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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **LONNY S. BERNATH,** **Respondent.**	**Administrative Proceeding** **File No. 03-16943**

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST LONNY S. BERNATH

Respectfully submitted,

DIVISION OF ENFORCEMENT
By its Attorney:

Joshua A. Mayes
Senior Trial Counsel
U.S. Securities & Exchange Commission
950 E. Paces Ferry Rd., Suite 900
Atlanta, GA 300326
Telephone: 404.842.5747
Email: mayesj@sec.gov

Dated: January 19, 2016

I. PRELIMINARY STATEMENT

The Division of Enforcement ("Division") respectfully moves for summary disposition of this action pursuant to Rule 250 of the Securities and Exchange Commission's ("Commission") Rules of Practice and the Court's December 21, 2015 Scheduling order in this matter. The Division asserts that, pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), sanctions are appropriate in the public interest for the protection of investors, and should be imposed against Lonny Bernath. Bernath was permanently enjoined against future violations of the antifraud provisions of the federal securities laws on October 30, 2015 in *SEC v. Bernath*, 3:15-cv-00485 (W.D. NC) (the "Injunctive Action"). Bernath had the opportunity to litigate the material facts forming the basis of the injunction in the Injunctive Action, but instead consented to the entry of a permanent injunction. As a consequence, Bernath is precluded from litigating in this case the facts alleged in the complaint in the Injunctive Action.

Because Bernath's misconduct, as alleged in the Complaint, was prolonged and egregious, an industry bar is warranted, and he should be barred from associating with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

II. STATEMENT OF FACTS

A. The Commission Filed a Civil Injunctive Action Against Bernath for Securities and Investment Advisory Fraud in 2015.

On October 13, 2015 the Commission filed the Injunctive Action against Bernath alleging that he had caused a number of investment funds he controlled to engage in transactions with entities in which Bernath had a personal interest, without disclosing the investments to his investors. (Complaint ("Compl.") ¶¶ 12-41.) A true and correct copy of the Commission's Complaint initiating the Injunctive Action is attached at Tab 1 of the accompanying Appendix.[1]

Bernath, a 44 year old resident of Charlotte, North Carolina, operated the investment advisers that managed three relevant funds, Headline Group, LP ("Headline Fund"), Headline Partners, LP ("Partners Fund") and Dynasty Capital

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[1] The Division submits in support of this motion for summary disposition an Appendix containing the Commission's October 13, 2015 Complaint initiating the Injunctive Action; the Consent of Defendant Bernath filed in the Injunctive Action that same day; and the October 30, 2015 Judgment entered against Bernath in the Injunctive Action. All of these filings, and their contents, are appropriate subjects of official notice pursuant to Commission Rule 323, and are, in any event, admitted to be authentic documents by Respondent. *See, In re Joseph P. Galluzzi*, Initial Decisions Release No. 187, 1001 SEC Lexis 1582, *8-9 (Aug. 7, 2001)(ALJ Kelly)(pursuant to Commission Rule 323, ALJ took official notice of the following filings and statements therein: Commission complaint; Indictment; Judgment of Conviction; Third Circuit Court of Appeal judgment affirming conviction, etc.); *see also, In re Brownson*, Initial Decisions Release No. 182, 2001 SEC Lexis 537, *7-8 (Mar 23, 2001)(ALJ Foelak)(same).

Partners, LP ("Dynasty Fund") (collectively, the "Funds"). (Compl. ¶¶ 1, 2.) At the same time as he was managing the Funds, Bernath also held a financial interest in and managed three real estate limited partnerships (the "Real Estate Partnerships") that were formed by Bernath for the purpose of investing in real estate. (Compl. ¶¶ 5, 6.) Bernath also held a financial interest in a chrome plating business known as ChromeEast. (Compl. ¶ 7.)

Bernath told investors in the Funds that they would use proprietary trading methodologies to make money by trading stocks, exchange traded funds and futures. (Compl. ¶¶ 14-16, 33, 36.) From 2008 to 2011, unbeknownst to investors, Bernath caused the Funds to invest in the Real Estate Partnerships and ChromeEast, even though some of the Funds' investors had expressly declined to invest in the Real Estate Patnerships. (Compl. ¶¶ 19-31, 41.) Bernath did not disclose the Funds' investments in the Real Estate Partnerships and ChromeEast to the Funds' investors until 2013. (Compl. ¶ 32.)

