can be sold or offered for sale. 15 U.S.C. § 77e(a), (c).[7] To establish a prima facie violation of § 5, the SEC must prove the following: "(1) [that] no registration statement was in effect for the securities; (2) that the defendant directly or indirectly sold or offered to sell the securities; and (3) that means of interstate transportation or communication were used in connection with the offer or sale." *Eur. & Overseas Commodity Traders, S.A. v. Banque Paribas London*, 147 F.3d 118, 124 n.4 (2d Cir 1998), *abrogated on other grounds by Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 28269 (2010). Scienter is not an element of a § 5 violation because that section imposes strict liability on sellers of securities. *SEC v. Sierra Brokerage Servs.*, 608 F. Supp. 2d 923, 939 (S.D. Ohio 2009) (citing *SEC v. Calvo*, 378 F.3d 1211, 1215 (11th Cir. 2004)). Once the SEC establishes a prima facie case, the defendant bears the burden of showing that the challenged securities

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[7] Section 5(a) states:

> Unless a registration statement is in effect as to a security, it shall be unlawful for any person directly or indirectly—
> (1) to make use of any means or instruments of transportation or communication in interstate commerce or the mails to sell such security through the use or medium of any prospectus or otherwise; or
> (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or delivery after sale.

15 U.S.C. § 77e(a).

Section 5(c) states in relevant part:

> It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security . . . .

15 U.S.C. § 77e(c).

transactions fall within one of the enumerated exemptions from registration. *Id.* (citing *Ralston Purina*, 346 U.S. at 126).

In this case, the SEC contends, and the AIC defendants do not dispute, that the AIC defendants offered and sold securities without registering those securities with the SEC. As to the element of registration, Skaltsounis testified during depositions that there were not any registration statements in effect for the common stock, preferred stock, and promissory notes sold during the relevant time period, so that this first element is met [*See* Doc. 96-1 at 3-4]. Regarding the second element, the SEC submitted evidence of stock certificates and subscription agreements, as well as promissory notes and rollover letters on those notes, to prove that securities were in fact offered and sold by the AIC defendants [*See* Doc. 96-2]. As it is undisputed that the AIC defendants sold securities to investors in multiple states, including but not limited to Virginia, Tennessee, and Colorado, the Court also concludes that the SEC has proven the interstate commerce element. Thus, the SEC has brought forward sufficient evidence to establish a prima facie case that the AIC defendants violated § 5. Where the parties disagree, however, is on the issue of whether there is sufficient evidence so as to create a question of fact as to the availability of one of the statutory exemptions of § 5's strict liability provisions.

1. Exempted Securities Under Section 3

The AIC defendants, in their amended answer [Doc. 84], claim that "[o]ne or more classes of securities offered by AIC are exempted securities" pursuant to § 3(a)(3) of the Securities Act, concerning notes and similar instruments with maturity dates of nine

months or less, and Section 3(a)(9), concerning securities exchanged with existing security holders where no commission was paid.[8] The SEC argues on summary judgment that the AIC defendants cannot meet their burden of showing that the securities sold in the relevant time period were exempt under either provision of § 3.

a. Notes with Short Term Maturities

Section 3(a)(3) states, in relevant part, that the following securities are exempt from the provisions of the Securities Act:

> [a]ny note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited[.]

15 U.S.C. § 77c(a)(3). Despite this language, several circuit courts have held that the "'mere fact that a note has a maturity of less than nine months does not take the case out of the [Securities Acts], unless the note fits the general notion of commercial paper.'"[9] *SEC v. R.G. Reynolds Enters.*, 952 F.2d 1125, 1132 (9th Cir. 1991) (quoting *Zeller v. Bogue Elec. Mfg. Corp.*, 476 F.2d 795, 800 (2d Cir. 1973)) (alterations in original); *see, e.g,. SEC v. Cont'l Commodities Corp.*, 497 F.2d 516, 524-25 (5th Cir. 1974) ("[I]t is the character of the note, not its maturity date, which determines coverage under both the

[8] In its motion for summary judgment the SEC notes that neither of the claimed exemptions under Section 3 were pled in response to the original complaint, and were only raised in the AIC defendants' amended answer [*See* Doc. 94-1 n.25]. The Court finds it appropriate to discuss both exemptions, given that the parties have fully briefed these issues.

[9] Commercial paper has been defined by the Supreme Court in this context as "short-term, high quality instruments issued to fund current operations and sold only to highly sophisticated investors." *Reves v. Ernst & Young*, 494 U.S. 56, 72 (1990). The AIC defendants have not alleged that the notes at issue fit this definition.

registration provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934."); *see also Am. Bank & Trust Co. v. Wallace*, 702 F.2d 93, 94-95 (6th Cir. 1983) (noting that the "duration . . . of the promissory note does not per se remove it from the purview of either the 1934 [Exchange] Act or 1933 [Securities] Act").

