UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17645

In the Matter of **GARY C. SNISKY** **Respondent.**	**MOTION FOR SUMMARY DISPOSITION PURSUANT TO RULE 250 OF THE COMMISSION RULES OF PRACTICE**

The Division of Enforcement hereby moves for Summary Disposition against Respondent Gary Snisky.

I. INTRODUCTION

Pursuant to the Securities Exchange Act of 1934 ("Exchange Act") and the Investment Advisors Act of 1940 ("Advisers Act"), the Division seeks permanent collateral and penny stock bars against Snisky based on the injunction against future violations of the securities laws entered against him.[1] Such bars are in the public interest and each of the facts necessary to show that such bars are appropriate is readily established without a hearing. Similarly, those facts show that sanctions are warranted under the *Steadman* factors and in light of the need for deterrence. Because all the necessary facts can be established without a hearing, summary disposition is appropriate.

In support of its Motion, the Division submits Snisky's Plea Agreement in *United States v. Snisky*, 13-cr-473-RM (D. Colo.), attached as Exhibit 1; the Criminal Judgment against Snisky in *United States v. Snisky*, attached as Exhibit 2; the Civil Injunctive Judgment against

[1] The Division does not seek a monetary penalty in this proceeding and, thus, has not performed the analysis set forth in *Rapaport v. SEC*, 682 f.3d 98, 108 (D.C. Cir. 2012).

Snisky in *SEC v. Snisky*, 13-cv-3149-LTB (D. Colo.), attached as Exhibit 3; the Complaint in *SEC v. Snisky*, attached as Exhibit 4; and the Form ADV for Arete, LTD, attached as Exhibit 5.

II. SUMMARY DISPOSITION IS APPROPRIATE

Rule 250(b) and (c) of the Commission's Rules of Practice provide for motions for summary disposition. The hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. *Id.* The Commission has regularly upheld use of summary disposition in cases where a respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. *See Jeffrey L. Gibson*, Rel. No. 34-57266, 2008 WL 294717 at * 5 (Feb. 4, 2008) (collecting cases), petition for review denied, 561 F. 3d 548 (6th Cir. 2009).

This case is appropriate for summary disposition. As discussed below, the predicate facts for the requested bars can be established through Snisky's Injunction, Plea Agreement, Criminal Judgment, and other public records.[2] The hearing officer can take official notice of these records pursuant to Rule 323 of the Commission's Rules of Practice [17 C.F.R. § 201.323]. Moreover, Snisky is collaterally estopped from contesting the Injunction, Plea Agreement, and Criminal Judgment. *See Roe v. City of Waterbury,* 542 F.3d 31, 41 (2d Cir.2008).

III. STATEMENT OF FACTS

The OIP in this matter alleges that respondent Snisky using his investment entity, Arete, LLC, conducted an offering fraud scheme from August 2011 through January 2013 and that, in connection with this fraudulent scheme, Snisky made misrepresentations to investors and misappropriated millions of dollars of investor funds. OIP ¶ II.3.

[2] A guilty plea has the same preclusive effect as a criminal conviction by jury verdict. *See United States v. Podell,* 572 F.2d 31, 35 (2d Cir.1978).

On February 15, 2015, Snisky entered into a plea agreement in a criminal prosecution against him and on June 18, 2015, Snisky was sentenced. *See United States v. Snisky*, 13-cr-473-RM, Docs. 100, 138. Plea Agreement, attached as Exhibit 1; Criminal Judgment, attached as Exhibit 2.[3] Snisky appealed his conviction to the Tenth Circuit Court of Appeals and that appeal was denied. *See* Exhibit 6.

On August 12, 2016, in a Commission civil injunctive action against him, a final judgment was entered against Snisky, enjoining him from violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933; Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder; Sections 206(1), (2), and (4) of the Advisors Act, and Rule 206(4)-8 thereunder; and Section 7(a) of the Investment Company Act of 1940. *See SEC v. Snisky*, 13-cv-3149-LTB, Doc. 31. Civil Judgment, attached as Exhibit 3.[4] Snisky appealed the civil injunction entered against him to the Tenth Circuit Court of Appeals. That appeal was dismissed. *See* Exhibit 7.

The relevant documents prove the following facts. Sometime in 2011, Snisky formed a company in Longmont, Colorado called Arete. Exhibit 1, pp. 7-8. Arete was an investment adviser registered with the Commission. Arete Form ADV, attached as Exhibit 5. Snisky was the president of Arete. *Id.* Between approximately July 2011 and January 2013, Snisky offered investors, potential investors, and financial advisors the purported opportunity to invest money in what Snisky called Arete's "proprietary value model," which was based on using the investors' money to purchase Ginnie Mae bonds (hereinafter referred to as the "Bond Program"). Exhibit 1, p. 11; *see also* Exhibit 4 at ¶ 28. Snisky falsely described this investment

[3] Snisky personally signed the plea agreement.

[4] Both the criminal case and the civil case against Snisky involved the same fraudulent scheme. *See, e.g.*, Plea Agreement, Exhibit 1, at pp. 11 – 13 and Complaint, Exhibit 4, at ¶¶ 1 – 4, 27 – 29. The criminal case also included an earlier fraudulent securities scheme. *See* Exhibit 1, pp. 8-11.

"model" to financial advisors, investors, and potential investors as safe because Ginnie Mae bonds were backed by the "full faith and credit of the United States." *Id*; *see also* Exhibit 4 at ¶¶ 3, 28. In fact, however, Snisky never used any investor money to purchase Ginnie Mae bonds. Exhibit 1, p. 12; *see also* Exhibit 4 at ¶ 28.

Starting in approximately July 2011, Snisky offered a 10-year investment model for the Bond Program, which promised the investor a 10% upfront bonus and an annual return of 7%. *Id*; *see also* Exhibit 4 at ¶¶ 3, 28. Under the 10-year model, an investor could not withdraw any money for the first five years; starting in the sixth year, the investor could only withdraw interest. *Id.* Prior to April of 2012, Snisky began offering a 5-year investment model for the Bond Program, which promised a 6% annual return on the invested money. *Id.* Throughout 2012, Snisky continued to make false assurances about the safety of investing in the Bond Program despite the fact that Snisky knew that he had not purchased any Ginnie Mae bonds as promised. *Id*; *see also* Exhibit 4 at ¶¶ 4, 28.

When Snisky met with financial advisors, investors, or potential investors regarding the Bond Program, he frequently falsely described himself as an "institutional trader'' who was "on Bloomberg." Exhibit 1, p. 11; *see also* Exhibit 4 at ¶¶ 3, 16, 23, 28. Snisky represented that this made him part of an elite group of people who could "make markets" and who had access to lucrative opportunities to which ordinary investors did not have access. Exhibit 1, pp. 11-12. Snisky often showed financial advisors, investors, or potential investors his impressive-looking Bloomberg terminal, pulled up screen shots regarding Ginnie Mae bonds, and implied that he either had or would be purchasing the displayed bond or something similar. Exhibit 1, p. 12. In fact, Snisky was not an "institutional trader." *Id*; *see also* Exhibit 4 at ¶ 28. Additionally, while Snisky had a Bloomberg terminal simply because he paid the substantial monthly fee required obtain one, Snisky never used his Bloomberg terminal to purchase or trade anything much less

to "make markets." *Id.*

Snisky also falsely told financial advisors, investors and potential investors that he could make additional money for the Bond Program by having funds invested in the Bond Program participate in an "overnight lending program." Exhibit 1, p. 12; *see also* Exhibit 4 at ¶¶ 3, 28. Snisky explained to financial advisors, investors and potential investors that banks were required to have a certain amount of revenue on hand and, if they did not, they could borrow overnight the required amount from other institutions for a small interest fee. *Id.* Snisky falsely stated that he had the ability to participate in this overnight lending program. *Id.* In fact, Snisky never participated in any "overnight lending program" and did not have the ability to do so. *Id*; *see also* Exhibit 4 at ¶¶ 4, 29.

Between approximately August 2011 and January 2013, Snisky received a net of approximately $4,180,540.81 in investor money that was supposed to be invested in Ginnie Mae bonds. Exhibit 1, p. 12. However, Snisky did not use any of this investor money to purchase Ginnie Mae bonds. *Id*; *see also* Exhibit 4 at ¶ 28. In fact, Snisky never purchased any Ginnie Mae bonds. *Id*; *see also* Exhibit 4 at ¶ 28. Despite this, Snisky caused false investment account statements to be mailed to investors in the Bond Program falsely showing that their money had been invested as promised and was earning a profit as promised. Exhibit 1, pp. 12-13; *see also* Exhibit 4 at ¶ 28.

IV. SNISKY WAS ASSOCIATED WITH AN INVESTMENT ADVISER AND ACTED AS A BROKER-DEALER AT THE TIME OF HIS MISCONDUCT.

Sections 15(b)(6) of the Exchange Act and 203(f) of the Advisers Act require that Snisky have been associated with a broker-dealer and investment adviser, respectively, to justify the imposition of sanctions. 15 U.S.C. §§ 78o(b)(4)(B)(i)-(iv), (6)(A)(ii), 80b-3(e)(2)(A)-(D), 80b-3(f). Section 203(f) authorizes the Commission to impose a collateral bar, if such sanction is in

the public interest and the person has willfully violated the Advisers Act or Exchange Act or any rule thereunder. *Matter of Christopher M. Gibson*, 2017 WL 371868 (Jan. 25, 2017) (citing 15 U.S.C. §§ 80b-3(e)(5)&(f)).

A. Snisky was Associated with an Investment Adviser.

At the time of his misconduct, Snisky was the president of Arete, a registered investment adviser. *See* Exhibit 5. As such, he was associated with an investment adviser.

In addition, Snisky acted as an investment adviser. An investment adviser is "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." 15 U.S.C. § 80b-2(a)(11).

Snisky perpetrated his fraud through Arete, an LLC that purported to be a private equity fund. Exhibit1 at pp. 7-8. From July 2011 through January 2013, Snisky offered investors Arete's "proprietary value model" which purportedly invested investor funds using Snisky's expertise and connections. *See* Exhibit 4 at pp. 11-12. Snisky advised investors about the profitability and safety of these investments, in short, the advisability of the investment. *Id.*

B. Snisky Acted as a Broker-Dealer.

Section 3(a)(4) of the Exchange Act defines a broker as any person "engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). Activities of a broker are characterized by "a certain regularity of participation in securities transactions at key points in the chain of distribution." *Mass. Fin. Servs., Inc. v. Sec. Investor Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976), aff'd, 545 F.2d 754 (1st Cir. 1976). Actions indicating that a person is "effecting" securities transactions include soliciting investors; providing either advice or a valuation as to the merit of an investment; actively finding investors; handling customer funds and securities; and participating in the order-taking

or order-routing process. *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D. N.Y. 2003); *SEC v Benger*, 697 F. Supp. 2d 932, 945 (N.D. Ill. 2010); *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011).

During the relevant time period, Snisky solicited investments in Arete's purported Bond Program. *See* Exhibit 1, p. 11; *see also* Exhibit 4 at ¶ 28. Snisky advised investors and potential investors that the Bond Program was safe and promised them certain bonuses and returns on the investment. *Id.* In addition, Snisky held himself out to investors and potential investors as an "institutional trader" who could "make markets" and access lucrative opportunities to which ordinary investors did not have access. Exhibit 1, p. 11-12; *see also* Exhibit 4 at ¶¶ 3, 16, 23, 28. These actions demonstrate that Snisky was acting as a broker-dealer.