The Complaint also alleges that Bernath shifted money and obligations among the Funds in order to meet liquidity needs. (Compl. ¶¶ 23, 28.) He also wrote down the value of the Funds' interests in the Real Estate Partnerships and ChromeEast from time to time between 2008 and 2011, without disclosing that fact to investors. (Compl. ¶ 31.)

B. Bernath Consented to the Entry of an Injunction

Before the filing of the Injunctive Action, while represented by counsel, Bernath signed a "Consent of Defendant Lonny S. Bernath" ("Consent"). A true and correct copy of the Consent is attached as Tab 2 to the Appendix. On October 13, 2015, the Consent was filed with the District Court. In the Consent, Bernath waived service of the Judgment and agreed that its entry by the District Court would constitute notice to him of its terms and conditions. (Consent ¶¶ 1, 10.)

Also in the Consent, Bernath expressly stated that he understood that "in any disciplinary proceeding before the Commission based on the entry of the injunction" – such as the instant administrative proceeding – he would "not be permitted to contest the factual allegations of the complaint . . ." (Consent ¶ 11.). Bernath further acknowledged that the Consent "resolve[d] only the claims asserted" in the Injunctive Action and that "the Court's entry of a permanent injunction may have collateral consequences under federal or state law." (Consent ¶ 11.) Bernath entered into the Consent "voluntarily and represent[ed] that no threats, offers, promises, or inducement of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce" him to enter into the Consent. (Consent ¶ 7.)

C. The District Court Enjoined Bernath on October 20, 2015

On October 20, 2015, after the filing of the Consent, the District Court in the Injunctive Action entered a Judgment as to Defendant Bernath ("Judgment"). A true and correct copy of the Judgment is attached at Tab 3 of the accompanying Appendix. The Judgment permanently enjoins Bernath from violations of Advisers Act Sections 206(1), 206(2) and 206(4) [15 U.S.C. §§ 80b-6(1), (2), (4)], and Rule 206(4)-8 thereunder [17 C.F.R. § 206(4)-8]; Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.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]. (Judgment ¶¶ I-V.)

III. ARGUMENT

A. Summary Disposition Standard

Rule 250 of the Commission's Rules of Practice provides that the Division or the Respondent may make a Motion for Summary Disposition subject to leave of Court prior to presentation of the Division's case in chief. The Rule expressly provides that the Administrative Law Judge ("ALJ") may grant the motion if there is "no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." This Court permitted the Division to file this motion in its scheduling order.

A consent injunction, "no less than one issued after trial upon a determination of the allegations, may furnish the sole basis for remedial action . . .." *In re Melton*, 56 S.E.C. 695 (July 25, 2003), *citing Cortlandt Investing Corp.*, 44 SEC 45, 53 (1969). It is rare that summary disposition will be inappropriate when a respondent has been enjoined against violations of the anti-fraud provisions of the securities laws. *In re Brownson,* 55 SEC 1023, 1028 n.12 (2002).

B. There Is No Genuine Material Issue of Fact

Section 203(f) of the Advisers Act authorizes the Commission to sanction Bernath if, as relevant here, 1) at the time of the alleged misconduct, he was associated with an investment adviser; 2) he has been enjoined from any action specified in Section 203(e)(5) of the Advisers Act; and 3) the sanction is in the public interest. 15 U.S.C. § 80b-3(f). "[T]he mere existence of an injunction may support ... a bar from participation in the securities industry where the nature of the acts enjoined and the circumstances indicate that it is in the public interest." *In re Melton*, 56 S.E.C. at 700.

The appropriateness of any remedial sanction is guided by the public interest factors set forth in *Steadman v. SEC*, 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. 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see *In re Kornman*, Advisers Act Release No. 2840 (Feb. 13, 2009), 95 SEC Docket 14246, 14255.

In October 2015, the District Court permanently enjoined Bernath against violations of the antifraud provisions of the Securities Act, the Exchange Act and the Advisers Act. Bernath was undisputedly associated with an investment adviser at the time of the misconduct underlying the injunction against him, and the terms of the Judgment speak for themselves. Appendix Tab III.

Based on the record before it, this Court should conclude as a matter of law that Bernath has been enjoined within the meaning of Advisers Act Rule 203(f), and that remedial sanctions are appropriate for the protection of investors. *See In re Melton*, 56 S.E.C. at 700. The *Steadman* factors weigh in favor of a bar. Bernath's misconduct was egregious and extended over a period of years. Bernath repeatedly lied to his clients about what he was doing with their money, and then he loaned their money to Real Estate Partnerships in which several of them had expressly declined to invest. He did that, in part, because he had personally invested in those entities and stood to make money if the ventures succeeded. His misconduct involved a high degree of scienter; Bernath moved money and assets

among the funds under his control in order to meet liquidity needs and to keep his scheme afloat. In short, Bernath's behavior is precisely the sort that warrants an industry bar.