Rather than focus on the maturity of the notes in question, courts have focused on the methodology adopted by the *Reves* Court in determining whether a note falls within the scope of the Securities Act's provisions, beginning with the presumption that every note is a security. *Reves v. Ernst & Young*, 494 U.S. 56, 65 (1990); *see, e.g., SEC v. Tee to Green Golf Parks, Inc.*, No. 00-CV-4788, 2011 WL 147862, at *6-7 (W.D.N.Y. Jan. 18, 2011). The presumption may be overcome by showing that the note in question bears a "family resemblance" to those notes which have been judicially recognized as not qualifying as securities,[10] based upon the analysis of four factors: (1) the motivation prompting the transaction; (2) the plan of distribution; (3) the reasonable expectation of the investing public; and (4) whether some factor reduces the risk of the instrument, rendering the federal securities laws unnecessary. *Bass v. Janney Montgomery Scott, Inc.*, 210 F.3d 577, 585 (6th Cir. 2000) (quotations and citations omitted). Under the first

[10] The *Reves* Court provided the following list of notes which it held were not securities:

> notes delivered in consumer financing, notes secured by a mortgage on a home, notes secured by a lien on a small business or some of its assets, notes relating to a "character" loan to a bank customer, short-term notes secured by an assignment of accounts receivables, notes which formalize an open-account indebtedness incurred in the ordinary course of business, and notes given in connection with loans by a commercial bank to a business for current operations.

Bass v. Janney Montgomery Scott, Inc., 210 F.3d 577, 585 (6th Cir. 2000) (citing *Reves*, 494 U.S. at 65).

factor, "if the seller's motivation is 'to raise money for the general use of a business enterprise . . . and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a security.'" *Id.* (quoting *Reves*, 494 U.S. at 66). As noted by the Sixth Circuit in *Bass*, the fourth factor not only includes comprehensive regulatory schemes but also the presence of collateral or insurance as evidence of reduced risk. *Id.*

Applying the foregoing to the promissory notes offered and issued by the AIC defendants, the Court concludes that the promissory notes, regardless of their maturities, represent securities subject to the provisions of § 5. Initially, the Court notes that the AIC defendants do not dispute that none of the judicially created exceptions set forth in *Revis* apply in this case [*See* Doc. 96-1 at 9-23]. Turning to the first *Revis* factor, it appears that AIC's purpose in selling the notes was to raise money for "the general use of AIC and its subsidiaries" [*Id.* at 24], and from AIC's perspective, those who received notes from AIC did so because of the prospect of interest [*Id.* at 27].[11] *See Reves*, 494 U.S. at 68 (noting that investors hoped to earn profit in the form of interest in finding note to be security). As to the second factor, Skaltsounis testified that both current customers of CB Securities and new customers received promissory notes, and that approximately 40 notes were sold to customers in several states, so that the plan of distribution also indicates the notes were securities. *Cf. Tee to Green*, 2011 WL 147862 at *7 (noting that sale of promissory notes in at least six different states indicated that the notes in question were securities). The

[11] That purchasers of the notes did so for reasons of profit is further evidenced by the notes themselves, at least some of which offered an interest rate of 12.5% [*See* Doc. 96-34 at 4].

AIC defendants have not argued or presented evidence that the expectation of the note holders was anything other than to receive a return on their investment in the form of interest over the maturity period of their respective notes, under the third factor. Finally, the AIC defendants have not shown that there was any independent regulatory scheme to protect note holders, nor does it appear that there was any collateral or insurance involved related to the promissory notes. Accordingly, the Court concludes that the notes in question were "securities" for purposes of the Securities Act and thus are not exempt from the requirements of § 5 under § 3(a)(3).

b. Securities Sold to Existing Security Holders

The AIC defendants also claim that at least some of the securities sold were exempt under § 3(a)(9), which exempts "any security exchanged by the issuer with its existing securities holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange." 15 U.S.C. § 77c(a)(9). In response to the SEC's motion for summary judgment, however, the AIC defendants have not submitted evidence of transactions involving existing exclusively AIC securities investors, nor submitted any evidence or affidavits on whether those who sold AIC securities received a commission.[12] The SEC, in support of its motion, submitted the interrogatory responses of AIC and Skaltsounis noting the investors with whom Skaltsounis communicated during the relevant time period, many of whom appear to be

[12] In fact, the AIC defendants, in response to the SEC's motion for summary judgment, only state that there is "no evidence that there was a commission or remuneration paid" in regard to a transaction for the rollover of a promissory note [Doc. 98 at 16].

first-time investors referred by CB Securities brokers or members of the AIC board to invest in the company [Doc. 96-25 at 14-17]. In light of this evidence, and given that the AIC defendants have not presented any evidence indicating that the sole recipients of securities in this time period were current investors, which is their ultimate burden to prove in asserting a statutory exemption, the Court finds that the AIC defendants have not created a genuine issue of material fact as to whether the securities in question were exempt pursuant to §3(a)(9).

2. Exempt Transactions Under Regulation D

The AIC defendants also contend that the securities offerings and sales occurring between 2006 and 2009 did not involve public offerings so that the transactions themselves are exempt under § 4 of the Securities Act and the regulations promulgated thereunder, commonly referred to as the "Regulation D exemption," 17 C.F.R. § 230.501 *et seq.* The AIC defendants specifically rely upon Rule 506 under Regulation D, based upon the nature of the offering and the status of their investors.

