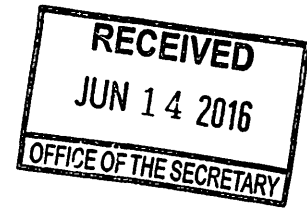


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



SECURITIES ACT OF 1933 Release No. 10051 / March 8, 2016

SECURITIES EXCHANGE ACT OF 1934 Release No. 77318 / March 8, 2016

INVESTMENT ADVISERS ACT OF 1940 Release No. 4349 / March 8, 2016

INVESTMENT COMPANY ACT OF 1940 Release No. 32024 / March 8, 2016

For their answer to the allegations in the Order Instituting Proceedings, Respondents state (In Bold) as follows:

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Steven Zoernack and EquityStar Capital Management, LLC (“EquityStar”)(collectively, “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

Summary

1. These proceedings involve violations of the anti-fraud provisions of the federal securities laws by Steven Zoernack and his company EquityStar, an unregistered investment adviser, in connection with the offer and sale of interests in Global Partners Fund, LLC (“Global Partners”) and Momentum Growth Fund, LLC (“Momentum”), two unregistered investment funds Zoernack created and then managed through EquityStar. From at least May 2010 through at least March 2014, EquityStar and Zoernack—EquityStar’s managing member and sole employee—made material misrepresentations and omissions and engaged in a fraudulent scheme involving this and other deceptive conduct including: **DENY**

- taking extensive measures to hide Zoernack’s identity as fund manager—while simultaneously advertising that the funds boasted a seasoned and reputable manager—and otherwise failing to disclose to investors and others, material facts about Zoernack’s

background, including two felony fraud convictions, a bankruptcy filing, and other money judgments and liens against Zoernack; **DENY**

- providing false and misleading data about Momentum to Morningstar, Inc. (a company that provides independent investment research to individuals, financial advisers and institutions) in order to obtain for Momentum the title of “Morningstar Five Star Rated Fund,” which Zoernack then used to market the fund. For example, Zoernack misrepresented to Morningstar that the Momentum fund had been in existence for years longer than it actually had, and that its assets were more than 40 times higher than they actually were; **DENY**
- creating and distributing false and misleading investment marketing materials, which failed to adequately indicate that results were hypothetical and not based on actual fund performance; **DENY**
- hiring a firm to manipulate Internet search results for Zoernack and populating the Internet with false and misleading information about him, including that he was a successful fund manager, investor, and philanthropist. This had the effect of making it harder for potential investors and others to discover information about Zoernack’s criminal convictions and other negative information about him; **DENY**
- secretly withdrawing more than \$1 million from about February 2012 to at least May 2014, without authorization, and without disclosing his withdrawals to investors, and falsely characterizing the withdrawals as assets of the funds. **DENY**

2. Through this deceptive conduct, Zoernack and EquityStar fraudulently offered and sold at least \$5.6 million of interests in Momentum and Global Partners to more than 40 investors in about 20 states and two foreign countries. Respondents’ conduct violated the anti-fraud provisions of the federal securities laws. **DENY**

Respondents

3. Steven Zoernack, age 53, resides in Nokomis, Florida. He is the managing member and sole employee of EquityStar. Zoernack is also the managing member for both the Momentum and Global Partners funds. **ADMIT**

4. EquityStar Capital Management, LLC, is a Delaware limited liability company formed May 20, 2010. Zoernack is the managing member and sole employee of EquityStar. During all relevant periods, EquityStar’s principal offices were located in Newport Beach, California, and Washington, D.C. EquityStar is an unregistered investment adviser for Global Partners and Momentum. **ADMIT**

Related Entities

5. Momentum Global Growth Fund, LLC, is a Delaware limited liability company formed July 10, 2012. Zoernack is its managing member. During all relevant periods, its principal offices

were located in Newport Beach, California. Momentum is an unregistered investment fund. **ADMIT**

6. Global Partners Fund, LLC, is a Delaware limited liability company formed May 20, 2010. Zoernack is its managing member. During all relevant periods, its principal offices were located in Newport Beach, California. Global Partners is an unregistered investment fund. **ADMIT**