IV. CONCLUSION

Accordingly, for the foregoing reasons, the Division respectfully requests that its motion for summary disposition of this action be granted against Bernath pursuant to Rule 250 of the Commission's Rules of Practice, and that an order be issued barring him from associating with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its Attorney:

Joshua A. Mayes
Senior Trial Counsel
Atlanta Regional Office
Securities and Exchange Commission
950 E. Paces Ferry Rd., Suite 900
Atlanta, GA 30326
Telephone: 404.842.5747
Email: mayesj@sec.gov

Dated: January 19, 2016.

CERTIFICATE OF SERVICE

On January 19, 2016, I sent via facsimile and via UPS overnight service the original and three copies of the foregoing to:

Brent J. Fields, Secretary
U.S. Securities & Exchange Commission
100 F. Street, NE
Washington, DC 20549

On January 19, 2016, I sent via UPS overnight service a copy of the foregoing to:

Hon. Jason Patil
Administrative Law Judge
Securities & Exchange Commission
100 F. Street, N.E.
Washington, DC 20549

Bob Mottern
Investment Law Group, LLC
1230 Peachtree Street, NE
Suite 2445
Atlanta, Georgia 30309

Joshua A. Mayes

APPENDIX

TAB 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LONNY S. BERNATH, Defendant.	Civil Action No.: **COMPLAINT**

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

SUMMARY

1. This enforcement action arises out of misrepresentations to investors by Lonny S. Bernath ("Bernath" or "Defendant") and his failure to disclose conflicts of interests presented by loans, investments, and other transactions made between several entities he managed and held financial interests in. Between at least 2007 and 2011, Defendant, without disclosing the transactions or conflicts of interests, directed Headline Group, LP ("Headline Fund"), Headline Partners, LP ("Partners Fund") and Dynasty Capital Partners, LP ("Dynasty Fund") (collectively referred to as the "Funds") to: (a) give loans to and make investments in three real estate limited partnerships ("Real Estate Partnerships") that Defendant managed and in which he held a financial interest; (b) make investments in an automotive chrome plating facility, ChromeEast, LLC ("ChromeEast"), in which Defendant held a financial interest; and (c) transfer investments and loans between themselves to meet liquidity needs. Furthermore, between at least 2009 and 2011, Defendant misrepresented the investment activities of the Funds to investors.

DEFENDANT

2. Defendant, age 43, is a resident of Charlotte, North Carolina. At all relevant times, Defendant operated the investment advisers to the Funds and the general partner of the Real Estate Partnerships. At all relevant times, Defendant directed the management of the Funds and was responsible for communications to investors and potential investors in the Funds. As of July 2015, Defendant no longer manages the Funds or the Real Estate Partnerships.

OTHER RELEVANT ENTITIES

3. Headline Investment Management, LLC ("HIM") operated as the investment adviser to the Funds between 2007 until March 2010. During all relevant times, HIM was located in Charlotte, North Carolina, and was managed by Bernath as owner and Chief Investment Officer ("CIO"). HIM was administratively dissolved in September 2010.

4. Headline Capital Management, LLC ("HCM") operated as the investment adviser to the Funds between March 2010 and February 2015. During all relevant times, HCM operated in Charlotte, North Carolina, and was managed by Bernath as owner and CIO. HCM was administratively dissolved in February 2015.

5. Cypress Capital Management, LLC ("Cypress Management") operated as the general partner and managed the Real Estate Partnerships. During all relevant times, Cypress Management operated in Charlotte, North Carolina, and was managed by Bernath. Prior to July 2008, Cypress Management operated under the name Novus Capital Management, LLC. Cypress Management was administratively dissolved in May 2013.

6. The Real Estate Partnerships are three North Carolina Limited Partnerships created to make real estate investments on behalf of investing limited partners. The three limited

partnerships are Novus Partners, LP ("Novus"), Bayside Development, LP ("Bayside"), and Saxony Partners, LP ("Saxony").

7. ChromeEast is an automotive chrome plating facility located in Concord, North Carolina. During various times between 2007 and 2014, Mr. Bernath assisted in the management and operation of ChromeEast. During all relevant times, Bernath maintained a financial interest in ChromeEast.