V. SNISKY HAS BEEN ENJOINED.

On August 12, 2016, a final judgment was entered against Snisky, enjoining him from violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933; Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder; Sections 206(1), (2), and (4) of the Advisors Act, and Rule 206(4)-8 thereunder; and Section 7(a) of the Investment Company Act of 1940. *See SEC v. Snisky*, 13-cv-3149-LTB, Doc. 31; Civil Judgment, attached as Exhibit 3.[5] Snisky was also ordered to pay disgorgement of $2,531,032. *Id.*

In addition, Snisky was convicted of one count of mail fraud in violation of Title 18 United States Code, Section 1341 and one count of monetary transactions in property derived from mail fraud in violation of Title 18 United States Code, Sections 1957 and 2(b). *See United States v. Snisky*, 13-cr-473-RM, Doc. 138; Criminal Judgment, attached as Exhibit 2. Snisky was

[5] On December 12, 2016, Snisky moved to vacate the final judgment against him. *See SEC v. Snisky*, 13-cv-3149-LTB, Doc. 32. On January 20, 2017, that motion was denied. *See SEC v. Snisky*, 13-cv-3149-LTB, Doc. 38.

sentenced to a prison term of 84 months followed by three years of supervised release and ordered to make restitution in the amount of $2,531,032. *Id*

VI. BARS ARE IN THE PUBLIC INTEREST.

Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act provide that collateral and penny stock bars may be imposed if the elements above are met and they are in the public interest. 15 U.S.C. § 78o(b)(6)(A); 15 U.S.C. § 80b-3(f).

The Commission considers the following factors when determining whether sanctions are in the public interest: the egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his or her conduct; and the likelihood that the respondent's occupation will present opportunities for future violations (the *Steadman* factors). *See Vladimir Boris Bugarski*, Rel. No. 34-66842, 2012 WL 1377357 at * 4 & n. 18 (Apr. 20, 2012) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1 979), affd on other grounds, 450 U.S. 91 (1981)). The Commission also considers the extent to which the sanction will have a deterrent effect. *See Shield Management Company,* Rel. No. 34-53201, 2006 WL 231642 at * 8 & n.46 (Jan. 31, 2006). Consideration of the *Steadman* factors demonstrates that Snisky's conduct warrants a severe sanction. The Commission has stated that "conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions." *Chris* G. *Gunderson,* Release No. 34-61234, 2009 WL 4981617 at * 5 (Dec. 23, 2009) (internal citation omitted). The Commission has also directed that "an individual who has been criminally convicted in connection with activities related to the purchase or sale of securities cannot be permitted to remain in the securities industry." *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *6 & n.34 (Jan. 16, 2007) (quoting *Frederick W. Wall*, Exchange Act Release No.

52467, 2005 WL 2291407, at *4 (Sept. 19, 2005)). Moreover, consideration of both specific and general deterrence supports the imposition of permanent bars.

A. Snisky's Violations are Egregious.

Snisky's fraudulent scheme was egregious: it violated bedrock antifraud principles that apply throughout the securities industry, including the "'philosophy of full disclosure' of accurate and non-misleading information to investors; the obligation to deal fairly with investors; and the prohibition on self-dealing." *Ross Mandell*, Rel. No. 34-71668, 2014 WL 907416 at * 4 (March 7, 2014) (internal citations omitted).

Snisky affirmatively lied to investors and potential investors. He sold investments in a Bond Program that did not exist, claiming that it was safe and would generate significant returns. *See* Exhibit 1, p. 11; *see also* Exhibit 4 at ¶ 28. He falsely represented himself as an "institutional trader" who could "make markets" and access exclusive investment opportunities. *See* Exhibit 1, pp. 11-12; *see also* Exhibit 4 at ¶ 28. He also falsely told investors and potential investors that he could participate in a fictitious "overnight lending program." *See* Exhibit 1, p. 12; *see also* Exhibit 4 at ¶¶ 3, 28. Each of these lies went to the heart to the offered investment – the safety and profitability of the investment. In fact, the entire investment program offered by Snisky was fake. No actual investment was ever made. *See* Exhibit 1, p. 12; *see also* Exhibit 4 at ¶ 28. And to cover up the fake investments, Snisky sent false investment account statements to investors. Exhibit 1, pp. 12-13; *see also* Exhibit 4 at ¶ 28. As a result of Snisky's egregious conduct, investors lost over $2 million. Exhibit 1, pp. 12-13.

B. Snisky's Violations were Recurrent.

Snisky's fraudulent scheme ran from at least July 2011 to January 2013 and involved numerous investors. *See* Exhibit 1, pp. 7 -13; Exhibit 4 at ¶ 1. Investors lost millions of dollars investing with Snisky. *See* Exhibit 1, p 13.

C. Snisky's Conduct Showed a High Degree of Scienter.

As discussed above, Snisky's representations were affirmative lies. Because Snisky knowingly and intentionally provided false information to investors and misappropriated investor funds, he acted with a high degree of scienter. *See, e.g., Toby G. Scammell*, Rel. No. 3961, 2014 WL 5493265 at *6 (March 17, 2014).

D. Snisky has Failed to Recognize the Wrongful Nature of his Conduct.

Snisky's Answer shows that, despite his criminal conviction, Snisky fails to accept any responsibility for investor losses or his part in them. In his answer, he shifts blame to others and claims he acted in "good faith" and did not create a fraudulent scheme. Answer at 5-6.

E. The Likelihood that Snisky will Engage in Future Violations is High.

As discussed above, Snisky engaged in egregious, recurrent violations with a high degree of intent. "[T]he likelihood of future illegal conduct is 'strongly suggested' by past illegal activity." *SEC v. Am. Bd. Of Trade,* 750 F. Supp. 100, 104 (S.D.N.Y. 1990). Moreover, while the fraudulent scheme underlying the civil injunction against Snisky ran from July 2011 to January 2013, Snisky also operated a separate fraudulent scheme from 2010 through 2011. Exhibit 1, pp. 8-11. This conduct "demonstrates his inability to observe investor protections and market integrity principles that apply throughout the securities industry." *Ross Mandell*, 2014 WL 907416 at * 2.

Although Snisky is currently incarcerated, he is a relatively young person. When he is released he will be in his early fifties. As a result, his past violations, his age, and his background as a person involved in the securities industry puts him in a position to commit violations in the future. Moreover, Snisky's "attempts to deflect responsibility for his fraudulent scheme demonstrate either a fundamental misunderstanding of his responsibilities as a securities professional or that he 'hold[s] those obligations in contempt.'" *Ross Mandell*, 2014 WL

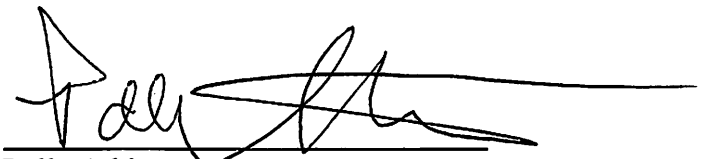
907416 at * 5 (internal citations omitted). In either case, those attempts reveal a serious risk he would commit further misconduct if permitted in any area of the industry. *Id.*

Finally, without a bar on Snisky, he could return to the securities industry once he is released from prison, and "the existence of a violation raises an inference that it will be repeated." *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)).

VII. CONCLUSION.

For the foregoing reasons, the Division requests that collateral and penny stock bars be entered against Snisky under Exchange Act Section 15(b) and Advisers Act Section 203(f) barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock.

Respectfully submitted this 24th day of October, 2018.



Polly Atkinson
Division of Enforcement
Securities and Exchange Commission
Denver Regional Office
1961 Stout Street, Ste. 1700
Denver, CO 80294

SERVICE LIST

On October 24, 2018, the foregoing **MOTION FOR SUMMARY DISPOSITION PURSUANT TO RULE 250 OF THE COMMISSION RULES OF PRACTICE** was sent to the following parties and other persons entitled to notice:

Office of the Secretary
Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Mail Stop 1090
Washington, DC 20549-2557
(By Facsimile and original and three copies by UPS)

Honorable Cameron Elliot
100 F Street, N.E.
Washington, D.C. 20549
(By Email)

Gary C. Snisky
Inmate No. [redacted]
[redacted]
PO Box [redacted]
Joint Base MDL, [redacted]
(By US Mail)

Nicole L. Nesvig
Senior Trial Paralegal

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 13-cr-00473-RM

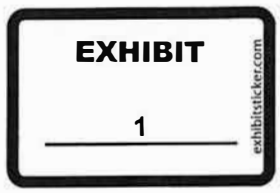
UNITED STATES OF AMERICA

Plaintiff,

v.

1. GARY SNISKY,

Defendant,



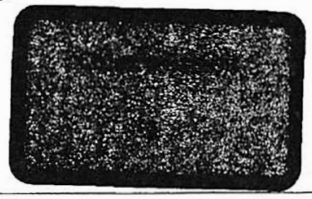
PLEA AGREEMENT AND STATEMENT OF FACTS
RELEVANT TO SENTENCING

The United States of America, by and through Pegeen D. Rhyne, Assistant United States Attorney for the United States Attorney's Office for the District of Colorado (the "government"), and the defendant, Gary Snisky ("Snisky" or the "defendant"), personally and by counsel, Robert Pepin, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1.

I. AGREEMENT

1. The defendant agrees to plead guilty to Count 2, charging mail fraud in violation of 18 U.S.C. § 1341, and Count 14, charging engaging in monetary transactions in property derived from mail fraud in violation of 18 U.S.C. § 1957. The defendant further agrees to admit to the asset forfeiture allegations in the Indictment.

2. The defendant agrees to pay the $200 special monetary assessment



applicable to these counts at or before the time of sentencing.

3. The defendant agrees that his sentence will include an order of restitution in an amount of approximately $2,531,032.22,[1] for a portion of which the defendant will be held jointly and severally liable with Richard Greeott.

4. Because the defendant agrees not to contest the sentencing factors set forth below, the government agrees that the defendant shall be awarded the additional 1-level reduction for acceptance of responsibility, pursuant to Section 3E1.1(b) of the Sentencing Guidelines, despite the fact that the government had substantially prepared for trial when the defendant agreed to plead guilty.

5. The defendant reserves the right to request a variant sentence. The government anticipates opposing any such request.

6. The defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Understanding this, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence unless it meets one of the following three criteria: (1) the sentence imposed is above the maximum penalty provided in the statute of conviction, (2) the Court, after determining the otherwise applicable sentencing guideline range, either departs or varies upwardly, or (3) the Court determines that the total offense level, after the 3-level reduction for acceptance of responsilibility, is higher than 30 and imposes a sentence above the sentencing guideline range calculated for that total offense level.

[1] The loss attributed to defendant Snisky is $5,226,965.93. To date, as a result of asset forfeiture proceedings, victims have already received restitution in the amount of $2,695,913.32. The difference between these amounts is the $2,531,052.61. The government expects some additional smaller payments to be made to victims through the asset forfeiture proceedings, and defendant Snisky's restitution obligation should be offset by any such future payments.

Except as provided above, the defendant also knowingly and voluntarily waives the right to appeal the manner in which the sentence is determined on grounds set forth in 18 U.S.C. § 3742. The defendant also knowingly and voluntarily waives his right to challenge this prosecution, conviction, or sentence and/or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255. This waiver provision, however, will not prevent the defendant from seeking relief otherwise available if: (1) there is an explicitly retroactive change in the applicable guidelines or sentencing statute, (2) there is a claim that the defendant was denied the effective assistance of counsel, or (3) there is a claim of prosecutorial misconduct. Additionally, if the government appeals the sentence imposed by the Court, the defendant is released from this waiver provision.

7. Forfeiture of Assets: The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture as proceeds of the scheme set forth in the indictment, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees, or elsewhere. In addition to the assets that the defendant has already forfeited in Case No. 13 cv-00567- REB-KLM, the additional assets to be forfeited specifically include, but are not limited to: a money judgment in an amount of approximately $2,531,052.61. The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action.

The defendant admits and agrees that the conduct described in the Factual Basis

below provides a sufficient factual and statutory basis to establish that the requisite nexus exists between the specific property subject to forfeiture and the offenses to which defendant is pleading guilty. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the Court find that the government has established the requisite nexus and enter a preliminary order of forfeiture.

The defendant agrees fully to assist the government in the recovery and return to the United States of any assets, or portions thereof, that are subject to forfeiture wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee.

Except as set forth in footnote 1, forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture. The United States Attorney's Office for the District of Colorado will recommend to the Attorney General that any net proceeds derived from the sale of the judicially forfeited assets be remitted or restored to eligible victims of the offense, for which the defendant has pleaded guilty, pursuant to 18 U.S.C. § 981(e), 28 C.F.R. pt. 9, and any other applicable laws. The defendant understands that the United States Attorney's Office has authority only to recommend such relief and that the final decision of whether to grant relief rests solely with the Department of Justice, which will make its decision in accordance with applicable law.

