SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for **November 2011**, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

MARY L. SCHAPIRO, CHAIRMAN

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

(25 Documents)

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3309 / November 1, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14610

In the Matter of **TERRY HARRIS,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Terry Harris ("Harris" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Harris was the founder and president of Wealth Builders International, Inc. ("Wealth Builders"), a corporation he controlled. From at least May 2002 through March 2003, Wealth Builders and Harris engaged in the business of providing options trading advice for compensation. During this period, Harris pooled clients' money in a brokerage account for the purpose of investing in options. Harris recommended options investments to clients and executed the recommended options trades in the pooled brokerage account. Harris received compensation for the options trading advice from deposits that investors made with Wealth Builders or another entity that he controlled. Harris also misappropriated money from clients' accounts. Harris raised at least $4.7 million from approximately 1,767 investors. Harris, 51 years old, currently resides at Holman Correctional Facility in Atmore, Alabama.

B. RESPONDENT'S CRIMINAL CONVICTION

1. On February 4, 2011, the Circuit Court of the Tenth Judicial Circuit, Jefferson County, Alabama entered a judgment of criminal conviction against Harris after a jury found Harris guilty of six counts of fraud and two counts of registration violations, in State of Alabama v. Terry Harris, Case No. CC-2007-001624.00. Harris was sentenced to serve 25 years in prison and ordered to make restitution in the amount of $1,646,944.

2. The counts of the criminal indictment upon which Harris was convicted of securities fraud alleged that Harris: 1) failed to invest investor funds, as represented, in order to utilize said funds to pay returns of previous investors; 2) provided false return statements to investors; and 3) falsely represented himself to potential investors as having a degree in accounting. Harris also was convicted of unlawfully having acted as an unregistered investment adviser and having sold unregistered securities.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

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

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65673 / November 2, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14612

In the Matter of **DANIEL W. NODURFT, ESQ.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Daniel W. Nodurft, Esq. ("Respondent" or "Nodurft") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

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[1] Rule 102(e)(3)(i) provides, in relevant part, that:

> The Commission, with due regard to the public interest and without preliminary hearing, may, by order . . . suspend from appearing or practicing before it any attorney . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

1. Nodurft, age 56, resides in Harahan, Louisiana, and is a licensed attorney with the Louisiana bar. From the incorporation of Aerokinetic Energy Corporation ("Aerokinetic" or the "Company") in December 2005 until May 2007, Nodurft served as Aerokinetic's vice-president, and thereafter became its secretary. Nodurft also served as Aerokinetic's general counsel from its inception until early 2008 when he agreed with the Florida bar not to serve as or hold himself out as a general counsel for a Florida corporation.

2. Aerokinetic was, at all relevant times, a Florida corporation with its principal place of business in Sarasota, Florida. Aerokinetic purported to be in the business of researching, developing, and marketing alternative technologies and products. The Company offered its securities to the general public, primarily through the solicitations of two promoters.

3. On October 14, 2011, a final judgment was entered against Nodurft, permanently enjoining him from violating Section 5 of the Securities Act of 1933 ("Securities Act) and Sections 17(a)(2) and 17(a)(3) of the Securities Act in the action entitled Securities and Exchange Commission v. Nodurft, Civil Action Number 8:08-CV-1409, in the United States District Court for the Middle District of Florida. Nodurft was also ordered to pay a $50,000 civil money penalty.

4. The Commission's complaint alleged, among other things, that Nodurft violated the registration and antifraud provisions of the securities laws in connection with Aerokinetic's fraudulent unregistered offering of securities. The complaint also alleged that Aerokinetic made numerous material misrepresentations and omissions to investors and prospective investors regarding, among other things, its purported "power generation" technology, the capabilities of its two primary products, and its purported success. The complaint further alleged that the Company disseminated baseless financial projections and made material misrepresentations about its operations and its president's personal use of investor funds.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Nodurft's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

Nodurft is suspended from appearing or practicing before the Commission as an attorney.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 65680 / November 3, 2011

ACCOUNTING AND AUDITING ENFORCEMENT
Rel. No. 3334 / November 3, 2011

Admin. Proc. File No. 3-14532

In the Matter of RAN H. FURMAN	ORDER DENYING MOTION TO LIFT TEMPORARY SUSPENSION AND DIRECTING HEARING

On September 6, 2011, we issued an order instituting proceedings ("OIP") against Ran H. Furman, formerly a certified public accountant ("CPA"), pursuant to Commission Rule of Practice 102(e)(3)[1] that temporarily suspended him from appearing or practicing before the

[1] Rule of Practice 102(e)(3)(i), 17 C.F.R. § 201.102(e)(3)(i), provides, in pertinent part, that:

> (i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any . . . accountant . . . who has been by name:
>
> > (A) permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or
> >
> > (B) found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

Commission as an accountant.[2] Furman has filed a petition, pursuant to Rule 102(e)(3)(ii),[3] requesting that his temporary suspension be lifted.

Furman, who was the chief financial officer of Island Pacific, Inc. ("Island Pacific"), oversaw the company's financial operations, participated in the preparation of its financial statements, and certified the accuracy of the company's quarterly and annual reports that were filed with the Commission.[4] On September 4, 2008, the Commission filed a complaint in the United States District Court for the Southern District of California alleging that Furman, among other things, engaged in a fraudulent scheme to overstate Island Pacific's financial results for the quarters ended September 30, 2003 and December 31, 2003, and its fiscal year ended March 31, 2004.[5]

On November 18, 2009, the district court entered an order granting partial summary judgment in the Commission's favor, holding that Furman violated Exchange Act Section 13(b)(5) (internal controls requirements) and Exchange Act Rules 13b2-1 (recordkeeping requirements) and 13b2-2 (misrepresentations to accountants).[6] On February 25, 2011, following a trial on the Commission's remaining claims, a jury found that Furman violated Exchange Act Section 10(b) and Exchange Act Rule 10b-5 and 13a-14 by engaging in fraudulent conduct and falsely certifying certain Forms 10-Q. The jury also found that Furman aided and abetted one or more violations by Island Pacific of Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, and 13a-13 in connection with the company's issuer reporting requirements. On July 8, 2011, the district court entered a final judgment against Furman permanently enjoining him from future violations of Exchange Act Section 10(b) and 13(b)(5) and Exchange Act Rules 10b-5, 13a-14, 13b2-1, and 13b-2-2, and from aiding and abetting violations of Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, and 13a-13.[7] The final judgment further

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[2] *Ran H. Furman, CPA*, Securities Exchange Act Rel. No. 65271 (Sept. 6, 2011), __ SEC Docket __, 2011 WL 3911514, at *3 (Sept. 6, 2011).

[3] 17 C.F.R. § 201.102(e)(3)(ii).

[4] *Furman*, __ SEC Docket at __, 2011 WL 3911514, at *4.

[5] *SEC v. Retail Pro, Inc. (fka Island Pacific, Inc.), et al.*, No. 08-CV-1620 WQH (RBB), *available at* http://www.sec.gov/litigation/complaints/2008/comp20703.pdf.

[6] *Furman*, __ SEC Docket at __, 2011 WL 3911514, at *1.