JURISDICTION AND VENUE

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

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

10. In connection with the transactions, acts, practices, and courses of business described in this Complaint, the Defendant, directly and indirectly, has made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

11. Certain of the transactions, acts, practices, and courses of business constituting the violations of law alleged herein occurred within this district.

STATEMENT OF FACTS

A. Background

12. Between at least 2007 and 2012, Defendant's advisory clients were comprised of several investments funds, including the Headline Fund, the Partners Fund, and the Dynasty Fund. Defendant provided advisory services through HCM, and its predecessor in interest HIM, as owner and CIO.

13. HCM, and its predecessor in interest HIM, collected quarterly investment advisory fees from the Headline Fund and the Dynasty Fund comprised of one-quarter of a percent of assets under management with a twenty percent performance fee. They also collected quarterly investment advisory fees from the Partners Fund comprised of one-half of a percent of assets under management with a twenty percent performance fee.

14. The Headline Fund was formed as a market neutral, statistical-based hedge fund that employed uncorrelated strategies across multiple asset classes including stocks, exchange-traded funds, and futures. Its core strategies were based on corporate earnings announcements.

15. The Partners Fund was formed in 2009 as a side-by-side fund of the Headline Fund to protect new investors from historic counter-party risk. As a side-by-side fund, the assets of both the Partners Fund and the Headline Fund were consolidated and the investment activity was identical.

16. The Dynasty Fund was formed to capitalize on a proprietary correlation model developed by Defendant utilizing 70 different Asian instruments including exchange-traded funds, American Depositary Receipts, and futures.

17. The investors in the Funds maintained limited partnership interests and were unable to exercise any management or investment decisions on behalf of the Funds. Each investor received a *pro rata* share of any gains or losses experienced by the Funds.

18. During the relevant period, Defendant also operated Cypress Capital, which managed the Real Estate Partnerships as the general partner. The Real Estate Partnerships were formed to capitalize on depressed real estate prices in Louisiana and Mississippi following the destruction caused by Hurricane Katrina.

B. The Headline Fund's Transactions with Related Entities in 2007

19. In 2007, Defendant directed the Headline Fund to invest at least $584,250 into Bayside and $413,000 into Novus. Including those investments, the Headline Fund had approximately $9.3 million in assets.

20. At the time of the Headline Fund investments in 2007, Defendant managed Bayside and Novus through Cypress Capital. Defendant also held personal financial interests in Bayside and Novus totaling approximately $143,000.

C. The Funds' Transactions with Related Entities in 2008

21. In 2008, Defendant directed the Headline Fund to invest an additional $312,000 in Bayside and $900,000 into ChromeEast. In 2008, the Headline Fund had approximately $11.6 million in assets.

22. At the time of the Headline Fund investments in 2008, Defendant managed Bayside through Cypress Capital. Defendant also held personal financial interests in Bayside and ChromeEast totaling approximately $75,000.

23. In 2008, Defendant directed the Dynasty Fund to purchase the Headline Fund's interests in Bayside, Novus, and ChromeEast for approximately $2.2 million. At the time the

Dynasty Fund purchased those interests from the Headline Fund, the Headline Fund needed capital to engage in its trading strategy and to help meet margin calls.

24. In 2008, Defendant also directed the Dynasty Fund to loan approximately $692,339 to Bayside. At the time of the loans, Bayside faced deteriorating market conditions and could not acquire credit from other sources to complete its construction projects.

25. During this period, Defendant managed Bayside and Novus through Cypress Capital. Defendant also held personal financial interests in Bayside, Novus, and ChromeEast totaling approximately $168,000.

D. The Dynasty Fund's Transactions with ChromeEast in 2009 and 2010

26. During 2009 and 2010, ChromeEast required additional capital to continue operations after losing a major service contract. Defendant directed the Dynasty Fund to invest an additional $425,000 in ChromeEast that was used to cover overhead and other operational expenses.

27. During the same period, the Dynasty Fund held as much as $7.5 million in assets. Of that amount, approximately $2.6 million was comprised of interests in Bayside, Novus, and ChromeEast. Defendant also held a personal financial interests in Bayside, Novus, and ChromeEast totaling approximately $168,000.

E. The Funds' Transactions with Related Entities in 2011

28. In 2011, Defendant directed the Headline Fund and the Partners Fund to purchase the Dynasty Fund's interests in Bayside and ChromeEast for at least $1.8 million. At the time of the transaction, the Dynasty Fund needed additional capital to meet redemption requests.

