

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**PROPHECY ASSET MANAGEMENT, LP,
JEFFREY SPOTTS, and BRIAN KAHN,**

Defendants.

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 : **Civil Action No. 3:25-cv-16058**
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 : **Complaint for Violations of the**
 : **Federal Securities Laws**
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 : **Jury Trial Demanded**
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Plaintiff Securities and Exchange Commission (the “Commission”) alleges as follows against defendants: Prophecy Asset Management, LP (“PAM”), whose last known address is 641 Lexington Avenue, New York, NY 10022; Jeffrey Spotts (“Spotts”), whose last known address is 508 Jefferson Street, Whitehall, PA 18052; and Brian Kahn (“Kahn”), whose last known address is 9935 Lake Louise Drive, Windermere, FL 34786 (collectively, “Defendants”):

SUMMARY

1. This case involves a multi-year investment adviser fraud orchestrated by PAM, Spotts, Kahn, and John Hughes (“Hughes”), which caused investors to lose more than \$350 million.

2. Spotts and Hughes controlled PAM, formerly a registered investment adviser that managed several funds (collectively referred to herein as “Prophecy” and “Special Opportunities”), and Kahn was the largest sub-adviser for the funds.

3. Between 2014 and March 2020, PAM, Spotts, and Hughes raised more than \$500 million from investors who invested in Prophecy and Special Opportunities and collected in excess of \$15 million in management and incentive fees.

4. Together, PAM, Spotts, Kahn, and Hughes deceived Prophecy's investors, prospective investors, auditors, and administrator about its "first loss" business model that purportedly allocated Prophecy's capital to dozens of sub-advisers who were required to trade in liquid securities and post cash collateral to absorb losses generated by their trading strategies.

5. In reality, PAM, Spotts, and Hughes allocated the vast majority of Prophecy's capital to Kahn, who incurred massive trading losses far exceeding the amount of cash collateral he had contributed to Prophecy.

6. In addition, contrary to what they told investors, PAM, Spotts, and Hughes caused Prophecy to spend investor funds on risky, highly illiquid investments, including investments into Kahn entities, for which PAM performed little to no due diligence, resulting in substantial additional losses to Prophecy.

7. To conceal these hundreds of millions of dollars in losses, PAM, Spotts, Kahn, and Hughes used fabricated documents showing that Kahn posted adequate collateral and engaged in a series of sham transactions to inflate the apparent value of Prophecy's assets and conceal the true financial condition of Prophecy.

8. At the same time, PAM, Spotts, and Hughes provided investors and prospective investors account statements, "fact sheets," and other promotional and due diligence materials misrepresenting that Prophecy was diversified, liquid and secured by cash collateral, and generated positive returns every month.

9. PAM, Spotts, Kahn, and Hughes further perpetrated their fraud with Special Opportunities, which purported to give investors access to certain preferred trading strategies identified by PAM. However, when investors invested in Special Opportunities, the majority of their money was simply transferred back to Prophecy or invested in entities controlled by Kahn.

10. The actions of PAM, Spotts, Kahn, and Hughes painted an inaccurate picture of Prophecy's and Special Opportunities' financial health by hiding losses and impaired assets, which, in turn, inflated the value of the funds and generated excessive management and incentive fees to PAM, Spotts, and Hughes.

11. By the end of March 2020, although Prophecy had never told investors it had lost money for even a single quarter, Prophecy's actual losses exceeded \$350 million. Prophecy's auditor then withdrew its 2018 audit opinion and resigned, and PAM, Spotts, and Hughes gated Prophecy and Special Opportunities, indefinitely suspending redemptions by investors.

12. By engaging in the conduct described in this Complaint, PAM and Spotts violated, directly or indirectly, and unless enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act" [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and Sections 206(1), (2), and (4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), (2), and (4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8]

13. By engaging in the conduct described in this Complaint, Kahn violated, directly or indirectly, and unless enjoined will continue to violate, Section 17(a)(1) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and (3)]; Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 206(1), (2), and (4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2), and (4)] and Rule 206(4)-8(a)(2) thereunder [17 C.F.R. § 275.206(4)-8(a)(2)].

JURISDICTION AND VENUE

14. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b), (d)], Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d), (e)], and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d), (e)] to enjoin such acts, practices, and courses of business, and to obtain disgorgement with prejudgment interest, civil money penalties, an officer and director bar, and such other and further relief the Court may deem just and appropriate.

15. 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), (d), and 77v(a)]; Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), (e), and 78aa]; and Sections 209(d), 209(e), and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), (e), 80b-14]. Defendants, directly or indirectly, made use of the mails, or the means and instrumentalities of interstate commerce, or the facility of national security exchanges, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

16. Venue in this district is proper pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 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(b), because certain acts, practices, transactions, and courses of business constituting violations of the federal securities laws occurred within the District of New Jersey. For example, in connection with the fraud, during the relevant time period, Spotts and Hughes conducted business from their respective homes in New Jersey. As PAM operated through them, PAM too conducted business in this District. In addition, Kahn sent and/or caused to be sent, wire transmissions that went through servers located in New Jersey, including fabricated documents sent to Hughes at his home in New

Jersey.

DEFENDANTS

17. PAM is a Delaware limited partnership and was a registered investment adviser established in 2001. PAM provided investment advisory services to the investment funds defined below. PAM's registration status with the Commission was cancelled on July 5, 2023.

18. Spotts, age 58, currently resides in Pennsylvania. During the relevant period, he was a 50% co-owner of PAM and, along with Hughes, had authority over all uses of investor capital invested in the investment funds defined below. During the relevant period, Spotts resided in and worked from his home in Summit, New Jersey.

19. Kahn, age 52 resides in Florida. During the relevant period, he controlled several entities that traded the investment funds' capital or to which the investment funds loaned their capital.

RELEVANT INDIVIDUAL AND ENTITIES

20. John Hughes, age 58, resides in Mahwah, New Jersey. During the relevant period, Hughes was a 50% co-owner of PAM and, along with Spotts, had authority over all uses of investor capital invested in the investment funds defined below. On November 2, 2023, the Commission charged Hughes with securities fraud for his participation in the scheme described in this Complaint. Hughes was also charged criminally for the same conduct and pled guilty to conspiracy to commit securities fraud.

21. "Prophecy," as used herein, refers collectively to the following investment funds: Prophecy Trading Advisors Master Fund LP; Prophecy Trading Advisors LP; and Prophecy Trading Advisors International LTD. On March 31, 2020, PAM, Spotts, and Hughes caused Prophecy to suspend investor redemptions and the payment of investor redemptions.

22. During the relevant period, Prophecy Trading Advisors Master Fund LP (“Master Fund”), a Cayman Islands limited partnership established in 2018, operated as a purported hedge fund.

23. During the relevant period, Prophecy Trading Advisors LP (“PTA”), a Delaware limited partnership established in 2011, operated as a purported hedge fund.

24. During the relevant period, Prophecy Trading Advisors International LTD (“PTA International”), a British Virgin Islands limited company established in 2012, operated as a purported hedge fund.

25. “Special Opportunities,” as used herein, refers collectively to the following investment funds: Prophecy Special Opportunities Fund LP and Prophecy Special Opportunities Fund International LTD.

26. During the relevant period, Prophecy Special Opportunities Fund LP, a Delaware limited partnership established in 2018, operated as a purported hedge fund.

27. During the relevant period, Prophecy Special Opportunities Fund International LTD, a British Virgin Islands limited company established in 2018, operated as a purported hedge fund.