[7] *Id.*

prohibited Furman from serving as an officer or director of a public company for seven years and ordered him to pay a third-tier civil money penalty of $75,000.[8]

In issuing the OIP, we found it "appropriate and in the public interest" that Furman be temporarily suspended from appearing or practicing before the Commission, based on the district court's final judgment. We stated that the temporary suspension would become permanent unless Furman filed a petition challenging it within thirty days of service of the order, pursuant to Rule of Practice 102(e)(3)(ii). We further advised that, pursuant to Rule of Practice 102(e)(3)(iii), upon receipt of such petition, we would either "lift the temporary suspension, or set the matter down for hearing . . . , or both."

In his petition, Furman states that he challenged the jury verdict and the district court's final judgment, "yet the court denied both motions by an order dated September 28, 2011." Furman also states that he "will appeal the verdict and the court's rulings imposing the injunction and other relief to the Ninth Circuit, and, if necessary, to the United States Supreme Court." Furman argues that the current suspension is not in the public interest because "(1) the restrictions already imposed on him provide substantial assurance that he will not violate the securities laws; (2) he has a strong reputation for honest and diligent performance of his professional duties as an accountant and executive; (3) he would be substantially prejudiced if he were suspended while the judgment could be (and very likely will be) overturned on appeal; and (4) numerous factors mitigate Furman's purported misconduct." The Division of Enforcement and the Office of the Chief Accountant (collectively, the "Division") oppose Furman's petition.

Rule 102(e)(3)(i) permits the Commission to suspend any accountant or other professional or expert who has been "permanently enjoined . . . from violating . . . any provision of the Federal securities laws or of the rules and regulations thereunder; or . . . found by any court of competent jurisdiction in an action brought by the Commission . . . to have violated . . . any provision of the Federal securities laws or rules and regulations thereunder."[9] Although Furman is entitled to appeal the underlying case against him, the possibility of an appeal to the court of appeals "does not alter the effect" of the jury's finding of securities law violations or the court's imposition of an injunction here.[10] Generally, a respondent in a "follow-on" proceeding is

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[8] *Id.* In the district court's June 23, 2011 orders in support of the final judgment and making findings of fact and conclusions of law concerning the relief sought by the Commission, the court found that the evidence presented at trial and on summary judgment demonstrated that "'Furman played an essential and knowing role in the securities law violations at issue.'" *Id.*

[9] 17 C.F.R. § 201.102(e)(3)(i).

[10] *Daniel S. Lezak*, 57 S.E.C. 997, 1000 n.16 (2004); *see also Michael T. Studer*, 57 S.E.C. 890, 896 (2004) (noting that "the fact that Studer is still litigating that action [on appeal]

(continued...)

precluded from challenging the basis for, or findings in, the underlying injunctive action.[11] At this stage, it appears that the findings made in the injunctive proceeding and the injunction issued against Furman justify continuing his suspension "until it can be determined what, if any, action may be appropriate to protect the Commission's processes."[12]

Furman further asserts that he will suffer prejudice if the suspension remains in effect pending his appeal of the underlying action. Furman states that he currently is not employed by a public company or by an accounting firm, that he is not a CPA because he allowed his license to expire several years ago, and that he is not seeking to be an independent accountant. He states that any accounting-related work he might do for a public company as a consultant would be subject to review by the company executive(s) responsible for review and approval of his work, the company's audit committee, and such company's outside auditors. The Division counters that "Furman's ongoing consulting services, including the 'CFO-type' consulting services he provides to small companies that do not need a full time CFO, . . . support the need for a Rule 102(e) suspension to protect the Commission's processes . . . ."

Under the circumstances, we find it appropriate that the suspension remain in effect pending the holding of a public hearing and decision by an administrative law judge. As provided in Rule 102(e)(3)(iii), we will set the matter down for public hearing. We express no opinion as to the merits of Furman's claims.

Accordingly, IT IS ORDERED that this proceeding be set down for public hearing before an administrative law judge in accordance with Rule of Practice 110. As specified in Rule of Practice 102(e)(3)(iii), the hearing in this matter shall be expedited in accordance with Rule of Practice 500; it is further

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[10] (...continued)
does not affect our statutory authority to conduct this proceeding"), *aff'd*, 148 F. App'x 58 (2d Cir. 2005).

[11] *See, e.g., Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598, 2604-05 n.20 (noting the appropriate forum for respondent's challenges to underlying litigation is the appellate court).

[12] *Lezak*, 57 S.E.C. at 1001.

ORDERED that the administrative law judge shall issue an initial decision no later than 210 days from the date of service of this order; and it is further

ORDERED that the temporary suspension of Ran H. Furman, entered on September 6, 2011, remain in effect pending a hearing and decision in this matter.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65693 / November 4, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14614

In the Matter of:

1st GLOBAL STOCK TRANSFER LLC and HELEN BAGLEY,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTIONS 17A(c)(3) AND 17A(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934, AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Sections 17A(c)(3) and 17A(c)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), against, respectively, 1st Global Stock Transfer LLC ("1st Global") and Helen Bagley ("Bagley") (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. 1st Global is a Nevada Corporation registered with the Commission as a transfer agent beginning in October 2001. At all relevant times, 1st Global operated as a transfer agent for transactions in the stock of CMKM Diamonds, Inc., a Nevada corporation which concocted and carried out a complex scheme to illegally issue and sell billions of shares of CMKM stock in several unregistered distributions between December 2002 and September 2004.

2. Bagley is the principal of 1st Global, and owned and operated 1st Global at all relevant times.

B. ENTRY OF THE INJUNCTION

3. On August 1, 2011, after the Commission's motion for summary judgment against Respondents was granted, a final judgment was entered against 1st Global and Bagley, permanently enjoining them from violating Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e, and additionally permanently barring Bagley from participating in an offering of penny stock, in the civil action entitled *SEC v. CMKM Diamonds, Inc. et al.*, Case No. 2:08-cv-00437-LRH-RJJ, in the United States District Court for the District of Nevada.

4. In granting the Commission summary judgment, the Court concluded, among other things, that the following facts were uncontroverted:

(a) Bagley was the individual who removed the restrictive legends from CMKM's stock certificates for at least 270 billion shares of CMKM stock;

(b) 1st Global and Bagley were both necessary participants and substantial factors in the sale of unrestricted CMKM stock in violation of Section 5 of the Securities Act because: (i) but for their participation in removing the restrictive legends, there would not have been a sale of unregistered securities because the CMKM stock would still have had the restrictive legend on each certificate; and (ii) their participation was not *de minimis* as they issued billions of shares of CMKM stock without the restrictive legend and then transferred those unrestricted certificates to broker-dealer NevWest Securities Corporation for the purpose of sale to the general public.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent 1st Global pursuant to Section 17A(c)(3) of the Exchange Act; and

C. What, if any, remedial action is appropriate in the public interest against Respondent Bagley pursuant to Section 17A(c)(4) of the Exchange Act.

IV.

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

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 202, 210, 229, 230, 232, 239, 240, 243, 249, 250, 251, 256, 257, 259, 260, 270, 274 and 275

Release Nos. 33-9273, 34-65686, 39-2480, IA-3310 and IC-29855

Rescission of Outdated Rules and Forms, and Amendments to Correct References

AGENCY: Securities and Exchange Commission

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to Commission rules and forms to correct references and remove certain rules, forms, and interpretive releases, to conform to changes in federal securities laws.

EFFECTIVE DATE: [insert date of publication in Federal Register], 2011.

