UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74305 / February 19, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4026 / February 19, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31459 / February 19, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16389

In the Matter of

VCAP Securities , LLC, and
Brett Thomas Graham,

Respondents.

NOTICE OF MOTION TO MODIFY ORDER

PLEASE TAKE NOTICE that, upon the annexed affidavit of Brett Graham, sworn to on January 9, 2017, Respondent Brett Graham, by his attorneys, Tannenbaum Helpern Syracuse & Hirschtritt LLP, will move, at a date to be determined, that the Securities and Exchange Commission (the "Commission") modify its Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b)(4), 15(b)(6), and 21C of the Securities Exchange Act Of 1934, Section 203(f) of The Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act Of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, issued in the above-captioned proceeding on February 19, 2015 (the "Order"), by: (a) removing the provisions contained in Section IV.C. of the Order which bar Mr. Graham from (i) being associated with an investment adviser, (ii) being associated with a securities broker or dealer in a non-supervisory capacity, and (iii) serving or acting as an officer, director or employee of a company which issues securities, including, but not limited to "penny

stocks," as that term is defined in Rule 3a51-1, promulgated under the Securities Exchange Act of 1934, as amended; and (b) adding a provision to the Order pursuant to Rule 506(d)(2)(ii), promulgated under the Securities Act of 1933, as amended, which states that, notwithstanding any other provision of the Order, the Order shall not operate to preclude any issuer with which Mr. Graham is associated as an officer, director, employee or investment adviser, from relying upon the exemption under Rule 506, and for such other and further relief as the Commission deems just and proper.

Dated: New York, New York
January 10, 2017

TANNENBAUM HELPERN SYRACUSE
& HIRSCHTRITT LLP

By: 

Ralph A. Siciliano
900 Third Avenue, 12th Fl.
New York, NY 10022
Tel. No.: (212) 508-6718

Attorneys for Brett Graham

To: Office of the Secretary
U.S. Securities and Exchange
Commission
100 F Street, NE
Washington, D.C. 20549

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ADMINISTRATIVE PROCEEDING
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In the Matter of

VCAP Securities , LLC, and
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AFFIDAVIT OF BRETT GRAHAM IN SUPPORT OF MOTION TO MODIFY ORDER

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

Introduction

1. I respectfully submit this affidavit in support of my motion to modify the bar order issued by the Commission on February 19, 2015 (the "Bar" or "Order"). A copy of the Order is annexed to the application as Exhibit A. The Order contains a bar from certain activities with a right to reapply after three years. I am requesting, by this motion, that the portion of the Order which bars me from certain activities be removed at this time.

2. Specifically, I respectfully request, by that the Commission modify the Order by: (a) removing the provisions contained in Section IV.C. of the Order which bar

me from (i) being associated with an investment adviser, (ii) being associated with a securities broker or dealer in a non-supervisory capacity, and (iii) serving or acting as an officer, director or employee of a company which issues securities, including, but not limited to "penny stocks," as that term is defined in Rule 3a51-1, promulgated under the Securities Exchange Act of 1934, as amended; and (b) adding a provision to the Order pursuant to Rule 506(d)(2)(ii), promulgated under the Securities Act of 1933, as amended, which states that, notwithstanding any other provision of the Order, the Order shall not operate to preclude any issuer with which I am associated as an officer, director, employee or investment adviser, from relying upon the exemption under Rule 506.

3. I recognize the unusual nature of this early request; however, I believe the extraordinary combination of circumstances warrants early reconsideration in this instance based on the following factors:

- Information that was unknown or could not have been known at the time the Order was issued;
- My compliance with the bar under hardship conditions during the allowed "carve-out" period;
- Actions of the remaining Partners at Vertical subsequent to the Order, and my efforts to shed light on those actions within the constraints of the Order;
- Personal and financial distress that can only be alleviated by modifying the bar;
- The decision to settle was based on the Staff's admonition that in the absence of a settlement an administrative proceeding would be filed against me, and I was advised by counsel that given the nature and rules of this forum (which were

amended after my settlement in 2015 to create a fairer forum for defendants) that it was preferable to strike the best deal possible via settlement. The constitutionality of this forum is now very much in question.

4. I will elaborate on each of the above in detail below, and I am fully prepared to appear before the Commission to discuss all details related to this matter. I also want to make it clear up front that nothing stated herein is intended to deny my involvement in the actions described in the Order; on the contrary, I have owned my actions fully with investors in the fund I managed, trading counterparties, and employees. I am optimistic, however, that at the conclusion of this application you will concur based on the knowledge that exists today and the actions of the parties subsequent to the Order that the original term of the bar was excessive both in absolute terms as well as entirely disproportionate, and that the public interest will be best-served in granting the relief requested in this application.

My Background in the Securities Industry

5. With the lone exception of the conduct set out in the Order, my 30+ year career in finance has not only been unblemished, but has been characterized by innovation, entrepreneurship, mentoring, and an unyielding commitment to integrity. Following an Analyst program at Morgan Stanley after UC Berkeley, I began work at Bear Stearns in their nascent mortgage-backed securities division in 1987. At Bear Stearns I pioneered research into prepayment rates among mortgage borrowers in different States and worked with the federal agencies to develop funding products to better match their assets. When the S&L Crisis hit, I was intimately involved in evaluating potential investments on behalf of banking clients as well as the RTC auctions

of orphaned portfolios. Having gained a reputation for trustworthiness and creative thinking, I migrated to a newly-constituted product development role throughout fixed income and originated and developed such ideas as Credit and Event Sensitive Notes for corporate clients that were having difficulty raising funds in the public bond markets due to ratings or takeover related factors.

6. In 1991 I was sent to Paris by Bear Stearns, which had recently signed a joint venture with the then-largest French bank, to head its start-up Continental European Securitization business where I was primarily responsible for developing a workable legal, regulatory and ratings model that survives to this day in a market that has grown into the hundreds of billions in size. Bear Stearns successfully exported this model all over Europe via numerous joint ventures. Wanting to focus on a broader client product suite than just securitization, I moved to London to start a Debt Capital Markets Group in Europe for Bear Stearns in 1993. In London, I revolutionized an opaque Euro-bond market by bringing transparency to syndication practices and Bear Stearns went from never having Lead Managed a Global Bond offering to being the largest underwriter of Global Corporate Bonds in 1995. By that point I was not only running the International Debt Capital Markets Group (Europe/Asia), I was also Co-Head of a European Fixed Income division of more than 300 people, many of whom I hired and trained. Throughout my tenure at Bear Stearns my record and the division's record were unblemished, and internally I developed a reputation as standing up for clients' rights at the expense of short-term profitability. As examples, I did this both by objecting in writing to derivative trades that I believed were being marketed to inappropriate clients and had a disproportionately high probability of outcome against the client, and by refusing to

participate in marketing Emerging Markets debt underwritings after the firm repeatedly failed to support its new issues in the secondary markets. My actions rankled at times, but I also successfully altered the firm's business practices by advocating for clients.