28. During the relevant period, Vintage Capital Management LLC (“Vintage”) was an asset management company controlled by Kahn.

29. During the relevant period, Samjor Family LP was an asset management company controlled by Kahn.

FACTS

A. Background

30. In 2001, Spotts founded PAM, which became an SEC-registered investment adviser on May 9, 2012. Spotts was PAM's Chief Executive Officer and Chief Investment Officer. His primary duties included raising capital for Prophecy, communicating with investors and prospective investors, and identifying and selecting sub-advisers.

31. Hughes joined PAM in 2006. He served as PAM's President and Chief Compliance Officer, oversaw the back-office and risk management operations for PAM, and, along with Spotts, selected sub-advisers.

32. At all relevant times after Hughes joined PAM in 2006, Hughes and Spotts jointly ran and controlled PAM, and each were involved in, and agreed to, major decisions concerning Prophecy's operations.

33. PAM was the investment adviser to Prophecy, which originally consisted of PTA and eventually included PTA International and the Master Fund. In July 2018, Prophecy transitioned to a master-feeder structure, converting both PTA and PTA International into feeder funds that invested all the capital in the newly created Master Fund, where all investment activity took place.

34. From its inception, at the direction of Spotts and Hughes, through PAM, Prophecy operated a "first-loss" business model purportedly to minimize the risk of loss to investors. Under this model, PAM claimed to allow a diverse group of sub-advisers to use Prophecy's capital to implement their own trading strategies in liquid securities and share the profits with Prophecy. To protect Prophecy's capital, PAM purportedly required sub-advisers to "post" cash collateral by depositing cash in an account controlled by a third-party to absorb any losses

generated by their trading strategies. Typically, PAM required sub-advisers to post 10% of the agreed upon trading allocation as cash collateral to be available to cover possible losses.

35. PAM also purportedly required sub-advisers to use Prophecy's execution management system, a trading platform wherein Prophecy would allocate capital to the sub-advisers, who then traded the capital in prime brokerage accounts held by Prophecy.

36. The trading platform purportedly allowed PAM to manage risk by actively monitoring the overall portfolio and the performance and liquidity of each trading strategy and ensuring that each sub-adviser maintained adequate cash collateral relative to their exposure.

37. PAM and Spotts claimed that if a sub-adviser's losses exceeded their posted cash-collateral, PAM would cut off the sub-adviser's trading until the sub-adviser provided additional cash collateral.

38. Sub-advisers enjoyed the benefits of leveraged trading capital provided by Prophecy's prime brokers and back-office support from Prophecy in return for the payment of a monthly administrative fee and a percentage of any trading profits generated. In exchange for their agreement to pay the administrative fee and absorb trading losses up to the amount of their cash deposit, PAM permitted the sub-advisers to keep a larger percentage (as compared to industry standards) of their trading profits, typically 80% or more.

39. PAM entered into an Account Investment Advisory Agreement ("Advisory Agreement") with each sub-adviser, including Kahn (via certain entities he controlled), to memorialize certain terms, including the amount of capital to be allocated to the sub-adviser for trading, administrative fees, profit split percentages, and the amount of cash collateral to be posted by the sub-adviser.

40. The Advisory Agreement indicated that all collateral posted by the sub-adviser was to be segregated in a separate bank account controlled by Prophecy's administrator and used to offset any trading losses incurred by that sub-adviser. PAM, Spotts, and Hughes frequently provided an example Advisory Agreement to investors for due diligence purposes.

41. To induce investments in the funds, PAM, Spotts, and Hughes, through marketing documents for the funds, represented that the combination of a lower profit split to Prophecy, the monthly administrative fees collected from all sub-advisers, and the insurance against trading losses afforded by each sub-adviser's cash deposit purportedly created a steady stream of mid to high single-digit returns uncorrelated to market conditions or the performance of the sub-advisers.

42. Conceptually, if Prophecy allocated \$1 million for a sub-adviser to trade, that sub-adviser should post \$100,000 in cash in an account controlled by Prophecy's administrator. If the sub-adviser sustained losses, \$20,000 for example, Prophecy could use the cash on deposit to cover the losses and reduce the capital available to the sub-adviser to trade until the collateral was replenished. In this way, Prophecy theoretically would not suffer any losses. According to representations made by PAM, if a sub-adviser's losses absorbed 50% or more of their cash collateral, PAM would stop the sub-adviser's trading and require additional collateral or a reduction in exposure.

43. In short, Prophecy was supposed to be monitoring sub-advisers trading in real time and was supposed to step in to mitigate risk and limit losses to the cash collateral provided by a sub-adviser.

44. PAM, Spotts, and Hughes collectively represented to investors and prospective investors in written materials and orally that Prophecy followed this first-loss business model.

B. PAM, Spotts, and Hughes Misrepresented Prophecy's Business Model to Investors and Prospective Investors

45. The premise of steady, single-digit returns protected against loss promoted to investors and potential investors by PAM, Spotts, and Hughes, was based on their misrepresentations that described active risk management where sub-advisers were purportedly routinely monitored with respect to diversification, cash collateral, and liquidity of trading strategies. In reality, PAM, Spotts, and Hughes knew or were reckless in not knowing that these representations they made about monitoring, diversification, collateral, and liquidity were false or misleading.

1. Misrepresentations Regarding Sub-Adviser Diversification

46. In written materials and/or orally, PAM, Spotts, and Hughes touted sub-adviser diversification as a key aspect of Prophecy's purported first-loss trading strategy because it minimized concentration risk. In other words, the risk to Prophecy would be reduced by avoiding over-exposure to a single sub-adviser. Thus, even if one sub-adviser incurred losses exceeding the balance of their cash deposit, the funds being managed by other sub-advisers would not be impacted.

47. PAM, Spotts, and Hughes represented to investors and prospective investors that Prophecy's capital was allocated to dozens of sub-advisers employing multiple diverse and even "unique" trading strategies. For example, PAM distributed monthly "fact sheets" to investors stating that Prophecy "seeks to generate returns by making notional allocations to a diverse group of sub-advisers running a variety of discretionary, systematic and unique investment strategies."

48. Similarly, PAM, Spotts, and Hughes provided investors and prospective investors a Due Diligence Questionnaire, which stated that Prophecy has “a diversified sub-adviser platform.”

49. In meetings and phone conversations, Spotts told prospective investors that diversification of sub-advisers helped minimize concentration risk.

50. However, PAM, Spotts, and Hughes knew, or were reckless in not knowing—and concealed from investors—that from at least 2017 through March 2020, the majority of Prophecy’s assets were allocated to Kahn or Kahn-controlled entities for purposes of trading.

51. PAM, Spotts, and Hughes received monthly Portfolio Breakdown Reports, which were internal reports that identified each sub-adviser by name, including Kahn, and listed their allocation amounts.

52. In December 2018, PAM began circulating these monthly Portfolio Breakdown Reports to investors and prospective investors but anonymized each sub-adviser as “Manager 1”, “Manager 2”, etc.

53. The Portfolio Breakdown Reports concealed Prophecy’s massive concentration in Kahn by presenting his total allocation as if Kahn were multiple, individualized sub-advisers.

54. For example, the December 2018 report listed 33 sub-advisers and identified them merely as Manager 1 through Manager 33. Unbeknownst to investors, six of the 33 sub-advisers were controlled by Kahn, who had been allocated approximately 78% of Prophecy’s more than \$1 billion in leveraged capital available for trading.