EquityStar's Investment Offerings

7. Between approximately March 2011 and at least March 2014, Zoernack and EquityStar offered and sold interests in the two investment funds, Momentum and Global Partners. From about March 2011 to about mid-2012, Zoernack and EquityStar offered and sold interests in Global Partners, raising at least \$2.6 million from more than 20 investors in approximately 13 states and Singapore. Between August 2012 and at least March 2014, Zoernack and EquityStar offered and sold interests in Momentum, raising approximately \$3 million in interests from about 20 investors in approximately 11 states and Canada. **DENY**

8. Zoernack handled all activities of EquityStar, Global Partners, and Momentum. He drafted all marketing and offering materials, responded to all substantive information requests, and made all investment decisions. In order to create the appearance that EquityStar was more than a one-man operation – and to otherwise conceal his identity as fund manager in furtherance of his fraudulent scheme – Zoernack used at least three other false identities in communications with investors, prospective investors and others. One of the false identities was a non-existent woman named Amanda Sutton, to whom Zoernack gave the title of Investor Relations Professional. **DENY**

9. Global Partners and Momentum maintained brokerage accounts at two broker-dealer firms during the relevant period. Both funds invested primarily in large cap stocks. Zoernack used several independent fund administrators to calculate earnings (using the broker-dealer monthly

account statements) and send monthly statements to investors during the course of his scheme. Zoernack employed another company to prepare annual tax statements for investors. **ADMIT**

Respondent Misrepresented and Omitted Material Facts About Zoernack's Background **DENY**

10. In the offer and sale of interests in the funds, the solicitation and marketing materials Zoernack drafted and distributed stressed the funds' reliance on the manager and claimed that the unnamed manager had "an impeccable and unblemished past record with the SEC." The unnamed manager was Zoernack, who had two criminal fraud convictions, had previously filed for bankruptcy, and had numerous money judgments and liens against him. Neither he nor EquityStar disclosed to prospective investors these facts about his background, which would have been important to a reasonable investor's investment decision. **DENY**

11. Zoernack also took extensive steps to conceal his criminal history and troubling financial record. Zoernack paid an Internet-based search engine manipulator ("Internet company"),

\$10,000 to make negative information about him appear less prominently in search engine results. The Internet company did this by acquiring multiple website domain names and populating them with positive information about Zoernack—provided and approved by Zoernack—then “hitting” the positive websites numerous times, thereby causing the positive information about Zoernack to appear in search engine results before negative information. However, much of the positive information that results from an Internet search of Zoernack’s name is false or misleading. **DENY**

12. In early 2012, EquityStar’s first fund administrator warned Zoernack numerous times about his poor fund management decisions and actions. In one email, the CEO of the fund administrator stated that, if Zoernack did not understand why one of the actions he had taken was inappropriate, “then I strongly recommend you hand back all of the investors[’] money ASAP before you end up in prison. And that’s the best advice I have ever given you.” Ultimately, after only a few months, the first fund administrator, auditor, and lawyers resigned because of Zoernack’s mismanagement of the Global Partners fund. In hiring EquityStar’s second fund administrator, Zoernack attempted to hide his involvement by having his wife sign the contract falsely identifying her as the managing director of the Global Partners fund and not indicating that he had any role in managing it. **DENY**

EquityStar, Zoernack, and Momentum Used False and Misleading Information to Gain a Five-Star Morningstar Listing for Momentum **DENY**

13. Morningstar is an independent investment research firm. Its website provides investors with a quantitative assessment of a fund’s past performance compared with other similar funds. A five-star rating, Morningstar’s highest, is given to only 10% of the funds rated by Morningstar. Morningstar’s rating is based on a fund’s performance data, which is provided by the fund’s management. Morningstar does not independently confirm the information supplied to it by fund managers and includes a disclaimer to that effect on each Morningstar report. Zoernack supplied false and misleading information to Morningstar in order to secure a Five-Star rating for the Momentum fund. **DENY**