Under § 4(a)(2), the registration requirements of the Securities Act do not apply to "transactions by an issuer not involving any public offering." 15 U.S.C. § 77d(a)(2). A non-public offering has been defined by the Supreme Court as "'[a]n offering to those who are shown to be able to fend for themselves.'" *Mark v. FSC Securities Corp.*, 870 F.2d 331, 333 (6th Cir. 1989) (alteration in original) (quoting *Ralston Purina*, 346 U.S. at 125. Regulation D, and Rule 506 in particular, codify this principle, and set forth specific

conditions that must be met in order to fall within the safe harbor. 17 C.F.R. § 230.506.[13] Under Rule 506 the offers and sales must first satisfy all of the terms and conditions set forth in Rules 501 and 502, as well as meet the following specific conditions:

> (i) Limitation on number of purchasers. There are no more than or the issuer reasonably believes that there are no more than 35 purchasers of securities from the issuer in any offering under this section.
>
> . . . .
>
> (ii) Nature of purchasers. Each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonable believes immediately prior to making any sale that such purchaser comes within this description.

Id.

Rule 501 notes that in calculating the total number of purchasers, relatives of other purchasers with the same primary residence are excluded, as are "accredited investors." An accredited investor is defined as any person who comes within one of eight enumerated categories, "or who the issuer reasonably believes" comes within one of the categories, which include the following: banks; business development companies; non-profit organizations with a certain amount of assets; directors, executive officers, and general partners of the issuer (or of a general partner of the issuer); natural persons with individual or joint net worth exceeding $1 million; and any natural person with individual income of $200,000 (or joint income of $300,000) in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year.

[13] In *Mark*, the Sixth Circuit noted that it was the company seeking the application of the safe harbor's burden to prove that the conditions of Rule 506 have been met. 870 F.2d at 334.

17 C.F.R. § 230.501(a). "In order to come within the Rule 506 safe harbor, [the issuer] is required to offer evidence of the issuer's reasonable belief as to the nature of *each* purchaser." *Mark*, 870 F.2d at 335; *see also SEC v. Credit First Fund, LP*, No. CV05-8741 DSF, 2006 WL 4729240, at *12 (C.D. Cal. Feb. 13, 2006) ("The party claiming the exemption must show that it is met not only with respect to each purchaser, but also with respect to each offeree.") (quoting *SEC v. Murphy*, 626 F.2d 633, 644-45 (9th Cir. 1980)).

Rule 502 sets forth conditions for the type of financial and other information that must be provided to any non-accredited investors for offers and sales under Regulation D, and requires that such information be provided within a reasonable period of time prior to sale. Rule 502 also sets forth limitations on the manner of the offering and types of solicitations that are permitted, as well as limits on resale of any securities sold under Regulation D.

In this case, the SEC argues that the safe harbor afforded by Rule 506 is unavailable to the AIC defendants because securities were sold to individuals who did not qualify as unaccredited investors or were otherwise sophisticated so as to understand the merits and risks of the prospective investment and who did not receive the requisite financial information. Although the SEC claims that numerous investors of AIC stock and notes during the relevant time period were not accredited, the SEC submitted evidence on several such investors, which the AIC defendants addressed in their response and which the Court will analyze to determine the availability of Rule 506.

The first investor that the SEC argues is unaccredited is Jovena Daniels, who filled out a "Direct Account Form" with CB Securities on September 12, 2009, and who was procured by defendant Graves [Doc. 96-33]. Ms. Daniels, a resident of Stafford, Virginia, indicated that her income was between $0 and $29,000, and noted that she was unemployed at the time. Although she estimated her financial net worth as being between $100,000 and $149,000, she wrote that her total net worth was "$300,000" [*Id.*]. Ms. Daniels signed the form indicating that she was aware of the nature of what was being offered (*i.e.* investment products by a non-bank) and that she had received a copy of the customer agreement (which is not included with the account form itself in the record). In the notes for use by CB Securities, its representative took Ms. Daniels's driver's license information. The form also indicates that a CB Securities principal reviewed the form on September 16, 2009 [*Id.*]. It does not indicate whether Ms. Daniels was deemed an accredited investor, whether Ms. Daniels herself was required to attest to her status as an accredited investor, or whether Ms. Daniels was informed that the promissory note was being issued without registration. A promissory note in the amount of $50,000, along with $2,500 in interest, was issued by AIC on September 28, 2009 [Doc. 98-8]. The Court notes that the promissory note itself similarly does not indicate that Ms. Daniels has been qualified as an accredited investor, or that the note's validity is dependent upon her status as such, or that the note was issued without registration.

From this, none of the documents in the record indicate that Ms. Daniels was an accredited investor, nor explain how AIC's agents formed a "reasonable belief" as to Ms.