29. In 2011, Defendant also directed the Headline Fund and the Partners Fund to contribute $1.4 million towards a loan for Saxony.

30. At the time of the Headline Fund and the Partners Fund investments in 2011, Defendant managed Bayside and Saxony through Cypress Capital. Defendant also held personal financial interests in Bayside, Saxony, and ChromeEast totaling approximately $522,000.

31. From 2008 until 2011, Defendant periodically wrote down the value of the Funds' investments in the Real Estate Partnerships and ChromeEast, to the detriment of the Funds' investors and without their knowledge.

F. Failure to Disclose the Funds' Transactions with Related Entities and Misleading Statements

32. Defendant did not disclose any of the Funds' transactions with Bayside, Novus, Saxony, ChromeEast, or the transactions between the Funds until 2013.

33. Between at least 2009 and 2011, Defendant provided investors and potential investors in the Dynasty Fund with monthly newsletters describing the Dynasty Fund and its activities. The monthly newsletters explained that the Dynasty Fund traded 70 different instruments to isolate the US impact on Asian instruments utilizing its own correlation calculation.

34. Defendant drafted the monthly newsletters to the Dynasty Fund and distributed them to investors and potential investors.

35. During the period of time the monthly newsletters were drafted and distributed to the Dynasty Fund, the Dynasty Fund had as much as $7.5 million in assets. Of the Dynasty Fund's $7.5 million in assets, as much as $2.6 million was comprised of investments and loans associated with Bayside, Novus, Saxony, and ChromeEast.

36. In 2011, Defendant provided investors and potential investors in the Headline Fund and the Partners Fund with monthly newsletters describing both and their activities. The

monthly newsletters explained that the Headline Fund and the Partners Fund invested only in liquid instruments and that its core strategies were based on corporate earnings announcements.

37. Defendant drafted the monthly newsletters to the Headline Fund and the Partners Fund and distributed them to investors and potential investors.

38. During the period of time the monthly newsletters were drafted and distributed to the Headline Fund and the Partners Fund investors, the combined assets of both was approximately $4.5 million. Of that amount, approximately $3.2 million was comprised of investments and loans associated with Bayside, Saxony, and ChromeEast.

39. The monthly newsletters to investors and potential investors in the Funds omitted any reference the Funds' transactions with Bayside, Novus, Saxony, or ChromeEast.

40. Some of the investors in the Funds who received the monthly newsletters thereafter purchased or redeemed interests in the Funds.

41. Some of the investors in the Funds declined to invest personally in Bayside, Novus, or Saxony when solicited to do so by the Defendant.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act

[15 U.S.C. § 77q(a)]

42. The Commission realleges paragraphs 1 through 40 above.

43. As a result of the conduct described above, Defendant violated Section 17(a) of the Securities Act and unless restrained and enjoined may in the future violate that provision of the Securities Act.

SECOND CLAIM FOR RELIEF

Violations of Section 10(b) and Rule 10b-5 of the Exchange Act

[15 U.S.C. § 78j(b) & 17 C.F.R. § 240.10b-5]

44. The Commission realleges paragraphs 1 through 40 above.

45. As a result of the conduct described above, Defendant violated Section 10(b) and Rule 10b-5 of the Exchange Act and unless restrained and enjoined may in the future violate those provisions of the Exchange Act.

THIRD CLAIM FOR RELIEF

Violations of Sections 206(1) and 206(2) of the Advisers Act

[15 U.S.C. §§ 80b-6(1) & 80b-6(2)]

46. The Commission realleges paragraphs 1 through 40 above.

47. As a result of the conduct described above, Defendant violated Sections 206(1) 206(2) of the Advisers Act and unless restrained and enjoined may in the future violate those provisions of the Advisers Act.

FOURTH CLAIM FOR RELIEF

Violations of Section 206(4) and Rule 206(4)-8 of the Advisers Act

[15 U.S.C. § 80b-6(1) & 17 C.F.R. §206(4)-8]

48. The Commission realleges paragraphs 1 through 40 above.

49. As a result of the conduct described above, Defendant violated Section 206(4) and Rule 206(4)-8 of the Advisers Act and unless restrained and enjoined may in the future violate those provisions of the Advisers Act.

PRAYER FOR RELIEF

The Commission respectfully requests that this Court:

1. Find that Defendant committed the violations alleged;

2. Enter injunctions, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant from violation, directly or indirectly, or aiding and abetting violations of the law and rules alleged in this complaint;

3. Order Defendant to conduct an accounting of all funds received by Defendant from investors or clients pursuant to the events described in the Commission's Complaint and of the disposition and use of said funds. This accounting shall include, but not be limited to: (a) any investments by or payments to investors in any of the entities identified in the Complaint; and (b) any proceeds received by Defendant or related entities in relation to the management of the various entities identified in the Complaint.