14. Momentum’s listing on Morningstar—which was based entirely on information Zoernack provided to Morningstar through its web portal—indicated that Momentum had a performance history that began in 2009 with returns in the top 20% of all funds, and that it had more than \$120 million in funds under management. This statement was false and misleading for multiple reasons. First, Momentum did not exist prior to 2012. This was a significant misrepresentation because, according to Morningstar’s requirements, without at least three years’ worth of performance results a fund was not eligible to be listed on Morningstar’s website. Second, most of Momentum’s returns listed in the Morningstar report were hypothetical or the results of “back-testing,” not actual performance results. Nowhere in the information Zoernack provided for the Morningstar listing—which then appeared on Morningstar’s website—did Zoernack disclose the purportedly hypothetical or “back-tested” nature of Momentum’s performance. Third, Momentum had nowhere near \$120 million in total assets under management; in reality, the fund never had more than \$3 million in assets. Finally, the Morningstar report contained a biography of Zoernack—which he provided—that failed to

disclose his criminal convictions, bankruptcy, other money judgments or liens against him.
DENY

15. Zoernack provided all the information about Momentum on Morningstar's website. He knew that the false and misleading information appeared in the funds' Morningstar listings because he received copies of them periodically from Morningstar. **DENY**

16. As a result of the false information Zoernack provided, Momentum appeared on the Morningstar website as a five-star rated fund when Zoernack and EquityStar offered and sold interests in the fund; and EquityStar and Zoernack, advertised Momentum as a "Morningstar Five- Star Rated fund." Moreover, Zoernack routinely touted EquityStar as an award winning fund and even incorporated the claim that it was "Awarded Morningstar 5 Star Fund" into his standard email signature block, sending many emails to investors and others which contained this misleading information. **DENY**

Respondents Made Misleading Statements About the Funds' Investing Performance DENY

17. Zoernack and EquityStar included false and misleading statements about investment returns for Global Partners and Momentum in marketing materials and emails. These returns were not the actual returns of the funds, but were based on what Zoernack asserted was a "back-testing" algorithm. However, in many of these marketing materials, Zoernack and EquityStar did not disclose that the purported results were not actual results but were based on Zoernack's putative "pro-forma back-testing." In other materials, Zoernack included a misleading and confusing footnote about the back-tested nature of the returns. **DENY**

18. One of the methods Zoernack used to seek new investors was to send out materially misleading solicitation emails to addresses he obtained through purchased leads. He sent one such email to dozens of individuals in the business community on October 30, 2012, soliciting them to invest in the Momentum Growth Fund. The email was materially misleading in various ways. First, it was purportedly sent by the non-existent Ms. Sutton, when it was really sent by Zoernack. Second, it touted EquityStar as an "award winning alternative investment fund manager" which "Morningstar gives . . . 5 stars out of 5" despite the fact that Zoernack procured the rating for the

Momentum fund by providing wholly false and misleading data to Morningstar. Third, the email asserted that "EquityStar's reputation and credibility is [sic] further enhanced by the use of outside auditors and an independent fund administrator." Zoernack and EquityStar did not inform investors that the prior fund administrator, auditors, and lawyers had all resigned. **DENY**

Zoernack Misused Investors' Funds DENY

19. According to the offering memoranda for Global Partners and Momentum, EquityStar would receive a management fee of 3% annually (or .25% monthly) for each fund. The offering documents for each fund also stated that EquityStar would receive a 25% incentive allocation on net profits. **ADMIT**

20. From approximately February 2012 to at least May 2014, Zoernack made tens of thousands of dollars a month in unauthorized withdrawals from both the Global Partners and Momentum trading accounts. These withdrawals were in addition to the fees and expenses authorized by the funds' offering memoranda. **DENY**

21. In all, Zoernack withdrew more than \$1 million from fund assets that he was not authorized to take. Zoernack transferred the money from the funds' trading accounts to the EquityStar account. From there, Zoernack transferred some of the funds to his personal bank account or other bank accounts under his control (including a family trust account). In other cases, Zoernack paid personal expenses directly from the EquityStar account, using checks, wires, and a debit card. **DENY**

22. The original offering memorandum for each fund did not allow fund assets to be used to pay day-to-day expenses, such as rent, salaries, administration, legal, audit, and tax and accounting. Instead, the documents stated that the fund manager was responsible for those expenses. Although Zoernack later changed the offering memorandum for the Momentum fund (but not the Global Partners fund), most investors did not receive any offering memorandum, let alone one containing language that would permit Zoernack to borrow money or use fund assets (to pay either himself or even legitimate management company liabilities). **DENY**