8. The government agrees to dismiss Counts 1, 3 through 13, and 15 through 18 at the time of sentencing.

9. This plea agreement is made pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure.

II. ELEMENTS OF THE OFFENSE

10. The parties agree that the elements of the mail fraud offense charged in Count 2 of the Indictment to which this plea is being tendered are as follows:

A. The defendant devised a scheme to defraud or to obtain money by means of false or fraudulent pretenses, representations or promises;

B. The defendant acted with specific intent to defraud or to obtain money by means of false or fraudulent pretenses, representations or promises;

C. The defendant mailed, or caused another person to mail, something through the U.S. Postal Service for the purpose of carrying out the scheme; and

D. The scheme employed false or fraudulent pretenses, representations, or promises that were material.[2]

11. The parties agree that the elements of the offense of engaging in a monetary transaction in property derived from mail fraud charged in Count 14 of the Indictment to which this plea is being tendered are as follows:

A. The defendant engaged in a monetary transaction affecting interstate commerce;

B. The monetary transaction was conducted involving criminally derived property;

[2] Tenth Circuit Pattern Jury Instructions (Criminal Cases), 2011, § 2.56.

C. The value of the criminally derived property exceeded $10,000;

D. The defendant knew the transaction involved criminally derived property; and

E. The monetary transaction took place within the United States.[3]

III. STATUTORY PENALTIES

12. The maximum statutory penalty for a violation of 18 U.S.C. § 1341 is: not more than 20 years of imprisonment, a fine of not more than the greater of $250,000 or twice the gain or loss from the offense, or both; not more than 3 years of supervised release; a $100 special assessment fee; plus an amount of approximately $2,531,052.61 in restitution.

The maximum statutory penalty for a violation of 18 U.S.C. § 1957 is: 10 years of imprisonment; a fine of not more than the greater of $250,000 or twice the amount of the criminally derived property, or both; 3 years supervised release, restitution, and a $100 special assessment fee.

Accordingly, the total maximum statutory penalty for both Counts 2 and 14 of the Indictment is: not more than 30 years of imprisonment; a fine of not more than the greater of $500,000 or twice the gain or loss from the offense, or both; not more than 3 years of supervised release; a $200 special assessment fee; plus an amount of approximately $2,531,052.61 in restitution.

13. If probation or supervised release is imposed, a violation of any condition of probation or supervised release may result in a separate prison sentence and additional supervision.

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[3] In the absence of a Tenth Circuit Pattern Jury Instruction for this statute, these elements were found in Federal Jury Practice and Instructions, 6th Cir., 2013, § 11.06.

IV. COLLATERAL CONSEQUENCES

14. The conviction may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury.

V. STIPULATION OF FACTS

15. The parties agree that there is a factual basis for the guilty plea that the defendant will tender pursuant to this plea agreement. That basis is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

16. This stipulation of facts does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have stipulated and which are relevant to the Court's guideline computations, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

17. The parties agree that relevant conduct began in 2010.

18. The parties agree as follows:

Mail Fraud

Between at least 2009 and sometime in 2011, defendant Snisky operated in Colorado a company called Colony Capital, LLC ("Colony Capital"), which purported to be a private equity firm offering investment opportunities in bonds, futures trading, and other offerings. Sometime in 2011, defendant Snisky shut down Colony Capital and formed a

company in Longmont, Colorado called Arete, LLC ("Arete"), which also purported to be a private equity firm offering investment opportunities in bonds, futures trading, and other offerings.

Beginning in late 2009, as a paid independent contractor, co-conspirator Richard Greeott ("Greeott") began doing website development work for Colony Capital. From late 2009 through at least January 17, 2013, Greeott continued performing information technology work for Colony Capital and then Arete as an independent contractor. Beginning in approximately mid-2010, defendant Snisky asked Greeott to develop a fully-automated trading system for trading in the futures market. In approximately late 2010, Greeott began developing an algorithm that would be the basis for the requested fully-automated trading system. Greeott's initial efforts in developing the algorithm were not successful, and the trading system failed. By approximately mid-2011, however, Greeott believed that he had developed an algorithm for trading in the futures market that he was ready to test in a simulated environment. Greeott tested the algorithm for several months in a simulated environment. Eventually, Greeott began testing the algorithm by trading small amounts of money in small, but real, futures contracts. By the end of 2012, Greeott was still testing the algorithm by making small trades in a Trade Station account, which was closed by Trade Station in late December 2012. At all times, the algorithm was still in a developmental phase. Additionally, at no time did Greeott, defendant Snisky, or anyone else at Colony Capital or Arete trade a significant amount of money using Greeott's algorithm, nor did Colony Capital or Arete make any real profit using Greeott's algorithm or by making manual trades in the futures market.

Beginning in at least 2010, however, defendant Snisky falsely led investors,

potential investors, and financial advisors to believe that Greeott's algorithm was being used by Colony Capital, and later Arete, to profitably trade in the futures market in order to falsely bolster Colony Capital's, and later Arete's, appearance of success and overall financial stability. Defendant Snisky believed that investors were more likely to invest in any of Colony Capital's, and later Arete's, multiple investment offerings if they believed that as a company Colony Capital, and later Arete, was more financially profitable than it truly was. Even when pitching the investment offering related to Ginnie Mae bonds described below, defendant Snisky falsely told investors, potential investors, and financial advisors that Arete made its "real money" trading futures by using Greeott's algorithm and by making strategic manual trades.

Between at least July 2011 and January 17, 2013, defendant Snisky took investors, potential investors, and financial advisors to Greeott's work station within Colony Capital's, and later Arete's, offices to observe Greeott's trading station, which included a computer system with three monitors that displayed data that purportedly related to trading in the futures market. While these investors, potential investors, and financial advisors were at Greeott's trading station, defendant Snisky and Greeott made statements that falsely suggested that Greeott was currently trading "live" in the futures markets and that Greeott had a history of trading profitably in the futures market. In fact, as defendant Snisky knew, most of the time when these investors, potential investors and financial advisors came to Greeott's station, Greeott was trading in a simulated environment and Greeott did not have a history of profitably trading in the futures market.

In approximately July 2011, K.K., S.K., and A.W.,[4] went to Colony Capital's office

[4] For privacy reasons, all people other than the defendant and Greeott will be referred to

located at 450 Main Street, Longmont, Colorado to discuss investing their money with Colony Capital for the purpose of trading in the futures market. During this meeting, defendant Snisky provided to K.K., S.K. and A.W. a document that falsely represented that Colony Capital had been trading in the futures market with a past performance of earning on its investments approximately 22% per year for the past two years. During this meeting, defendant Snisky took K.K., S.K., and A.W. to Greeott's trading station. Despite the fact that Greeott was trading in a simulated environment and did not yet believe that his algorithm was even close to working successfully, defendant Snisky and Greeott falsely led K.K., S.K., and A.W. to believe that Greeott was successfully trading "live" in the futures market. Soon after this meeting, K.K. invested $178,164.99 with Colony Capital for the purpose of trading in the futures market. In August 2011 and in October 2011, S.K. invested $25,000 and $23,912.44, respectively, with Colony Capital for the purpose of trading in the futures market. Later, when A.W.'s wife decided to invest and K.K. decided to invest more money in the futures trading program, defendant Snisky informed them that his company was now operating under the name Arete. As a result, K.K. and A.W.'s wife invested money with Arete for the purpose of trading in the futures market. Despite the fact that the futures trading program was never truly operational or profitable at Colony Capital or Arete, defendant Snisky sent to K.K., S.K., and A.W.'s wife false account statements indicating that their money was being successfully traded in the futures market and that their accounts had earned profits. Between July 2011 and March 2012, defendant Snisky received a total of $371,346.26 in investor money that was supposed to be traded in the futures market; however,

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by their initials.

defendant Snisky returned approximately $54,000 to investor J.T., who had demanded his $50,000 principal investment back in late 2012. Defendant Snisky did not trade the vast majority of this $321,346.26 in the futures market as promised.

Between approximately July 2011 and January 2013, defendant Snisky's primary focus was to offer investors, potential investors, and financial advisors the purported opportunity to invest money in what defendant Snisky called Arete's "proprietary value model," which was based on using the investors' money to purchase Ginnie Mae bonds (hereinafter referred to as the "Bond Program"). Defendant Snisky falsely described this investment "model" to several financial advisors, investors, and potential investors as safe because Ginnie Mae bonds were backed by the "full faith and credit of the United States." Starting in approximately July 2011, defendant Snisky offered a 10-year investment model for the Bond Program, which promised the investor a 10% upfront bonus and an annual return of 7%. Under the 10-year model, an investor could not withdraw any money for the first five years; starting in the sixth year, the investor could only withdraw interest. Prior to April of 2012, defendant Snisky began offering a 5-year investment model for the Bond Program, which promised a 6% annual return on the invested money. Throughout 2012, defendant Snisky continued to make false assurances about the safety of investing in the Bond Program despite the fact that Snisky knew that he had not purchased any Ginnie Mae bonds as promised.

When defendant Snisky met with financial advisors, investors, or potential investors regarding the Bond Program and the futures trading program, he frequently falsely described himself as an "institutional trader" who was "on Bloomberg." Defendant Snisky represented that this made him part of an elite group of people who could "make

markets" and who had access to lucrative opportunities to which ordinary investors did not have access. Defendant Snisky often showed financial advisors, investors, or potential investors his impressive-looking Bloomberg terminal, pulled up screen shots regarding Ginnie Mae bonds, and implied that he either had or would be purchasing the displayed bond or something similar. In fact, defendant Snisky was not an "institutional trader." Additionally, while defendant had a Bloomberg terminal simply because he paid the substantial monthly fee required obtain one, defendant Snisky never used his Bloomberg terminal to purchase or trade anything or to "make markets."

Defendant Snisky also falsely told financial advisors, investors and potential investors that he could make additional money for the Bond Program by having funds invested in the Bond Program participate in the "overnight lending program." Defendant Snisky explained to financial advisors, investors and potential investors that banks were required to have a certain amount of revenue on hand and, if they did not, they could borrow overnight the required amount from other institutions for a small interest fee. Defendant Snisky falsely stated that he had the ability to participate in this overnight lending program. In fact, at all times relevant to the Indictment, defendant Snisky never participated in the "overnight lending program" and did not have the ability to do so.

Between approximately August 2011 and January 2013, defendant Snisky received a net of approximately $4,180,540.81 in investor money that was supposed to be invested in Ginnie Mae bonds. However, defendant Snisky did not use any of this investor money to purchase Ginnie Mae bonds. In fact, defendant Snisky never purchased any Ginnie Mae bonds. Despite this, defendant Snisky caused false investment account statements to be mailed to investors in the Bond Program falsely

showing that their money had been invested as promised and was earning a profit as promised.

On January 11, 2012, defendant mailed or caused to be mailed to G.B., an investor in the Bond Program, a Welcome letter and a false account statement entitled "Contributor Information & Data." The false account statement furthered the mail fraud scheme described above by falsely reassuring G.B. that her money had been invested as promised and was earning interest as promised.

Defendant Snisky agrees that the loss for which he will be held accountable for purposes of relevant conduct is $5,226,965.93, which is the net loss to investors in the Bond Program and the futures trading program, including the losses to investors C.P. and J.L. who invested in an earlier bond program, but were told their money was later rolled into the Bond Program and the futures trading program.

Engaging In Monetary Transaction with Proceeds from Mail Fraud

On November 17, 2011, in Colorado, the defendant withdrew $35,426 from US Bank Acct No. 103680540996 held by Arete LLC and caused that money to be transferred to an account in the name of Jewel Properties. The entire $35,426 was proceeds from the mail fraud described above because investor deposits from the above-described mail fraud were the only sources of deposit in this account from the account's inception in August 2011 through November 28, 2011. During the entire month of November of 2011, US Bank operated in interstate commerce in that it had branches in multiple states and performed interstate transactions on behalf of its clients.

VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

19. The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies in bold the matters which are in dispute, if any.

Mail Fraud

A. The base guideline is § 2B1.1, with a base offense level of 7.

B. An 18-level enhancement applies because the loss was more than $2,500,000 but less than $7,000,000, resulting in an offense level of 25. §2B1.1(b)(1)(J).