FOR FURTHER INFORMATION CONTACT: Daniel K. Chang, Senior Counsel, at (202) 551-6792, Office of Regulatory Policy, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: The Commission is rescinding rules and forms adopted under the Public Utility Holding Company Act ("PUHCA"),[1] and revising other rules and forms to correct outdated references to PUHCA, correct outdated references due to enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010[2] ("Dodd-Frank Act"), and make other ministerial corrections.[3] Congress repealed PUHCA

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1 15 U.S.C. 79 (repealed effective 2006).

2 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

3 These ministerial corrections consist of removal of references to rescinded Form ET and correction of an erroneous reference to 15 U.S.C. 77nn that should refer to 15 U.S.C. 77nnn.

effective 2006,[4] and the Dodd-Frank Act amended various provisions of the federal securities laws and removed references to PUHCA from those laws.

The Commission is amending: Organizational Rules 1, 2, 20b, 30-5, 30-6, 30-7, 30-14, 43, 80, 80a, 80c, 80f, 304, 307, 308, 551, and 800; Rules of Practice 190 and 210; Informal and Other Procedures Rules 1, 2, 3, 6, and 9; Regulation S-X, Items 1-01, 3-18, and 3A-05; Regulation S-K, Item 405; Regulation C, Items 400, 404, 412, 414, 421, 423, 427, 430, 431, 436, 460, 470, 471, and 479; and Regulation S-T, Items 11, 101, 102, 104, 201, 202, 306, 311, 402, and 501, and rules 122 and 176 under the Securities Act of 1933 (the "Securities Act"); rules 0-4, 11d1-1, 13f-1, 14d-4, 14d-7, 16a-1, 16a-2, 16a-3, and 16b-1 under the Securities Exchange Act of 1934 (the "Exchange Act"); Regulation FD, Item 100; rules 0-4, 0-6, 7a-29, and 19a-1 under the Trust Indenture Act of 1939; rules 0-4 and 8b-32 under the Investment Company Act of 1940 ("Investment Company Act"); rule 0-4 under the Investment Advisers Act of 1940 ("Investment Advisers Act"); the General Instructions to Forms 3, 4 and 5; and the General Instructions to Form SE. The Commission is removing and reserving 17 CFR 250, 17 CFR 251, 17 CFR 256, 17 CFR 257, and 17 CFR 259 because each solely contains rules, forms, or interpretive releases that applied exclusively under PUHCA.

PROCEDURAL AND OTHER MATTERS

Section 553 of the Administrative Procedure Act ("APA") provides that when an agency for good cause finds that notice and public comment are inapplicable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and opportunity for public comment.[5] The Commission has determined that there is good cause for making today's

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[4] Pub. L. No. 109-58, 119 Stat. 594 (2005).

[5] 5 U.S.C. 553(b)(B).

action final without prior proposal and opportunity for comment.[6] Because Congress repealed PUHCA, the Commission's action to amend rules to correct outdated references and to eliminate rules, forms, and interpretive releases concerning, and authorized by, statutory provisions that are no longer in effect is ministerial in nature. Similarly, other changes to the Commission's rules to correct outdated or inaccurate references are also ministerial in nature. Therefore the Commission is adopting the rule amendments without prior notice and comment. For the same reasons, the Commission finds good cause for making the rule changes effective upon publication in the Federal Register.[7]

The amendments the Commission is adopting do not make substantive or material modifications to any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[8]

The Commission is sensitive to the costs and benefits of its rules. The rule amendments the Commission is adopting today are ministerial actions that correct or eliminate outdated references and therefore will have no separate economic effect, including no effect on competition.

STATUTORY AUTHORITY

We are adopting these amendments consistent with the repeal of PUHCA in section 1263 of the Energy Policy Act of 2005 and pursuant to the Securities Act, 15 U.S.C. 77a et seq.; the

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6 Because the Commission is not publishing the rule and form amendments in a notice of proposed rulemaking, no analysis is required under the Regulatory Flexibility Act. *See* 5 U.S.C. 601(2) (for purposes of the Regulatory Flexibility Act, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking).

7 *See* 5 U.S.C. 553(d) (permitting the publication of a rule to be less than 30 days before its effective date, if good cause is found).

8 44 U.S.C. 3501, 3507. Following the repeal of PUHCA, the Commission discontinued the Paperwork Reduction Act information collections relating exclusively to PUHCA and rules and forms issued thereunder.

Exchange Act, 15 U.S.C. 78a et seq.; the Trust Indenture Act, 15 U.S.C. 77aaa et seq.; the Investment Company Act, 15 U.S.C. 80a; and the Investment Advisers Act, 15 U.S.C. 80b.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Classified information, Conflicts of interest, Government employees, Organization and functions (Government agencies).

17 CFR Part 201

Administrative practice and procedure.

17 CFR Part 202

Administrative practice and procedure, Securities.

17 CFR Part 210

Accountants, Accounting, Securities.

17 CFR Part 229, 230, 232, 239, 240, 243, and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 250

Confidential business information, Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

17 CFR Part 251

Electric utilities, Holding companies, Natural gas, Securities.

17 CFR Part 256

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities, Uniform System of Accounts.

17 CFR Part 257

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities, Uniform System of Accounts.

17 CFR Part 259

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Trusts and trustees

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

TEXT OF THE AMENDMENTS

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200 – ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

SUBPART A – ORGANIZATION AND PROGRAM MANAGEMENT

1. The authority citation for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78*ll*(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

* * * * *

2. Section 200.1 is amended by:

a. Removing the phrase "Public Utility Holding Company Act of 1935," from the third sentence of the introductory text;

b. Removing the phrase "public utility holding companies," from paragraph (b);

c. Removing paragraph (h);

d. Redesignating paragraphs (i) and (j) as paragraphs (h) and (i); and

e. Removing the authority citation following the section.

3. Section 200.2 is amended by removing paragraph (c) and redesignating paragraphs (d) through (g) as paragraphs (c) through (f).

4. Section 200.20b is amended by removing the phrase "the administration and execution of the Public Utility Holding Company Act of 1935," from the first sentence of the introductory text and removing paragraph (f).

5. Section 200.30-5 is amended by:

a. Removing paragraph (f);

b. Redesignating paragraphs (g) through (m) as paragraphs (f) through (l); and

c. Removing the phrase "the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) and" from newly redesignated paragraphs (k) and (l).

6. Section 200.30-6 is amended by removing the authority citation following the section.

7. Section 200.30-7 is amended by removing the phrase "the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.*," from the introductory text of paragraph (a) and removing the phrase "section 24 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79x," from paragraph (a)(6).

8. Section 200.30-14 is amended by removing the phrase, "the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.*," from the introductory text of paragraph (g)(1).

SUBPART B – DISPOSITION OF COMMISSION BUSINESS

9. The authority citation for Part 200, subpart B, continues to read as follows:

Authority: 5 U.S.C. 552b; 15 U.S.C. 78d-1 and 78w.

10. Section 200.43 is amended by removing the phrase "section 18(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r(c))," from the first sentence of paragraph (b)(2).

SUBPART C – CANONS OF ETHICS

11. The authority citation for Part 200, subpart C, is revised to read as follows:

Authority: Secs. 19, 28, 48 Stat. 85, 901, as amended, sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 77sss, 78w, 80a-37, and 80b-11.