7. In 2001 I resigned from Bear Stearns when the firm was still very much in the ascendancy, and decided to pursue opportunities on the investment management side as I saw how overly dependent investors were on the broker-dealer community for research and analytics. I co-founded Vertical Capital LLC ("Vertical"), a registered investment adviser, in 2002 as a structured finance boutique asset manager with a dedication to building its own internal analytics as a differentiating factor. Vertical had great success in its early years, but then suffered in the Housing Crisis as the structure of our funds did not stand up to rules that governed the financing. I had correctly foreseen the housing bubble and was the first manager to build in short buckets as protection, but the ratings agencies denied us the ability to execute on the hedges shortly before markets collapsed (by refusing to provide the required ratings confirmation on the debt if we executed the hedges), just when they were needed most. It was a hard-learned lesson. During the period leading up to the Housing Crisis, Vertical and I had a front-row seat into some of the abuses that were ultimately revealed in its wake, but I steadfastly distanced us from engaging in any untoward practices at the expense of profits. Notably, Vertical, as a highly-regarded manager, was on many occasions offered fees to lend its name to Synthetic CDOs that later came to infamy, but on every occasion I refused as the manager was not afforded actual selection rights on the underlying asset pool. Indeed, the Financial Crisis Inquiry Commission's final report on the causes of the financial crisis makes a positive reference to Vertical in this regard as not being a "rent-a-manager" to

draw a stark contrast with the abusive practices that permeated much of the industry at the time. It is the only positive reference to any asset manager I have found in the voluminous report.

8. In 2009 I re-constituted Vertical as a Distressed Non-Agency Residential Mortgage-Backed Securities manager for which I was sole CIO. The fund invested exclusively in deep-credit RMBS and typically held securities for a period of years until the investment thesis was realized as befits my value-based approach. Having learned important lessons in the Financial Crisis, I engineered an overhaul of our analytical approach from 2007-9 and also structured our fund as an un-levered Series Private Equity Fund and developed a novel and perfectly-aligned fee structure that our investors loved and have sought to impose (with some success) on other investment managers: No Management Fee and a Performance Fee payable only after investors have recouped all their invested capital through distributions. Between 2009-2014 Vertical (primarily me) raised over $400mm in capital and investors earned an average return multiple of 2.5-3x invested capital (depending on the timing/series of the investment). I was the sole Managing Partner/CIO during this period in which Vertical grew to 25 employees, most of whom I recruited, hired and mentored.

9. In 2010 I started a second business line at Vertical via our broker-dealer affiliate, VCAP Securities, LLC ("VCAP"), which we purchased in 2009. Having been actively involved in the RTC Liquidation process during the S&L Crisis early on in my Bear Stearns career, I saw great similarities with the wave of impending liquidations of orphaned portfolios in the wake of the Housing Crisis. I also observed what I regarded as tremendous abuses in the early auctions in which Vertical participated as bidder; despite

the fact these were Public Auctions the auction agent routinely denied some (including us) the right to bid, certain bidders were given preferential treatment based on personal favors, in some instances the auction agent advertised that the securities would "not trade" when in fact this was untrue and which allowed one party to set the price for the portfolio, and transparency of the process was practically non-existent which discouraged participation and contributed to a disjointed secondary market. Simply put, I wanted to bring transparency to the process and by doing so improve participation, pricing and enhance the secondary market. Notwithstanding the actions that led to the Order (which I will address later), Vertical, through its broker-dealer affiliate VCAP, was successful in all respects. We became the largest liquidation agent eventually auctioning off >$25bn in securities and participation and liquidity improved greatly as a result of the enhanced transparency we brought to the process. Markets participants would be unanimous in their praise in that regard as evidenced by our client list that included all the major banks and Trustees.

10. In sum, my 30+ year illustrious career in finance has been characterized by successful innovation across a broad range of markets, products and geography. It has also been characterized throughout by a commitment to transparency, integrity, and learning from experience; in fact one of my mantras that I have shared with all my former employees is that "while there is no such thing as a stupid question, only a moron makes the same mistake twice".

Actions Which Led to the Order

11. The SEC Investigation into VCAP began in 2013 as an investigation into a trade that was part of an auction run by VCAP. The security in question was a Synthetic

CDO security that was owned by the portfolio VCAP was auctioning. The security had no intrinsic economic value. The Controlling Class, which was unwinding the portfolio and was required to bid on every security to effectuate a successful auction, bid $0.12. Another bank, which wanted to buy the security so it could unwind the derivative behind the Synthetic CDO, bid $21.00. These were the only two bidders. Instead of going to the Trustee (which had hired VCAP to run the auction according to commercially reasonable practices) I instructed the higher bidder via Bloomberg Instant Messenger (the manner in which I communicated with the 40+ bidders in real-time during the auction) to cut its bid "in half". I also added "and remember me…" which referred to nothing beyond friendly banter as the Salesman in question was a friendly acquaintance. This message appears to have triggered the SEC Staff's initial investigation. However, as was shown through testimony a year later, there was no *quid pro quo* arrangement between Vertical and the higher bidder. My Sales Coverage from the high bidder was never asked, nor was he in any position, to deliver any incremental business to VCAP, and the net economic impact of the trade was a small loss, as VCAP was compensated based on proceeds from the sale which were reduced by a minimal amount as a result of allowing for a lower purchase price so as not to have an egregiously wide spread between the winning bid and runner-up. The impact on the auction from this trade reduced proceeds by ~.025% whereas VCAP's aggregate efforts increased proceeds substantially. I would have done exactly the same had I been selling off a portfolio owned by Vertical and indeed I believe every market participant would have deemed my actions "commercially reasonable," as to stick a bidder with a 20+ point bid/cover spread on a low $ price security would have been an off-market practice and dissuaded the winning bidder from participation in future

auctions. Without a doubt, I should have gone to the Trustee and not bypassed this step as I testified, but in the fatigue of the final list on the third day of a successful auction and for a security that was of inconsequential value to the outcome of the sale (.02%) I short-circuited the process. That said, the outcome would have been exactly the same, and it is telling that even after the details of the Order were made public the Trustee for the liquidation in question made no claim against VCAP/Vertical.

12. When the SEC subpoenaed documents related to this auction, it learned that Vertical had placed a limited number of indirect bids in the auction through an intermediary broker-dealer. As I and others testified, we believed at the time that we were permitted to do this under our engagement agreement. VCAP also afforded Vertical the option to re-bid (as it did all other bidders during the auction) and in a very small number of instances Vertical got "last look" which it did not afford other bidders. Vertical's rationale for this was clear: Vertical was the largest asset manager with a dedicated focus on deep credit non-agency RMBS (typically very low $ priced securities), and within the Vertical Group we had perfect knowledge of the bidding so if we hadn't bid indirectly we could have gone to the winning bidder (who would have bought the securities at a lower price) and purchased them immediately after the auction. If Vertical hadn't participated indirectly it would have lessened participation/proceeds for the particular sub-sector of the market that we dominated, and the net result for Vertical would have been the same, as we would own the securities in our funds at approximately the same price, with the only "loser" being the client that hired VCAP to run the auction who wouldn't have benefitted from our higher bids.