C. A 2-level enhancement applies because there were more than 10 victims, resulting in an offense level of 27. §2B1.1(b)(2)(A)(i).

D. Pursuant to Section 2B1.1(b)(10), a 2-level enhancement is applied for sophisticated means, resulting in an offense level of 29.

E. Pursuant to Section 3B1.1(a), a 4-level enhancement is applied for "organizer or leader" of a criminal activity that was "otherwise extensive," resulting in an offense level of 33.

F. The adjusted offense level would be 33.

Monetary Transaction in Proceeds from Mail Fraud

G. Pursuant to application note 2(C) under Section 2S1.1 combined with Section 3D1.3(a), no adjustments should be made as a result of the money laundering count in this case because the mail fraud calculation with Chapter 3 enhancements results in the highest offense level of the grouped counts.

H. The defendant should receive a 3-level downward adjustment for timely acceptance of responsibility. The resulting offense level would be 30.

I. The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions. Based on information currently available to the parties, it is estimated that the defendant's criminal history category would be I.

J. The career offender/criminal livelihood/armed career criminal adjustments would not apply.

K. The advisory guideline range resulting from these calculations is 97-121 months. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level(s) estimated above could conceivably result in a range from 97 months (bottom of Category I) to 210 months (top of Category VI). The guideline range would not exceed, in any case, the statutory maximum applicable to the count of conviction.

L. Pursuant to guideline § 5E1.2, assuming the estimated offense level above, the fine range for this offense would be $15,000 to $150,000, plus applicable interest and penalties.

M. Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is at least 1 year, but not more than 3 years.

N. Pursuant to guideline §5E1.1(a)(1), the Court shall enter a restitution order for the full amount of the victim's loss, which the parties agree will be an amount of approximately $2,531,052.61.

20. The parties understand that although the Court will consider the parties' estimate, the Court must make its own determination of the guideline range. In doing so, the Court is not bound by the position of any party.

21. No estimate by the parties regarding the guideline range precludes either party from asking the Court, within the overall context of the guidelines, to depart from that range at sentencing if that party believes that a departure is specifically authorized by the guidelines or that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the advisory guidelines. Similarly, no estimate by the parties regarding the guideline range precludes either party from asking the Court to vary entirely from the advisory guidelines and to impose a non-guideline sentence based on other 18 U.S.C. § 3553 factors.

22. The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose that reasonable sentence

which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.

VII. ENTIRE AGREEMENT

23. This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

2-5-15
Date

GARY SNISKY SNISKY
Defendant

2-5-15
Date

Robert Pepin
Attorney for Defendant

2/5/15
Date

Pegeen D. Rhyne
Assistant U.S. Attorney

AO 245B (Rev. 11/14 D/CO) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

District of COLORADO

AMENDED JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)
(Changes Identified with Asterisks (*))

UNITED STATES OF AMERICA
V.

GARY SNISKY

Case Number: 13-cr-00473-RM-01

USM Number: [redacted]

Robert William Pepin, AFPD
Defendant's Attorney

Date of Original Judgment: June 25, 2015

Reason for Amendment: Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36).

EXHIBIT 2 exhibitsticker.com

THE DEFENDANT:

☒ pleaded guilty to Counts 2 and 14 of the Indictment

☐ pleaded nolo contendere to Count(s) _____ which was accepted by the Court.

☐ was found guilty on Count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1341	Mail Fraud	01/11/12	2
18 U.S.C. §§ 1957 and 2(b)	Monetary Transactions in Property Derived from Mail Fraud	11/17/11	14

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on Count(s) _____

☒ Counts remaining of the Indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

June 18, 2015
Date of Imposition of Judgment

Signature of Judge

Raymond P. Moore, U.S. District Judge
Name and Title of Judge

July 8, 2015
Date

DEFENDANT: GARY SNISKY
CASE NUMBER: 13-cr-00473-RM-01

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: eighty-four months per count, to be served concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to a facility near the vicinity of White Plains, New York.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 12 p.m. noon within 15 days of designation.

☐ as notified by the United States Marshal.

☒ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: GARY SNISKY
CASE NUMBER: 13-cr-00473-RM-01

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: three (3) years per count, concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician. Except as authorized by court order, the defendant shall not possess, use or sell marijuana or any marijuana derivative (including THC) in any form (including edibles) or for any purpose (including medical purposes). Without the prior permission of the probation officer, the defendant shall not enter any marijuana dispensary or grow facility;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and
14) the defendant shall provide access to any requested financial information.

DEFENDANT: GARY SNISKY
CASE NUMBER: 13-cr-00473-RM-01

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the periodic payment obligations imposed pursuant to the Court's judgment and sentence.

2. As directed by the probation officer, the defendant shall apply any monies received from income tax refunds, lottery winnings, inheritances, judgments, and any anticipated or unexpected financial gains to the outstanding court ordered financial obligation in this case.

3. If the defendant has an outstanding financial obligation, the probation office may share any financial or employment documentation relevant to the defendant with the Asset Recovery Division of the United States Attorney's Office to assist in the collection of the obligation.

4. All employment for the defendant shall be approved in advance by the supervising probation officer. The defendant shall not engage in any business activity unless the activity is approved by the probation officer. Any approved business activity must operate under a formal, registered entity. For any approved business activity, the defendant shall provide the probation officer with the names of all business entities and their registered agents. The defendant shall not register any new business entity, foreign or domestic, without the approval of the probation officer. The defendant shall not cause or induce others to register business entities on her behalf. For any approved business activity, the defendant shall maintain business records. The defendant shall provide all requested documentation and records to the probation officer regarding any of her business activities as requested by the probation officer.

5. The defendant shall maintain separate personal and business finances and shall not co-mingle personal and business funds or income in any financial accounts, including but not limited to bank accounts and lines of credit.

DEFENDANT: GARY SNISKY

CASE NUMBER: 13-cr-00473-RM-01

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
Count 2	$ 100.00	$ 0.00	$ 2,531,032.22
Count 14	$ 100.00	$ 0.00	$ 0.00
TOTALS	$ 200.00	$ 0.00	$ 2,531,032.22

☐ **The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.**

☒ **The defendant must make restitution (including community restitution) to the following payees in the amount listed below.**

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
[redacted]	$145,085.59	$70,254.47	
[redacted]	$209,277.50	$101,337.98	
[redacted]	$623,000.00	$301,673.91	
[redacted]	$10,090.50	$4,886.10	
[redacted]	$33,909.00	$16,419.68	
[redacted]	$50,000.00	$24,211.39	
[redacted]	$22,500.67	$10,895.45	
[redacted]	$97,000.00	$47,570.09	
[redacted]	$53,067.93	$25,696.97	
[redacted]	$53,042.40	$25,684.60	
[redacted]	$35,000.00	$16,947.60	
TOTALS	$ 5,226,965.54	$ 2,531,032.22	

☐ **Restitution amount ordered pursuant to plea _____**

☐ **The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).**

☒ **The Court determined that the defendant does not have the ability to pay interest and it is ordered that:**

☒ **the interest requirement is waived for** ☐ **fine** ☒ **restitution.**

☐ **the interest requirement for the** ☐ **fine** ☐ **restitution is modified as follows:**

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.**

DEFENDANT: GARY SNISKY
CASE NUMBER: 13-cr-00473-RM-01

ADDITIONAL RESTITUTION PAYEES*

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
[redacted]	$56,000.00	$27,116.76	
[redacted]	$142,242.00	$72,267.12	
[redacted]	$61,727.24	$29,890.04*	
[redacted]	$104,092.00	$50,404.24	
[redacted]	$198,164.99	$95,956.99	
[redacted]	$48,912.44	$23,684.76	
[redacted]	$250,000.00	$121,056.94	
[redacted]	$74,393.48	$36,023.39	
[redacted]	$34,824.55	$16,863.01	
[redacted]	$106,000.00	$51,328.14	
[redacted]	$20,899.36	$10,120.05	
[redacted]	$36,242.44	$17,549.50	
[redacted]	$35,695.75	$17,284.87	
[redacted]	$210,700.27	$102,026.92	
[redacted]	$329,896.29	$159,744.95	
[redacted]	$308,964.03	$149,608.97	
[redacted]	$475,058.47	$230,036.53	
[redacted]	$31,023.69	$15,022.52	
[redacted]	$13,559.64	$6,565.95	
[redacted]	$30,240.04	$14,643.07	
[redacted]	$260,587.08	$126,183.50	
[redacted]	$50,000.00	$24,211.39	
[redacted]	$205,532.56	$99,524.57	
[redacted]	$48,500.00	$23,485.05	
[redacted]	$83,000.00	$39.590.91	
[redacted]	$220,000.00	$106,530.11	
[redacted]	$194,000.00	$93,940.19	
[redacted]	$74,268.83	$35,963.03	
[redacted]	$100,000.00	$48,422.78	
[redacted]	$83,447.00	$40,407.36	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: GARY SNISKY
CASE NUMBER: 13-cr-00473-RM-01

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☐ Lump sum payment of _____ due immediately, balance due

☐ not later _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined ☐ C, ☐ D, or ☒ F below); or

C ☐ Payment in _____ (e.g., weekly, monthly, quarterly) installments of _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in _____ (e.g., weekly, monthly, quarterly) installments of _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence _____ (e.g., 30 or 60 days) after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time;

F ☒ Special instructions regarding the payment of criminal monetary penalties:

The special assessment and restitution obligation are due immediately. Any unpaid restitution balance upon release from incarceration shall be paid in monthly installment payments during the term of supervised release. The monthly installment payments will be calculated as at least 10 percent of the defendant's gross monthly income.

Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

13-cr-00375-PAB-01, Richard Greeott, $2,179,938.76

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following Court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

A money judgment in the amount of $2,531,052.31 and as reflected in the Plea Agreement and in Doc. No. 111, which includes a forfeiture of substitute asset in the amount of $45,000 U.S. currency.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal,
(5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and Court costs.

DEFENDANT: GARY SNISKY
CASE NUMBER: 13-cr-00473-RM-01

STATEMENT OF REASONS

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A ☒ The Court adopts the presentence investigation report without change.

B ☐ The Court adopts the presentence investigation report with the following changes.

(Check all that apply and specify Court determination, findings, or comments, referencing paragraph numbers in the presentence report, if (Use page 4 if necessary.)

1 ☐ Chapter Two of the U.S.S.G. Manual determinations by Court (including changes to base offense level, or specific offense characteristics):

2 ☐ Chapter Three of the U.S.S.G. Manual determinations by Court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple Counts, or acceptance of responsibility):

3 ☐ Chapter Four of the U.S.S.G. Manual determinations by Court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):

4 ☐ Additional Comments or Findings (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):

C ☐ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.

II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

A ☒ No Count of conviction carries a mandatory minimum sentence.

B ☐ Mandatory minimum sentence imposed.

C ☐ One or more Counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the Court has determined that the mandatory minimum does not apply based on

☐ findings of fact in this case

☐ substantial assistance (18 U.S.C. § 3553(e))

☐ the statutory safety valve (18 U.S.C. § 3553(f))

III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: 28
Criminal History Category: I
Imprisonment Range: 78 to 97 months
Supervised Release 1 to 3 years per count.
Fine Range: 12,500 to $ 125,000

☒ Fine waived or below the guideline range because of inability to pay.

DEFENDANT: GARY SNISKY
CASE NUMBER: 13-cr-00473-RM-01

STATEMENT OF REASONS

IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)

A ☒ The sentence is within an advisory guideline range that is not greater than 24 months, and the Court finds no reason to depart.

B ☐ The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons. (Use page 4 if necessary.)

C ☐ The Court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual. (Also complete Section V.)

D ☐ The Court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)

A The sentence imposed departs (Check only one.):
☐ below the advisory guideline range
☐ above the advisory guideline range

B Departure based on (Check all that apply.):

1 Plea Agreement (Check all that apply and check reason(s) below.):
☐ 5K1.1 plea agreement based on the defendant's substantial assistance
☐ 5K3.1 plea agreement based on Early Disposition or "Fast-track" Program
☐ binding plea agreement for departure accepted by the Court
☐ plea agreement for departure, which the Court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense departure motion.