SUBPART D – INFORMATION AND REQUESTS

12. The general authority citation for Part 200, subpart D, continues to read, in part, as follows:

Authority: 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 77sss, 78m(F)(3), 78w, 80a-37, 80a-44(a), 80a-44(b), 80b-10(a), and 80b-11.

* * * * *

13. Section 200.80 is amended by removing the phrase "78m(f)(3), the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(a)" from the third sentence of paragraph (a)(4) and adding in its place the phrase "78m(f)(4)".

14. Section 200.80a is amended by removing the table labeled "Public Utility Holding Company Act of 1935".

15. Section 200.80c is amended by removing the phrase "the Public Utility Holding Company Act of 1935," from paragraph (b)2, Official Summary.

16. Section 200.80f is amended by removing the table labeled "Public Utility Holding Company Act of 1935".

SUBPART F – CODE OF BEHAVIOR GOVERNING EX PARTE COMMUNICATIONS BETWEEN PERSONS OUTSIDE THE COMMISSION AND DECISIONAL EMPLOYEES

17. The authority citation for Part 200, subpart F, is revised to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 80a-37, 80b-11, and 7202; and 5 U.S.C. 557.

SUBPART H – REGULATIONS PERTAINING TO THE PRIVACY OF INDIVIDUALS AND SYSTEMS OF RECORDS MAINTAINED BY THE COMMISSION

18. The authority citation for Part 200, subpart H, continues to read, in part, as follows:

Authority: 5 U.S.C. 552a(f), unless otherwise noted.

19. Sections 200.304, 200.307 and 200.308 are amended by removing the authority citations following the sections.

* * * * *

SUBPART K – REGULATIONS PERTAINING TO THE PROTECTION OF THE ENVIRONMENT

20. The authority citation for Part 200, subpart K, continues to read as follows:

Authority: 15 U.S.C. 78w(a)(2).

21. Section 200.551 is revised to read as follows:

§ 200.551 Applicability.

In the event of extraordinary circumstances in which a Commission action may involve major Federal action significantly affecting the quality of the human environment, the Commission shall follow the procedures set forth in §§ 200.552 through 200.554 of this part, unless doing so would be inconsistent with its statutory authority under the Federal securities laws.

SUBPART M – REGULATION CONCERNING CONDUCT OF MEMBERS AND EMPLOYEES AND FORMER MEMBERS AND EMPLOYEES OF THE COMMISSION

22. The authority citation for Part 200, subpart M, continues to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 80a-37, 80b-11; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 36; 5 CFR 735.104; 5 CFR 2634; and 5 CFR 2635, unless otherwise noted.

23. Section 200.800 is amended by removing from the table contained in paragraph (b) all three column entries for the information collection requirements identified and described in 17 CFR §§ 250.1(a) through 259.603 (Rule 1(a) through Form SE) as well as all three column entries for the information collection requirement contained in "Form ET" (§§ 239.62, 249.445, 259.601, 269.6, and 274.401).

PART 201 – RULES OF PRACTICE

SUBPART D – RULES OF PRACTICE

24. The authority citation for part 201, subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h-1, 77j, 77s, 77u, 77sss, 77ttt, 78c(b), 78d-1, 78d-2, 78*l*, 78m, 78n, 78o(d), 78o-3, 78s, 78u-2, 78u-3, 78v, 78w, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, 80b-12, 7202, 7215, and 7217.

25. Section 201.190 is amended by removing the phrase "Section 22(b) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(b), and Rule 104 thereunder, 17 CFR 250.104;" from the first sentence of paragraph (a).

26. Section 201.210 is amended by revising paragraph (b) to read as follows:

§ 201.210 Parties, limited participants and amici curiae.

(a) * * *

(b) *Intervention as a party* – (1) *Generally.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, or a proceeding to review a Board determination, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding. No person, however, shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) of this section would be inadequate for the protection of the person's interests. In a proceeding under the Investment Company Act of 1940, any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(2) *Intervention as of right.* In proceedings under the Investment Company Act of 1940, any interested State or State agency shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

* * * * *

PART 202 – INFORMAL AND OTHER PROCEDURES

27. The authority citation for Part 202 is revised and the specific authority for § 202.5 is removed to read, in part, as follows:

Authority: 15 U.S.C. 77s, 77t, 77sss, 77uuu, 78d-1, 78u, 78w, 78*ll*(d), 80a-37, 80a-41, 80b-9, 80b-11, 7201 *et seq.*, unless otherwise noted.

* * * * *

28. Section 202.1 is amended by removing the phrase "250," from paragraph (b).

29. Section 202.2 is amended by removing the phrase "matters under the Public Utility Holding Company Act of 1935 and" in the last sentence.

30. Section 202.3 is amended by:

a. Removing the phrase "and the Public Utility Holding Company Act of 1935" from the first sentence of paragraph (a);

b. Removing the phrase ", and filings under the Public Utility Holding Company Act of 1935 which are also routed to the Division of Investment Management." from the seventh sentence of paragraph (a); and

c. Removing the phrase "the Public Utility Holding Company Act of 1935," from the last sentence of paragraph (b)(1).

31. Section 202.6 is amended by removing the authority citation following the section.

32. Section 202.9 is amended by removing the phrase "250.110," from the first sentence of footnote 1.

PART 210 – FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

33. The authority citation for Part 210 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j-1, 78*l*, 78m, 78n, 78o(d), 78q, 78u-5, 78w, 78*ll,* 78mm, 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

34. Section 210.1-01 is amended by adding the word "and" at the end of paragraph (a)(2), removing paragraph (a)(3), and redesignating paragraph (a)(4) as paragraph (a)(3).

35. Section 210.3-18 is amended by removing the authority citation following the section.

36. Section 210.3A-05 is removed in its entirety.

PART 229 – STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 – REGULATION S-K

37. The authority citation for Part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78*ll*, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

38. Section 229.405 is amended by revising the introductory text and removing the phrase "or section 17 of the Public Utility Holding Company Act" from paragraph (a)(1).

The revision reads as follows:

§ 229.405 (Item 405) Compliance with section 16(a) of the Exchange Act.

Every registrant having a class of equity securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) and every closed-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) shall:

* * * * *

PART 230 – GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

39. The authority citation for Part 230 is revised by removing the specific authority for § 230.473 to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

40. Sections 230.122 and 230.176 are amended by removing the authority citations following the sections.

PART 230 – REGULATION C – REGISTRATION

41. The authority citation for Part 230, Regulation C, Registration, is revised by removing the specific authority for § 230.499 to read, in part, as follows:

Authority: Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s)

* * * * *

42. Sections 230.400, 230.404, 230.414, 230.421, 230.423, 230.427, 230.430, 230.431, 230.436, 230.460, 230.470, 230.471, and 230.479 are amended by removing the authority citations following the sections.

43. Section 230.412 is amended by removing the phrase "the Public Utility Holding Company Act of 1935," from the second sentence in paragraph (b).

PART 230 – INVESTMENT COMPANIES; BUSINESS DEVELOPMENT COMPANIES

44. The authority citation for Part 230, Investment Companies; Business Development Companies, §§ 230.480 through 230.485 is removed. The source and note remain unchanged.