13. Let me address these issues individually in what I regard as reverse order of seriousness. First, the particular engagement letter for this deal which I signed did in fact bar Vertical from bidding "directly or indirectly". It was, as was shown, an unmarked change to a template agreement I had signed dozens of times. I scanned it for changes and, seeing nothing material, signed it. Second, there has never been any argument that Vertical couldn't have bid on the securities immediately following the auction, and in fact our engagement agreements specifically allowed for this and we wouldn't have become involved as an auction agent if it had impeded us in the secondary markets. Finally, why did we bid and why did we on occasion give Vertical last look? At the time I took a holistic view and believed that our Client benefitted and that nobody was harmed while Vertical ended up in the same position it would have whether it bid indirectly or bought the securities immediately following the auction. However, while it remains true that our Client benefitted and nobody has claimed harm and nobody has disputed that Vertical could and likely would have bought the securities at approximately the same price, I judge my own actions much harsher in hindsight. I got us into the liquidation business to elevate the transparency of the process, which I succeeded in doing in all but one respect where I allowed my holistic view to prevail and breached the sanctity of the auction process. Shame on me!

As a final note before moving onto events subsequent to the Order I would add the following: i) Vertical had long-ceased the practice of bidding indirectly in auctions run by its VCAP affiliate before being contacted by the SEC as I didn't deem our bids to be of significant value to our selling client as more bidders began to focus on Vertical's sub-sector; ii) I always performed extensive and rigorous analysis on the securities on which

we bid indirectly before the auctions, so our bids were not at all simply price-based as the nature of the securities involved was anything but generic; iii) as the Staff learned almost a year after beginning its investigation, Vertical didn't sell any of the securities quickly and still held all of them more than a year later (I believe this latter point is very significant, as it demonstrates that Vertical was not seeking to profit at the expense of its client, and Vertical was not required to disgorge any profits on the trades as part of the Order which settled this matter); and iv) the volume involved in the indirect bids was insignificant relative to both the size of the auctions and Vertical's AUM and was immaterial to Vertical's returns.

Settlement Discussions and Implementation of the Order

14. The stage for settlement was set in a July 2014 meeting between the SEC Staff and Vertical/VCAP's Counsel, Seward & Kissel. During that meeting the Staff provided a PowerPoint presentation stating its findings. While most of its findings referenced "Graham [me] and Ferraro" (Beth Ferraro, my Co- Portfolio Manager for the fund and equal participant in the indirect purchases) the Staff indicated it would be inclined to settle with "Graham and VCAP". The initial settlement terms discussed with the SEC Staff provided for a collateral bar of ~3 years and closing VCAP. There was no mention of a lifetime bar/re-application and in fact Vertical and I had very high expectations of either/both limiting the bar to the broker-dealer and/or shortening its duration. And the Staff made it clear in their presentation that in the absence of a settlement the matter would be referred to an administrative law judge which Vertical's Counsel advised should be avoided at almost any cost. It was for that reason and on that basis the Partners agreed to move down a settlement path.

15. The SEC presented a draft settlement to Vertical's Partners on December 1, 2014. It called for a bar, solely against me, from both broker-dealer and registered investment advisor activities, with an ability to re-apply in three years. Recognizing my importance to Vertical's funds/investors, the draft allowed for a one year carve-out period during which time I could assist with sales of securities then held by Vertical during a presumed wind-down/transition period. It further barred me from working on premises and from communicating with Vertical's investors, denied me the ability to earn a bonus and capped my salary at a reduced rate, and mandated that an outside observer be hired to verify my compliance during the carve-out period. Had all of Vertical's Partners acted in good faith, I would have served out the carve-out period and attempted to move on with my life. However, this was not to be, as relations between the Partners rapidly broke down and investors suffered as a direct result.

16. Shortly before the draft settlement was presented to Vertical on December 1, 2014 Ms. Ferraro, who had only avoided being charged by my agreeing to settle, attempted an internal coup and insisted that she be named CIO and that I be removed entirely from the business before investors were told of the SEC settlement. The SEC Staff was peripherally aware of this because Ms. Ferraro hired her own counsel who contacted the SEC and went from a position of supporting the carve-out to opposing it. The other two Partners, Mr. Blacker (COO) and Mr. Porcelli (CTO), did not believe that Ferraro had demonstrated the capability to manage the funds as CIO; so they resisted her demands and wanted me to retain final say over sales as had always been the case. As a last ditch attempt at compromise I suggested establishing a four person Sales Committee with simple majority rule, but with the explicit understanding that once a decision was

made there would be no external dissent. Ferraro rejected this, which led to Vertical's issuing a wind-down notice for the funds along with the SEC disclosure on December 2nd.

17. Between December 2, 2014 – February 19, 2015 when the final Order was issued, I met or spoke (mostly in person) with almost every Vertical investor. While I was advised by "professionals" to say as little as possible and give opaque answers to direct questions and to hang on the "no admit/no deny" language of the Order, this advice seemed off-base to me given the personal relationships I had developed over the years with many investors who routinely asked me about a range of investment topics (mostly unrelated to Vertical). Instead, as it was the last time I was going to be able to speak to them for a year, I gave them a complete accounting of events they would read about in the final Order, explained our actions, apologized to them, and took responsibility for my role in the actions that led to the Order. Investors were highly appreciative of the efforts I made to be fully transparent with them, and the commitment I made to work on their behalf during the carve-out period. In fact, two full years later, and with 95% of capital returned to investors not a single claim has been filed (or settlement made) with any Vertical investor, something that could not have been known at the time the bar was negotiated.

18. In addition to speaking with Vertical's investors, I met with almost all of Vertical's trading/auction counterparties and was similarly transparent with them regarding the actions and my role in them. To say they were sympathetic would be an understatement, and, as with investors, no claim has been filed (or settlement made) with

any trading or auction counterparty. Again, this could not have been known at the time the bar was negotiated.

19. Having addressed Vertical's investors and trading counterparties, one notable group remained for me to address before I left the office to begin the carve-out period; Vertical's employees. I addressed Vertical's employees with a heavy heart but without any anger or self-pity. Instead, I took it as an opportunity for a teaching moment. I told them that we had accomplished much together over a long period during which we had experienced many ups and downs, and that we should be justifiably proud of the returns we had delivered to investors and the transparency we had brought to the markets via our auction participation. However, I explained to them that while we didn't seek advantage or to harm anyone via our indirect auction bids, we breached the integrity of the auction process that we were hired to maintain, and that was an error in judgement on my part. I went on to explain that it was my lone lapse in this regard, but that they should learn from it and never operate in a gray area, and that if they found themselves asking if something was okay, then it probably wasn't.

20. By contrast, I would note Ms. Ferraro's actions where she continues to deny "any role" in the actions that led to the Order to Vertical's investors, counterparties, and employees. This, despite the fact that Ferraro would very likely have been charged absent a settlement, as she was actively involved in the actions that led to the Order based on her own testimony. If only this was the worst of her actions.

21. As noted earlier, Vertical issued a wind-down notice to investors December 2, 2014 because Ferraro declined to participate in a Sales Committee, instead insisting on final control over sales. As Vertical was generally the top performing fund

among its investors, and unawares of the open hostility among Vertical's Partners that led to the wind-down notice, several investors unsurprisingly expressed a desire to remain invested at least during the one year carve-out period and potentially longer. Seizing upon this, Ferraro changed her tune after the New Year and embraced the Sales Committee she had previously rejected. Blacker/Porcelli took her at her word which was sufficient to pass the initiative under Vertical's governance which required a simple majority. I dissented because I had lost all faith in Ferraro's sense of duty to anyone but her own interests. I wrote to the Partners over the Christmas break that while a Partnership could survive bad decisions, it could not survive a collapse of its governance in which Partners selectively chose which provisions to abide by while ignoring others. As this was clearly the situation at Vertical I argued that the Partnership needed to be wound up for the good of investors. Nonetheless, I had pledged to investors my full commitment during the carve-out period so I had no choice but to participate in the Sales Committee I now opposed. Vertical sent a revised notice to investors in January 2015 offering them either the right to redeem or an option to "remain invested". Approximately 40% of Vertical's investors elected the latter option.