2. Misrepresentations Regarding Kahn’s Cash Collateral

55. PAM, Spotts, and Hughes distributed offering and marketing documents that also stated that Prophecy protected its capital from losses by holding cash collateral contributed by

each sub-adviser. PAM represented that if a sub-adviser's losses absorbed 50% or more of its cash collateral deposit, PAM would stop the sub-adviser's trading and require additional collateral or a reduction in exposure.

56. For example, the Due Diligence Questionnaire provided to potential investors specifically stated that allocations to sub-advisers "are supported by cash deposits provided by each sub-adviser. The deposits serve as the primary downside risk protection for the fund." The Due Diligence Questionnaire further boasted that Prophecy's "'edge' is that each sub-adviser is accountable for losses from their strategy and must supply capital to a third-party deposit account or similar collateral structure. This deposit is used to offset any losses."

57. Further, Prophecy's 2017 audited financial statements, which were provided to at least some investors, stated that Prophecy maintains contractual agreements that required each sub-adviser "to deposit their own capital into a separate bank account managed by the Fund administrator. . . . Sub-advisers agree to absorb their trading losses by reimbursing the Fund from the deposited capital." In addition, on calls and/or in-person meetings with investors and prospective investors, Spotts represented that Prophecy required cash deposits equal to 10% of a sub-adviser's trading allocation to absorb any trading losses incurred.

58. Since at least 2018, Prophecy's cash collateral deposits fell well short of the stated 10% of sub-adviser allocations. Prophecy, Spotts, and Hughes knew, or were reckless in not knowing, that Prophecy's cash collateral deposits were short of the stated 10% of sub-adviser allocations.

59. For example, as of January 2019, Prophecy's total cash deposit balance equaled a mere 0.77% of the reported gross market value of its assets. By July 2019, Prophecy's cash

deposit balance dipped even lower, to 0.05%. PAM, Spotts, and Hughes knew, or were reckless in not knowing, that Prophecy's cash collateral deposits were well short of the 10% mark.

60. PAM, Spotts, and Hughes allowed Prophecy to all but abandon its cash deposit requirement for Kahn, notwithstanding Kahn's outsized allotment of Prophecy's trading capital and enormous trading losses.

61. For instance, Kahn's trading losses exceeded the amount of the cash collateral Kahn had contributed by: \$55 million in September 2018; \$216 million in November 2019; and \$328 million in March 2020.

62. At all times, PAM, Spotts, and Hughes were aware of Kahn's trading losses and related cash deposit deficits because they were provided monthly reports indicating each sub-advisers' profit and loss and cash deposit balances. Spotts and Hughes also discussed Kahn's trading losses in person and by phone. Nevertheless, PAM, Spotts, and Hughes allowed Kahn to continue trading.

63. Despite knowing of Kahn's continually increasing cash collateral deficit and mounting trading losses, PAM, Spotts, and Hughes continued to falsely claim to investors that no sub-adviser had ever exhausted its cash collateral deposit.

64. Kahn's losses, which exceeded deposited capital, also meant that Prophecy suffered massive losses for which it had no mechanism to reasonably guarantee reimbursement. Yet Prophecy continued to claim it had experienced positive returns since its inception.

65. Contrary to the representations of PAM, Spotts, and Hughes, Prophecy first had a sub-adviser exhaust their cash collateral in January 2014, when a sub-adviser lost nearly \$3 million of investor capital, an amount well in excess of his cash collateral. At that time, in order

to avoid recording losses for Prophecy, PAM, Spotts, and Hughes caused Prophecy to enter into a series of sham transactions to conceal the loss.

66. Despite that event and the continued losses of Kahn, PAM, Spotts, and Hughes continued to knowingly and/or recklessly mislead investors about Prophecy's performance. In an email dated Oct. 28, 2018, several weeks after Kahn exhausted his cash collateral deposit and his trading losses reached \$55 million, Spotts wrote to investors: "No portfolio managers had a severe enough decline in the allocations to exhaust their deposit and impair the fund." Spotts knew or was reckless in not knowing that this was false.

67. On May 2, 2019, PAM sent Prophecy's largest investor a document containing information on each sub-adviser's trading results and deposit balance which reflected that Kahn maintained a deposit balance of more than \$36 million. PAM, Spotts, and Hughes knew, or were reckless in not knowing, this information was false.

68. Contrary to that representation, as of May 2, 2019, the bank account designated to hold cash collateral posted by all of Prophecy's sub-advisers contained less than \$10 million and internal records maintained by Prophecy indicated that Kahn had a cash collateral *deficit* on May 2, 2019 of approximately \$130 million.

69. From January 2018 through March 2020, Kahn's trading losses exceeded the balance of his cash collateral for all but one month.

70. By February 2020, Kahn's deposit balance deficit approached \$200 million. Although PAM, Spotts, and Hughes knew, or were reckless in not knowing, that Kahn's deposit balance had a massive deficit, Spotts emailed a prospective investor, falsely claiming "the fund is a pure first-loss strategy, with all allocations backstopped by collateral deposits."

3. Misrepresentations Regarding Liquidity of Investments

71. PAM's offering documents were also replete with misrepresentations that Prophecy's investments were concentrated in liquid securities traded on Prophecy's platform. Spotts and Hughes knew or were reckless in not knowing that these were misleading statements.

72. For example, the Due Diligence Questionnaire falsely stated that "[t]he majority of positions across the fund can be liquidated within one business day without significantly impacting prices."

73. During due diligence meetings with potential investors, Spotts represented that Prophecy's sub-advisers traded in mainly highly liquid US equities on Prophecy's trading platform, allowing PAM to monitor a sub-adviser's trading activity and quickly liquidate positions if the losses breached the sub-adviser's cash deposit.

74. Spotts represented to at least one investor that although Prophecy would occasionally extend loans, or make direct investments in sub-advisers, which PAM referred to as "off-platform" investments, these strategies were for arbitrage-like trading with low downside and comprised less than 5% of Prophecy's assets. Spotts represented further that PAM maintained full transparency regarding the off-platform investments. Spotts knew or was reckless in not knowing that this was false.

75. Contrary to these representations, from 2018 through March 2020, PAM, Spotts, and Hughes routinely caused Prophecy to invest substantial sums of money in off-platform, illiquid investments.

76. By the end of 2019, PAM, Spotts, and Hughes knew, or were reckless in not knowing, that off-platform investments represented approximately 75% of Prophecy's reported net asset value. Furthermore, PAM, Spotts, and Hughes knew, or were reckless in not knowing,

that these investments were frequently not in low-risk, arbitrage-like trading strategies over which PAM had full transparency, but were instead comprised mainly of unsecured loans or investments in special purpose vehicles, often with Kahn-controlled entities, for which PAM, Spotts, and Hughes performed little or no due diligence.

C. Kahn's Trading Losses Were Concealed From Investors

77. PAM, Spotts, and Hughes knew, or were reckless in not knowing, that Kahn's trading had resulted in massive losses for Prophecy for which there was not adequate cash collateral. Yet they failed to disclose to investors the massive trading losses incurred by Kahn and made false representations to investors about Prophecy's performance.

78. From at least October 2017 through March 2020, PAM, Spotts, and Hughes caused PAM to solicit significant sums of new investor capital while representing to investors and potential investors that it had generated positive monthly returns every month since its inception. For example, in March 2020, a PTA fact sheet circulated to investors showed positive performance in every month between October 2011 and January 2020. PAM, Spotts, and Hughes knew, or were reckless in not knowing, that these representations were false.