PART 232 – REGULATION S-T – GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

45. The authority citation for Part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

46. Section 232.11 is amended by removing the definition of the term "Public Utility Act."

47. Section 232.101 is amended by removing and reserving paragraphs (c)(12), (c)(13), and (c)(14).

48. Section 232.102 is amended by removing the phrase "Rule 22 under the Public Utility Holding Company Act (§ 250.22 of this chapter)," from the second sentence of paragraph (a) and removing paragraph (f).

49. Section 232.104 is amended by removing the phrase "section 16 of the Public Utility Act (15 U.S.C. 79p)," from the first sentence of paragraph (d).

50. Section 232.201 is amended by removing the phrases "259.604," and "259.601," from note 1 to paragraph (a).

51. Section 232.202 is amended by removing the phrase "259.603," from note 1 to § 232.202.

52. Section 232.306 is amended by removing the phrase "259.603," from paragraphs (b) and (c).

53. Section 232.311 is amended by:

a. Removing paragraphs (c), (d), and (e); and redesignating paragraphs (f) through (i) as paragraphs (c) through (f);

b. In newly redesignated paragraph (e)(1), removing the phrases "259.604," and "259.601,"; and

c. In newly redesignated paragraph (e)(2), removing the phrase "(a) through (g)" and adding in its place the phrase "(a) through (d)".

54. Section 232.501 is amended by removing the phrase "Public Utility Act section 16 (15 U.S.C. 79p)," from paragraph (c)(2); and removing the phrase "the Public Utility Act" from the second sentence of paragraph (c)(3).

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

55. The authority for Part 239 is amended by revising the specific authority for §§ 239.63 and 239.64 to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u-5, 78w(a), 78*ll*, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80-37, unless otherwise noted.

* * * * *

Sections 239.63 and 239.64 are also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 80a-8, 80a-24, 80a-29, and 80a-37.

* * * * *

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

56. The authority for Part 240 is amended by revising the specific authorities for § 240.14d-1 and § 240.14e-2 to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l*, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78*ll,* 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11,

and 7201 *et seq.*; 18 U.S.C. 1350; 12 U.S.C. 5221(e)(3); and Pub. L. 111-203, § 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Section 240.14d-1 is also issued under 15 U.S.C. 77g, 77j, 77s(a), 77ttt(a), 80a-37.

Section 240.14e-2 is also issued under 15 U.S.C. 77g, 77h, 77s(a), 77sss, 80a-37(a).

* * * * *

57. Section 240.0-4 is amended by removing the authority citation following the section.

58. Section 240.11d1-1 is amended by removing the phrase ", or as a stockholder of a company distributing such security in order to effectuate the provisions of section 11 of the Public Utility Holding Company Act of 1935" from the first sentence of paragraph (d) and by removing the authority citation following the section.

59. Section 240.13f-1 is amended by removing the phrase "13(f)(3) of the Act (15 U.S.C. 78m(f)(3))" from the second sentence of paragraph (c) and adding in its place the phrase "13(f)(4) of the Act (15 U.S.C. 78m(f)(4))".

60. Sections 240.14d-4 and 240.14d-7 are amended by removing the authority citations following the sections.

61. Section 240.16a-1 is amended by removing paragraph (a)(5)(i) and redesignating paragraphs (a)(5)(ii) and (a)(5)(iii) as paragraphs (a)(5)(i) and (a)(5)(ii).

62. Section 240.16a-2 is amended by removing the phrase "section 17(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q(a)) or" from the first sentence of the introductory text; and removing the phrase "Public Utility Holding Company Act of 1935 and the" from the third sentence of the introductory text.

63. Section 240.16a-3 is amended by removing the phrase "either section 17(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q(a)) or" from paragraph (d).

64. Section 240.16b-1 is revised by removing the designation "(a)" from paragraph (a) and removing paragraph (b).

PART 243 – REGULATION FD

65. The authority for Part 243 continues to read as follows:

Authority: 15 U.S.C. 78c, 78i, 78j, 78o, 78w, 78mm, and 80a-29, unless otherwise noted.

66. Section 243.100 is amended by removing the phrase "13(f)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(5))" from paragraph (b)(1)(ii) and adding in its place the phrase "13(f)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(6))".

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

67. The authority for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

68. Amend Form 5 (referenced in § 249.105) by:

a. Removing ", except that a single statement shall be filed with respect to the securities of a registered public utility holding company and all of its subsidiary companies" from General Instruction 1(c).

b. Removing and reserving General Instruction 3(a)(ii).

Note – The text of Form 5 does not and this amendment will not appear in the Code of Federal Regulations.

PART 250 – GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

69. Part 250 is removed and reserved.

PART 251 – INTERPRETATIVE RELEASES RELATING TO THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 AND GENERAL RULES AND REGULATIONS THEREUNDER

70. Part 251 is removed and reserved.

PART 256 – UNIFORM SYSTEM OF ACCOUNTS FOR MUTUAL SERVICE COMPANIES AND SUBSIDIARY SERVICE COMPANIES, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

71. Part 256 is removed and reserved.

PART 257 – PRESERVATION AND DESTRUCTION OF RECORDS OF REGISTERED PUBLIC UTILITY HOLDING COMPANIES AND OF MUTUAL AND SUBSIDIARY SERVICE COMPANIES

72. Part 257 is removed and reserved.

PART 259 – FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

73. Part 259 is removed and reserved.

PART 260 – GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

74. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 77*ll*(d), 80b-3, 80b-4, and 80b-11.

75. Sections 260.0-4, 260.0-6 and 260.7a-29 are amended by removing the authority citations following the sections.

76. Section 260.19a-1 is amended by:

a. Removing the quotation marks before and after the phrase "file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934."

b. Removing the phrase "77nn(a)(1)" and adding in its place the phrase "77nnn(a)(1)".

PART 270 – RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

77. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

* * * * *

78. Sections 270.0-4 and 270.8b-32 are amended by removing the authority citations following the sections.

PART 274 – FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

79. The general authority for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

* * * * *

80. Amend Form 3 (referenced in §§ 249.103 and 274.202) by:

Note – The text of Form 3 does not and this amendment will not appear in the Code of Federal Regulations.

a. Removing and reserving General Instructions 1(a)(iii) and 4(a)(ii).

b. Removing the phrase ", except that a single statement shall be filed with respect to the securities of a registered public utility holding company and all of its subsidiary companies" from General Instruction 2(c).

81. Amend Form 4 (referenced in §§ 249.104 and 274.203) by:

Note – The text of Form 4 does not and this amendment will not appear in the Code of Federal Regulations.

a. Removing the phrase ", except that a single statement shall be filed with respect to the securities of a registered public utility holding company and all of its subsidiary companies" from General Instruction 1(c).

b. Removing and reserving General Instruction 3(a)(ii).

82. Amend the Form SE (referenced in §§ 239.64, 249.444, 269.8 and 274.403) by removing the phrase "the Public Utility Holding Company Act of 1935," from Form SE General Instruction 1.A. and from the second sentence of Form SE General Instruction 1.B.

Note – The text of Form SE does not and this amendment will not appear in the Code of Federal Regulations.

PART 275 – RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

83. The authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(11)(H), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, and 80b-11, unless otherwise noted.