2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):
☐ 5K1.1 government motion based on the defendant's substantial assistance
☐ 5K3.1 government motion based on Early Disposition or "Fast-track" program
☐ government motion for departure
☐ defense motion for departure to which the government did not object
☐ defense motion for departure to which the government objected

3 Other
☐ Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

C Reason(s) for Departure (Check all that apply other than 5K1.1 or 5K3.1.)

☐	4A1.3 Criminal History Inadequacy	☐	5K2.1 Death	☐	5K2.11 Lesser Harm		
☐	5H1.1 Age	☐	5K2.2 Physical Injury	☐	5K2.12 Coercion and Duress		
☐	5H1.2 Education and Vocational Skills	☐	5K2.3 Extreme Psychological Injury	☐	5K2.13 Diminished Capacity		
☐	5H1.3 Mental and Emotional Condition	☐	5K2.4 Abduction or Unlawful Restraint	☐	5K2.14 Public Welfare		
☐	5H1.4 Physical Condition	☐	5K2.5 Property Damage or Loss	☐	5K2.16 Voluntary Disclosure of Offense		
☐	5H1.5 Employment Record	☐	5K2.6 Weapon or Dangerous Weapon	☐	5K2.17 High-Capacity, Semiautomatic		
☐	5H1.6 Family Ties and Responsibilities	☐	5K2.7 Disruption of Government Function	☐	5K2.18 Violent Street Gang		
☐	5H1.11 Military Record, Charitable Service, Good Works	☐	5K2.8 Extreme Conduct	☐	5K2.20 Aberrant Behavior		
		☐	5K2.9 Criminal Purpose	☐	5K2.21 Dismissed and Uncharged Conduct		
☐	5K2.0 Aggravating or Mitigating	☐	5K2.10 Victim's Conduct	☐	5K2.22 Age or Health of Sex Offenders		
				☐	5K2.23 Discharged Terms of Imprisonment		
				☐	Other guideline basis (*e.g.*, 2B1.1 commentary)		

D Explain the facts justifying the departure. (Use page 4 if necessary.)

DEFENDANT: GARY SNISKY
CASE NUMBER: 13-cr-00473-RM-01

STATEMENT OF REASONS

VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM (Check all that apply.)

A The sentence imposed is (Check only one.):

☐ below the advisory guideline range

☐ above the advisory guideline range

B Sentence imposed pursuant to (Check all that apply.):

1 Plea Agreement (Check all that apply and check reason(s) below.):

☐ binding plea agreement for a sentence outside the advisory guideline system accepted by the Court

☐ plea agreement for a sentence outside the advisory guideline system, which the Court finds to be reasonable

☐ plea agreement that states that the government will not oppose a defense motion to the Court to sentence outside the advisory system

2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):

☐ government motion for a sentence outside of the advisory guideline system

☐ defense motion for a sentence outside of the advisory guideline system to which the government did not object

☐ defense motion for a sentence outside of the advisory guideline system to which the government objected

3 Other

☐ Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (

C Reason(s) for Sentence Outside the Advisory Guideline System (Check all that apply.)

☐ the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)

☐ to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))

☐ to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))

☐ to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))

☐ to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))

☐ to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))

☐ to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

D Explain the facts justifying a sentence outside the advisory guideline system. (Use page 4 if necessary.)

DEFENDANT: GARY SNISKY
CASE NUMBER: 13-cr-00473-RM-01

STATEMENT OF REASONS

VII COURT DETERMINATIONS OF RESTITUTION

A ☐ Restitution Not Applicable.

B Total Amount of $2,531,032.22

C Restitution not ordered (Check only one.):

1 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).

2 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

3 ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).

4 ☐ Restitution is not ordered for other reasons. (Explain.)

D ☐ Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE

Civil Case No. 13-cv-03149-LTB

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GARY C. SNISKY,

Defendant.

ORDER

This matter is before me on Plaintiff United States Securities and Exchange Commission's ("Commission") Motion for Default Judgment [Doc. # 25], which seeks entry of default judgment against Defendant Gary C. Snisky. For the following reasons, I **GRANT** the motion and direct entry of default judgment against Mr. Snisky.

Mr. Snisky was personally served with the summons and complaint in this case on November 25, 2013. Docs. # 7, 28-1. In January 2014, I stayed this matter to allow a related criminal case against Mr. Snisky (No. 13-CR-00473-RM in this Court) to conclude. Doc. # 12. I lifted the stay on June 23, 2015, and I ordered Mr. Snisky to answer or otherwise respond to the Commission's complaint by July 23, 2015. Doc. # 24. Mr. Snisky has not answered or otherwise responded to the Commission's complaint. Upon application by the Commission, the Clerk entered default against Mr. Snisky on April 5, 2016. Doc. # 29.

Both the criminal case and this case arise out of an alleged scheme by which Mr. Snisky, *inter alia*, offered to investors the opportunity to invest money in his company's "proprietary

value model," which purported to use investors' money to purchase Ginnie Mae bonds. Doc. # 25 at 5-6; Doc. # 25-1. The Commission asserts that Mr. Snisky received "approximately $4,180,540.81 in investor money that was supposed to be invested in the Bond program." Doc. # 25 at 11. The Commission adds that Mr. Snisky "did not use any of this investor money to purchase Ginnie Mae bonds" but instead "used investor funds for personal use." *Id.* In the criminal case, Mr. Snisky pleaded guilty to two criminal counts arising out of this and related conduct: one count of mail fraud in violation of 18 U.S.C. § 1341, and one count of engaging in monetary transactions in property derived from mail fraud in violation of 18 U.S.C. § 1957. Doc. # 25-1.

In the instant civil case, the Commission has charged Mr. Snisky with violations of certain securities laws and rules arising out of the same conduct: Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)]; Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78j(b) and 78(o)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; Sections 206(1), (2), and (4) of the Investment Advisors Act of 1940 [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 Section 7(a) of the Investment Company Act of 1940 [15 U.S.C. § 80a-7]. *See* Compl. at 14-18 [Doc. # 2]. The Commission seeks injunctive relief preventing Mr. Snisky from violating these provisions. *Id.* at 18-19; Doc. # 25 at 16-20. The Commission also seeks $2,531,032.00 in disgorgement and prejudgment interest on disgorgement through June 30, 2015 in the amount of $244,122.00. *Id.* The Commission has withdrawn the request for civil penalties contained in its complaint. Doc. # 25 at 4. In its motion, the Commission sets forth certain facts drawn from the complaint in this case and Mr. Snisky's plea agreement in the

criminal case.

Upon a defendant's default, the factual allegations in the complaint are taken as true. *See Olcott v. Delaware Flood Co.*, 327 F.3d 1115, 1125 (10th Cir. 2003). Further, a defendant may be collaterally estopped from contesting matters disposed of in a related criminal case, including facts set forth in a plea agreement entered into by the defendant. *See S.E.C. v. Gordon*, 822 F. Supp. 2d 1144, 1153 (N.D. Okla. 2011), *aff'd*, 522 F. App'x 448 (10th Cir. 2013); *Roe v. City of Waterbury*, 542 F.3d 31, 41 (2d Cir. 2008). Taking as true the facts contained in the complaint and plea agreement—as recited on pages 5 through 11 of the Commission's motion, Doc. # 25 at 5-11, and incorporated herein by reference—I conclude that the Commission is entitled to the relief requested.

Accordingly, I **GRANT** the Commission's motion and order as follows:

1. Mr. Snisky, his agents, employees, and all persons in active concert or participation with them, are permanently restrained and enjoined from violating, directly or indirectly, Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)]; Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78j(b) and 78(o)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; Sections 206(1), (2), and (4) of the Investment Advisors Act of 1940 [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 Section 7(a) of the Investment Company Act of 1940 [15 U.S.C. § 80a-7];
2. Mr. Snisky is ordered to pay the Commission $2,531,032.00 in disgorgement and $244,122.00 in prejudgment interest on disgorgement, to be offset by any payment of restitution Mr. Snisky makes in his related criminal case, No. 13-CR-00473-RM;

3. The Commission is awarded its costs; and

4. The Clerk of Court shall enter judgment accordingly.

DATED: August 11, 2016, at Denver, Colorado.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 13-cv-03149-LTB

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GARY C. SNISKY,

Defendant.

DEFAULT JUDGMENT

PURSUANT to and in accordance with Fed. R. Civ. P. 55(b) and the Order entered by the Honorable Lewis T. Babcock on August 11, 2016, and incorporated herein by reference as if fully set forth, it is

ORDERED that Plaintiff United States Securities and Exchange Commission's Motion for Default Judgment is GRANTED. It is

FURTHER ORDERED that Mr. Snisky, his agents, employees, and all persons in active concert or participation with them, are permanently restrained and enjoined from violating, directly or indirectly, Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)]; Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78j(b) and 78(o)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; Sections 206(1), (2), and (4) of the Investment Advisors Act of 1940 [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 Section 7(a) of the Investment Company Act of 1940 [15 U.S.C. § 80a-7]. It is

FURTHER ORDERED that Mr. Snisky is ordered to pay the Commission $2,531,032.00 in disgorgement and $244,122.00 in prejudgment interest on disgorgement, to be offset by any payment of restitution Mr. Snisky makes in his related criminal case, No. 13-CR-00473-RM. It is

FURTHER ORDERED that default judgment is hereby entered in favor of Plaintiff United States Securities and Exchange Commission and against Defendant Gary C. Snisky. It is

FURTHER ORDERED that Plaintiff United States Securities and Exchange Commission shall have its costs by the filing of a Bill of Costs with the Clerk of this Court within fourteen days of the entry of judgment, pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

DATED at Denver, Colorado this 12th day of August, 2016.

FOR THE COURT:

JEFFREY P. COLWELL, CLERK

By: s/E. Buchanan
E. Buchanan, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-03149

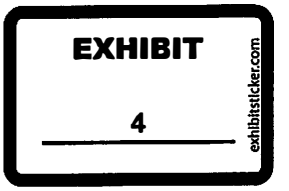
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

GARY C. SNISKY

Defendant.



COMPLAINT

As its Complaint, Plaintiff, Securities and Exchange Commission, alleges as follows:

I. SUMMARY

1. This matter concerns an offering fraud scheme conducted by Gary C. Snisky ("Snisky") and his Longmont, Colorado-based investment entity, Arete, LLC ("Arete"). From August 2011 through January 2013, Snisky fraudulently raised at least $3.8 million from more than 40 investors in Colorado and seven other states through the sale of membership interests in Arete and other related funds.

2. Primarily targeting annuity holders, Snisky used insurance agents to conduct his offering. At Snisky's direction, these salespeople solicited mostly elderly annuity-holding clients to purchase Arete, a purportedly safe and more profitable alternative to an annuity, in which investors could supposedly enjoy the same consistent, no-risk

returns as most annuities while also having the ability to withdraw the interest earned and principal of the investment after ten years without penalty.

3. Investors were told that their investment in Arete would provide a guaranteed annual return of 6% or 7%; a 10% bonus would be paid to compensate for any annuity withdrawal penalties; their funds would be used to purchase "agency" bonds backed by the "full faith and credit" of the United States Government; and Snisky, as an "institutional trader," would use these bonds to engage in overnight banking sweeps.

4. These representations, however, were false. Snisky did not purchase any agency bonds, nor did he ever engage in any overnight banking sweeps. Instead, Snisky misappropriated approximately $2.8 million of investor funds, mostly through cash withdrawals. He used these funds to pay commissions to his salespeople, make payments on his personal mortgage, and otherwise for his own personal benefit.

II. VIOLATIONS

5. As a result of the conduct described herein, defendant Snisky directly or indirectly engaged in transactions, acts, practices, or courses of business that constitute violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b) and 78(o)], Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Sections 206(1), (2), and (4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4)], and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8]. In addition, as a result of the conduct described herein, defendant Snisky aided and abetted violations of

Section 7(a) of the Investment Company Act of 1940 [15 U.S.C. §§ 80a-7]. Unless defendant Snisky is permanently restrained and enjoined, he will again engage in the transactions, acts, practices, and courses of business set forth in this Complaint, and in transactions, acts, practices, and courses of business of similar type and object.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], Sections 209(d) and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-14] and Sections 42 and 44 of the Investment Company Act [15 U.S.C. §§ 80a-41 and 80a-43].