79. The following chart shows Prophecy's monthly assets under management alongside the concealed cumulative trading losses generated by Kahn. (The undisclosed cumulative trading losses include both unrealized marked-to-market losses and realized cash losses.) PAM, Spotts, and Hughes knew, or were reckless in not knowing, that, by January 2020, Kahn's use of leverage resulted in cumulative losses of approximately \$270,000,000, which was more than 74% of the reported assets under management:

Month	Reported Assets Under Management (Prophecy only)	Undisclosed Kahn Cumulative Trading Losses
Jan '18	\$193,262,221	(\$68,796,437)
Feb '18	\$206,680,330	(\$89,272,107)
Mar '18	\$210,514,769	(\$73,855,675)
Apr '18	\$231,581,824	(\$84,973,086)
May '18	\$231,296,977	(\$99,856,774)
Jun '18	\$238,882,887	(\$55,769,941)
Jul '18	\$251,960,512	(\$86,149,501)
Aug '18	\$278,391,448	(\$99,029,274)
Sep '18	\$281,328,749	(\$133,547,197)
Oct '18	\$291,278,303	(\$92,770,160)
Nov '18	\$300,145,549	(\$126,465,092)
Dec '18	\$309,940,471	(\$85,457,632)
Jan '19	\$316,671,028	(\$110,945,903)
Feb '19	\$352,256,146	(\$141,049,323)
Mar '19	\$363,039,646	(\$164,932,011)
Apr '19	\$351,669,307	(\$193,341,589)
May '19	\$334,611,151	(\$270,389,293)
Jun '19	\$338,605,040	(\$274,697,896)
Jul '19	\$346,130,025	(\$277,349,650)
Aug '19	\$371,751,174	(\$272,194,183)
Sep '19	\$395,227,258	(\$260,971,957)
Oct '19	\$361,330,212	(\$278,964,629)
Nov '19	\$367,180,474	(\$288,855,554)
Dec '19	\$363,079,864	(\$264,739,409)
Jan '20	\$363,042,750	(\$270,944,717)

80. The losses appeared to continue to mount in February and March 2020 when undisclosed trading losses rose to more than \$400,000,000.

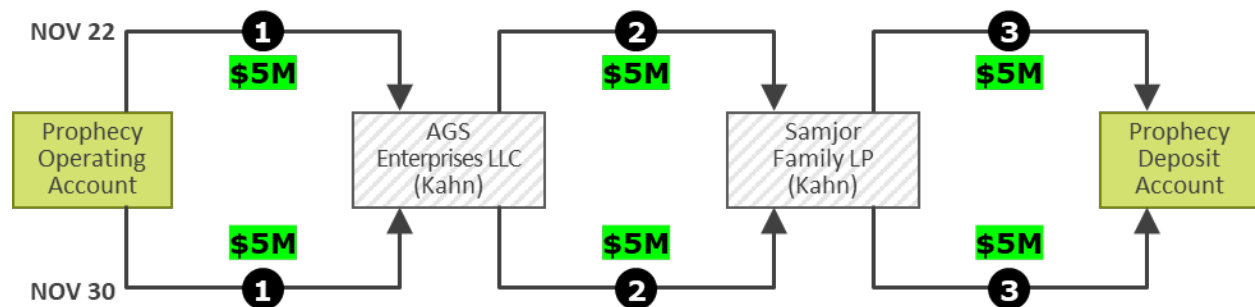
D. PAM, Spotts, Kahn, and Hughes Concealed Kahn's Lack of Cash Collateral

81. PAM, Spotts, Kahn, and Hughes deceived Prophecy's administrator and auditor by entering into sham transactions to provide Kahn with cash to cover his trading losses and falsifying documentation designed to create the appearance that Kahn's trading losses remained secured by non-cash collateral. This deception kept investors and potential investors from learning of the losses.

82. Kahn, Spotts, and Hughes met for lunch on approximately May 25, 2019 at a restaurant in New Jersey to discuss the situation. In the weeks and months that followed that meeting, Spotts and Kahn communicated extensively and Spotts directed Kahn on various communications with Prophecy's auditor and administrator.

1. PAM, Spotts, Kahn, and Hughes Used Investor Funds for Kahn's Cash Collateral

83. For example, by October 2017, Kahn had a negative cash collateral deposit of more than \$20 million. Kahn was either unwilling or unable to contribute additional cash to cure the deficit. Rather than restrict his trading until he contributed additional cash collateral, Hughes and Kahn entered into an agreement in which Hughes caused Prophecy to engage in a "round-trip" transaction with Kahn that both understood was designed to artificially replenish Kahn's cash collateral deposit. The below diagram illustrates this round-trip transaction:



84. Specifically, Kahn and Prophecy executed a promissory note whereby Prophecy purported to “loan” \$11 million of investor funds to AGS Enterprises LLC (“AGS Enterprises”), an entity with no assets or operations that was owned by Kahn. However, through a series of transactions, AGS Enterprises immediately returned \$10 million of that amount to Prophecy masked as collateral contributions by Kahn.

85. First, on November 22, 2017, Prophecy wired \$5 million to AGS Enterprises. That same day, Kahn caused AGS Enterprises to wire \$5 million to Samjor Family, Kahn’s sub-adviser entity. Then, Kahn caused Samjor Family to immediately wire that money back to Prophecy, which recorded the \$5 million as a cash collateral contribution from Kahn, notwithstanding that Prophecy had originally advanced this money to Kahn’s entity.

86. Eight days later, on November 30, the parties repeated the same process, taking another \$5 million from Prophecy, routing it through entities owned by Kahn, and Kahn sending the same amount of money back to Prophecy to further “replenish” his cash deposit account.

87. Less than a week later, on December 6, Prophecy sent another \$1 million to AGS Enterprises.

88. In an email, Hughes falsely told Prophecy’s administrator that the \$11 million Prophecy sent to AGS Enterprises in November and December 2017 was “to fund a new investment.” However, Kahn and AGS Enterprises did not invest the \$11 million on behalf of Prophecy. Instead, they simply sent \$10 million of it back to Prophecy as cash collateral in a roundtrip transaction and used the remaining \$1 million for other purposes.

89. Kahn forged the signature of a former colleague as the signer of the sham loan agreement between Prophecy and AGS Enterprises on behalf of AGS Enterprises, thereby

concealing his involvement in the transaction from Prophecy's auditor and administrator.

However, Kahn's former colleague had no knowledge of this transaction and was no longer associated with AGS Enterprises at the time of the agreement.

2. Kahn Provided Worthless Non-Cash Collateral to Prophecy

90. Prophecy did not report Kahn's trading losses to investors. Instead, PAM, Spotts, and Hughes caused Prophecy to record Kahn's trading losses on its books as a receivable from Kahn. While the amount of the receivable changed depending on the investments and market conditions, as of year-end 2018, the purported receivable accounted for approximately 0.8% of Prophecy's reported assets under management.

91. As Kahn's losses mounted, however, the purported receivable comprised a rapidly increasing percentage of Prophecy's assets under management. By the end of 2019, the claimed receivable accounted for nearly 53% of Prophecy's assets under management.