* * * * *

84. Section 275.0-4 is amended by removing the authority citation following the section.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

November 4, 2011

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9274 / November 7, 2011

SECURITIES EXCHANGE ACT OF 1934
Release No. 65698 / November 7, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29856 / November 7, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14615

In the Matter of

Ronald St. Clair, CPA and Lawrence Swan, CA,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACTOF 1934, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Ronald St. Clair, CPA and Lawrence Swan, CA (the "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the

purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, the Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and the Respondents' Offers, the Commission finds[1] that:

Summary

This proceeding involves the conduct of Ronald St. Clair and Lawrence Swan, who offered and sold interests in the unregistered Boston Trading and Research LLC ("BTR") investment program to 269 investors who invested approximately $19.7 million. BTR was a purported foreign currency ("FOREX") trading program that obtained approximately $40 million from approximately 1000 investors from at least July 2007 through September 2008. Neither BTR nor the interests in its investment program was registered with the Commission. Likewise, neither St. Clair nor Swan was registered with the Commission as a broker-dealer nor were they associated persons of any registered broker-dealer.

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondents

St. Clair, a resident of Fort Myers, Florida, is a 64 year old co-owner of a Florida-based tax planning and preparation firm named Caloosehatche Tax & Financial Services, Inc. St. Clair is a Certified Public Accountant licensed in Florida.

Swan, age 54, is also a resident of Fort Myers, Florida, and co-owner of Caloosehatche Tax & Financial Services, Inc. Swan purports to be a Chartered Accountant in England.

Background

1. BTR was a Massachusetts-based limited liability company that had a principal place of business in Boston, Massachusetts. BTR operated from approximately July 2007 through September 2008. BTR was not registered with the Commission in any capacity.

2. BTR purportedly offered investors individually managed accounts for purposes of trading in FOREX. For a minimum investment of $10,000, individuals could invest with BTR by signing a limited power of attorney that granted BTR principals the right to direct the trading of their funds in the FOREX market. Approximately 1,000 investors invested approximately $40 million with BTR. BTR's investors ranged from domestic to foreign, with many residing in Florida. Investors were solicited through marketing materials, presentations, and through promoters or feeders. These promoters or feeders referred investors to BTR and received compensation, including a percentage of profits and a per trade commission, for referring investors to BTR.

3. BTR represented to investors and Respondents that it was opening individually managed accounts. However, BTR traded investors' funds in established sub-groups, which were comprised of pooled funds invested by individuals, usually according to characteristics such as their particular promoter. When BTR placed trades on behalf of investors, the trade and any profits or losses associated with the trade were reflected (to the extent disclosed) as pro rata positions on investors' account statements. The BTR trading program was not registered with the Commission.

4. BTR collapsed over the 2008 Labor Day weekend due to, among other things, the significant losses accrued as a result of apparent unauthorized trading and misappropriation of investor funds by BTR's principals and/or managers. Ultimately, BTR distributed the remaining funds, which amounted to approximately 10% of investments, to its investors.

Conduct of St. Clair and Swan

5. St. Clair and Swan founded Basis Financial of SW FL, Inc., a now defunct Florida-based corporation, to serve as a promoter for BTR from BTR's inception. St. Clair and Swan introduced investors to BTR through Basis Financial. Basis Financial received commissions and profit sharing from BTR for referring investors, which were shared by St. Clair and Swan.

6. St. Clair and Swan referred approximately 269 investors, who invested approximately $19.7 million, to BTR. Most of the investors were tax clients of either St. Clair or Swan.

7. St. Clair and Swan hosted at least one marketing event and provided prospective investors with copies of St. Clair's and Swan's personal BTR account statements in an effort to promote BTR.

8. St. Clair, Swan, and Basis Financial never registered with the Commission as broker-dealers, and neither St. Clair nor Swan was ever an associated person of a registered broker-dealer.

9. St. Clair and Swan used the telephone, internet and in-person meetings to offer and sell the BTR program.

10. St. Clair and Swan were compensated approximately $256,000 each from BTR for their efforts in offering and selling the BTR investment program.

Violations

As a result of the conduct described above:

11. St. Clair and Swan each willfully violated Sections 5(a) and 5(c) of the Securities Act by offering and selling the BTR investment program, which was not registered with the Commission, nor was it exempt from registration.[2]

12. St. Clair and Swan also each willfully violated Section 15(a) of the Exchange Act by offering and selling securities in interstate commerce, without being registered with the Commission as a broker or dealer or being associated persons of a registered broker-dealer.

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[2] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents St. Clair and Swan's Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents St. Clair and Swan shall cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act, and Section 15(a) of the Exchange Act.

B. Respondents St. Clair and Swan are hereby barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock with the right to apply for reentry after one year to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondents will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent St. Clair shall, within 30 days of the entry of this Order, pay disgorgement of $256,495.00 and prejudgment interest of $52,307.17 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Ronald St. Clair as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and wire transfer, money order or check shall be sent to John Dugan, Associate Regional Director,

Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, Massachusetts 02110.

E. Respondent Swan shall, within 30 days of the entry of this Order, pay disgorgement of $256,495.00 and prejudgment interest of $52,307.17 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Lawrence Swan as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and wire transfer, money order or check shall be sent to John Dugan, Associate Regional Director, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, Massachusetts 02110.

F. Respondent St. Clair shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $50,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Ronald St. Clair as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and wire transfer, money order or check shall be sent to John Dugan, Associate Regional Director, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, Massachusetts 02110.

G. Respondent Swan shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $50,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Lawrence Swan as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and wire transfer, money order or check shall be sent to John Dugan, Associate Regional Director, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, Massachusetts 02110.

H. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any

Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against either Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

November 9, 2011

In the Matter of **RMD Technologies, Inc.,** **Rockwall Holdings, Inc.,** **Southmark Corp.,** **Stargold Mines, Inc.,** **Stelax Industries, Ltd.,** **Stem Cell Innovations, Inc., and** **Surfect Holdings, Inc.,** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RMD Technologies, Inc. because it has not filed any periodic reports since the period ended February 29, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rockwall Holdings, Inc. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Southmark Corp. because it has not filed any periodic reports since the period ended June 30, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Stargold Mines, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Stelax Industries, Ltd. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Stem Cell Innovations, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Surfect Holdings, Inc. because it has not filed any periodic reports since the period ended December 31, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on November 9, 2011, through 11:59 p.m. EST on November 22, 2011.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65714 / November 9, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14616

In the Matter of **RMD Technologies, Inc.,** **Rockwall Holdings, Inc.,** **Royston Mannor Estates, Inc.,** **Southmark Corp.,** **Stargold Mines, Inc.,** **Stelax Industries, Ltd.,** **Stem Cell Innovations, Inc., and** **Surfect Holdings, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents RMD Technologies, Inc., Rockwall Holdings, Inc., Royston Mannor Estates, Inc., Southmark Corp., Stargold Mines, Inc., Stelax Industries, Ltd., Stem Cell Innovations, Inc., and Surfect Holdings, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. RMD Technologies, Inc. (CIK No. 1312112) is a suspended California corporation located in San Marcos, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). RMD is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended February 29, 2008, which reported a net loss of

$257,188 for the prior nine months. As of November 1, 2011, the company's stock (symbol "RMDT") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link"), had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Rockwall Holdings, Inc. (CIK No. 1135263) is a Nevada corporation located in Cerritos, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Rockwall is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2008, which reported a net loss of over $3.1 million for the prior twelve months. As of November 1, 2011, the company's stock (symbol "RKWL") was quoted on OTC Link, had three market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Royston Mannor Estates, Inc. (CIK No. 1105513) is a permanently revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Royston is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB/A registration statement on July 27, 2000, which reported a net loss of $36,142 from the company's December 31, 1998 inception to June 30, 2000.