Daniels's status prior to issuing the note, particularly given that Ms. Daniels was a new customer of CB Securities. At his deposition, Skaltsounis testified that he had not seen the form before and could not authenticate it. As AIC has not presented any evidence that Ms. Daniels was an accredited investor, and the SEC has presented evidence that she was not, the Court finds that Ms. Daniels was not an accredited investor, so that the AIC defendants were required to meet the conditions set forth in Rules 502 and 506. As to Rule 502's requirements, the AIC defendants have not presented evidence that Ms. Daniels received any financial information, which the defendants had an obligation to provide, or that Ms. Daniels was advised on the limitations of resale of the note. In addition, the AIC defendants have not presented evidence which led them to reasonably believe that Ms. Daniels, assuming she received the requisite information, had "such knowledge and experience in financial and business matters" so that she was capable of evaluating the merits and risks of the prospective investment. 17 C.F.R. § 230.506(b)(2)(ii). Thus, the Court concludes that the safe harbor provisions of Rule 506 were not available to the AIC defendants in their offering and sale of the promissory note to Ms. Daniels.[14]

[14] The AIC defendants argue that regardless of her status as an accredited investor, the note issued to Ms. Daniels is exempt because it has a maturity of six months. The maturity of the note, however, is immaterial to the issue of whether the safe harbor provisions of Rule 506 were available to the AIC defendants, and as discussed, under the *Reves* analysis all of the notes in question were subject to the Securities Act's requirements.

The Court reaches a similar conclusion with respect to several promissory notes issued to Clarice Newman, a resident of Maryville, Tennessee.[15] Ms. Newman filled out several account forms on March 3, 2008 with CB Securities, procured by CB Securities representative Carol LaRue [Doc. 96-33 at 12-14]. Ms. Newman indicated that she had 35 years of investment experience, was retired, with an income between $30,000 and $59,000, and a net worth of $350,000 [*Id.*]. Similarly to Ms. Daniels, there is no other information on the form indicating and AIC has otherwise presented evidence that Ms. Daniels was an accredited investor. Although the form indicates that Ms. Newman was an existing customer of CB Securities, this alone cannot create a genuine issue of material fact as to accredited status, particularly in light of AIC's admission that Ms. Newman was potentially unaccredited and that it did not know what documents were given to her prior to her investment [Doc. 98 at 20]. Without any evidence that the AIC defendants had a reasonable belief as to either Ms. Newman's status as an accredited investor or to their compliance with the conditions of Rules 502 and 506, the Court finds that the sale of promissory notes to Ms. Newman were not covered under Regulation D.[16]

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[15] Although there is no promissory note issued to Ms. Newman in the record, the AIC defendants admit in their response to the SEC's motion for partial summary judgment that Ms. Newman received two promissory notes in 2008 and rolled her investment into a new promissory note in July 2009 [Doc. 98 at 20 n.11].

[16] The Court notes that the SEC submitted additional account forms for individuals for whom there do not appear to be promissory notes or subscription agreements in the record. Two of these individuals, Elizabeth Green (income of less than $59,000, net worth of less than $800,000) and Robert Stuart (income of less than $130,000, net worth of "$500,000+") on the face of the forms, do not appear to meet any of the definitions of "accredited investor status," nor have the AIC defendants presented any other evidence as to these investors' status or receipt of the requisite financial information [Doc. 96-33].

In response, the AIC defendants first reference an answer to one of the SEC's interrogatories, in which AIC stated that it relied upon four categories of information in justifying that it had a reasonable belief as to the status and nature of each investor: 1) the advice of Troutman Sanders and Tom Grant; 2) due diligence by AIC and its authorized agents; 3) "existing and established familial, personal and business relationships, including information supplied by Investors on account opening forms, in client agreements, and relating to other private placements" [Doc. 98 at 19]; and 4) investor representations in promissory notes, subscription agreements, and other documents relating to investments.

As to the first category, AIC notes that it was informed by its attorneys that the Form D's, offering materials, and instruments used in connection with the AIC investments were compliant. As previously discussed, the AIC defendants have not presented any evidence that its counsel examined any of the actual investors who received these unregistered securities to determine whether they were accredited, or that its attorneys were aware of any such specific transactions. Although the AIC defendants submitted a compilation of every Form D filed on their behalf as an exhibit to their response [Doc. 98-7], as required under Regulation D, the form itself does not inform the SEC (or the attorney preparing the form) anything about the nature of the investor. The forms discuss the transactions, rather than the investors themselves and the information provided to them, the focal point of Rule 506.

The AIC defendants have similarly not directed the Court to any evidence describing the process by which AIC's agents/brokers exercised due diligence prior to selling securities to investors, nor have they presented any financial information that was given to investors prior to their investment. During deposition testimony, Skaltsounis stated that he did not know what information was provided to potential preferred stockholders or potential promissory noteholders [Doc. 96-1 at 37]. Although the AIC defendants submitted, and the record contains, several subscription agreements and questionnaires completed by investors where they are specifically asked to attest to their accredited status [Doc. 98-9 (subscription agreement and questionnaire for George and Patricia Gilbert)], the AIC defendants have not presented similar agreements and questionnaires for the other new customers whose investments were solicited during the relevant time period. *See Mark*, 870 F.2d at 337 (noting that blank subscription documents and questionnaires did not amount to probative evidence of compliance with Rule 506 when it was the "answers and information received *from* purchasers" that was determinative). Moreover, while the account forms contain blank spaces related to accredited status as discussed, *supra*, there is no indication that the account forms or promissory notes given to noteholders contain any places where potential investors were to affirm their accredited status, unlike the subscription agreements. This makes the AIC defendants' reliance upon the investors' agreement to invest in a promissory note as a basis for compliance with Rule 506 unreasonable, particularly when several account forms, on their face, indicate unaccredited status. Because the Court finds that the AIC

defendants have not presented any evidence creating a genuine issue of material fact as to their having met the conditions of Rule 506 for each investor, and the SEC has presented affirmative evidence showing the unavailability of the safe harbor, the Court concludes that the sales of AIC securities were not exempt under Regulation D.