22. From the outset and throughout the carve-out period Vertical's Sales Committee in my opinion failed investors who elected the "remain invested" option despite the best of my constant efforts and over my persistent and loud protestations. Beginning with the first bond reviewed by the Sales Committee - HMBT 2005-4 M2 – in which Ferraro refused to attend a Sales Committee meeting, belatedly submitted analysis based on a flawed version of Vertical's model that inflated valuation by overstating interest collections (credit enhancement) on the underlying loans, refused to respond to

written questions from the Sales Committee asking her to justify her position, and then issued a dissenting view to an investor based on the flawed model/inflated valuation (which unfortunately they accepted unaware of the flawed basis of the analysis) Ferraro made apparent that her "about face" in accepting the Sales Committee was a sham. It was clear that Ferraro's objective was to obstruct voluntary sales using any means in order to retain assets under management to try to rebuild Vertical with her in charge after the expiry of the carve-out period. I will not go into extensive detail unless asked to do so by the Commission, but the litany of what I considered to be Ferraro's improper actions during the carve-out period include the following: i) running a flawed analytics model to inflate valuation, ii) using those inflated valuations as the basis of her recommendations/dissents to investors, iii) marking securities using the flawed version of the model, and iv) ignoring observed market prices when they were lower than marks, but using them to obtain higher valuations when the opposite was true. The impact of her actions was exacerbated by the fact that, due to the Communications Bar in the Order, Ferraro was the only Portfolio Manager at Vertical who was allowed to speak with investors.

23. I repeatedly and consistently brought these actions to the attention of Blacker/Porcelli and Vertical's Counsel. And I pleaded with them to alert investors to the error in the version of the model Ferraro insisted on running to support her views, but to my knowledge they never did, though Blacker/Porcelli have subsequently claimed similar obstructionist behavior on the part of Ferraro in arbitration. Unfortunately, from the time I actively recommended ramping up sales activities in June 2015 when I authored an internal position paper to the Sales Committee titled "Perfect Storm?" in which I

correctly forecast the market peak, prices in Vertical's sector declined ~20% while Vertical's Sales Committee was largely paralyzed.

24. One question you might ask from the above is why I didn't report these actions to the SEC? The answer to that is both simple and complex. To begin with, I wanted to. I repeatedly asked Vertical's Counsel, Seward & Kissel, their thoughts on reporting and/or seeking to have the Communications Bar lifted so I could speak to investors, and I was repeatedly advised against that. The advice came with an ominous warning that the reaction of the SEC was unpredictable and included the possibility the Commission might instead cancel the remainder of the carve-out period which would have left investors completely exposed, a risk I simply wasn't willing to take.

25. The carve-out period, which had been agreed by the SEC specifically to protect investors, instead had the opposite effect as a result of Ferraro's obstructionist scheme to retain AUM. This was by far the darkest period of my professional career. Despite my accurate premonition of Ferraro's obstructionist behavior, I was at my desk at home every day at 7am setting out a schedule of bonds to sell, evaluating those securities, assessing markets, and reviewing valuations. Pursuant to the Order, I did so at a lower salary than I have earned in 20 years and with no possibility of a bonus. I agreed to this in order to protect investors, but I did not bargain for the anxiety, hostility and hair-pulling exasperation that I experienced during this period. While causing incredible personal stress, I am proud that I continued at all times during the carve-out period to fervently advocate on behalf of investors as I have always done. Investors that elected to liquidate were able to do so in a well-paced but abbreviated period and received excellent execution largely as a result of my efforts in scheduling sales and evaluating the

underlying securities. And while investors that elected to "remain invested" suffered, they suffered far less than they would have without my relentless pressure to act, supported by rigorous analysis. I would also note that the net effect was reduced profitability for a sub-set of investors, since to the best of my knowledge no Vertical investor has lost money.

26. In addition to working tirelessly on behalf of investors during the carve-out period, I want to underscore my full compliance with the Order. A Monitor was retained during the carve-out period to oversee my compliance and based on my conversations with him I believe he was satisfied that I complied in all respects and that any protestations, of which he was well aware, were all made within the terms of the Order. I have certified such to the Commission as required. I have not appeared on Vertical's premises since the Order, I did not communicate with investors pursuant to the Order during the carve-out period, I did not participate in managing the business, and VCAP and I have disgorged and/or paid fines as determined in the Order. Despite the difficulties of circumstance that have arisen, I have taken my commitments seriously and abided by them in full, even when it hurt to do so.

Impact of the Bar Order

27. In the personal questionnaire I filled out prior to my testimony there was no box to check for "engaged and primary financial responsibility for my fiancé and her teen-age daughter" but this is in fact the case. Instead I could only check the box for "not married" and "no children" but that is not in fact my life. I will never know whether that had an influence on the punishment meted out against me in absolute and relative [to Ms. Ferraro] terms, but I did sense at my testimony from the outset that there was a pre-

determination I was a "bad guy" and the only interest was whether the investigative team had the facts wrong. As I stated at my testimony and have acknowledged to investors, counterparties and employees that as pertains the indirect bidding activities, they did not.

28. What is certain is that my personal and professional life since the bar was imposed has been severely impacted and I have suffered mightily. I have described for you the work conditions during the carve-out period, but my personal situation has been no less fraught. To begin with, my engagement is on hold until I can find gainful employment. However, the terms of the bar have made that effectively impossible both within and outside the financial services industry due to limitations on corporate activities if employing someone subject to a bar.

29. I was subjected to extreme personal and financial distress as a result of a baseless claim asserted by Vertical's former Head of Marketing who attempted to leverage the SEC settlement into an extortionate personal payout and when that failed went to The New York Times and had a baseless hit-piece planted by her employment lawyer. She eventually filed an arbitration claim against Vertical and me hoping to prompt a payout, but I refused to settle and instead spent several hundred thousand dollars in defense. Earlier this year the Panel dismissed her claims in their entirety stating she was "not a whistleblower" and instead calling her an "extortionist". The Panel instead awarded partial costs to Vertical on which she has defaulted. I have tried in vain to get The Times to print an amendment, but they have refused to do so, despite the clear evidence of improper conduct by the former employee and her lawyer. I have filed an Ethics Complaint against Ms. Freier's lawyer, but that comes with no personal benefit

other than the satisfaction he would be unable to harass and extort anyone else in the future.

30. Additionally, Vertical's remaining Partners are embroiled in arbitration against each other, and the firm has halted profits distributions and left the company under rudderless stewardship. As the largest owner I have the most at risk but no say in the matter which has forced me to curtail personal expenditures and halt investment activities in start-up companies that I had hoped to focus on following the end of the carve-out period.