7. Defendant, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, the means and instrumentalities of interstate commerce, or of the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

8. Venue lies in this Court pursuant to Section 22(a) of the Securities Act and Section 27(a) of the Exchange Act. Defendant resides within this district and certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the District of Colorado.

IV. DEFENDANT AND HIS ENTITIES

9. Gary C. Snisky, age 46 (as of November, 2013), is a resident of Longmont, Colorado. He was the sole managing member of the following entities: Arete, LLC; CMG Offering – 12PO5i, LLC ("CMG5"); CMG Offering – 12PO10i, LLC ("CMG10");

Summit Offering – 12PO5i, LLC ("Summit5"); and Summit Offering – 12PO10i, LLC ("Summit10"). Snisky also had an ownership interest in Arete, Ltd., a/k/a Sky Peak Capital Management, a Cheyenne, Wyoming based investment adviser registered with the Commission.[1] Snisky formerly held Series 7, 62, and 63, licenses, which all expired in 1999.

10. Arete was a Colorado limited liability company with its principal place of business in Longmont, Colorado. Snisky was Arete's sole managing member. Arete functioned both as the entity through which Snisky engaged in his overall business operations and as the primary issuer, or pooled investment vehicle, of the interests offered and sold to investors. Snisky formed Arete in June 2011, and voluntarily dissolved the entity in April 2012. Arete has never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act. Arete has never been registered with the Commission in any capacity.

11. After dissolving Arete in April 2012, Snisky formed CMG5, CMG10, Summit5, and Summit10 which are all Colorado limited liability companies with their principal place of business in Longmont, Colorado. Snisky is the sole and managing member of CMG5, CMG10, Summit 5, and Summit10. CMG5, CMG10, Summit 5, and Summit10 were each formed in April 2012 solely as a "private placement LLC" or pooled investment vehicle by which investors invested funds for the Arete investment. Although some investors invested in CMG5, CMG10, Summit 5, and Summit10, the

[1] Arete, Ltd., a/k/a Sky Peak Capital Management, is not a participant in the conduct alleged in this complaint.

investors uniformly believed they were investing in Arete and all investor funds were deposited into bank accounts held in the name of Arete. CMG5, CMG10, Summit5, and Summit10 have never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act. None of them has ever been registered with the Commission in any capacity.

V. FACTS

12. From August 2011 through January 2013, Snisky conducted an offering raising over $3.8 million from more than 40 investors in at least eight states including Colorado.

13. Many investors in Snisky's offering were retired annuity holders.

14. Although the investment contracts offered by Snisky identified different funds over the life of this scheme, including Arete, CMG5, CMG10, Summit5, and Summit10, all of the investors believed they were investing in "Arete" and all investor funds flowed through bank accounts held in Arete's name.

15. In or about August 2011, Snisky began recruiting veteran insurance salespeople to sell the Arete investment. These individuals had an established client base, much of which owned annuities. Snisky reached out to these salespeople by phone, email and in person to invite them to "training sessions" at Arete's office in Longmont Colorado.

A. Snisky Committed Fraud in Conducting His Offering

16. Snisky described Arete as an "annuity-plus" investment, where unlike typical annuities, investors could withdraw principal and interest earned after ten years while still enjoying a no-risk, 6% to 7% guaranteed annual return. Snisky emphasized the

safety of the investment, touting himself as an "institutional trader" – with no middleman fees – who could secure safe, government-backed agency bonds at a discount.

17. Snisky's sales pitch was extremely convincing, leading one salesperson to invest her own retirement funds in Arete.

18. Snisky created and provided all written documents that the sales people used in soliciting investors. These documents included Private Placement Memoranda ("PPMs") and Contribution Agreements for Arete, CMG5, CMG10, Summit5, and Summit10. These documents contained key misrepresentations about the safety of principal, guaranteed returns, and use of investor funds.

19. Snisky also showed salespeople fraudulent investor account statements purporting to show earnings from Arete's investment activity. Finally, Snisky distributed an Excel-based financial model that allowed salespeople to enter a dollar amount of investment and then calculate the "guaranteed" returns which could be printed out for each investor. Snisky was adamant that only documents he personally authorized could be given to investors.

20. Armed with these offering materials, Snisky's sales force set out to offer the Arete investment to their clients. Most of these clients were elderly, unsophisticated, unaccredited, and unqualified investors. Many were retired and most had a net worth significantly less than $1 million, including any real estate or personal property.

21. Through his sales force, Snisky and Arete raised at least $3.8 million from more than 40 investors, in eight different states. The majority of these funds were

commingled in Arete's primary bank account and smaller amounts were held in other Arete bank accounts.

22. The majority of investors in Arete used funds from IRAs or other retirement accounts. Snisky used two different self-directed IRA companies as third-party administrators to allow such investments. The self-directed IRA companies set up accounts for investors and forwarded paperwork and investment funds to Arete.

23. Following the initial influx of investors, Snisky organized at least two seminars at which he met with approximately 30 current investors and salespeople. At these meetings, Snisky introduced himself as the "institutional trader" behind Arete's success and reiterated the same misrepresentations about the safety of principal, guaranteed returns, and use of investor funds that had lured investors into the scheme.

24. In addition, Snisky hand-delivered fraudulent account statements to the investors attending the seminars which purported to show that their investment was performing as promised.

25. At the time Snisky made these claims to investors, he had not purchased any bonds on their behalf and had, in fact, helped himself to millions of investor funds.

26. Snisky closed these meetings by encouraging investors to spread the word about Arete.

i. Defendant Snisky Made Material Misrepresentations

27. From August 2011 through January 2013, Snisky made material misrepresentations and omissions to investors regarding the use of investor funds, the

risk of investment, and the return on investment directly to investors and indirectly to investors through the sales team he trained.

28. In addition, as the sole owner and managing member of each of the relevant entities, Snisky exercised ultimate authority over the content and distribution of the investment documents used by each of the entities. Snisky authored, reviewed, and authorized the various PPMs and offering materials transmitted directly to investors or indirectly to investors through salespeople. In those documents, Snisky made the following material misrepresentations:

a. Snisky claimed that Arete provided a guaranteed annual return of 6% or 7%. In fact, no returns were earned on any investment. Instead, Snisky never purchased any agency bonds and misappropriated investor funds.

b. Snisky promised that Arete would pay an immediate 10% bonus to compensate for any surrender charge or withdrawal penalty assessed by an annuity upon the transfer of funds to Arete. In fact, no such bonus was ever paid into investors' accounts. Instead, to further his fraudulent scheme, Snisky fabricated investor account statements with false bonuses.

c. Snisky claimed that investor funds would be used to purchase "agency bonds," described as Ginnie Mae or similar federal government-backed bonds. In fact, no such bonds were ever purchased. Instead, investor funds were misappropriated by Snisky.

d. Snisky claimed that investor "principal and interest [was] protected by the Full Faith and Credit of the United States." In fact, investors' principal and interest was

not protected because Snisky did not use investor funds for any such investment, nor could he reasonably make such a claim for any such investment.

e. Snisky claimed that the returns and bonus paid by Arete were made possible by Snisky's purported status and experience as an "institutional trader" who would purchase agency bonds at a discount and invest the bonds in overnight banking sweeps. In fact, Snisky was not an "institutional trader," and he did not purchase agency bonds or engage in overnight banking sweeps.

29. Snisky was aware of the false nature of the statements in the PPMs and made by the salespersons, to whom he provided all the substantive information regarding the investment. Snisky knew that he did not purchase agency bonds and did not engage in overnight banking sweeps. Additionally, Snisky knew that funds were being misappropriated because he controlled the bank accounts and the movement of investor funds.

ii. Snisky Engaged in a Scheme to Defraud

30. Snisky engaged in deceptive acts and a course of business that operated as a fraud. Snisky engaged in the following acts in furtherance of the fraudulent scheme:

a. Snisky is the architect of the offering.

b. Snisky provided training to the salespersons.

c. Snisky e-mailed and mailed to salespersons and investors PPMs and related offering materials that he knew contained false and misleading statements.

d. Snisky transmitted fictitious periodic statements to salespeople and investors.

e. Snisky misappropriated investor funds for personal use.

B. Snisky Engaged in an Unregistered Distribution

31. The interests in Arete, CMG5, CMG10, Summit 5, and Summit10 offered and sold to investors were securities.

32. Under the agreement with Arete and the other pooled vehicles and related representations, investors expected to earn a guaranteed 6% or 7% annual return derived from Snisky's efforts in purchasing government agency bonds at a discount and using these bonds in overnight banking sweeps. The investors' success was interwoven with and solely dependent upon the efforts and success of Snisky purchasing these government agency bonds and engaging in these banking sweeps. Snisky had exclusive control over the use of investor funds, which were commingled in an Arete bank account. Investors had no voting, veto, or other powers under their Contribution Agreements.

33. Snisky offered and sold the securities of Arete, CMG5, CMG10, Summit 5, and Summit10 through the use of the internet and the mails.

34. No registration statement was in effect or had been filed as to any of those securities.

35. Arete, CMG5, CMG10, Summit5, and Summit10 were all under the common control of Snisky. Snisky disregarded the separate corporate existence of the companies. In addition, Arete, CMG5, CMG10, Summit5, and Summit10 were all engaged in the same type of business – acting as pooled investment vehicles by which investors invested funds for the Arete investment. And Snisky commingled the assets

of Arete, CMG5, CMG10, Summit5, and Summit10, depositing all invested funds in Arete's bank accounts.

36. The sales of Arete, CMG5, CMG10, Summit5, and Summit10 securities were all part of a continuous offering from August 2011 to January 2013. They each involved the same type of security - membership interests in the companies. They each required a cash investment. The proceeds of the all the offerings were purportedly used to purchase agency bonds.

37. Neither Snisky nor his companies had a personal or business relationship with most of their investors prior to the offering. In addition, the investors did not have access to correct financial information about the Arete investment prior to investing. At least some of the investors were unsophisticated and did not understand the risks of the investment. Moreover, in most instances, neither Snisky nor his salespeople had a reasonable basis to believe otherwise.

38. Snisky and his sales force engaged in a general solicitation. At seminars conducted by Snisky, he encouraged attendees to provide information about Arete to others. Similarly, Snisky's sales force informed new potential customers about the opportunity to invest in Arete.

C. Snisky Acted as an Unregistered Broker-Dealer

39. As alleged above, Snisky offered and sold the securities of Arete, CMG5, CMG10, Summit5, and Summit10 through the use of the internet and the mails.

40. At the time he offered and sold the securities of Arete, CMG5, CMG10, Summit5, and Summit10, Snisky was not a registered broker-dealer nor was he associated with a registered broker-dealer.

41. Snisky received compensation, in the form of investor funds he misappropriated, for each transaction in the securities of Arete, CMG5, CMG10, Summit5, and Summit10.

D. Snisky was an Investment Adviser

42. Arete, CMG5, CMG10, Summit5, and Summit10 were pooled investment vehicles. Snisky created Arete, CMG5, CMG10, Summit5, and Summit10 for the express purpose of raising capital from individual investors to be pooled and used for trading in agency bonds. Each of these funds was an internally managed fund that did not employ an outside investment adviser. Investors in each of these funds did not have a right to participate in the management of the funds, leaving Snisky as the sole managing member with total control.

43. Snisky acted as an investment adviser to Arete, CMG5, CMG10, Summit 5, and Summit10. Snisky was responsible for all investment decisions for the funds. Snisky received compensation for managing the funds, in the form of investor funds he misappropriated.

44. Snisky defrauded Arete, CMG5, CMG10, Summit 5, and Summit10 by misappropriating their assets. Snisky also made false and misleading statements and defrauded investors and prospective investors in Arete, CMG5, CMG10, Summit 5, and Summit10.

E. Arete, CMG5, CMG10, Summit5, and Summit10 Failed to Register as Investment Companies

45. Snisky described Arete, CMG5, CMG10, Summit5, and Summit10 as being engaged in the business of investing and trading in securities. Their securities were sold in public offerings to individuals who were not "qualified purchasers."