4. Southmark Corp. (CIK No. 701996) is a Georgia corporation located in Plano, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Southmark is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended June 30, 1996. As of November 1, 2011, the company's stock (symbol "SMRK") was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Stargold Mines, Inc. (CIK No. 1301557) is a revoked Nevada corporation located in San Mateo, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Stargold is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2008, which reported a net loss of $113,123 for the prior three months. As of November 1, 2011, the company's stock (symbol "SGDM") was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Stelax Industries, Ltd. (CIK No. 847541) is a British Columbia corporation located in Dallas, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Stelax is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2007, which reported a net loss of $182,747 for the prior months. As of November 1, 2011, the company's stock (symbol "STAX") was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. Stem Cell Innovations, Inc. (CIK No. 351532) is a Delaware corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Stem Cell is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2007, which reported a net loss of over $6.4 million for the prior three months. As of November 1, 2011, the company's stock (symbol "SCLL") was quoted on OTC Link, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

8. Surfect Holdings, Inc. (CIK No. 1356505) is a forfeited Delaware corporation located in Tempe, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Surfect is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2008, which reported a net loss of over $3.86 million for the prior twelve months. On August 17, 2009, the company filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Arizona, and the case was still pending as of July 15, 2011. As of November 1, 2011, the company's stock (symbol "SUFH") was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

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

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

November 9, 2011

In the Matter of **Rovac Corp.,** **RS Group of Companies, Inc.,** **Rymer Foods, Inc.** **Stratus Services Group, Inc.,** **Sun Cal Energy, Inc.,** **Sun Motor International, Inc.,** **Surebet Casinos, Inc., and** **Swiss Medica, Inc.,** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rovac Corp. because it has not filed any periodic reports since the period ended July 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RS Group of Companies, Inc. because it has not filed any periodic reports since the period ended March 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rymer Foods, Inc. because it has not filed any periodic reports since July 28, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Stratus Services Group, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sun Cal Energy, Inc. because it has not filed any periodic reports since the period ended March 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sun Motor International, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Surebet Casinos, Inc. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Swiss Medica, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on November 9, 2011, through 11:59 p.m. EST on November 22, 2011.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65715 / November 9, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14617

In the Matter of **Rovac Corp.,** **RS Group of Companies, Inc.,** **Rymer Foods, Inc.,** **Stratus Services Group, Inc.,** **Sun Cal Energy, Inc.,** **Sun Motor International, Inc.,** **Surebet Casinos, Inc., and** **Swiss Medica, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Rovac Corp., RS Group of Companies, Inc., Rymer Foods, Inc., Stratus Services Group, Inc., Sun Cal Energy, Inc., Sun Motor International, Inc., Surebet Casinos, Inc., and Swiss Medica, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Rovac Corp. (CIK No. 85399) is a void Delaware corporation located in Rochdale, Massachusetts with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Rovac is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended July 31, 2001, which reported a net loss of $78,310 for the prior twelve

months. As of November 3, 2011, the company's stock (symbol "ROVC") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link"), had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. RS Group of Companies, Inc. (CIK No. 1200202) is a dissolved Florida corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). RS Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2006, which reported a net loss of over $1.11 million for the prior twelve months. As of November 3, 2011, the company's stock (symbol "RSGC") was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Rymer Foods, Inc. (CIK No. 56871) is a void Delaware corporation located in Chicago, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Rymer Foods is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 28, 2001, which reported a net loss of $6,000 for the prior thirty-nine weeks. As of November 3, 2011, the company's stock (symbol "RFDS") was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Stratus Services Group, Inc. (CIK No. 1044391) is a void Delaware corporation located in Shrewsbury, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Stratus Services is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2008, which reported a net loss of $684,058 for the prior nine months. As of November 3, 2011, the company's stock (symbol "SSVG") was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Sun Cal Energy, Inc. (CIK No. 1315373) is a dissolved Nevada corporation located in Calgary, Alberta, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Sun Cal is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2009, which reported a net loss of $194,892 for the prior nine months. As of November 3, 2011, the company's stock (symbol "SCEY") was quoted on OTC Link, had ten market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Sun Motor International, Inc. (CIK No. 108729) is a delinquent Wyoming corporation located in Kowloon, Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Sun Motor is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2007. As of November 3, 2011, the company's stock (symbol "SNMO") was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. Surebet Casinos, Inc. (CIK No. 1110654) is an expired Utah corporation located in Pensacola, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Surebet Casinos is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended March 31, 2003, which reported a net loss of $51,405 for the prior twelve months. As of November 3, 2011, the company's stock (symbol "SBET") was quoted on OTC Link, had three market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

8. Swiss Medica, Inc. (CIK No. 318245) is a void Delaware corporation located in Mississauga, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Swiss Medica is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2007, which reported a net loss of over $2.96 million for the prior six months. As of November 3, 2011, the company's stock (symbol "SWME") was quoted on OTC Link, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

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

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9275 / November 10, 2011

SECURITIES EXCHANGE ACT OF 1934
Release No. 65726 / November 10, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3313 / November 10, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29859 / November 10, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14619

In the Matter of **WESTERN PACIFIC CAPITAL MANAGEMENT, LLC AND KEVIN JAMES O'ROURKE,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Western Pacific Capital Management, LLC ("Western Pacific"), and pursuant to Section

8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act against Kevin James O'Rourke ("O'Rourke", and together with Western Pacific, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. This matter involves misconduct by Western Pacific, a registered investment adviser, and its sole owner and principal, O'Rourke, for failing to disclose a conflict of interest, misusing client assets to benefit the adviser, and repeatedly making material misrepresentations to clients.

2. In 2005 and 2006, Western Pacific served as a placement agent for Ameranth, Inc. ("Ameranth") for an unregistered offering of Ameranth stock. In exchange, Western Pacific received a success fee of 10% of the capital it raised. At the time, neither Western Pacific nor O'Rourke were registered brokers or affiliated with a registered broker. O'Rourke urged many Western Pacific clients to invest in Ameranth without disclosing that Western Pacific would financially benefit from their investments. O'Rourke also advised clients to invest in a hedge fund, the Lighthouse Fund, LP ("Lighthouse" or the "Fund"), without disclosing that the Fund would initially invest primarily in Ameranth, for which Western Pacific would receive a 10% success fee. In all, Western Pacific earned $482,745 in success fees as a placement agent for Ameranth.

3. Between 2006 and 2008, O'Rourke misused Fund assets and lied to his clients who invested in the Fund. To resolve a dispute with a client who no longer wanted his $800,000 of Ameranth stock, O'Rourke caused the Fund to buy some of the stock and permitted the client to use the remainder of the stock to fund the client's investment in the Fund. O'Rourke ultimately redeemed the client's interest in the Fund for cash. In addition, in response to client inquiries regarding the Fund's liquidity, O'Rourke repeatedly misstated that the Fund was liquid or had less than 25% of its holdings in illiquid securities, when in fact approximately 90% of the Fund's assets were illiquid.