31. For someone who had never been personally involved in a legal dispute or had unflattering publicity, all of this is dizzying and demoralizing. The same was true of the SEC investigative process where I was advised by Seward & Kissel after all the facts were on the table and testimony taken that they believed the most likely outcome was a fine, but that I might not be able to avoid a short-term suspension of 3-6mos but that it likely would be confined to the broker-dealer. They were flabbergasted by the severity of the initial settlement proposal, and that my personal terms got worse during the negotiation. And these are not novice lawyers!

32. I cooperated fully with the investigation (even volunteering information about the auction/liquidation practices of others that in my opinion were far more egregious than anything VCAP/Vertical was accused of doing). And as I have stated above I have explicitly owned and atoned for my lapse in judgement rather than relying on a "no admit" settlement. For someone who has otherwise had an unblemished and exemplary career it has been a deeply humbling, painful and costly experience which has been substantially exacerbated by the behavior of others. At this point, I would put out to

you that there is no more for me to learn from the experience, only more suffering for me and my dependents if the punishment runs to term. It may well equate to a death knell to my career aspirations.

33. I have spent my career advising companies, governments and investing clients with regards to strategy and execution. Vertical Capital, the , isn't even a party to the settlement and no client is claimed to have been harmed in the Order. Nowhere, not even in the SEC Order, is there any accusation that I have ever breached my fiduciary responsibilities to investors or clients. In fact, I have been a consistent and steadfast advocate at the expense of my own or my firm's short-term profitability. Notwithstanding the blot of indirect bidding, I have been a substantive proponent and innovator in bringing transparency to global capital markets. That is a legacy that I am anxious to build on in the investment advisory world following in the grand footsteps of my relative Benjamin Graham the author of *Security Analysis*, the still highly-regarded tome on value investing

34. As I stated up front, there were many things that were not and in some cases could not have been known at the time the Order was negotiated. Chief among these is that two full years later this is demonstrably a "no harm" situation as no investor or counterparty has claimed harm. Not only was it a no harm situation, but Vertical didn't gain an advantage as it could have bought the same securities immediately after the auction. And it clearly wasn't a risk-less proposition as Vertical took substantial risk and held the securities for well over a year before any were sold, and this timing was largely dependent upon litigation recoveries related to rep & warranty breaches which was integral to the fund's strategy/success. Lastly, Vertical and I presented what we believed

to be a very compelling defense of our actions as "pure of heart" and we would have been inclined to take these arguments to trial confident of a result, but not in an administrative law forum.

35. As the Commission is aware, the validity of the Commission's use of administrative proceedings has come under challenge recently, and at least one Federal Circuit Court of Appeals has held that the process of appointing administrative law judges in such proceedings violates the United States Constitution. Under these circumstances, I believe it was unfair to use the threat of such a proceeding as a basis to convince me to consent to the Order that was issued against me. It is also likely that, in the event that the appointment process is ultimately held to be unconstitutional, the Order that was issued is not valid.

36. Despite the personal and financial hardship it imposed on me, I honored the commitment I made to investors to bring my full dedication to the Sales Committee during the carve-out period, which would have served investors well had the motives of all parties been pure. Nonetheless, I honored my commitment in full as well as to all other aspects of the Order, and continued to advocate strongly on behalf of investors/clients as I have done throughout my career. When I observed behavior I believed was contrary to investor interests, I brought it to the attention of my superiors at Vertical (as I was no longer a Partner) and to Vertical's Counsel when that fell on deaf ears. If I hadn't been concerned about the carve-out being cancelled and investors being left entirely adrift, I would have brought it to regulators.

37. My personal financial situation also has been dramatically and adversely impacted by the bar, as I am completely shut out from employment in the only industry in which I have any experience and have ever been employed.

38. I ask that you read this with an open mind rather than with a pre-determined outcome. I haven't minimized my error in judgement (to the contrary I have owned it fully), but it also represented a one-off, no harm situation where holistically everyone was better off. As someone who has devoted his career to advising clients with integrity rather than profitability at the forefront, and who has worked tirelessly to improve transparency in global debt markets am I the "bad guy" that you want to give a death penalty punishment? Or will you allow me to resume my heretofore exemplary career and continue to serve clients interests, having been humbled over the past two years. I would assert to you in the strongest possible way that it would be in the public's interest to lift my bar.

What I want to do next in my career: Proposed Modification of the Bar Order:

39. I have held two significant jobs in my career, each for a fourteen year period, so as I contemplate future career endeavors I do not do so lightly. What is clear is that any and all options that I am contemplating are not possible for one of a variety of different reasons under the far-reaching terms of the Order.

40. On the asset management side I am considering two primary options, both consistent with my view that a secular trend towards direct investment is in place as I believe actively managed funds of the 2/20 garden variety have failed investors in both rising and falling markets. An increasingly important category of investors that has emerged over the past five years is the Single or Multi-Family Office (SFO/MFO). But

while these investors have long-term objectives and are therefore in a position to provide highly-valued patient capital and can invest in anything, my observation is that most have been staffed with a mind-set to picking managers rather than direct investing. And while it is clear based on some anecdotal conversations that there is an interest in migrating towards direct investing, they do not have the staff to do so. Bringing my experience and expertise to a new class of investors in some form would be akin to building Vertical as a first-in-kind manager that developed its own internal analytics rather than relying on Wall Street research that I knew first-hand.

41. One idea I would like to pursue is to work directly for an SFO or MFO to source and evaluate direct investments across a broad spectrum based on my wide-spread experience. While I am advised that the former might be possible under the existing terms of the bar as an entity exempt from registration, the latter is not. However, in speaking to market participants, it has also become evident that certain SFO's are also raising or sponsoring funds as an adjunct towards co-investment in areas where the Family made its money and has particular expertise (e.g. real estate) and hiring me would limit the potential activities of an SFO making it unappealing for them due to the disqualification under Rule 506(d) promulgated under the Securities Act of 1933, as amended ("Rule 506").

42. A related idea working with the same investor group would be to form a Consultancy with a group of like-minded individuals (likely including people I have worked with around the globe over the past 30 years) to source ideas for a set group of SFO/MFO's as this would enable me to pursue a wider range of opportunities than an individual SFO/MFO might be interested in, but also to do so in a more cost/fee efficient

manner than for an SFO/MFO to hire an internal team to source and evaluate direct investment ideas. I believe there is a significant disconnect in the marketplace between SFO/MFO capital that as a category investor is looking to migrate towards direct investing and the best ideas which have no natural way of reaching these investors. Instead they are being shown for the most part bottom-of-the-barrel ideas that have been rejected by larger fee-paying investors. On this front, my idea can be nothing more than that for now as the bar would restrict these activities on a number of fronts, most obviously the provision of indirect investment advisory services.

43. Following the carve-out period, I have occupied myself by making personal investments (until I recently curtailed those activities out of necessity) as I had never before had time to focus on such activities. These investments have ranged from a specialized Irish Commercial Property Fund, a dedicated Hotel Fund focusing solely on University locations, a Mumbai-based Leisure Property direct investment, a Napa Vineyard bridge financing, and a New Hampshire-based start-up video game company. This points to the breadth and depth of my contacts around the world to potentially source investments, but the Gaming entity also presents another potential avenue/obstacle. In addition to investing, I considered offering financial/strategic advice based on my experience at financing start-up enterprises; however, I was advised that pursuant to Rule 506(d), this would not be possible as hiring me or having me join the Board of Directors would restrict the company's ability to raise capital under certain commonly-used exemptions. This ended any potential role beyond that of investor, I think to the detriment of the Company and its prospects.