46. Arete, CMG5, CMG10, Summit5, and Summit10 were required to register as investment companies, but failed to do so.

47. As the managing member of these entities, Snisky was responsible for ensuring that Arete, CMG5, CMG10, Summit5, and Summit10 register as investment companies, yet he failed to take those necessary steps.

F. Snisky Profited From his Scheme

48. Snisky controlled Arete's bank accounts and therefore had access to and control over all of the investor funds.

49. From February 2012 to May 2012, Snisky misappropriated almost $2.8 million of the more than $3.8 million raised from investors. Snisky withdrew more than $2.7 million of that sum in cash. Snisky used investor funds for personal use, including to pay his home mortgage. None of the funds raised from investors were ever used to purchase any government agency bonds or any other securities or investments.

VI. CLAIMS FOR RELIEF

FIRST CLAIM
Unregistered Sale of Securities
Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§ 77e(a) and e(c)]

50. As a result of the conduct alleged in paragraphs 31 through 38 defendant Snisky has, directly or indirectly, in the absence of an applicable exemption, while no registration statement was in effect, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities in violation of Section 5(a) of the Securities Act.

51. As a result of the conduct alleged in paragraphs 31 through 38 defendant Snisky has, directly or indirectly, in the absence of an applicable exemption, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell securities, while no registration statement had been filed with the Commission in violation of Section 5(c) of the Securities Act.

52. Unless restrained and enjoined, defendant Snisky will, in the future, violate Sections 5(a) and 5(c) of the Securities Act.

SECOND CLAIM
Fraud in the Offer or Sale of Securities
Violations of Section 17(a) of the Securities Act
[15 U.S.C. § 77q(a)]

53. As a result of the conduct alleged in paragraphs 1 through 26, 30 and 48 through 49, defendant Snisky has, directly or indirectly, with scienter, in the offer or sale of securities, by use of the means or instruments of transportation or communication in

interstate commerce or by use of the mails, employed a device, scheme, or artifice to defraud in violation of Section 17(a)(1) of the Securities Act.

54. As a result of the conduct alleged in paragraphs 1 through 29 and 48 through 49,, defendant Snisky has, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails obtained money or property by means of untrue statements of material fact or by omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading in violation of Section 17(a)(2) of the Securities Act.

55. As a result of the conduct alleged in paragraphs 1 through 26, 30 and 48 through 49, defendant Snisky has engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of securities in violation of Section 17(a)(3) of the Securities Act.

56. Unless restrained and enjoined defendant Snisky will, in the future, violate Section 17(a) of the Securities Act.

THIRD CLAIM
Fraud in the Purchase or Sale of Securities Through a Scheme to Defraud
Violations of Section 10(b) and Rules 10b-5(a) and 10b-5(c) of the Exchange Act
[15 U.S.C. § 78j(b) and 17 C.F.R. §§ 240.10b-5(a) and (c)]

57. As a result of the conduct alleged in paragraphs 1 through 26, 30 and 48 through 49, defendant Snisky has, directly or indirectly, with scienter, by use of the means or instruments of interstate commerce or by use of the mails, used or employed, in connection with the purchase or sale of securities, a manipulative or deceptive device or contrivance in contravention of the rules and regulations of the Commission or

employed devices, schemes, or artifices to defraud, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder.

58. As a result of the conduct alleged in paragraphs 1 through 26, 30 and 48 through 49, defendant Snisky has, directly or indirectly, with scienter, by use of the means or instruments of interstate commerce or by use of the mails, in connection with the purchase or sale of securities, engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in violation of Section 10(b) of the Exchange Act and Rule 10b-5(c) thereunder.

59. Unless restrained and enjoined defendant Snisky will, in the future, violate Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder.

FOURTH CLAIM

Fraud in the Purchase or Sale of Securities Using a Misrepresentation or Omission
Violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b)]

60. As a result of the conduct alleged in paragraphs 1 through 29, defendant Snisky has, directly or indirectly, with scienter, by use of the means or instruments of interstate commerce or by use of the mails, in connection with the purchase or sale of securities, made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

61. Unless restrained and enjoined defendant Snisky will, in the future, violate Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

FIFTH CLAIM
Offers and Sales of Securities by an Unregistered Broker-Dealer
Violations of Exchange Act Section 15(a)
[15 U.S.C. § 78o(a)]

62. As a result of the conduct alleged in paragraphs 39 through 41 and 48 through 49, defendant Snisky has, while not registered as or associated with a broker or dealer made use of the means or instruments of interstate commerce to induce or attempt to induce the purchase or sale of a security in violation of Section 15(a) of the Exchange Act.

63. Unless restrained and enjoined defendant Snisky will, in the future, violate Section 15(a) of the Exchange Act.

SIXTH CLAIM
Fraud by an Investment Advisor
Violations of Section 206(1), (2) and (4) and Rule 206(4)-8 of the Advisers Act
[15 U.S.C. §§ 80b-6(1), (2) and (4) and 17 C.F.R. § 275.206(4)-8]

64. As a result of the conduct alleged in paragraphs 1 through 30, 42 through 44, and 48 through 49, defendant Snisky, while acting as an investment adviser, has, directly or indirectly, with scienter, by use of the means or instruments of interstate commerce or by use of the mails, employed a device, scheme, or artifice to defraud clients and prospective clients in violation of Section 206(1) of the Advisers Act.

65. As a result of the conduct alleged in paragraphs 1 through 30 and 42 through 44, defendant Snisky, while acting as an investment adviser, has, directly or indirectly, by use of the means or instruments of interstate commerce or by use of the mails, engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients and prospective clients in violation of Section 206(2) of the Advisers Act.

66. As a result of the conduct alleged in paragraphs 1 through 30, 42 through 44, and 48 through 49, defendant Snisky, while acting as an investment adviser, has, directly or indirectly, by use of the means or instruments of interstate commerce or by use of the mails, engaged in acts, practices, or courses of business which are fraudulent, deceptive or manipulative in violation of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

67. Unless restrained and enjoined defendant Snisky will, in the future, violate Section 206 of the Advisers Act.

SEVENTH CLAIM
Aiding and Abetting Transactions by an Unregistered Investment Company
Violations of Investment Company Act Section 7(a)
[15 U.S.C. § 80a-7(a)]

68. As a result of the conduct alleged in paragraphs 45 through 47, Arete, CMG5, CMG10, Summit5, and Summit10, while not registered with the Commission, directly or indirectly offered for sale, sold, and delivered after sale, by use of the mails or other means or instrumentality of interstate commerce, a security or interest in a security in violation of Section 7(a) of the Investment Company Act.

69. Defendant Snisky, knowingly or recklessly, provided substantial assistance to the violations of the Investment Company Act listed above.

70. Unless restrained and enjoined defendant Snisky will, in the future, aid and abet violations of Section 7(a) of the Investment Company Act.

VII. PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I. Find that defendant Snisky committed the violations alleged;

II. Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining defendant Snisky, his agents, employees, and all persons in active concert or participation with them, from violating, directly or indirectly, the laws and rules alleged in this Complaint;

III. Order that defendant Snisky disgorge all ill-gotten gains, including pre- and post-judgment interest, in the form of any benefits of any kind received as a result of the acts and courses of conduct in this Complaint;

IV. Order that defendant Snisky pay civil penalties, including post-judgment interest, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(e) of the Adviser's Act [15 U.S.C. § 80b-9(e)]; and

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

Respectfully submitted this 21st day of November, 2013.

/s Polly Atkinson
Polly Atkinson
Attorney for Plaintiff
Securities and Exchange Commission
1801 California Street
Suite 1500
Denver, Colorado 80202
Telephone: (303) 844-1000
Facsimile: (303) 844-1068
AtkinsonP@sec.gov

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND REPORT BY EXEMPT REPORTING ADVISERS

Primary Business Name: SKY PEAK CAPITAL MANAGEMENT **CRD Number: 165797**

SEC Initial - Item 1 Identifying Information **Rev. 10/2012**

11/27/2012 5:04:56 PM

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 4.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):
ARETE, LTD

B. Name under which you primarily conduct your advisory business, if different from Item 1.A.:
ARETE, LTD

List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of
☐ your legal name or ☑ your primary business name:
SKY PEAK CAPITAL MANAGEMENT

D. (1) If you are registered with the SEC as an investment adviser, your SEC file number: **801-77422**
(2) If you report to the SEC as an *exempt reporting adviser*, your SEC file number:

E. If you have a number ("*CRD* Number") assigned by the *FINRA's CRD* system or by the IARD system, your *CRD* number: **165797**

If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

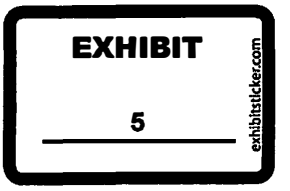
F. *Principal Office and Place of Business*
(1) Address (do not use a P.O. Box):

Number and Street 1:		Number and Street 2:	
1621 CENTRAL AVENUE			
City:	State:	Country:	ZIP+4/Postal Code:
CHEYENNE	Wyoming	UNITED STATES	82001

If this address is a private residence, check this box: ☐

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for SEC registration, if you are registered only with the SEC, or if you are reporting to the SEC as an exempt reporting adviser, list the largest five offices in terms of numbers of employees.

(2) Days of week that you normally conduct business at your *principal office and place of business:*
◉ Monday - Friday ○ Other:
Normal business hours at this location:
7:30 AM - 5:30PM(MT)
(3) Telephone number at this location:
303-459-2701
(4) Facsimile number at this location:
303-459-2723



G. Mailing address, if different from your *principal office and place of business* address:

Number and Street 1:		Number and Street 2:	
710 TENACITY DRIVE			
City:	State:	Country:	ZIP+4/Postal Code:
LONGMONT	Colorado	UNITED STATES	80504

If this address is a private residence, check this box: ☐

H. If you are a sole proprietor, state your full residence address, if different from your *principal office and place of business* address in Item 1.F.:

Number and Street 1:		Number and Street 2:	
City:	State:	Country:	ZIP+4/Postal Code:

	Yes	No
I. Do you have one or more websites?	◉	

If "yes," list all website addresses on Section 1.I. of Schedule D. If a website address serves as a portal through which to access other information you have published on the web, you may list the portal without listing addresses for all of the other information. Some advisers may need to list more than one portal address. Do not provide individual electronic mail (e-mail) addresses in response to this Item.

J. Provide the name and contact information of your Chief Compliance Officer: If you are an *exempt reporting adviser*, you must provide the contact information for your Chief Compliance Officer, if you have one. If not, you must complete Item 1.K. below.

Name:		Other titles, if any:	
GARY CHRISTOPHER SNISKY		PRESIDENT	
Telephone number:		Facsimile number:	
303-459-2701			
Number and Street 1:		Number and Street 2:	
1621 CENTRAL AVENUE			
City:	State:	Country:	ZIP+4/Postal Code:
CHEYENNE	Wyoming	UNITED STATES	82001

Electronic mail (e-mail) address, if Chief Compliance Officer has one:
GSNISKY@ARETELTD.COM

K. Additional Regulatory Contact Person: If a person other than the Chief Compliance Officer is authorized to receive information and respond to questions about this Form ADV, you may provide that information here.

Name:		Titles:	
Telephone number:		Facsimile number:	
Number and Street 1:		Number and Street 2:	
City:	State:	Country:	ZIP+4/Postal Code:

Electronic mail (e-mail) address, if contact person has one:

	Yes	No
L. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*?	○	◉

If "yes," complete Section 1.L. of Schedule D.

	Yes	No
M. Are you registered with a *foreign financial regulatory authority*?	○	◉

Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes," complete Section 1.M. of Schedule D.

	Yes	No
N. Are you a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934?	○	◉

If "yes," provide your CIK number (Central Index Key number that the SEC assigns to each public reporting company):

	Yes	No
O. Did you have $1 billion or more in assets on the last day of your most recent fiscal year?	○	◉

P. Provide your *Legal Entity Identifier* if you have one:

A *legal entity identifier* is a unique number that companies use to identify each other in the financial marketplace. In the first half of 2011, the *legal entity identifier* standard was still in development. You may not have a *legal entity identifier*.