4. Order Defendant to disgorge all ill-gotten gains in the form of any benefits of any kind derived from the illegal conduct alleged in this Complaint, plus prejudgment interest;

5. Order Defendant to pay civil penalties, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] in an amount to be determined by the Court; and

6. Order such other relief as is necessary and appropriate.

Dated: October 13, 2014

s/ Joshua A. Mayes
Joshua A. Mayes
Georgia Bar No. 143107
Senior Trial Attorney
United States Securities & Exchange Commission
950 E. Paces Ferry Road NE

Suite 900
Atlanta, GA 30326
404-842-5747
mayesj@sec.gov

TAB 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LONNY S. BERNATH, Defendant.	C.A. No. __-____ (ABC)

CONSENT OF DEFENDANT LONNY S. BERNATH

1. Defendant Lonny S. Bernath ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 12 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the Judgment in the form attached hereto (the "Judgment") and incorporated by reference herein, which, among other things:

a) permanently restrains and enjoins Defendant from violations of Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1), 206(2), and 206(4) of the Investments Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8]; and

b) orders the Defendant to prepare and present to this Court and to the Commission a sworn

accounting of all funds received by Defendant from investors or clients pursuant to the events described in the Commission's Complaint and of the disposition and use of said funds. This accounting shall include, but not be limited to: (i) any investments by or payments to investors in any of the entities identified in the Complaint; and (ii) any proceeds received by Defendant or related entities in relation to the management of the various entities identified in the Complaint.

3. Defendant agrees that, upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] and, if so, the amount(s) of the disgorgement and/or civil penalty. The Defendant further understands that, if disgorgement is ordered, Defendant shall pay prejudgment interest thereon, calculated based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendant further agrees that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure or Federal Rule of Evidence 802. In connection with the Commission's motion

for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

4. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to paragraph 3, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

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

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

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

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

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

waives any objection based thereon.

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

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant 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). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to

take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

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

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

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

Dated: 9/16/15

Lonny S. Bernath

On Sept. 16, 2015, Lonny S. Bernath, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Robin Gaston Mason
Notary Public
Commission expires: 9-20-2017

Approved as to form:

Robert J. Mottern, Esq.
1230 Peachtree Street, N.E.
Suite 2445
Atlanta, GA 30309
404-607-6933
Attorney for Defendant

ROBIN GASTON MASON
NOTARY PUBLIC
CABARRUS COUNTY, NC
My Commission Expires 9-20-2017

TAB 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LONNY S. BERNATH, Defendant.	Civil Action No. 3:15-cv-00485

JUDGMENT AS TO DEFENDANT LONNY S. BERNATH

The Securities and Exchange Commission ("Commission") having filed a Complaint and Defendant Lonny S. Bernath ("Bernath" or "Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VIII); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment, the Court hereby grants the Commission's Unopposed Motion for Entry of Judgment by Consent Against Bernath:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 206(1) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. § 80b-6(1)] by using any means or instrumentality of interstate commerce, or the mails, directly or indirectly, to employ any device, scheme, or artifice to defraud any client or prospective client.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert orparticipation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)] by using any means or instrumentality of interstate commerce, or the mails, directly or indirectly, to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 promulgated thereunder [17 C.F.R. §206(4)-8], by using any means or instrumentality of interstate commerce, or the mails, directly or indirectly, to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, including, while acting as an investment adviser to a pooled investment vehicle to:

(1) make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or

(2) otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant prepare and present to this Court and to the Commission a sworn accounting of all funds received by Defendant from investors or clients pursuant to the events described in the Commission's Complaint and of the disposition and use of said funds. This accounting shall include, but not be limited to: (a) any investments by or payments to investors in any of the entities identified in the Complaint; and (b) any proceeds received by Defendant or related entities in relation to the management of the various entities identified in the Complaint.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] and, if so, the amount(s) of the disgorgement and/or civil penalty. If disgorgement is ordered, Defendant shall pay prejudgment interest thereon, calculated based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment

contained in Rule 56(c) of the Federal Rules of Civil Procedure and Rule 802 of the Federal Rules of Evidence. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant 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).

IX.

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

Dated: 30 Oct

Graham C. Mullen
UNITED STATES DISTRICT JUDGE