44. I wish I could give you a specific job that I have been offered and would accept if certain limitations of the bar were lifted. But this is simply not possible in the real world while such a restrictive Order is in place. The fact is, no entity is likely to take my application seriously and spend the time necessary to evaluate me along with other candidates and offer me a position subject to certain limitations of the bar being removed while putting off other candidates in the process. I've hired hundreds of people and I know I wouldn't give myself the time of day while the bar is in place regardless of my experience, qualifications and excellent record.

45. So while I have outlined some of my "leading ideas" they are not comprehensive. Other areas I would likely explore include: FinTech, as I have always been a leading-edge proponent of developing proprietary technology and optimizing efficiency of market processes; socially conscious investing, where I think the expertise on the investment front is far less than the social consciousness of practitioners so it ends up being unwitting charity, and I might even consider pursuing a position in the incoming Administration on the international front. What is clear is that all of these channels, for different reasons, would be unavailable to me based on the restrictions on me under the bar or restrictions it would place on the entity for hiring me.

46. Based on the foregoing, I respectfully request, by this Motion, that the Commission modify the Order by: (a) removing the provisions contained in Section IV.C. of the Order which bar me from (i) being associated with an investment adviser, (ii) being associated with a securities broker or dealer in a non-supervisory capacity, and (iii) serving or acting as an officer, director or employee of a company which issues securities, including, but not limited to "penny stocks," as that term is defined in Rule

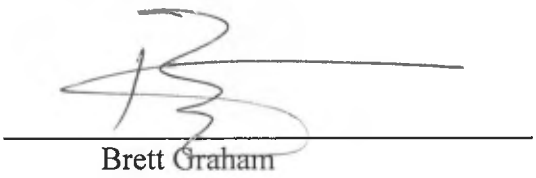
3a51-1, promulgated under the Securities Exchange Act of 1934, as amended; and (b) adding a provision to the Order pursuant to Rule 506(d)(2)(ii), promulgated under the Securities Act of 1933, as amended, which states that, notwithstanding any other provision of the Order, the Order shall not operate to preclude any issuer with which I am associated as an officer, director, employee or investment adviser, from relying upon the exemption under Rule 506.

47. The foregoing represents only a partial lifting of the provisions of the Order which restricts my activities, as the proposed modifications would not remove the prohibitions against my association with a registered investment company or from being associated with a broker-dealer in a supervisory capacity. At the same time, the proposed modification would enable me to engage in the investment adviser and related broker-dealer activities described in paragraphs 38-44, above, and thereby afford me some ability to be employed and begin to restore my livelihood. I respectfully submit, therefore, that this limited modification is appropriate and in the public interest.

48. I will simply re-state here what I have stated above: I believe the evidence of the past ~2 years demonstrates that I have taken full responsibility for my lapse in judgement, but the evidence of the past 30 years is that this was an isolated event in an otherwise illustrious career dedicated to advocating for clients and promoting market transparency. I believe with the information that is now known it can and should be concluded that the terms of the bar were disproportionate and it would be in the public

interest to allow me to continue to serve investor interests and market transparency as I have consistently done.

I thank you for your consideration.



Brett Graham

Sworn to before me this
9th day of January, 2017.

NOTARY PUBLIC

RALPH A. SICILIANO
Notary Public, State of New York
No. 31-02SI4790565
Qualified in New York County
Commission Expires October 31, 2017

[1041109-4]

EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74305 / February 19, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4026 / February 19, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31459 / February 19, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16389

In the Matter of **VCAP Securities, LLC, and Brett Thomas Graham,** Respondents.	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b)(4), 15(b)(6), AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against VCAP Securities, LLC ("VCAP"), and Sections 15(b)(6) and 21C of the Exchange Act, Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Brett Thomas Graham ("Graham").

II.

In anticipation of the institution of these proceedings, VCAP and Graham (collectively, "Respondents") have submitted Offers of Settlement ("Offers") which the Commission has

determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b)(4), 15(b)(6), and 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

1. This matter involves a scheme by VCAP and Graham to acquire certain securities from auctions of collateralized debt obligations ("CDOs") that VCAP was conducting as liquidation agent. VCAP and Graham's actions in the auctions improperly benefitted funds managed by Vertical Capital, LLC ("Vertical"), VCAP's affiliated investment adviser. The conduct involved Graham arranging for a separate broker-dealer ("Third-Party B-D") to place bids on behalf of Vertical in the CDO liquidations run by VCAP, as VCAP and its affiliates were not permitted to bid under the terms of the relevant engagement agreements. As the liquidation agent for the auctions, VCAP had access to confidential bidding information from other bidders. Taking advantage of this access and information, Graham waited for the majority of the bids to come in from the other auction participants, and then instructed Third-Party B-D to bid on the bonds Graham wanted for Vertical-managed funds, at prices that were often slightly higher than the highest bid from other participants. After winning the bonds in the auction, Third-Party B-D would then immediately sell the bonds to the Vertical funds at a small markup.

2. In the course of this conduct, Graham and VCAP made material misrepresentations to the trustees of the various CDOs for which VCAP served as liquidation agent. Graham executed, on behalf of VCAP, various engagement agreements in which he falsely represented that VCAP and its affiliates would not bid in the auctions and would not misuse confidential information and/or bidding information afforded to VCAP as the liquidation agent. At the time he executed the final agreements, however, Graham had already communicated multiple times with Third-Party B-D about submitting bids on behalf of Vertical. VCAP also provided the various trustees with documents that did not disclose that its affiliate Vertical was the winning bidder.

3. In addition, in one particular auction, Graham provided one non-affiliated bidder with favorable treatment with respect to a security that that bidder was very interested in obtaining.

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Although the sales person at the bidding entity told Graham that his traders were anxious to win the bond, and that the bidder could increase its bid if necessary, Graham instead instructed him to cut the bid in half. Graham neither sought permission from the trustee nor informed it about his instructions to halve the bid. As a result, the trustee received half as much in proceeds for that bond as it would have otherwise.

Respondents

4. VCAP Securities, LLC ("VCAP") is a broker-dealer registered with the Commission. On December 24, 2014, it filed a Form BD-W. It was organized in Georgia, and maintains its principal place of business in New York, New York. VCAP is over 99% indirectly owned by Graham through a holding company called BD Partner Holdings, LLC. The economic interest in and control over VCAP are shared by Graham and three other partners.

5. Brett Thomas Graham ("Graham") is currently the CEO of VCAP, and the managing partner, Chief Investment Officer, and a portfolio manager of Vertical. He has no disciplinary history. Graham indirectly owns over 99% of VCAP and 55.8% of Vertical, and has an economic interest of 33% and a voting interest of 25% in each. He holds Series 7, 24, and 63 licenses. Graham is 51 years old, and a resident of New York, New York.

Other Relevant Entities

6. Vertical Capital, LLC ("Vertical") is a registered investment adviser. It is organized in Delaware, and maintains its principal place of business in New York, New York. Vertical is wholly owned by VCAP Partners LLC, which is 55.8% owned by Graham. The economic interest in and control over Vertical are shared by Graham and the same three partners that also share in the economic interest and control of VCAP.