3. Exemption Under Section 4(a)(1)

In their response to the SEC's motion for summary judgment, the AIC defendants claim that the provisions of § 5 do not apply as "[t]here is no genuine dispute that CBS and Skaltsounis are not issuers, underwriters or dealers in AIC securities" [Doc. 98 at 16]. The SEC argues that the defense is baseless given the fact that both CB Securities and Skaltsounis are dealers, and that, even if they were not dealers, their participation in the transaction is enough to impose liability under §§ 5(a) and 5(c).

Section 4(a)(1) of the Securities Act states that the provisions of § 5 do not apply to "transactions by any person other than an issue, underwriter, or dealer." 15 U.S.C. § 77d(a)(1). The Securities Act defines an underwriter, in part, as any person who "offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking . . . ." 15 U.S.C. § 77b(11). Similarly, a "dealer" is defined as "any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person." 15 U.S.C. § 77b(12).

The Courts finds defendants' asserted defense to be meritless based upon the language of the statute. Skaltsounis testified during his deposition that he procured many of the AIC investments directly, was responsible for signing off on numerous subscription agreements and promissory notes, and met with numerous investors regarding the sale of AIC securities [Doc. 96-25 at 14-16]. CB Securities, a registered broker-dealer with the NASD and FINRA during the relevant time period, and its registered representatives, including Skaltsounis, Guyette and Graves, all engaged in the sale of AIC stock and notes during the relevant time period. The defendants have presented no evidence to contradict the record, which shows that the AIC defendants directly participated in the distribution of AIC's securities, so that the transactions are not exempt under § 4(a)(1).

For the reasons previously discussed, the Court finds that the AIC defendants' claimed exemptions and defenses to § 5 liability are not well-taken, and there is no genuine issue of material fact as to whether the AIC defendants violated §§ 5(a) and 5(c) through the unregistered sale of securities.[17] Accordingly, the SEC's motion for summary judgment will be granted and judgment will be entered against the AIC defendants and in favor of the SEC as to this claim.

[17] The Court notes that the AIC defendants re-assert their advice of counsel defense to this claim, but, as *scienter* is not an element of a § 5 violation, *Sierra Brokerage*, 608 F. Supp. 2d at 939, the Court need not consider this defense as it relates to this specific claim.

C. Liability of Relief Defendants

The SEC also seeks what it terms "contingent summary judgment" as to its claims of disgorgement against the relief defendants, who received funds from AIC that represented the proceeds of its alleged fraudulent and prohibited transactions at issue. Specifically, the SEC claims that there is no genuine issue of material fact as to the relief defendants' receipt of funds, and to there being no legitimate claim to those funds, so that the relief defendants are liable so long as the SEC proves the underlying violations against the AIC defendants. The relief defendants argue that the relief defendants have a legitimate claim to the funds at issue because they performed legitimate services, namely, enhancing shareholder value by growing revenues, which, given their position as subsidiaries of AIC, provided value to AIC's shareholders [Doc. 98 at 22].

"'Federal courts may order equitable relief against [such] a person who is not accused of wrongdoing in a securities enforcement action where that person: (1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds.'" *SEC v. George*, 426 F.3d 786, 798 (6th Cir. 2005) (quoting *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998)). Courts have noted that the receipt of property as a gift, without the payment of consideration, is insufficient to create a "legitimate claim" immunizing property from disgorgement. *CFTC v. Walsh*, 618 F.3d 218, 226 (2d Cir. 2010) (citing cases). Although not addressed by the Sixth Circuit, other courts have held that "relief defendants who have provided some form of valuable consideration in good faith in return for proceeds of fraud are beyond the reach of the district court's disgorgement

remedy." *Id.* (citing *Janvey v. Adams*, 588 F.3d 831, 834-35 (5th Cir. 2009) (purchaser of certificates of deposit from bank had "ownership interest")); *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 191-92 (4th Cir. 2002)); *see also FTC v. Bronson Parnters, LLC*, 674 F. Supp. 2d 373, 392 (D. Conn. 2009) ("A relief defendant can show a legitimate claim to the funds received by showing that some services were performed in consideration for the monies.").

The parties do not dispute that AIC gave capital contributions to each of the relief defendants. The SEC provided the report of an expert witness, Professor Ray Stephens, who determined the following amounts of capital contributions made to the relief defendants during the relevant time period: (1) AIC to Waterford, $541,000; (2) AIC to Advent, $516,150; and (3) AIC to CBS Advisors, $58,686.75 [Doc. 96-8 at 15]. The defendants do not dispute these amounts in their response. Thus, the Court concludes that these are the amounts that the relief defendants received from AIC.