92. To purportedly secure the receivable with collateral, Kahn and Prophecy entered into at least six agreements consisting of, among other things, personal guaranties, promissory notes, and pledged "assets," which did not exist or had questionable value. Yet, PAM, Spotts, and Hughes never wrote down or discounted the value of this receivable, or provided auditors with information that would have suggested it was not worth the full stated value.

93. PAM, Spotts, and Hughes performed little to no due diligence on these assets (or on Kahn's personal finances), never taking any reasonable steps to value, control, or redeem the non-cash collateral provided by Kahn, some of which was wholly fabricated.

94. In addition, PAM, Spotts, Hughes, and Kahn deceived Prophecy's auditors regarding the purported non-cash collateral provided by Kahn.

95. For example, in April 2019, during Prophecy's on-going 2018 audit, Prophecy's auditor identified that Kahn had a substantial cash deposit deficit during 2018 and emailed Hughes stating he "wanted to understand what was the rationale for the negative deposit accounts for [Kahn] and how/when Prophecy plans to remediate the same."

96. Subsequently, Kahn and Hughes fabricated certain documents concerning a purported agreement between Prophecy and Buddy's Newco LLC ("Buddy's"), a company controlled by Kahn.

97. Specifically, Kahn created an agreement titled, "Buddy's Newco LLC Series A Preferred Stock Agreement" ("Buddy's Preferred Stock Agreement"). On April 10, 2019, Kahn emailed Hughes a draft of the Buddy's Preferred Stock Agreement that purported to show Prophecy's ownership of \$125 million worth of preferred shares of Buddy's stock, backdated to January 1, 2018.

98. Between April and June 2019, Kahn and Hughes exchanged additional drafts of the Buddy's Preferred Stock Agreement in which the assigned value of the shares ranged from \$75 million to \$150 million.

99. On June 1, 2019, Hughes emailed Kahn stating that they needed to "Finalize the class [A] share document and get certificate for same." Kahn responded, "Confirm date of issuance for you should be January 2018. This would become a credit to the fund and an asset on your balance sheet year end 2018"

100. By June 3, 2019, Kahn delivered to Hughes two Buddy's Convertible Stock Certificates ("Buddy's Certificates") backdated to January 3, 2018. One of the certificates was for 75 shares with a purported valuation of \$75 million. The second certificate was for 150 shares with a purported valuation of \$150 million. Subsequently, Hughes provided Prophecy's

auditor with the Buddy's Preferred Stock Agreement and the Buddy's Certificate purportedly valued at \$75 million.

101. In response to a series of questions from Prophecy's auditor, after a phone call with Spotts, Hughes, and at least one other person during which Kahn was instructed on the responses to provide to the auditor's inquiry, Kahn falsely confirmed that he had authority to issue the preferred stock to Prophecy, the preferred stock was issued and outstanding as of December 31, 2018, and that the preferred stock was collateral used to secure his 2018 trading losses.

102. In reality, Buddy's Newco LLC Series A Preferred Shares were never issued to Prophecy or anybody else because the shares never existed. The entire agreement and transaction was a sham created by Kahn, Spotts, and Hughes. Spotts, Kahn, and Hughes knew, or were reckless in not knowing, this was done to mislead Prophecy's auditor.

103. Around this same time, Prophecy's administrator requested additional information concerning Kahn's non-cash collateral in light of Kahn's rapidly accelerating trading losses in 2019. In an email dated June 18, 2019, Prophecy's administrator indicated that more than 58% of Prophecy's \$350 million net asset value was in the form of a \$204 million receivable due from Kahn and should be classified as illiquid.

104. The administrator requested that Prophecy identify the non-cash collateral that Kahn purportedly pledged to secure the receivable owed to Prophecy and provide the administrator with signed monthly certifications.

105. In response, Hughes provided the administrator with the other Buddy's Preferred Stock Agreement that Kahn created, which purported to grant Prophecy \$150 million worth of

preferred shares but was now dated January 1, 2019. As before, these shares did not exist. The entire agreement and transaction was a sham created by Kahn, Spotts, and Hughes.

106. As requested, Prophecy began providing its administrator with certified monthly spreadsheets, signed by Hughes, listing Kahn's non-cash collateral. These monthly spreadsheets included the Buddy's preferred shares, and other bogus collateral, and falsely represented to Prophecy's administrator that the collateral was valid and could be liquidated to settle Kahn's receivable arising from his trading losses.

107. PAM, Spotts, Kahn, and Hughes knew, or were reckless in not knowing, that the purported Buddy's preferred shares were a sham.

3. Kahn's Losses And Lack of Cash Collateral Were Never Disclosed To Investors

108. In addition, PAM, Spotts, and Hughes never disclosed to investors that Kahn had sustained massive losses or that they were permitting Kahn to continue trading without providing sufficient collateral to be consistent with their represented business model.

109. Prophecy's June 2019 investor account statements, issued in July 2019, included a disclosure at the bottom that Prophecy *may* accept non-cash collateral. However, PAM, Spotts, and Hughes never disclosed that Prophecy actually was accepting millions in non-cash collateral from its largest sub-adviser and that much (if not all) of the non-cash collateral were actually sham assets that Kahn, Spotts, and Hughes made up.

110. PAM, Spotts, and Hughes provided prospective investors with marketing and due diligence materials referenced in this Complaint, which made no mention that Prophecy accepted non-cash collateral in lieu of cash, let alone in excess of \$100 million from its largest sub-adviser.

E. PAM, Spotts, Kahn, and Hughes Concealed “Off-Platform” Investment Losses

111. PAM, Spotts, Kahn, and Hughes also concealed other Prophecy losses associated with impaired assets on Prophecy’s balance sheet from Prophecy’s auditor and administrator—ultimately keeping information from investors and prospective investors—by engaging in a series of sham and round-trip transactions using falsified and backdated documents.

112. From 2015 through 2019, Prophecy engaged in a series of elaborate sham, round-trip transactions with entities controlled by Kahn, Brenda Smith (“Smith”) and George Heckler (“Heckler”). These transactions concealed from Prophecy’s auditor and administrator (and ultimately its investors) losses Prophecy sustained, recasting the losses as new investments or loans. Hughes and Spotts both knew of, or were reckless in not knowing about, these sham transactions, and took active roles in helping devise and effectuate these transactions.

113. On August 27, 2019, the Commission charged Smith and Broad Reach Capital LP (“Broad Reach”), a hedge fund controlled by Smith, with securities fraud. Smith was also charged criminally for the same conduct and pled guilty to securities fraud.

114. On March 9, 2021, the Commission charged Heckler with securities fraud. He was also charged criminally for the same conduct and pled guilty to securities fraud.

115. Below are illustrative examples of some of the sham, round-trip transactions that the PAM, Spotts, Kahn, Hughes and others utilized to conceal Prophecy’s losses.

1. Cassatt Short Term Trading Fund

116. By year-end 2014, Prophecy had invested more than \$20 million with Cassatt Short Term Trading Fund (“Cassatt”), a private hedge fund controlled by Heckler and ultimately revealed to be a Ponzi-like, fraudulent scheme.