Background

7. This matter concerns five auctions that VCAP conducted as liquidation agent during 2012. For each of these auctions, VCAP was hired to liquidate the assets of a CDO by the respective CDO trustees. Prior to each liquidation, VCAP entered into an agreement with the trustee governing the terms of VCAP's role as liquidation agent. As the CEO of VCAP, Graham had the primary responsibility for reviewing and executing these agreements on behalf of VCAP.

8. During the relevant time period, Graham was a portfolio manager and the chief investment officer of Vertical, a registered investment adviser and asset manager. The main focus of Vertical's investment management activities has been two private funds: Resolution Credit Opportunities Fund I, which was formed in the fall of 2009, and Resolution Credit Opportunities Fund II, which was formed in late 2011 (collectively, the "Funds"). In addition, during the relevant time period, Vertical served as the investment manager for four separately managed accounts (collectively, the "SMAs").

Vertical Bidding in VCAP-Run Liquidations

9. Since their inception, Vertical's Funds and SMAs have generally invested in illiquid, non-agency mortgage-backed securities. Graham has been principally responsible for these investment decisions. These same types of securities were often included in the CDOs that VCAP was hired to liquidate.

10. Graham knew or was reckless in not knowing that VCAP and its affiliates could not bid in a liquidation for which VCAP served as liquidation agent. The liquidation agent agreements that Graham signed as CEO on behalf of VCAP for each of the five CDO liquidations all prohibited VCAP or its affiliates from bidding in the liquidations, and required VCAP to keep the bidding information it received confidential during the auction. One of the agreements also expressly prohibited giving preferential or favorable treatment to any bidder.

11. In addition to the prohibitions in the liquidation agent agreements, VCAP's own compliance manual also prohibited bidding by VCAP and its affiliates. The VCAP compliance manual, dated December 19, 2011, provided, among other things, the following:

> *Possible Conflicts of Interest*
> To prevent even the appearance of any conflict of interest, VCAP and its affiliates and employees will not bid in an auction liquidation run by VCAP.

VCAP's compliance manual was provided to each employee of VCAP on at least an annual basis.

12. To carry out his plan to have Vertical bid in VCAP-run auctions, Graham contacted an individual that he had worked with previously ("Broker"), who currently worked at Third-Party B-D, which was based in the United Kingdom. Graham never consulted with counsel or with VCAP's chief compliance officer to discuss the permissibility of the arrangement. Nor did Graham or anyone else at VCAP discuss with any of the CDO trustees that hired VCAP whether Vertical could bid in the VCAP-run auctions through Third-Party B-D.

13. Before the first liquidation in which Third-Party B-D bid on behalf of Vertical, Broker asked Graham whether the trustee was aware of the arrangement. Broker asked, "[W]ill the seller know or care that a B/D maybe be [sic] biddin for some of your funds?" To which, Graham responded, "[N]o…Auction, so high bid wins. Auction was published in WSJ." Broker understood Graham's response to mean that the arrangement was permissible.

14. A few weeks thereafter, Broker inquired a second time about the permissibility of the arrangement. Broker asked, "[Third-Party B-D's compliance] understands the confidentiality issue and why you are in the middle, but wants to confirm therefore your seller allows your funds to bid in the bwic, for us to facilitate…"[2] Graham responded, "[Y]es," even though Graham had never asked any of the CDO trustees whether this arrangement was permissible.

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[2] The term "bwic" means, "bid wanted in competition."

15. Graham generally followed the same pattern with respect to each of the five CDO liquidations in which he had Third-Party B-D bid on behalf of Vertical. Graham generally waited until he had received the majority of the bids from the other auction participants, and then would tell Third-Party B-D which bonds in the CDO liquidation to bid on and at what price. Having access to the other auction participants' bids, Graham was able to, and in several instances did, give bid prices to Third-Party B-D that were slightly higher than the highest bid from the other bidders. This conduct is illustrated in Table 1 below, which shows the time and amounts for some of Vertical's bids through Third-Party B-D in an auction list from one of the five CDO liquidations at issue.

TABLE 1

	Bidder	Bid	Time
Bond A	Bidder A1	8.0781	2:24 p.m.
	Third-Party B-D	8.5000	2:58 p.m.
Bond B	Bidder B1	3.0156	2:24 p.m.
	Third-Party B-D	3.2500	2:59 p.m.
Bond C	Bidder C1	7.59375	2:23 p.m.
	Third-Party B-D	7.75000	3:04 p.m.

As demonstrated above, Third-Party B-D bid after the other auction participants' bids were received by VCAP. In addition, Third-Party B-D's bids were often slightly higher than the high bid from the other auction participants, ensuring that Vertical would win the bonds Graham wanted but not pay too much.

16. After receiving instructions from Graham, Third-Party B-D would then submit the bids in the same manner as all of the other auction participants. However, unbeknownst to the trustees, Third-Party B-D was bidding on behalf of Vertical. Third-Party B-D was usually the last, or one of the last, participants to submit its initial bids in the auction.

17. At times, another auction participant would submit or improve a bid after Graham had given his instructions to Third-Party B-D. If a later bid was higher than Third-Party B-D's bid for a bond that Graham was interested in winning, Graham at times instructed Third-Party B-D to resubmit its bid at an amount higher than that other bid. This conduct is illustrated in Table 2 below, which shows some of Third-Party B-D's bids for another list in one of the five CDO liquidations at issue. On this list, Graham instructed Third-Party B-D to resubmit bids in several instances, in order to top subsequent higher bids from other auction participants.

TABLE 2

	Bidder	Bid	Time
Bond A	Third-Party B-D	42.01	11:25 a.m.
	Bidder A1	45	11:33 a.m.
	Third-Party B-D	45.15	12:01 p.m.
Bond B	Bidder B1	43.03125	10:48 a.m.
	Third-Party B-D	43.25	11:30 a.m.
	Bidder B2	43.375	12:10 p.m.
	Third-Party B-D	43.45	12:20 p.m.
Bond C	Third-Party B-D	34.01	11:23 a.m.
	Bidder C1	34.53125	11:29 a.m.
	Third-Party B-D	34.625	11:50 a.m.

18. In one particular instance, Graham instructed Third-Party B-D to resubmit its bid for a lower amount because Graham subsequently received bidding information indicating that the next high bid for that particular bond had decreased. Thus, he knew that Third-Party B-D could win the bond for less than what it had initially bid. This is illustrated in Table 3 below.

TABLE 3

	Bidder	Bid	Time
Bond X	Third-Party B-D	28.50	11:21 a.m.
	Bidder X1	24.00	12:00 p.m.
	Third-Party B-D	24.50	12:09 p.m.

19. Immediately after each auction, Vertical's Funds and SMAs purchased from Third-Party B-D any of the bonds that Third-Party B-D won in the auction, in allocations designated by Graham and at a slight mark-up as determined by Graham.

20. At the conclusion of the auction for each list, VCAP sent an e-mail to the trustee attaching a spreadsheet listing the winner and second highest bid for each bond, as well as listing each participant and their final bids. This was the manner in which VCAP communicated the bids to the trustee, and requested the trustee's approval for awarding the winners. Graham never told the trustee that Third-Party B-D was bidding on behalf of Vertical, nor did he inform the trustee that he was using pricing information from other bids to determine the amount of the bid price for Third-Party B-D.