The relief defendants dispute whether they have a legitimate claim to the distributed funds. Specifically, the relief defendants argue that they provided services back to AIC after receipt of the funds by growing their business, increasing their revenue, and thus increasing shareholder value to AIC. The relief defendants point to audited financial statements as proof of the value they provided to AIC. Professor Stephens, however, stated in his report that "AIC's ownership of each of its subsidiaries did not change due to the cash capital contributions made to CB Securities, Waterford, Advent, or CBS Advisors. AIC received nothing of value in exchange for the cash capital

contributions to CB Securities, Waterford, Advent, and CBS Advisors" [Doc. 96-8 at 11]. The SEC also submitted deposition testimony indicating that neither Advent [Doc. 96-35 at 5], Waterford [Doc. 96-37 at 3], nor CBS Advisors [Doc. 96-39 at 5] provided specific services that were tied to the capital contributions.

The Court concludes that the relief defendants do not have a legitimate claim to the contributions made by AIC. The relief defendants argue that the growth of their business was "consideration" for the contributions received by AIC; however, the contributions were a result of AIC's existing ownership interest in the relief defendants, which did not change in this time period [*See* Doc. 96-8 at 11-12]. Similarly, the benefit AIC received from the relief defendants' growth of their businesses was a direct result of AIC's ownership interest, rather than as consideration for the funds received. As the relief defendants were subsidiaries of AIC, the Court finds it would be inappropriate to allow those who violate the securities laws to retain the benefit of their fraudulent acts by transferring the funds to a subsidiary or subsidiaries, which in turn generate revenue for the parent through legitimate means. Moreover, unlike relief defendants who purchased ill-gotten proceeds for value or who earned such proceeds as a result of their employment relationship, the relief defendants have not presented any evidence that the contributions received here involved the exchange of benefits and detriments which serves as consideration to create an independent ownership interest in the received funds. Accordingly, the Court finds that the contributions made by AIC were gratuitous and are

subject to disgorgement.[18] The SEC's motion in this regard is granted to the extent that the relief defendants will be subject to disgorgement pending a finding of liability against the AIC defendants on the SEC's claims.

IV. Conclusion

For the reasons previously stated, the Court finds that the SEC has shown there is no genuine issue of material fact as to the claims and defenses presented in their Motion for Partial Summary Judgment [Doc. 93], and the defendants have not presented any evidence to rebut this showing. Accordingly, the SEC's Motion for Partial Summary Judgment [Doc. 93] is hereby **GRANTED** to the extent discussed herein. It is **ORDERED** that the SEC submit an appropriate form of judgment. This matter will proceed to trial on the SEC's remaining claims.

IT IS SO ORDERED.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

[18] Although the relief defendants assert the same affirmative defenses as the AIC defendants to preclude the availability of disgorgement, the Court finds that these defenses fail for the same reasons as previously discussed by the Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AIC, INC. et al., Defendants. and ALLIED BEACON PARTNERS, INC., et al., Relief Defendants.	)	Civil Action No. 3:11cv00176

AIC DEFENDANTS' AND RELIEF DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT

Defendants, AIC, Inc. ("AIC"), Community Bankers Securities, LLC ("CBS"), and Nicholas D. Skaltsounis ("Skaltsounis") (AIC, CBS and Skaltsounis are collectively referred to as the "Defendants"), and Relief Defendants, Allied Beacon Partners, Inc. (f/k/a Waterford Investors Services, Inc.), Advent Securities, Inc., and CBS Advisors, LLC (collectively referred to as the "Relief Defendants"), by counsel, file the following brief Response to the plaintiff's motion for entry of final judgments [*Documents 205 and 206*]:

The AIC Defendants and Relief Defendants will not restate the facts or prior positions and objections, all of which are matters of Record in this action. The AIC Defendants and Relief Defendants will also refrain from making any post-trial motions at this time. At this stage of the proceeding, the Defendants simply ask the Court to take account of the following:

1. The SEC continues to refer to "investors across several states", yet during the almost three (3) week jury trial – attended 100% of the time by no less than five (5) SEC lawyers – the SEC called only eleven (11) out of the ***hundreds*** of shareholders and noteholders of AIC. The amount of any judgment against AIC, CBS and certainly Skaltsounis should, at a minimum, be limited to proven loss of the "investors" who testified. Otherwise, the Court is left with an illogical and insupportable paradox: Skaltsounis was the largest "investor" in AIC and he certainly did not defraud himself or sell himself an unregistered security. And what about the "investors" who never testified? Other than sheer speculation, how does the Court know that ***any*** of these investors were defrauded by anyone?

2. At trial, the SEC chose to parade a handful of little old ladies, a pastor, and other "sympathic" witnesses before the Jury. With the exception of Mr. Skaltsounis' dentist, ***none*** of the so-called "victims" ever spoke with Mr. Skaltsounis. After hearing almost 3 weeks of testimony and receiving 1,000s of exhibits introduced by the SEC, the Jury returned a verdict in under 4 hours. The jury could not possibly have followed the law and/or considered the evidence. The SEC claims that it is seeking relief that will "appropriately" punish the AIC Defendants for their wrongdoing and deter them and others from violations in the future. In truth, the relief requested is death. Fortunately,

the SEC caused the bankruptcy of the AIC Defendants and the Relief Defendants long ago. To suggest that there will ever be "recovered funds" is comical. The SEC knows it is comical. The SEC's actions have ensured that none of the "defrauded investors" will ever obtain a return on their investments.