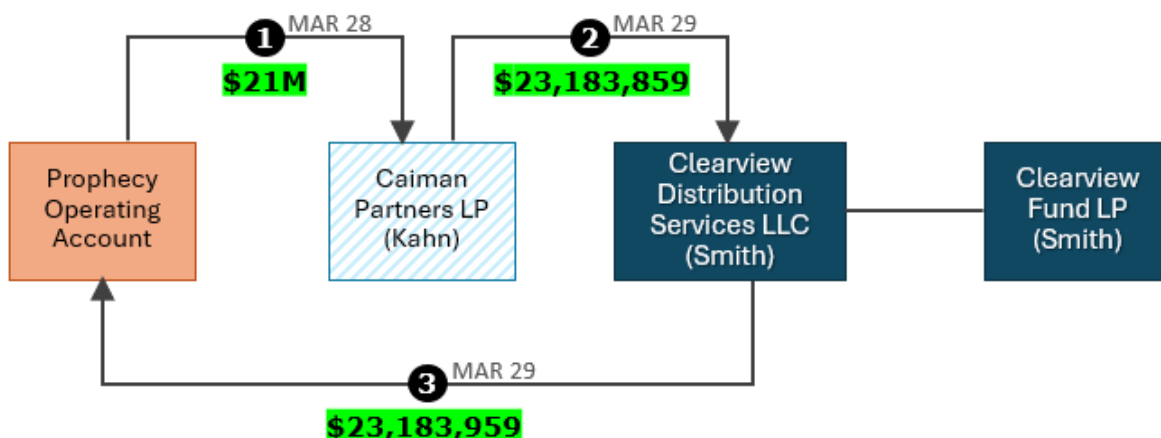
117. By the end of 2014, Heckler had ceased all trading activities, closed Cassatt’s brokerage accounts, mainly held illiquid assets, and was unable to fully redeem Prophecy’s investment.

118. Although PAM, Spotts, and Hughes knew, or were reckless in not knowing, that Cassatt was unable to fully redeem Prophecy’s investment, they failed to disclose to investors, prospective investors, or auditors Prophecy’s substantial loss via the Cassatt investment, which would directly contradict representations made to investors regarding Prophecy’s investment strategy and liquid assets, and would jeopardize the future prospects of both Prophecy and PAM.

119. For instance, by 2018, Prophecy’s investment losses in Cassatt had been shifted to another hedge fund advised by PAM, Prophecy Alpha Fund LP (the “Alpha Fund”) and re-characterized as a \$22.5 million loan owed to the Alpha Fund by another Heckler entity.

120. In February 2018, PAM, Spotts, and Hughes concealed the loss by causing Prophecy to “invest” an equivalent amount (\$22.5 million) in Clearview Fund LP (“Clearview”), an entity controlled by Smith. Clearview, in turn, used the investment proceeds obtained from Prophecy to purchase from the Alpha Fund the clearly worthless loan owed by Heckler for face value. The worthless loan owed by Heckler was the only asset of Clearview. So, PAM, Spotts, and Hughes knew or were reckless in not knowing that the \$22.5 million “investment” in Clearview by Prophecy was essentially worthless.

121. In 2019, Kahn helped PAM, Spotts, and Hughes clear Prophecy's books of the Clearview investment in advance of Prophecy's 2018 audit by engaging in another set of complex fraudulent transactions. The below diagram illustrates this round-trip transaction:



122. Specifically, on March 28, 2019, Prophecy “loaned” \$21 million to Caiman Partners (“Caiman”), an entity controlled by Kahn, which had no assets or operations. The following day, to assist Prophecy, Kahn wired this money, plus approximately \$2.2 million of his own funds, to Clearview Distribution Services LLC (“Clearview Distribution”), a newly created entity controlled by Smith, for the purported purchase from Clearview of the defaulted loan owed by Heckler. Clearview Distribution wired the approximately \$23.2 million it received back to Prophecy the same day.

123. Prophecy represented to its auditor and administrator that the approximately \$23.2 million payment received was for the redemption of the investment in Clearview. In reality, as known by Kahn, PAM, Spotts, and Hughes this was simply a complex series of transactions to continue to hide Prophecy's trading losses. Going forward from March 2019, that loss was masked as a new investment – a “loan” to Caiman partners.

2. Broad Reach

124. By 2018, Prophecy had an investment valued on its books at approximately \$24 million in Broad Reach. Though Spotts claimed to at least one investor that Prophecy had full transparency into the underlying investments of Broad Reach, this was false. Broad Reach also turned out to be a Ponzi-like, fraudulent scheme.

125. When Prophecy attempted to redeem its Broad Reach investment at the end of 2018, Smith informed Spotts and Hughes that Broad Reach was only able to make a partial redemption of \$6.5 million – leaving Prophecy with an approximate \$17.5 million redemption receivable.

126. By May 2019, with collectability of the receivable in doubt, with an institutional investor seeking redemption of its investment in Prophecy, and in the midst of its 2018 audit, PAM, Spotts, and Hughes again turned to Kahn to help fraudulently clear Prophecy's books of the impaired asset and conceal the related loss.

127. Specifically, in May 2019, Hughes emailed Kahn asking him to wire Prophecy \$17,579,885.15—the exact amount of the outstanding Broad Reach receivable.

128. Kahn sourced the funds needed from entities he controlled and routed the funds to Kahn's AGS Enterprises. Kahn then, via multiple wire transfers, sent the exact amount requested by Hughes to Prophecy.

129. The funds sourced by Kahn included approximately \$444,000 and \$580,000 of capital from Special Opportunities (a fund structure launched by PAM in 2019) and Prophecy, respectively, relating to purported investments in entities controlled by Kahn in the days leading up to Kahn's purchase of the Broad Reach interest.

130. On June 12, 2019, days after Kahn began making the AGS Enterprises' payments to Prophecy, Kahn emailed Hughes a one-page agreement backdated to April 1, 2019 titled "Assignment of Limited Partnership Interest." This document purported to assign Prophecy's partnership interests in Broad Reach to AGS Enterprises.

131. PAM, Spotts, Kahn, and Hughes concealed Kahn's involvement in this transaction from Prophecy's auditor and administrator. In addition, Spotts and Hughes knew that Prophecy's limited partnership agreement with Broad Reach did not allow Prophecy to unilaterally assign its partnership interests to a third party.

132. To overcome these hurdles, Kahn forged the signature of his then 13 year-old son on the document, using his son's first and middle name but omitting his last name; and Spotts and Hughes altered the limited partnership agreement before sending it to Prophecy's auditors in such a way that purportedly allowed Prophecy to assign its limited partnership interest in Broad Reach.

133. On June 17, Spotts emailed Prophecy's auditor concerning the Broad Reach redemption, falsely stating "[w]hile we redeemed for 12/31/18, we received the proceeds plus interest during the interim." Spotts supported this assertion by sending what appeared to be a Broad Reach account statement indicating Prophecy was fully redeemed by April 2019. But Spotts knew, or was reckless in not knowing, that this was false. The cash received from Prophecy was actually provided by Kahn to "purchase" the worthless Broad Reach receivable.

134. After Smith was charged by the Commission in August 2019 and arrested by law enforcement in connection with the criminal case, at least one investor recalled that Prophecy had invested in Broad Reach. The investor contacted Spotts to inquire whether Prophecy had suffered a loss in Broad Reach. On August 27, Spotts replied with false assurances that "[w]e

are not in that fund” and “[w]e are not impaired by this event.” Spotts knew or was reckless in not knowing that his representations to the investor were false and/or misleading.

3. Vintage Capital Management LLC

135. Although Kahn had a cash collateral deficit in excess of \$50 million during the fall of 2018, Prophecy provided a \$36 million unsecured loan to Vintage Capital Management LLC (“Vintage”), an asset management company controlled by Kahn.