23. Zoernack repeatedly represented to the second fund administrator that his withdrawals from the funds were loans he would repay and thus should be accounted for as receivables due from Zoernack to Global Partners and Momentum. For instance, as early as September 26, 2012, Zoernack sent a letter to the managing director of the second fund administrator in which he asserted that he would "reimburse the [Global Partners] fund for the[] higher than usual expenses" the fund had purportedly incurred to that point. He added, "Our plan is to have these higher than usual expenses reimbursed in full with 7% interest on or before December 31, 2012." But neither Zoernack nor EquityStar reimbursed the funds "in full" or paid any interest whatsoever. Instead, Zoernack continued his withdrawals, largely unabated, more than tripling what he had agreed to pay the funds by early 2014. **DENY**

24. Due to a combination of Zoernack's substantial unauthorized withdrawals and trading losses, the value of the Global Partners fund fell precipitously. In or about September 2012, Zoernack closed the fund to new investors. Around that time he started the Momentum fund and

urged investors—who were then unaware that almost 21% of the value of the Global Partners fund was listed as a fund asset based on Zoernack's unauthorized cash withdrawals—to transfer their balances from Global Partners to Momentum. Some of them followed his recommendation. This resulted in significant further losses for all those who did. **DENY**

25. At no time before March 2014 did Zoernack or EquityStar disclose to investors the existence of the withdrawals or balance of the alleged receivables Zoernack promised the second fund administrator he would repay. As a result, investors were misled with respect to a material fact, i.e., the value of their EquityStar fund portfolios. That is because, as discussed above, Zoernack continued to have the fund administrator identify his withdrawals in the funds' financial statements as assets, rather than expenses, of Global Partners and Momentum. As assets, they

were included in the monthly account values sent by the fund administrator to Global Partners and Momentum investors, causing the investors' account balances and net returns to be materially inflated. The monthly statements to investors, however, did not identify the existence or amounts of the withdrawals by Zoernack or that there was an ever-increasing receivable balance. **DENY**

26. The withdrawals were unauthorized and undisclosed. The offering materials for Global Partners and Momentum did not authorize the withdrawals Zoernack made, and investors were not aware that their account values in monthly statements included withdrawals made by Zoernack. **DENY**

27. The withdrawals were also material, totaling more than \$1 million. By May 2014, after large trading losses and after some investors redeemed their interests in the funds, the withdrawals accounted for nearly 75% of Global Partners' NAV and almost 50% of Momentum's NAV reported to investors. **DENY**

Violations

28. As a result of the conduct described above, Zoernack and EquityStar willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities. **DENY**

29. As a result of the conduct described above, Respondents Zoernack and EquityStar also willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent and deceptive conduct by an investment adviser with respect to any client or prospective client, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit making an untrue statement of a material fact or omitting any material fact to any investor or prospective investor in a pooled investment vehicle and engaging in any act, practice, or course of business that is fraudulent or deceptive with respect to any investor or prospective investor in a pooled investment vehicle. **DENY**

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. what, if any, remedial action is appropriate in the public interest against Respondents pursuant to Sections 203(e) and 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Sections 203(i) and 203(j) of the Advisers Act;

C. what, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act; and

D. whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, whether Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a)(2) of the Exchange Act, and Section 203(i) of the Advisers Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Section 21C(e) of the Exchange Act, and Section 203(j) and 203(k)(5) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within

the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields Secretary

June 10th, 2016



Hon. Jason S. Patil
Administrative Law Judge
Office of the Secretary
U.S. Securities and Exchange Commission,
100 F Street N.E., Mail Stop 1090,
Washington, D.C. 20549

RE: ADMINISTRATIVE PROCEEDING File No. 3-17157

Dear Hon. Judge Patil:

Enclosed please find the 3 hard copy submissions of the Answers to order instituting proceedings (OIP) against Respondents.

Since my request for an extension to retain an attorney (Thomas Sjoblom Esq.) was denied, I have provided these Answers to the best of my ability.

Sincerely,

A handwritten signature in blue ink, appearing to be "S. Zoernack", written over the word "Sincerely,".

Steven Zoernack
EquityStar Capital Management LLC (In the capacity of continued voluntary settlement fulfillment with former investors)
(949) 682-2060