3. Prior to this action, Skaltsounis had an untarnished record in the securities industry. He did not have a single complaint in over 30 years. He properly engaged Troutman Sanders to handle all legal matters for AIC and its subsidiaries, as the voluminous invoices demonstrate. Troutman prepared ***ALL*** of the legal instruments provided to "investors", including the subscription agreements and notes. Troutman never advised AIC to use a detailed written prospectus to describe the risks involved in an investment in AIC. AIC had a Board of Directors, which included Troutman Partner, Thomas A. Grant, Esquire. Skaltsounis was not making decisions about AIC Investments by himself in a vaccum. He consulted his attorney and all issues relating to the AIC Investments were openly and fully discussed at Board meetings. Skaltsounis' "past behavior", *i.e., his unblemished record in the industry*, and his behavior during the ten (10) years in which AIC offered stock and notes do not support a permanent ban. In fact, given the severity of the financial "punishment", how is Skaltsounis ever going to pay the massive judgment requested by the SEC if he can never work again?

4. In its motion, the SEC repeatedly refers to a "high degree of scienter". The evidence at trial, however, contradicts that gross and unrestrained hyperbole. Why would Skaltsounis invest over $458,000 of his own money in AIC? Why would the other directors – who collectively were the larges "investor" group – invest their and their families money in a "scheme to defraud" anyone? Were mistakes made by AIC? Should

AIC have given every investor a 500+ page prospectus with 50+ pages of "**RISK FACTORS**" disclosed in bold, capitals? That would have helped, but "investors" like Janice Robinson didn't read anything anyway. The SEC's hyperbole should be rejected by the Court.

5. Finally, the SEC represents to the Court that it is only trying to be "conservative" in requesting a $27,950,000 civil penalty against AIC and a $5,590,000 for Skaltsounis. The AIC Defendants reject the SEC's disingenuous arguments. This is not justice. This is not how America is supposed to operate. These are punitive damages, which are not recoverable in a private civil action § 10(b). There should not be *any* civil penalty in this case. There was ***no*** proof of "135 violations" of any securities laws by AIC, CBS or Skaltsounis or Thomas Grant (who solicited several investors) or anyone else. Only 11 "investors" testified at trial. How does the Court or even the SEC, for that matter, know that any other "investor" was "defrauded"? There is no evidence of such "fraud". The SEC is manufacturing evidence and argument. The SEC's effort to "punish" the AIC Defendants is unconstitutional, since, *inter alia*, it deprives the AIC Defendants of the right to confront the "investors" who did not testify that they were ever defrauded and imposes MILLIONS of dollars in punitive damages without any trial at all. The SEC's methods are not acceptable.

DATED: December 24, 2013

Signature of Counsel on Next Page

AIC, INC.
COMMUNITY BANKERS SECURITIES, LLC
NICHOLAS D. SKALTSOUNIS
ALLIED BEACON PARTNERS, INC.
(f/k/a Waterford Investor Services, Inc.)
ADVENT SECURITIES, INC.
ALLIED BEACON WEALTH MANAGEMENT, LLC
(F/k/a CBS Advisors, LLC)

By: */s/Steven S. Biss*

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Local Counsel for Defendants and
Relief Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2013, a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notice of electronic filing to counsel for the plaintiff, Michael J. Rinaldi, Esquire, Securities and Exchange Commission, Philadelphia Regional Office, 701 Market Street, Suite 2000, Philadelphia, Pa 19106, RinaldiM@sec.gov.

By: */s/Steven S. Biss*

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August 20, 2014

Via E-Mail and First-Class Mail

Steven S. Biss, Esq.
300 W. Main St., Ste. 102
Charlottesville, Va. 22903

Re: In re Skaltsounis, Administrative Proceeding File No. 3-16013

Dear Steve:

Pursuant to SEC Rule of Practice 230, documents related to the above-referenced matter are available for inspection and copying at the Securities and Exchange Commission's Philadelphia Regional Office, 1617 JFK Boulevard, Suite 520, Philadelphia, Pennsylvania. Pursuant to SEC Rule of Practice 230(f), the respondent is responsible for the cost of photocopying. If you wish to make arrangements for such inspection and copying, please contact me at (215) 597-3192.

Further, I am sending a copy of this letter to Mr. Skaltsounis by first-class mail, because it is not clear that you represent him in the above-referenced matter. I have called you twice this month regarding this issue, but have not heard back from you.

Very truly yours,

Michael J. Rinaldi

cc: Respondent Nicholas D. Skaltsounis (via first-class mail)

In the Matter Of:

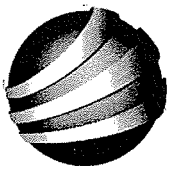
SEC vs. AIC

3:11-cv-00176

NICHOLAS D. SKALTSOUNIS

March 22, 2013

Volume II



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BY MR. RINALDI:

Q. I want you to tell me -- AIC has asserted an unclean hands defense. It must have some basis, I guess.

A. Yeah.

Q. Yeah.

MR. BISS: Yeah. Don't guess. It's in his interrogatory answers. Ask him about what's in there.

BY MR. RINALDI:

Q. What's the basis of the unclean hands defense?

A. Let's see.

First, it's the whole process of you knowing our situation and the motive for acting on it. That the -- based on the examination in 2009, the statements by your staff in 2009, the condition of the economy at the time, the status of the SEC under the pressure of having to perform and get scalps, the Madoff blemish.