136. Spotts and Hughes did not do this transaction for the benefit of Prophecy or its investors. Instead, they understood that Kahn was going to use the loan proceeds to provide rescue financing to a company in which Vintage was heavily invested. Prophecy included this new “allocation” on the December 2018 Portfolio Breakdown Report sent to investors as “Manager 33,” masking that it was going to a Kahn-controlled entity.

137. Spotts and Hughes also failed to disclose the true nature of this large off-platform loan to investors, falsely classifying it as a “Fixed Income” trading strategy on the Portfolio Breakdown Report.

138. By December 2018, the Prophecy loan to Vintage had matured and Kahn failed to repay the loan. During Prophecy’s 2018 audit, rather than acknowledge to its auditor that the loan had defaulted and was uncollectable, Kahn, Spotts, and Hughes devised a plan to enter into a series of complex sham transactions to conceal the failed loan.

139. Kahn told Hughes that he was receiving money from another source and would temporarily pay the \$36 million loan, but needed the money he paid immediately returned.

140. Specifically, on or about April 25 and 26, 2019, PAM, Spotts, Hughes, and Kahn engaged in a round-trip transaction designed to deceive Prophecy’s auditors.

141. On April 25, Kahn received \$25 million into a Vintage account from a third-party. A few minutes later, the same account wired \$25 million to Prophecy. Later that day, the same Vintage account sent an additional \$2.5 million to Prophecy. The following morning, April 26, the same Vintage account sent another \$8.5 million to Prophecy, resulting in a total of \$36 million being sent to Prophecy over the two days.

142. However, on the morning of April 26, PAM, Spotts, and Hughes caused Prophecy to send the \$36 million back to Kahn as purported “investments” in two Kahn-controlled entities, wiring \$17 million to Vintage Tributum LP and \$19 million to Vintage Panther LP.

143. While the parties documented the purported investments, the investments did not exist and the documents were created only to make it appear as though the original loan had been repaid.

144. When Spotts and Hughes were questioned by Prophecy’s auditor about the source of the Vintage loan repayment, Hughes intentionally misled the auditor, stating in an email, and copying Spotts, that no additional loans were exchanged with Vintage or any affiliated entities of Kahn for the collection of the \$36 million loan.

4. Samjor LP

145. By year-end 2019, Kahn’s trading losses had increased. However, PAM, Spotts, and Hughes made no effort to collect on this debt, which Prophecy designated a receivable on its balance sheet, through the purported non-cash collateral that Kahn had pledged to secure the receivable.

146. Spotts and Hughes became concerned that Prophecy’s auditor and administrator would further scrutinize the validity of the non-cash collateral pledged by Kahn.

147. To relieve this concern, Spotts, Kahn, and Hughes determined that the receivable Kahn owed would need to be replaced with a different “asset.”

148. Subsequently, Kahn formed a limited partnership called Samjor LP (“Samjor”). According to the Samjor partnership agreement, Kahn was to initially capitalize the partnership by contributing \$194 million worth of shares of a publicly traded company for which Kahn served as CEO, and Samjor would issue the lone limited partnership interest in the fund to Prophecy. In so doing, the receivable owed by Kahn on Prophecy’s balance sheet would be exchanged for a new limited partnership investment in Samjor.

149. However, Kahn failed to contribute the shares to the partnership as agreed, rendering worthless the limited partnership interest issued to Prophecy because Samjor had zero assets. Although Spotts and Hughes knew, or were reckless in not knowing, that Kahn never funded the Samjor partnership with publicly traded securities, Prophecy reported this transaction to its administrator as a new “fund investment” worth \$194 million.

150. In order to finalize Prophecy’s net asset value for the month, Prophecy’s administrator requested from Hughes a statement issued by Samjor to confirm the value of the investment. Hughes passed along the request to Kahn, and Kahn then issued a fabricated account statement to Prophecy’s administrator indicating that Prophecy’s investment in Samjor was valued at \$194 million as of December 31, 2019 and January 31, 2020, despite knowing that Samjor had no assets.

F. Special Opportunities

151. In April 2019, PAM launched Special Opportunities. Similar to Prophecy, Spotts raised capital for the funds and communicated with Special Opportunities' investors and prospective investors, and Hughes oversaw the back-office and risk management operations.

152. Pursuant to its offering materials, Special Opportunities purportedly allocated capital to a smaller group of sub-advisers that were selected due to their past success. However, unlike Prophecy, Special Opportunities did not purport to have a first-loss component. Instead, investors stood to receive a higher percentage of any trading profits generated by the sub-advisers.

153. Spotts and Hughes caused PAM to provide a fact sheet to investors stating that Special Opportunities' "assets are allocated primarily across liquid discretionary and systematic equity long/short strategies that have a non-market risk/asymmetrical return profile, liquidity of the underlying instruments, prior history with Prophecy, quality of operational infrastructure and ability to produce consistent returns."

154. Spotts and Hughes knew, or were reckless in not knowing, that the representations regarding Special Opportunities were false. Instead of investing the capital provided by investors in proven investment strategies as it had represented, Special Opportunities allocated millions of dollars to Prophecy in the form of undocumented, unsecured loans, and to Kahn in the form of investments in entities under his control.

155. According to Special Opportunities' March 2020 "investment schedule," of the \$47.5 million of assets held, almost \$18 million had been loaned to Prophecy, and another approximately \$19 million was invested in entities controlled by Kahn.

156. PAM, Spotts, and Hughes caused Special Opportunities to make these loans and investments at a time when they knew Prophecy was imploding due to Kahn's massive trading losses, lack of adequate collateral, and inability to repay his obligations.

157. The capital allocated to Prophecy appears to have been used to purportedly provide first-loss cash deposits for certain sub-advisers whose trading profits would be split with Special Opportunities. But those funds were never segregated in a bank account overseen by the administrator and were largely transferred to prime brokerage accounts held by Prophecy. Moreover, Kahn round-tripped some of the money allocated to him back to Prophecy in order to conceal other investment losses, including losses arising from Prophecy's investment in Broad Reach.

G. The Fraud Unravels

158. In a letter to investors dated March 31, 2020, Spotts disclosed that Prophecy's auditor had resigned and withdrawn its opinion and that PAM had suspended all redemptions for Prophecy and Special Opportunities.

H. Defendants Violated the Federal Securities Laws

159. During the relevant period, PAM, Spotts, Kahn, and Hughes perpetrated a fraudulent scheme.

160. In perpetrating the fraud, Defendants used the means or instruments of interstate commerce or of the mails, or the facility of a national securities exchange, including by communicating false statements and sending fabricated documents through emails.

161. All of the misrepresentations and omissions set forth herein, individually and in the aggregate, are material.

162. Defendants engaged in deceptive conduct, including, but not limited to, lying to and deceiving Prophecy's auditors, creating false documents purporting to show that Kahn had posted adequate collateral to cover his massive trading losses, forging signatures on documents, and, on multiple occasions, entering into sham and round-trip transactions.

163. PAM, Spotts, and Kahn acted knowingly and/or recklessly while engaging in deceptive conduct.

164. PAM and Spotts made material misrepresentations and omitted stating material facts necessary to make other material statements not misleading to investors and prospective investors in connection with the purchase, sale, or offering of securities.

165. PAM and Spotts acted knowingly and/or recklessly in making material misrepresentations and omitting material facts.

166. All of the misrepresentations and omissions set forth herein, individually and in the aggregate, are material.

167. PAM and Spotts had ultimate authority for false and misleading statements and omissions made orally and in writing to investors and prospective investors in Prophecy offering materials and other communications to investors.