SECTION 1.B. Other Business Names

No Information Filed

SECTION 1.F. Other Offices

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Section 1.F. for each location. If you are applying for SEC registration, if you are registered only with the SEC, or if you are an *exempt reporting adviser*, list only the largest five offices (in terms of numbers of *employees*).

Number and Street 1:		Number and Street 2:	
710 TENACITY DRIVE			
City:	State:	Country:	ZIP+4/Postal Code:
LONGMONT	Colorado	UNITED STATES	80504

If this address is a private residence, check this box: ☐

Telephone Number:	Facsimile Number:
303-459-2701	303-459-2723

SECTION 1.L. Location of Books and Records

No Information Filed

SECTION 1.I. Website Addresses

No Information Filed

SECTION 1.M. Registration with Foreign Financial Regulatory Authorities

No Information Filed

FILED
United States Court of Appeals
Tenth Circuit

March 2, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GARY SNISKY,

Defendant - Appellant.

No. 17-1199
(D.C. Nos. 1:16-CV-01044-RM &
1:13-CR-00473-RM-1)
(D. Colo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MORITZ, BALDOCK**, and **KELLY**, Circuit Judges.

Petitioner Gary Snisky, a federal prisoner proceeding pro se, seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion. He also seeks leave to proceed in forma pauperis (IFP). Exercising jurisdiction under 28 U.S.C. § 2253(a), we deny his request for a COA, deny his IFP motion, and dismiss this matter.

BACKGROUND

Snisky was indicted on thirteen counts of mail fraud under 18 U.S.C. § 1341 and five counts of money laundering under 18 U.S.C. § 1957 in connection with an

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* This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

allegedly fraudulent investment scheme. He ultimately pled guilty to one count of mail fraud and one count of money laundering pursuant to a plea agreement in which he stipulated, among other things, that he had lied and made misrepresentations to investors and was subject to various sentence enhancements under the U.S. Sentencing Guidelines based on the amount of the loss and other stipulated facts. In the plea agreement, he also agreed not to contest these enhancements. With one exception not relevant here, the presentence report (PSR) agreed with the stipulated sentencing enhancements and determined that Snisky's advisory sentencing range under the Guidelines was 78 to 97 months. The district court adopted the findings of the PSR, sentenced Snisky to 84 months in prison, and ordered restitution in the amount stipulated in the plea agreement. Snisky filed a direct appeal in this court, which was later dismissed on his motion.

Snisky filed a § 2255 motion to vacate, set aside or correct his conviction and sentence, claiming ineffective assistance of counsel. In a thorough 20-page order, the district court examined Snisky's claims under the two-part standard stated in *Strickland v. Washington*, 466 U.S. 668 (1984), and concluded the record conclusively showed he was not entitled to relief. It therefore denied Snisky's motion and his request for an evidentiary hearing and also denied a COA on its decision. The district court denied Snisky's subsequent motion for leave to proceed IFP on appeal.

Snisky now requests a COA in order to contest the district court's decision and also asks that we allow him to proceed IFP in this appeal.

DISCUSSION

To appeal the district court's denial of § 2255 relief, Snisky must obtain a COA. 28 U.S.C. § 2253(c)(1)(B). We may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). This standard requires him to demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted). In determining whether Snisky has met this standard, we do not engage in a "full consideration of the factual or legal bases adduced in support of the claims" but rather "an overview of the claims . . . and a general assessment of their merits." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

In his application for COA, Snisky contends the district court erred in rejecting his claims of ineffective assistance of counsel in connection with his guilty plea and sentencing[1] and that it abused its discretion in denying these claims without an evidentiary hearing. We examine each contention in turn under the COA standard. Because Snisky is proceeding pro se, we review his COA application liberally but do not act as his advocate. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

[1] Snisky also asserted in the district court that his counsel rendered ineffective assistance in failing to challenge alleged government misconduct, but he does not dispute the court's denial of this claim in his application for COA.

A. Ineffective Assistance of Counsel Claims

The Sixth Amendment provides criminal defendants with the right to effective assistance of counsel. *See Strickland*, 466 U.S. at 685-86. To establish that he was deprived of this right, a defendant must show "both that his counsel's performance 'fell below an objective standard of reasonableness' *and* that 'the deficient performance prejudiced the defense.'" *Byrd v. Workman*, 645 F.3d 1159, 1167 (10th Cir. 2011) (quoting *Strickland*, 466 U.S. at 687-88). To meet the first prong of this test, a defendant "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690. The court must then determine "whether, in light of all of the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance," *id.*, applying a "highly deferential" standard that reflects the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," *id.* at 689; *see Hooks v. Workman*, 689 F.3d 1148, 1187 (10th Cir. 2012) ("[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." (internal quotation marks omitted)). To establish prejudice as required by *Strickland*'s second prong, a defendant cannot rely on speculation, but instead must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S at 694. An insufficient showing under either prong of the *Strickland* test is dispositive. *Id.* at 697.

1. Guilty plea

Snisky claimed in the district court and now in this court that he received ineffective assistance of counsel in connection with the government's plea offer because his counsel (1) did not understand the relevant law and failed to properly investigate the case; (2) did not explain the government's burden in proving his fraudulent intent and the sentencing factors, (3) failed to present evidence disputing his intent and the sentencing factors to the government during plea negotiations; (4) advised him not to challenge the government's loss calculation because it would cause the government to withdraw its downward adjustment for acceptance of responsibility; and (5) coerced Snisky to accept the plea agreement by falsely promising that he would provide mitigating evidence at sentencing and object to what Snisky now claims are inaccuracies in the plea agreement's stipulated facts. Snisky also asserted he would not have accepted the plea agreement if defense counsel had not assured him that the stipulated facts were disputed and would be further argued.

The district court found Snisky failed to demonstrate his counsel's performance was outside the range of professionally competent assistance because these assertions were conclusory, *see United States v. Fisher*, 38 F.3d 1144, 1147 (10th Cir. 1994), not supported by evidence refuting the fraudulent intent and other facts to which he stipulated,[2] and also were contrary to his representations in the plea

[2] Snisky suggests in his application that he submitted affidavits and other documentation to the district court in support of his motion, but in fact he submitted (continued)

agreement, in his Statement in Advance of Guilty Plea, and at the change of plea hearing. In particular, during the plea hearing, Snisky, a college graduate, affirmed under oath that he had read and reviewed the stipulated facts in the plea agreement with counsel and admitted that these facts were true. He also averred that he had agreed not to dispute the sentencing factors reported in the plea agreement and that he understood the charges against him, had reviewed the elements of the charged offenses with counsel, and understood the government's burden to prove each element beyond a reasonable doubt. He also affirmed that he had read and understood the Statement in Advance of Guilty Plea, which reports that the only promises made to induce him to plead guilty were those set out in the plea agreement. Finally, Snisky affirmed at the hearing that he was satisfied with his counsel and the representation and advice he had received.

Such "'[s]olemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.'" *Lasiter v. Thomas*, 89 F.3d 699, 702 (10th Cir. 1996) (quoting *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); *see United States v. Silva*, 430 F.3d 1096, 1099-100 (10th Cir. 2005) (relying on plea agreement and plea colloquy to deny COA on ineffective assistance of counsel claim). Based on Snisky's declarations at the plea hearing and our review of the rest of the record on appeal, we conclude that reasonable

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only three exhibits, none of which refute the stipulated facts to which he agreed in the plea agreement.

jurists could not debate the district court's denial of Snisky's claim of ineffective assistance of counsel relating to his guilty plea.[3]

2. Sentencing

We also conclude that reasonable jurists would not debate the district court's denial of Snisky's ineffective assistance claim regarding his counsel's performance at sentencing. In his application for COA, Snisky argues, as he did in the district court, that his defense counsel provided ineffective assistance at this phase of his proceedings because he failed to contest the loss calculation and other sentencing factors reported in the PSR and adopted by the district court in sentencing. Counsel's failure to dispute the loss calculation and other sentencing factors is not objectively unreasonable, however, when Snisky stipulated to these facts and sentencing enhancements in the plea agreement and affirmed at the plea hearing that he understood and agreed to them. *Cf. Emery v. Johnson*, 139 F.3d 191, 198 (5th Cir. 1997) (rejecting an ineffective counsel claim for failure to object to testimony

[3] In his application for COA, Snisky also argues for the first time that he received ineffective assistance in connection with his plea because counsel failed to explain adequately the plea agreement's "ambiguous language" and the "comparative benefits of the plea offer relative to proceeding to trial." Appl. at 5, 15. Snisky also apparently blames his counsel for the government not making a plea offer until 30 days before trial and then giving him only 8 days to consider it. *See id.* at 13. We need not address these arguments because Snisky "has not provided a reason to deviate from the general rule that we do not address arguments presented for the first time on appeal." *United States v. Moya*, 676 F.3d 1211, 1213 (10th Cir. 2012) (internal quotation marks omitted). Nonetheless, we note that reasonable jurists would agree that these assertions are conclusory and hence are not sufficient to overcome the presumption that his counsel's performance was objectively reasonable.

because "failure to assert a meritless objection cannot be grounds for a finding of deficient performance").

Snisky further claims that his counsel's performance at sentencing was constitutionally deficient because he failed to provide any mitigating facts, object to the government witness' testimony, or argue for a lower sentence. These assertions are conclusory and are also contradicted by the record, which shows that Snisky's counsel filed objections to the PSR before the sentencing hearing, objected to the government witness' testimony and cross-examined him at the hearing, and argued at length in a written motion and at the hearing that mitigating factors warranted probation or a sentence well below the advisory guideline range. Snisky also failed to show in the district court that there was a reasonable probability that but for his counsel's allegedly deficient performance he would have received a lower sentence, as required to meet *Strickland*'s prejudice requirement. *See United States v. Washington*, 619 F.3d 1252, 1262 (10th Cir. 2010) (stating standard for demonstrating prejudice for ineffective performance at sentencing); *Byrd*, 645 F.3d at 1168 (noting "mere speculation" is insufficient to show prejudice under *Strickland*). The district court's conclusion that Snisky did not establish ineffective assistance of counsel at sentencing is therefore not debatable.

B. Denial of Evidentiary Hearing

Snisky also seeks to appeal the district court's denial of his request for an evidentiary hearing. The district court based its decision on its findings that Snisky failed to demonstrate any material disputed factual issues and that the record conclusively

showed he was not entitled to relief on any of his claims. This decision is reviewed for abuse of discretion. *See United States v. Moya*, 676 F.3d 1211, 1214 (10th Cir. 2012). Given the record below, reasonable jurists would agree the district court did not abuse its discretion in denying an evidentiary hearing. *See, e.g., Anderson v. Att'y Gen. of Kan.*, 425 F.3d 853, 860 (10th Cir. 2005) (stating evidentiary hearing not necessary when "[t]he record refutes the claim of ineffective assistance"); *Hooks v. Workman,* 606 F.3d 715, 731 (10th Cir. 2010) (affirming denial of evidentiary hearing because "the general and conclusory nature of the allegations in [the petitioner's request] fully support the district court's decision to deny that request"); *United States v. Gonzalez*, 596 F.3d 1228, 1244 (10th Cir. 2010) (denying request for COA on failure to conduct evidentiary hearing because "there were no relevant, disputed issues of fact that needed to be resolved").

CONCLUSION

Because no reasonable jurist would debate the district court's decision, we deny a COA and dismiss the appeal. We also deny Snisky's IFP motion because he failed to demonstrate "a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *Silva*, 430 F.3d at 1100 (internal quotation marks omitted).

Entered for the Court

Nancy L. Moritz
Circuit Judge

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FOR THE TENTH CIRCUIT
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RE: **17-1052, USSEC v. Snisky**
Dist/Ag docket: 1:13-CV-03149-LTB

Dear Counsel, Appellant and Clerk:

Please be advised that the court issued an order today dismissing this case.

In addition, please be advised that the mandate for this case has issued today. The clerk of the originating court shall file accordingly.

Please contact this office if you have questions.

Sincerely,

Elisabeth A. Shumaker

Elisabeth A. Shumaker
Clerk of the Court

EAS/dd