21. Overall, Vertical's Funds and SMAs acquired 23 securities, paying nearly $12 million, through the 5 CDO liquidations by placing prohibited bids. In total, VCAP received

$1,182,839 in fees from the CDO trustees for conducting the 5 liquidations, and Graham personally received 10% of this amount, approximately $120,000, for originating the business.

VCAP Gives An Auction Participant Preferential Treatment

22. During the course of a CDO liquidation for which VCAP was the liquidation agent, Graham gave preferential treatment to one auction participant ("Preferred Participant") that resulted in lower proceeds to the trustee.

23. After the start of the auction, the sales person at Preferred Participant ("Salesman") who was responsible for covering Vertical, sent a Bloomberg instant message to inform Graham that Preferred Participant was especially interested in winning a particular bond. Salesman messaged Graham that the bond was very important to Preferred Participant, and asked Graham to let him know where Preferred Participant needed to be in order to win, indicating that Preferred Participant would be willing to bid higher if necessary. Graham, seeing that the other bids for that particular bond were just fractions of Preferred Participant's bid, responded to Salesman and told him to cut Preferred Participant's bid in half.

24. Preferred Participant thereafter changed its bid for the bond to half of its original bid, and resubmitted the bid. Preferred Participant won the bond at the reduced price, which was about 10 points higher than the next highest bid.

25. Prior to instructing Preferred Participant to cut its bid in half, Graham did not seek permission from the trustee of the CDO that was being liquidated. Graham also never informed the trustee that it was receiving half of what it would have otherwise received for the bond, had Graham not instructed Preferred Participant to cut its bid in half.

26. As a result of the conduct described above, VCAP willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful, in connection with the purchase or sale of any security, to employ any device, scheme, or artifice to defraud; or 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 to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

27. As a result of the conduct described above, Graham willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful, in connection with the purchase or sale of any security, to employ any device, scheme, or artifice to defraud; or 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 to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Civil Penalties

28. VCAP has submitted a sworn Statement of Financial Condition dated November 21, 2014, and other evidence and has asserted its inability to pay a civil penalty.

Undertakings

29. Graham has undertaken to provide written certification, signed by Graham under penalty of perjury, that he is in compliance with item IV.C. below. Such certification must be provided to the Commission staff every ninety days from the date of entry of this Order, for a period of one year thereafter.

30. Graham has undertaken to retain, not at the Commission's expense, a qualified independent consultant (the "Consultant") not unacceptable to the Commission staff to do the following:

a. Provide a memorandum that is to be distributed to all employees and partners of Vertical prior to or by the date of entry of this Order: (i) outlining the parameters of Graham's limited role in Vertical, as specified in item IV.C. below, and (ii) giving instructions that each employee and partner of Vertical must strictly comply with the terms of such limited role by Graham.

b. Provide training to all Vertical employees and partners regarding the limitations and restrictions placed on Graham's conduct with respect to Vertical, as specified in item IV.C. below.

c. Submit a report concerning Graham's compliance with the terms of item IV.C. below, to the Commission staff every ninety days from the date of entry of this Order, for a period of one year thereafter. In connection with the preparation of such reports, and to confirm that Graham is in compliance with item IV.C. below, Consultant will, at least: (i) conduct a review of all e-mail communications and instant messages to or from Graham, and (ii) interview Graham and the employees and partners of Vertical about Graham's activities.

d. Establish an e-mail hotline for Vertical employees and partners to report any potential violations of Graham's limited role with Vertical, as specified in item IV.C. below. Consultant will investigate any reports of potential violations, and disclose any such reports or investigations in its periodic reports to the Commission staff.

e. Require Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of

the engagement, Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Vertical, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist Consultant in performance of its duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Vertical, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

31. Graham shall certify, in writing, compliance with the undertakings set forth above in items 30 and 31. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Graham agrees to provide such evidence. The certification and supporting material shall be submitted to Andrew Sporkin, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

32. In determining whether to accept the Offers, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 15(b)(4), 15(b)(6), and 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. VCAP cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Graham cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

C. Graham be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter

for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and 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; with the right to apply for reentry after three years to the appropriate self-regulatory organization, or if there is none, to the Commission;

a. provided however, that Graham may, for a period of one year from the entry of this Order, continue to be employed by Vertical solely for the purpose of assisting Vertical in the sale, or transfer to independent managers, of securities and positions held by any funds or accounts managed by Vertical, as of the date of the entry of this Order. During the one-year carve-out period, all sales by Graham shall be subject to review and approval by Vertical prior to execution. During this one-year period of limited employment at Vertical, Graham may not carry out his employment activities on the premises of Vertical, and he must be located offsite from Vertical. Notwithstanding this limited employment role, the following restrictions will be placed upon Graham as of the date of the entry of this Order: (i) Graham may not serve on Vertical's Board of Directors, or in any officer, executive, or management role at Vertical; (ii) Other than for the limited purpose of selling securities and positions held by any funds or accounts managed by Vertical, as of the date of the entry of this Order, Graham may not have any role, input, authority, duties, or discussions as to the management of Vertical, any entity affiliated with Vertical, or any of Vertical's clients; (iii) Graham may not have any role in formulating, summarizing, discussing, or memorializing Vertical's marketing or management strategy; (iv) Graham may not have any authority to hire or fire employees of Vertical, or to negotiate or bind Vertical in any contracts; (v) Graham may not have any contact with current or prospective investors in any funds or accounts managed by Vertical regarding anything concerning Vertical or VCAP (other than current and former employees of Vertical who are also Vertical investors); (vi) Graham may not solicit capital on behalf of Vertical; (vii) Graham may not participate, consult, or assist with any purchase of securities; and (viii) Graham may not participate, consult, or assist with any sales of assets or positions that were purchased or acquired after the date of entry of this Order. Nothing herein shall prevent Graham from communicating with Vertical partners and counsel regarding any outstanding legal actions in which Vertical is a party.

D. VCAP is censured.

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

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

F. VCAP shall, within ten (10) days of the entry of this Order, pay disgorgement of $1,064,555 and prejudgment interest of $85,044 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways: (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

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

Payments by check or money order must be accompanied by a cover letter identifying VCAP as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew Sporkin, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6013.

G. Based upon VCAP's sworn representations in its Statement of Financial Condition dated November 21, 2014, and other documents submitted to the Commission, the Commission is not imposing a penalty against VCAP.

H. Graham shall, within ten (10) days of the entry of this Order, pay disgorgement of $118,284, prejudgment interest of $9,449, and a civil money penalty in the amount of $200,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 USC §3717. Payment must be made in one of the following ways: (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Graham as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew Sporkin, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6013.

I. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether VCAP provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest, and/or the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by VCAP was fraudulent, misleading, inaccurate, or incomplete in any material respect. VCAP may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest, or a penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; (4) contest the imposition of the maximum penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

J. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Act, a Fair Fund is created for the disgorgement, interest and penalties referenced in paragraphs F and H above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Graham agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Graham's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Graham agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

K. Graham shall comply with the undertakings enumerated in Section III, items 29 through 31 above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Graham, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Graham under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Graham of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary