UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
(ATLANTA DIVISION)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **CHARLES A. BANKS, IV** **Defendant.**	**Civil Action Number 1:16-cv-_____** **Jury Trial Demanded**

COMPLAINT

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

NATURE OF ACTION

1. This matter involves securities fraud committed by Charles Augustus Banks, IV ("Banks"), an Atlanta-based investment adviser, against one of his clients ("the Investor"), a former professional basketball player.

2. Between May 2012 and October 2012, Banks made material misrepresentations to, and omitted material facts from, the Investor to induce the Investor to invest $7.5 million in Gameday Entertainment, LLC ("Gameday"), a private retailer of sports team apparel and merchandise.

3. Specifically, Banks represented to the Investor that Gameday intended to offer two investors the opportunity to invest in a $15 million mezzanine debt and equity offering of the company, for which each investor would receive 12% interest (paid monthly), equity in Gameday, and a security interest in all of Gameday's assets. Banks also represented to the Investor that Gameday would use approximately $5 million of the $15 million raised for Gameday's ongoing operations and business development, and the remaining amount would be used to pay off certain of its existing bank debt so that the Investor would have a first lien position on Gameday's assets.

4. Based on these representations, the Investor invested $7.5 million in Gameday. The Investor instructed Banks to transfer that amount to Gameday from a line of credit that Banks controlled for the Investor. However, at the time Banks transferred the money to Gameday, Banks knew that his representations to the Investor were misleading and false.

5. In particular, Banks knew that no other investor had invested in the offering, and thus Gameday's existing bank debt would not be retired so that the Investor could obtain a first lien position on Gameday's assets. Moreover, Banks did not disclose to the Investor that he had prearranged to receive from Gameday a $225,000 fee for securing the Investor's investment or that he intended to misappropriate a portion of the Investor's monthly return.

6. Within a few days of Gameday receiving the Investor's money, Banks instructed Gameday to pay him the $225,000 fee and divert to him 20% of the Investor's monthly return, or $15,000 of the $75,000 that Gameday owed the Investor monthly. Banks received these monthly payments for approximately two years. Banks also instructed Gameday to begin paying him over $600,000 in various past due amounts that Gameday allegedly owed him.

7. In June 2013, while continuing to act as the Investor's investment adviser, Banks defrauded the Investor again by deceiving him into signing a personal guarantee and subordination agreement on an approximately $6 million bank line of credit to Gameday. To obtain the Investor's signature, Banks directed that only the signature page of the guarantee document be sent to the Investor, while falsely representing to the Investor that it would *reduce* his existing investment risk in Gameday.

8. In fact, the guarantee substantially *increased* the Investor's risk in the Gameday investment. To further enrich himself, Banks also instructed Gameday to divert to him a 3% "guarantee fee," or at least $180,000, that was due to the Investor as consideration for providing the guarantee.

9. By engaging in the conduct alleged in this Complaint, Banks violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77a(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule

10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-6].

JURISDICTION AND VENUE

10. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v], Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)], and Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14] to enjoin Banks from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties, disgorgement, an officer and director bar, and for other equitable relief.

11. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and 28 U.S.C. § 1331.

12. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v], Section 27(a) of the Exchange Act [15 U.S.C. § 78aa], Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and 28 U.S.C. § 1391.

13. Banks, directly and indirectly, made use of the mails, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

14. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act, the Exchange Act, and the Advisers Act occurred within the jurisdiction of the United States District Court for the Northern District of Georgia. In addition, Banks resides in this judicial district.

15. Banks, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

DEFENDANT

16. **Charles Augustus Banks, IV**, age 48, is a resident of Atlanta, Georgia. In 2012 and 2013, Banks owned (with a business partner) approximately 42% of the outstanding shares in Gameday. Banks also portrayed himself publicly as the Chairman of Gameday's Board of Directors.

17. Banks's position as Chairman of Gameday, his ownership interest in the company, and his past sourcing of Gameday's capital and financing gave Banks influence over Gameday's CEO, Jeffrey J. Neal ("Neal").

18. Banks is also the founder, a principal, and the majority owner of Terroir Capital, LLC ("Terroir"), an exempt reporting adviser that manages at least two private funds created by Banks. Those funds are Terroir Hotel & Resort Fund II, L.P., and the Terroir Winery Fund, L.P. (collectively, the "Terroir Funds"). The Terroir Funds own wineries and resort properties.

19. Prior to forming Terroir, Banks was president and part owner of CSI Capital Management, LLC ("CSI"), an investment adviser registered with the Commission. In April 2011, SunTrust Investment Services, Inc. ("SunTrust"), an SEC-registered investment adviser, purchased CSI.

STATEMENT OF FACTS

A. Banks Becomes The Investor's Investment Adviser

20. Banks joined CSI in 1992.

21. In 1997, Banks was an Executive Vice President at CSI. In that position, Banks successfully solicited the Investor to become an advisory client of CSI.

22. Banks was the Investor's primary point of contact with CSI.

23. In 1999, Banks received an ownership interest in CSI.

24. In 2001, Banks became the President of CSI.

25. Over time, Banks's role with the Investor expanded to include advising the Investor on various business matters. Banks advised the Investor, for

example, about investing in a fund called the Terroir Hotel and Resort Fund, L.P. Banks subsequently advised the Investor on other private investments, including investments in the Terroir Funds.

26. In 2007, Banks left his management role at CSI and formed Terroir. Banks continued, however, to have an ownership interest in CSI.

27. Terroir became the adviser, directly or through affiliates, to the Terroir Funds.

28. Although Banks was no longer in a management role at CSI, he remained CSI's primary point of contact with the Investor. Banks also continued to facilitate CSI's communication with the Investor about the Investor's advisory account with CSI.

29. In addition, Banks continued to have access to the Investor's account information at CSI and could view the Investor's investment holdings.

30. In 2011, CSI sold its business, including the Investor's advisory account, to SunTrust. Although Banks was not employed by SunTrust after the acquisition, he maintained a relationship of trust and confidence with the Investor. Banks also remained involved with the Investor's advisory account by communicating with SunTrust on the Investor's behalf regarding the investments the Investor held at SunTrust.

31. Banks also negotiated an exception from a covenant-not-to-compete

with SunTrust that allowed Banks, with certain limitations, to continue advising legacy CSI clients, including the Investor, about potential business opportunities.

32. Although the Investor knew that SunTrust had acquired CSI, the Investor continued to rely on Banks for investment advice and to communicate on his behalf with SunTrust, including directing SunTrust how to allocate the capital in his account among various investments.

33. The Investor believed that Banks continued to receive compensation from SunTrust for his services to him.

34. Banks also continued to provide the Investor advice on private investments, presenting to him various business opportunities for investment, as well as continuing to serve in a more general role of advising the Investor on business matters.

35. Between 2007 and 2012, as a result of Banks's recommendations, the Investor invested—in addition to the Gameday investment at issue here—approximately $14 million in the Terroir Funds. Through these investments, the Investor paid management fees to Banks's company Terroir, in exchange for investment advice.

36. The Investor also invested $1.1 million in Le Metier Beauty Investment Partners, LLC ("Le Metier"), an entity affiliated with Banks that was formed for the purpose of investing in Metier Tribeca, LLC, a luxury cosmetics

company.

B. The Gameday Offering

37. In or about March 2012, Neal, Gameday's CEO, informed Banks that Gameday required additional financing to fund its ongoing operations.

38. At that time, Banks not only was Gameday's Chairman and largest shareholder, but also its primary source for raising capital due to his connections with professional sports team owners and athletes.

39. Neal proposed to Banks that Gameday solicit two investors to invest $7.5 million each for a term of five years, with each investor receiving in return 12% interest per annum, paid monthly, and warrants convertible to 5% common equity.

40. Neal further proposed that Gameday use approximately $5 million of the total investment for working capital and the balance to pay off existing bank debt so that both investors would have a senior security interest in Gameday's inventory.

41. Neal prepared a written presentation summarizing these terms to market the offering, including that Gameday intended to have two investors and that proceeds of the offering would be used to retire Gameday debt, and sent this presentation to Banks.

42. Thereafter, Neal undertook efforts to find investors for the offering

and, at the same time, he also requested that Banks solicit the Investor to be one of the two investors.

43. Between approximately May 2012 and October 2012, Banks solicited the Investor to invest in Gameday's offering.

44. Specifically, Banks conveyed to the Investor the terms of the offering as proposed by Neal, emphasized that there would be very little risk due to the security interest in the proposed collateral, and recommended that the Investor make the investment.

45. In a May 9, 2012 email to the Investor, Banks touted the offering by telling the Investor that he had a "very good opportunity to run by [him]" that would allow the Investor to "make a 10% spread" and "end up with equity in a $50m company."

46. Banks also told the Investor that "[Gameday] has grown like crazy and we have a chance to land all the merchandising for the Dodgers, so we need cash to buy the inventory."

47. Banks represented to the Investor that "the company would borrow $4-7 M at 12% interest . . . and the loan would be guaranteed and backed by [Gameday's] long term contracts."

48. Banks added that, while he "ha[s] a hedge fund lined up to do the deal," he wanted to give the Investor the opportunity because it would be a

"homerun" for him.

49. In a subsequent August 13, 2012 email to the Investor, Banks again highlighted the investment's lack of risk, writing:

> Jeff Neal, the CEO wants to replace the $7m loan we have with [C]omerica [B]ank and add another $3M of capital. He just sent me the final offer from a hedge fund to provide $15M of financing. . . . Based on the deal he sent me I can get you a great deal (I can't do it because I am chairman). If you loan the company $4-5m (secured by our guaranteed contracts and inventory) I can get you 12% interest . . . and I can get them to pay the interest up front each year. This would be a 3 year loan and paid in full at the end of three years. So you would take very little risk (because of the security) and make 1.2-1.5M over the three years.

50. Banks also assured the Investor that he would have a first lien position on Gameday's collateral.

51. The presentation materials that Banks gave to the Investor made clear that this would occur as a result of the company's existing bank debt being paid off.

52. The Investor informed Banks that having a first lien position was important to him.

53. On September 5, 2012, Banks sent the Investor the written presentation summarizing the offering that Neal had previously prepared and given to Banks.

C. Banks's Communications with SunTrust

54. Shortly after Banks began soliciting the Investor to invest in Gameday, Banks informed SunTrust of his recommendation.

55. Banks told SunTrust that he had recommended to the Investor that he borrow his investment funds from SunTrust, secured by the assets in his advisory account, so that the Investor could profit from the spread between the interest he would need to pay SunTrust and what the Investor purportedly would earn in return from Gameday.

56. SunTrust responded to Banks that it did not agree with the Investor making the Gameday investment.

57. SunTrust further objected to the Investor borrowing the funds to invest in Gameday.

58. SunTrust told Banks that its concerns arose from the lack of assurance that Gameday would find a second investor and the result that the Investor would not have a first security lien on Gameday's assets.

59. SunTrust indicated to the Investor in an email dated September 28, 2012, that SunTrust had not evaluated the soundness of the proposed Gameday investment. SunTrust advised the Investor to obtain counsel to review the investment documents.

60. Shortly after SunTrust's September 28, 2012 email to the Investor,

Banks reiterated to SunTrust his role with respect to the Investor's investments.

61. Specifically, Banks first obtained the Investor's consent to open a bank account in the Investor's name at Comerica Bank, and to move assets from the Investor's SunTrust account to Comerica.

62. Using the new Comerica account as collateral, Banks arranged with Comerica for the Investor to obtain a $10 million secured line of credit.

63. Banks then sent an October 17, 2012 email to SunTrust, in which he wrote:

> Gentlemen, [the Investor] asked me to clarify how he is comfortable going forward. [The Investor] has been happy with how we have done things for the last 16 years or so. He would like to see a quarterly report that is clean, simple and to the point. Explanation is only necessary when there are extenuating circumstances. . . . [The Investor] would like me to receive the same communication he receives. He would like me to work with Todd [the Investor's SunTrust adviser] on the allocation and investment of his capital. For private deals, [the Investor] [sic] has set up an account at [C]omerica [B]ank. In the future when he wishes to invest in a private deal he will review with me and then transfer the necessary cash to the [C]omerica account where he will make the investment. This way it is clear that [S]untrust is not advising him in this capacity.

64. Banks copied the Investor on this email and concluded it by asking the Investor to "please respond that these are your wishes."

65. The next day, the Investor replied by email to all of the original recipients, saying "[t]hat sounds good to me. Lets keep it simple. Thnx."

D. The Investor's Investment In Gameday

66. In mid-October 2012, based on Banks's representations, the Investor agreed to invest $7.5 million in Gameday.

67. On October 17, 2012, the Investor signed and returned to Neal a Note and Warrant Purchase Agreement, a Secured Promissory Note, and a Security Agreement (collectively, "Gameday note"), which memorialized the Investor's $7.5 million investment in Gameday.

68. The Note and Warrant Purchase Agreement ultimately included both: (1) a promissory note with a maturity of five years, paying interest of 12% per annum (paid monthly); and (2) a stock warrant convertible into 3% of Gameday common equity.

69. The Security Agreement represented that Gameday shall "keep the [c]ollateral free from any adverse claims, liens, security interests, or encumbrances (other than security interest of [the Investor])."

70. At the same time, the Investor also signed and returned a Warrant to Purchase Units which gave the Investor the right to obtain a three percent equity interest in Gameday at a nominal price within five years.

71. Two days later, on October 19, 2012, Banks emailed Neal to tell him that the Investor's funds for the investment would shortly be transferred to Comerica Bank and directed Gameday to pay him a 3% origination fee, or

$225,000, for arranging the Investor's investment.

72. In the same email, Banks also told Neal that Gameday needed to pay him or Hammer Holdings, LLC – a company that Banks jointly owns with another individual – accrued fees and other amounts due, totaling $358,000.

73. Finally, Banks informed Neal that, starting in 2013, his yearly consulting fee from Gameday would increase from $150,000 to $250,000 per year.

74. At the time, Neal was telling Banks that he was on the verge of obtaining funds from a group of foreign investors, who would constitute the second investor for the offering.

75. Neal asked Banks when the Investor's money would be transferred to Gameday.

76. Banks told Neal that he would not release the Investor's funds until Gameday had received the $7.5 million from the second investor because Banks knew the second investment was important to the Investor as it was necessary to enable Gameday to pay off its existing debt and give the Investor a first lien on Gameday's assets.

77. In an October 24, 2012 e-mail to Neal, Banks stated, "[the Investor] is VERY worried (I'm sure based on SunTrust's comments) that the [second investor isn't] real and that he's being misled into funding."

78. However, the next day, October 25, 2012, Banks directed Comerica to

draw down $7.5 million on the Investor's line of credit and wire those funds on the Investor's behalf to Gameday.

79. Despite knowing that the second investment was important to the Investor, at the time of his instructions to Comerica, Banks knew that Gameday had not received the second investment.

80. Banks also knew that if he did not transfer the money at that time, his approval from the Investor for the wire transfer would expire and Banks might have difficulty obtaining a new approval from the Investor.

81. Banks expressed this concern to Neal in an October 25, 2012 email, in which Banks told Neal: "I need to send [the Investor's] wire today or we have to get him on the phone to approve, which could be tough. If I send wire, pls [sic] don't touch until the [second investor] fund[s]."

82. Gameday did not receive any funds from a second investor.

83. Nevertheless, on November 1, 2012, Banks instructed Neal to pay him the money they had agreed upon, including the $225,000 origination fee for obtaining the Investor's investment.

84. On November 2, 2012, Banks told Neal by email to pay to him 20% of the Investor's monthly interest payments, or $15,000 of the $75,000 due monthly to the Investor from Gameday.

85. In instructing Neal to send him a portion of the Investor's monthly

return, Banks falsely told Neal that he had obtained the Investor's agreement to this arrangement.

86. In a November 2, 2012 email to Neal, Banks wrote: "Btw, I got him to agree to pay me 20% on the Gameday deal. So every month I need 20% to go to [Banks's bank account]. Plus I get 20% of the stock he picks up (which I can toss into the pot for you and me)."

87. The Investor did not agree to pay Banks any portion of his interest payments and Banks did not disclose to the Investor that Gameday would pay 20% of the Investor's interest payments to Banks. Banks also did not disclose to the Investor that he was earning a 3% origination fee for the Investor's investment.

88. In addition, Banks did not disclose to the Investor that the second investment never materialized and that, as a result, Gameday had not paid off its existing bank debt.

89. The Investor's investment in Gameday was subordinated to Gameday's existing bank debt.

90. The subordination of the Investor's investment in Gameday was contrary to Banks's representations to the Investor and the Investor's wishes.

91. At approximately this same time, Banks also recommended that the Investor invest in Le Metier.

92. In making this recommendation, Banks touted the company's fragrance

as the "hottest in New York at Bergdorf, Saks, and Niemans;" Banks noted his strong relationship with the CEO of the company; and Banks claimed that he and another professional athlete, among others, were also investing in it.

93. The Investor accepted Banks's recommendation to invest in Le Metier.

94. On October 25, 2012 – the same day that Banks transferred the Investor's funds to Gameday – Banks also invested $1.1 million of the Investor's funds in Le Metier.

95. Banks again used the Investor's line of credit at Comerica to make the investment.

96. Banks received compensation for the Investor's investment in Le Metier by obtaining a non-binding letter of intent from the company to award Banks exclusive distribution rights in Asia.

E. The June 2013 Gameday Loan Guaranty and Subordination

97. Even with the Investor's investment, Gameday needed additional funding.

98. On December 4, 2012, Gameday made a 30-day loan to Banks of $950,000.

99. Banks did not repay this loan.

100. On December 20, 2012, Gameday made an additional, 30-day loan of $1.5 million to Hammer Holdings, a company that is controlled by Banks and

another individual.

101. Hammer Holdings did not repay this loan.

102. In January 2013, Gameday defaulted on a loan the company had with Comerica.

103. This loan was personally guaranteed by the individual who controlled Hammer Holdings with Banks, and was secured by that individual's assets on deposit at the bank.

104. After several months of negotiation, Comerica agreed to allow Gameday to restructure the loan and establish a new line of credit, provided that it again is secured by a personal guarantee.

105. The individual who had guaranteed the original loan to Gameday no longer wanted to be the guarantor.

106. Beginning in May 2013, Banks and Neal undertook efforts to have the Investor become the guarantor of the new financing from Comerica.

107. In a May 5, 2013 email exchange with Neal, Banks stated, "[w]onder if I can get [the Investor] to replace [the original guarantor] on the guarantee? Without having to move more money over there?"

108. In the same email exchange, Banks later observed that: "I need to be careful asking as I don't want to make him nervous. Ask [Comerica's loan officer] what he would need from [the Investor]."

109. Neal then emailed the Comerica loan officer, saying, "[Banks] said that he can get [the Investor] to take over the guaranty, but he doesn't want to have to move any more money in right now. He thinks that would cause a red flag."

110. On June 4, 2013, after Comerica had agreed to accept [the Investor's] guaranty without the Investor depositing additional funds, Banks directed Comerica to send him the guaranty agreement and an agreement subordinating the Investor's $7.5 million investment to the new line of credit.

111. Banks also directed the Comerica loan officer to send only the signature pages of both agreements to the Investor, who at the time was in Miami, Florida.

112. On the same day, Banks told the Investor to sign and return the signature pages.

113. Although the pages had legends that said "Signature Page to [the Investor] Guarantee" and "Signature Page to Subordination Agreement," respectively, Banks did not tell the Investor that he was signing a guarantee and a subordination document.

114. Instead, Banks informed the Investor in a text message that:

> "[o]n the good news front Gameday is crushing. We are changing your 7.5m loan to 6m. Paying it down 1.5m. Sending you an amendment to the loan I need you to send back when you get it."

115. The Investor replied, "[w]hy are we changing the loan?? If its

crushing should I get more of the company?? Or at least what's agreed upon?? I'm confused."

116. Banks answered the Investor by stating:

> "[m]y fault for not explaining more clearly. Your exposure is going down but your upside remain and your monthly payments remain. This just removes 1.5m of risk for you. All great news. No downside."

117. Following Banks's representations, the Investor signed and returned the signature pages without asking to read the full documents or questioning Banks further.

118. Banks's statements to the Investor in the above text messages were false and deceptive.

119. The Investor did not reduce his investment by $1.5 million by signing the guarantee and subordination documents.

120. Instead, by signing the documents, the Investor significantly increased his exposure to Gameday's risk of default, while subordinating his earlier investment to the new line of credit.

121. Shortly after the new Comerica line of credit was secured, Banks directed Gameday to pay him the 3% "guarantee fee," or at least $180,000, that Gameday was willing to pay the Investor as consideration for providing the guarantee.

122. Banks did not disclose this 3% "guarantee fee" to the investor.

123. In exchange for providing investment advice to the Investor, Banks was compensated by paying himself 20% of the Investor's monthly interest payments.

F. Banks's Fraud Is Exposed

124. In or about March 2013, the Investor became involved in divorce proceedings.

125. As part of those proceedings, the Investor's divorce attorney questioned Neal about the Investor's Gameday investment, including why the Investor was receiving less than he was owed each month.

126. Neal drafted a response in which he explained that 20% of the Investor's monthly interest payment was being paid to Banks.

127. However, when Neal previewed his response with Banks before sending it to the Investor's attorney, Banks promptly told Neal to delete reference to the 20% being paid to him.

128. Over the next several weeks, the Investor's attorney pressed Neal for an explanation of the discrepancy.

129. At one point, Banks told Neal to tell the attorney falsely that the 20% was being withheld as "deferred compensation."

130. The Investor's attorney asked for documents reflecting the deferred compensation arrangement. Banks and Neal could not provide the Investor's

attorney with such documents because they do not exist.

131. Eventually, Banks and Neal disclosed that a portion of the Investor's return had been diverted to Banks over the course of the investment.

132. Following this disclosure, Banks agreed to pay the Investor the amount that he had diverted.

133. However, instead of paying the money to the Investor himself, Banks instructed Neal to pay the funds from Gameday and told Neal to credit the amount paid to the Investor against unspecified amounts due to Banks from Gameday.

134. To date, none of the Investor's investment has been returned to him.

COUNT I – FRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

135. Paragraphs 1 through 134 are realleged and incorporated herein by reference.

136. Defendant Banks, acting with scienter, in the offer or sale of securities and by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, employed a device, scheme, or artifice to defraud.

137. By reason of the foregoing, Banks, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II – FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)]

138. Paragraphs 1 through 134 are realleged and incorporated herein by reference.

139. Defendant Banks, acting knowingly, recklessly, or negligently in the offer or sale of securities and by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, (a) obtained money or property by means of untrue statements of material fact or by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (b) engaged in transactions, practices, or a course of business which operated or would have operated as a fraud or deceit upon the Investor.

140. By reason of the foregoing, Banks, directly and indirectly, has violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III – FRAUD

Violations of Section 10(b) of the Exchange Act and Rules 10b-5(a), (b), and (c) thereunder [15 U.S.C. § 78j(b)(5), 17 C.F.R. § 240.10b-5]

141. Paragraphs 1 through 134 are realleged and incorporated by reference herein.

142. Defendant Banks, acting with scienter and in connection with the purchase or sale of securities and by the use of any means or instrumentality of interstate commerce or by use of the mails or any facility of any national securities exchange, directly or indirectly, (a) employed a device, scheme, and artifice to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, or a course of business which operated or would have operated as a fraud or deceit upon sellers, purchasers, or prospective purchasers of securities.

143. By engaging in the conduct described above, Banks violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b)(5), 17 C.F.R. § 240.10b-5].

COUNT IV – FRAUD

Violations of Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)]

144. Paragraphs 1 through 134 are realleged and incorporated by reference herein.

145. At all relevant times, Banks acted as an investment adviser to the Investor. In exchange for compensation, Banks engaged in the business of advising the Investor as to the value of securities or as to advisability of investing in, purchasing, or selling securities.

146. Banks, with scienter and while acting as an investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, employed a device, scheme, or artifice to defraud the Investor.

147. By engaging in the conduct described herein, Banks violated, and unless enjoined will continue to violate, Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

COUNT V – FRAUD

Violations of Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)]

148. Paragraphs 1 through 134 are realleged and incorporated herein by reference.

149. At all relevant times, Banks acted as an investment adviser to the Investor. In exchange for compensation, Banks engaged in the business of advising the Investor as to the value of securities or as to advisability of investing in, purchasing, or selling securities.

150. Banks, with knowledge, recklessness, or negligence, and while acting as an investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, engaged in transactions, practices, or a course of business which operated as a fraud or deceit upon the Investor.

151. By engaging in the conduct described above, Banks violated, and unless enjoined will continue to violate, Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

PRAYER FOR RELIEF

The Commission respectfully requests that this Court:

1. Find that Banks committed the violations alleged;

2. Permanently enjoin Banks and each of his agents, employees, and attorneys, and any other person in active concert or participation with him who receives actual notice of the injunction by personal service or otherwise, from directly or indirectly engaging in conduct in violation of the following provisions: Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]; and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1)-(2)];

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

4. Order Banks to pay civil penalties 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 Advisers Act [15 U.S.C. § 80b-9(e)] in an amount to be determined by the Court;

5. Issue an Order pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] permanently prohibiting Banks from acting as an officer or director of any issuer whose securities are registered with the Commission pursuant to Section 12 of the Exchange Act or which is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act;

6. Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all order and decrees that may be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court; and

7. Order such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

JURY TRIAL DEMAND

The SEC demands a trial by jury as to all issues that may be so tried.

Dated: September 9, 2016

Respectfully submitted,

/s/ Harry B. Roback
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CERTIFICATION OF COMPLIANCE

This is to certify that the foregoing was prepared using Times New Roman 14 point font in accordance with Local Rule 5.1 (B).

/s/ Harry B. Roback
Harry B. Roback