168. Through this scheme, Defendants employed a device, scheme or artifice to defraud and engaged in acts, transactions or courses of business that operated as a fraud or deceit upon investors and/or clients.

169. The conduct described herein was in connection with the purchase, sale, or offering of securities.

170. PAM, Spotts, and Kahn acted as investment advisers during the relevant period by providing investment advisory services for a fee.

171. PAM, Spotts, and Kahn provided investment advisory services to pooled investment vehicles, Prophecy and Special Opportunities.

172. In connection with the conduct described herein, PAM, Spotts, and Kahn breached the fiduciary duty they owed to their investment advisory clients.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF Violations of Section 17(a) of the Securities Act (Defendants PAM and Spotts)

173. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 172, inclusive, as if the same were fully set forth herein.

174. By engaging in the conduct alleged herein, PAM and Spotts, in the offer or sale of securities, directly or indirectly, singly or in concert, by the use of the means or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- a. knowingly or recklessly employed devices, schemes or artifices to defraud;
- b. knowingly, recklessly, or negligently obtained money or property by means of, or 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/or
- c. knowingly, recklessly, or negligently engaged in acts, transactions, practices, or courses of business that operated as a fraud or deceit upon offerees, purchasers, and prospective purchasers of securities.

175. By engaging in the foregoing conduct, PAM and Spotts violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF
Violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act
(Defendant Kahn)

176. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 172, inclusive, as if they were fully set forth herein.

177. By engaging in the conduct alleged herein, Kahn directly or indirectly, singly or in concert, by the use of the means or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails, (1) knowingly or recklessly employed devices, schemes or artifices to defraud; and/or (2) knowingly, recklessly, or negligently engaged in acts, transactions, practices, or courses of business that operated as a fraud or deceit upon offerees, purchasers, and prospective purchasers of securities.

178. By reason of the foregoing, Kahn violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and 77q(a)(3)].

THIRD CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
(Defendants PAM and Spotts)

179. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 172, inclusive, as if the same were fully set forth herein.

180. By engaging in the conduct alleged herein, PAM and Spotts directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or the facility of a national securities exchanges, in connection with the purchase and sale of securities described herein, knowingly or recklessly:

- a. employed devices, schemes, or artifices to defraud;

b. made untrue statements of material facts and 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/or

c. engaged in acts, practices, and courses of business which operated or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

181. By reason of the foregoing, PAM and Spotts, directly and indirectly, violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

FOURTH CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and
Rules 10b-5(a) and 10b-5(c) thereunder
(Defendant Kahn)

182. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 172, inclusive, as if the same were fully set forth herein.

183. By engaging in the conduct alleged herein, Kahn directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or the facility of a national securities exchanges, in connection with the purchase and sale of securities described herein, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud; and/or (b) engaged in acts, practices, and courses of business which operated or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

184. By reason of the foregoing, Kahn, directly and indirectly, violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

FIFTH CLAIM FOR RELIEF
Violations of Section 206(1) and (2) of the Advisers Act
(All Defendants)

185. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 172, inclusive, as if the same were fully set forth herein.

186. At all relevant times, PAM, Spotts, and Kahn were investment advisers under Advisers Act Section 202(11) [15 U.S.C. § 80b-2(11)].

187. By engaging in the conduct alleged herein, PAM, Spotts, and Kahn, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

a. knowingly or recklessly employed devices, schemes or artifices to defraud any client or prospective client; and/or

b. knowingly, recklessly, or negligently engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon any client or prospective client.

188. By engaging in the foregoing conduct, PAM, Spotts, and Kahn violated, and unless restrained and enjoined will continue to violate, Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

SIXTH CLAIM FOR RELIEF
Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder
(PAM and Spotts)

189. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 172, inclusive, as if the same were fully set forth herein.

190. At all relevant times, PAM and Spotts were investment advisers under Advisers Act Section 202(11) [15 U.S.C. § 80b-2(11)] to a pooled investment vehicle, as defined in Rule 206(4)-8(b) [17 C.F.R. § 275.206(4)-8(b)].

191. PAM and Spotts, by engaging in the conduct alleged herein, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, knowingly,

recklessly, or negligently: (a) made one or more untrue statements of material fact or omitted to state one or more material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; and/or (b) engaged in one or more acts, practices, or courses of business that were fraudulent, deceptive, or manipulative, with respect to any investor or prospective investor in the pooled investment vehicle..

192. By reason of the foregoing, PAM and Spotts violated and, unless restrained and enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

SEVENTH CLAIM FOR RELIEF
Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(2) thereunder
(Defendant Kahn)

193. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 172, inclusive, as if the same were fully set forth herein.

194. At all relevant times, Kahn was an investment adviser under Advisers Act Section 202(11) [15 U.S.C. § 80b-2(11)] to a pooled investment vehicle, as defined in Rule 206(4)-8(b) [17 C.F.R. § 275.206(4)-8(b)].

195. Kahn, by engaging in the conduct alleged herein, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, knowingly, recklessly, or negligently engaged in one or more acts, practices, or courses of business that were fraudulent, deceptive, or manipulative, with respect to any investor or prospective investor in the pooled investment vehicle.

196. By reason of the foregoing, Kahn violated and, unless restrained and enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8(a)(2) thereunder [17 C.F.R. § 275.206(4)-8(a)(2)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining PAM, Spotts, and Kahn from, directly or indirectly, violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1), (2), and (4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2), and (4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

II.

Ordering PAM and Spotts to disgorge all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

III.

Ordering PAM, Spotts, and Kahn to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]

IV.

Barring Spotts and Kahn from serving as an officer or director of a public company pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)]; and

V.

Granting such other and further relief as this Court may determine to be just and necessary.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands that this case be tried to a jury.

Respectfully submitted,

By: s/John V. Donnelly III
John V. Donnelly III
Gregory Bockin
Julia C. Green
Securities and Exchange Commission
1617 JFK Blvd., Suite 520
Philadelphia, PA 19103
Telephone: (215) 597-3100
Facsimile: (215) 597-2740
Email: DonnellyJ@sec.gov

**ATTORNEYS FOR PLAINTIFF
SECURITIES AND EXCHANGE
COMMISSION**

Dated: September 29, 2025

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PROPHECY ASSET MANAGEMENT LP,
JEFFREY SPOTTS and BRIAN KAHN

Defendant.

Case No.

**DESIGNATION OF AGENT
FOR SERVICE**

Pursuant to Local Rule 101.1(f), because the Securities and Exchange Commission (the “Commission”) does not have an office in this district, the United States Attorney for the District of New Jersey is hereby designated as eligible as an alternative to the Commission to receive service of all notices or papers in the captioned action. Therefore, service upon the United States or its authorized designee, David Dauenheimer, Deputy Chief, Civil Division, United States Attorney’s Office for the District of New Jersey, 970 Broad Street, 7th Floor, Newark, NJ 07102 shall constitute service upon the Commission for purposes of this action.

Respectfully submitted,

s/ John V. Donnelly III

John V. Donnelly III

Attorney for Plaintiff
U.S. Securities and Exchange Commission
Philadelphia Regional Office
1617 JFK Boulevard, Suite 520
Philadelphia, PA 19103
Telephone: (215) 597-3100
Facsimile: (215) 597-2740
DonnellyJ@sec.gov