You were looking into everything you could to -- as Shapiro said, to restore to the investment world the stability and assurances that things were going to be set right.

And in your zeal, you came to -- you knew

that we were easy prey, because we were a small firm. You jumped to a conclusion, but did not care. You needed a scalp, or two, or three.

And then you got involved in it, and started gathering information that -- and realized that your jump to conclusion was in fact a jump, but it was too late and you didn't care.

You then were subpoenaing and gathering more information and saber rattling and threatening TROs.

You were threatening, while I remained, in December and onwards with Waterford in attempt to save Waterford to continue some shareholder value -- you realized that Waterford was a -- was problematic for you, because it's sheer existence refused your statement that it was a Ponzi scheme and not a real firm.

Because you were actually, basically, say -- you were actually saying that in your investigation and in your subpoena questions and statements made to some of the people that you got depositions from in Philadelphia.

And you put us into a position where it destroyed the firm. And I, on advice of Troutman Sanders, went and got personal counsel. Because they

suggested I did. So I got personal counsel.

He recommended, poorly in retrospect, that I take the Fifth. But he was getting information from you that was making statements that you all really had something.

And in fact, you didn't. You were putting things together any way you could to make this -- to fit this -- the round peg/square box or vice-versa.

And my -- the bad advice to counsel -- from counsel for me to take the Fifth didn't give me a chance to explain certain things, whether you wanted to hear them or not.

Because you all were so assured that you all knew what you all had. I believe that you determined around that time that you -- it may be a little less than you thought.

But you still had -- you had destroyed the firm and, effectively, destroyed me. So you couldn't stop, and you couldn't say, "We're sorry. We see that this is nothing wrong here."

So you offered a settlement to me. And that settlement was pretty devastating. It would disbar me from the industry. You would, basically, get rid of AIC through a default judgment, and be able to take over all the assets through a TRO or -- which

would effectively destroy Waterford.

Which would bail you out there, because Waterford was a blemish, since it still existed, was eventually sold, and still is an active broker-dealer today.

So that settlement was devastating. It would have been devastating, and also it had all these false accusations that would justify your actions.

And it was the perfect remedy for you and for the staff to get out of this mess. And everything was ready to be finalized, tied with a bow, and put on your little war lodge as another trophy.

However, about that time -- you wouldn't even change some of the -- you accused us of having a Ponzi scheme. At that time, you were at least nice enough to use the word "Ponzi-like."

As soon as we took on counsel to -- other than Mr. Isenberg, and I told -- I had informed you that I had -- AIC had retained counsel, it infuriated you.

Because this was ready to be tied in a nice bow. So instead of being up front about things, you were even -- you became more devious and unclean.

You took the words "Ponzi-like" out of your filing, and used the word "Ponzi." You insured that

the media in your press release would have that word.

I was being destroyed before I ever set one foot in court. And there are 7 -- there are 1100 hits on Google right now that refer to me as "accused Ponzi schemer Nick Skaltsounis."

It's ruined me in any vocation I want to pursue to-date. And then to make matters even worse, with your deviousness, since I retained counsel and finally had some real defense, you decided to change venue.

Because we had no counsel in Tennessee. We had counsel in Virginia. So where you had shown me a document, a filing in Richmond, you now tore that up and filed instead in Tennessee.

Very shrewd. Very unclean-like. And to-date, we have counsel. We're defending this. And there are many, many other examples of --

Just the uncleanliness that we're talking about, the unclean hands, permeates the entire three years, or four -- actually, it's four years.

November 1 of 2009 is when you embarked in this matter. And it'll be four years before we see the courtroom.

And I look forward to that date. I think we need to show the people that -- like me at one

time -- that thought the SEC was really looking out for the investment world, where that's now, to me, in the abstract they are.

But in reality, right now, you're after scalps. The big boys, Goldman Sachs, settle with you, and you put $500 million in your coffers. They settle with you because they can.

The little firms settle with you because they have to, because they can't afford a defense. So you have sort of the best of both worlds in that regard.

It's the ones that defend themselves, the ones that are right and defend themselves, that are really caught in the middle.

I'm fortunate enough to sit here today with counsel that could never get paid enough to do what he's doing against this kind of tyranny.

Because -- and I'm not saying this against the institution, because I fought for that institution, all our institutions, in Vietnam.

I fought for that institution. But it's the players. It's the ones -- and I say this to Ms. Walters. You did good work, but you need to acknowledge when you got it wrong.

And you got it wrong. Rather than to try

to beat it into something it's not. And you're wasting shareholder money.

You've already destroyed me. You've already destroyed the companies. Right now, it's ego. I mean, this is absurd. You carry this travesty out.

Unclean? Unclean? That's a nice way of saying what you are.

Q. Any other basis for AIC's unclean hands defense?

A. Plenty. But none come to mind immediately. They're all in there. And I can't recall them all.

Q. Well, I'm asking you at your 30(b)(6) deposition what the basis is.

A. I can't recall.

MR. BISS: Have you given him a full answer?

THE WITNESS: Yes.

MR. BISS: Okay.

BY MR. RINALDI:

Q. Thank you.

And AIC has also asserted a waiver defense.

What is the basis of the waiver defense?

MR. BISS: You mean other than what's in the interrogatory answers? Or do you just want