B. RESPONDENTS

4. **Western Pacific** is a California limited liability corporation with its principal place of business in Del Mar, California. Western Pacific registered with the Commission as an investment adviser effective May 13, 2009 and has approximately $75 million in assets under management in 250 accounts. From June 2004 until it registered with the Commission, Western Pacific was an investment adviser registered with the State of California.

5. **O'Rourke** is Western Pacific's founder, president, and sole control person. At all relevant times, O'Rourke was responsible for the management of Western Pacific's business. O'Rourke was a registered representative with various registered brokers from 1987 through 2001. In 1993, the NASD censured O'Rourke and ordered him

to pay a $5,000 fine for forging a client's signature based on her oral authorization to liquidate a security.

C. OTHER REVELVANT ENTITIES

6. **Lighthouse** is a California limited partnership formed in 2005, with its principal place of business in Del Mar, California. Lighthouse is an unregistered pooled investment vehicle.

7. **Ameranth** is a Delaware corporation formed in 1996, with its principal place of business in San Diego, California. Ameranth is not a public company. Ameranth developed and licensed software for the hospitality, financial services, and healthcare industries.

D. BACKGROUND

8. In 2005 and 2006, Ameranth conducted an unregistered offering of securities (the "Offering"). Pursuant to the Offering, Ameranth offered three million shares of Series D Preferred Stock, with a purchase price of two dollars per share. For each two dollars invested, the investor received one Series D Preferred Share ("Ameranth Stock") and a warrant to purchase a single share of Ameranth common stock. The offering memorandum states that the investment is speculative and high-risk, and that in the company's ten-year history it had experienced only cumulative net losses. The offering memorandum also disclosed that two placement agents, which were not identified, would receive a 10% success fee on the gross proceeds they raised.

9. Western Pacific was one of the two placement agents Ameranth retained for the Offering. As such, it received a success fee of 10% of the capital it raised. As a placement agent, Western Pacific collected investor questionnaires, responded to investor questions, and confirmed that investor subscriptions had been accepted so that the investor could wire money to the company. Western Pacific was also involved with developing the terms of the Offering. Western Pacific has never been registered as a broker. O'Rourke, who offered and sold the Ameranth Stock on Western Pacific's behalf, has not been affiliated with a registered broker since 2001.

10. From June 2005 through November 2006, Western Pacific raised $4,827,445 for the Offering, and Ameranth paid Western Pacific $482,745 in success fees. O'Rourke, through meetings, telephone conversations, and emails, advised individual Western Pacific clients to invest in Ameranth. Of the $482,745 in success fees Western Pacific received, $250,495 was attributable to individual clients purchasing Ameranth Stock and $200,000 was attributable to O'Rourke investing $2 million of Lighthouse assets in Ameranth. The $482,745 in success fees Western Pacific received were substantial when compared to its management fees. In 2005 and 2006, Western Pacific earned management fees totaling $557,865.

11. In early 2005, O'Rourke formed Lighthouse. From mid-2005 through mid-2008, the Fund's general partner paid Western Pacific for management services provided to the Fund.

12. In June 2005, the Fund received its first investments from four Western Pacific clients who contributed $2,015,925. The Fund continued to raise money from additional investors, but the Fund's value never exceeded $3.1 million. The Fund's investors were all clients of Western Pacific. Following their respective investments in the Fund, all but one of the Fund's investors maintained separate accounts over which Western Pacific had discretionary authority. The client that did not maintain a separate account ("Client A") invested all of the money Western Pacific had previously managed for him in the Fund.

E. WESTERN PACIFIC AND O'ROURKE FAILED TO DISCLOSE THAT WESTERN PACIFIC WOULD RECEIVE A 10% SUCCESS FEE

13. Western Pacific and O'Rourke, with scienter, failed to disclose to each of their clients, prior to their participation in the Offering that Western Pacific would receive a 10% success fee. Such information would have been material to a reasonable investor in deciding whether to participate in the Offering.

14. None of the written disclosures available to the clients made clear that Western Pacific had a conflict of interest when advising them to purchase Ameranth Stock. Ameranth's offering documents disclosed that a success fee would be paid to two "placement agents," but did not identify the placement agents. Neither Western Pacific nor O'Rourke provided a separate, written disclosure regarding the firm's receipt of the success fee.

15. O'Rourke also raised approximately $2 million for Lighthouse from four advisory clients without disclosing his conflict of interest. Before raising funds for Lighthouse, Western Pacific agreed to purchase $2 million in Ameranth Stock. From June 17 through June 30, 2005, O'Rourke raised the first $2 million for the Fund from four Western Pacific clients. Immediately thereafter, O'Rourke transferred $2 million to Ameranth. As a result, Western Pacific received $200,000 in success fees due to Lighthouse's $2 million investment. O'Rourke, with scienter, failed to disclose to any of the four Lighthouse investors that he intended to use their money to buy $2 million in Ameranth Stock and in so doing generate $200,000 in success fees for Western Pacific. Such information would have been material to a reasonable investor in deciding whether to invest in the Fund.

F. O'ROURKE IMPROPERLY USED LIGHTHOUSE FUND ASSETS TO RESOLVE A DISPUTE WITH A WESTERN PACIFIC CLIENT

16. In 2006, a dispute arose between O'Rourke and a client ("Client B") regarding the client's $800,000 investment in the Offering, for which Western Pacific had received $80,000 in success fees. Client B had money invested with O'Rourke, had referred business to O'Rourke, and had promised that he would substantially increase the amount invested with O'Rourke.

17. Before the Offering closed, Client B told O'Rourke that he no longer wanted to invest in Ameranth and requested the return of his money. Ameranth, however, insisted that Client B had committed to the $800,000 investment. Ultimately, O'Rourke used Lighthouse to pay back Client B—increasing the Fund's Ameranth position by 40%: Specifically, in October 2006, O'Rourke caused Lighthouse to purchase $300,000 of Ameranth Stock from Client B; in March 2007, O'Rourke allowed Client B to contribute his remaining $500,000 of Ameranth Stock to the Fund in exchange for a partnership interest in the Fund; and in late 2008, after Client B had requested full redemption from the Fund, O'Rourke paid Client B $410,000 as a complete redemption of his investment in Lighthouse.

18. O'Rourke' $410,000 distribution to Client B improperly preceded the completion of an earlier redemption request from another Lighthouse investor and Western Pacific client ("Client C"). More than a year before Client B made his redemption request, Client C had requested a full redemption of his $522,425 investment in the Fund, which was valued at $575,342 as of September 30, 2007. O'Rourke and Client C agreed that he would receive his redemption in four quarterly payments and that he would be fully redeemed within a year. O'Rourke failed to make the redemption payments to Client C as promised and ultimately failed to provide Client C a full redemption, instead providing Client B with a full redemption. In late 2007 and early 2008, O'Rourke made two payments to Client C totaling $300,000, leaving approximately $222,425 remaining to be redeemed. O'Rourke promised the next payment to Client C in September 2008. Instead of making the promised payment to the Client C, however, O'Rourke paid Client B the $410,000. While O'Rourke made an additional $100,000 payment to Client C in early 2009, approximately $122,425 remains outstanding.

G. O'ROURKE REPEATEDLY MISREPRESENTED THE FUND'S LIQUIDITY TO LIGHTHOUSE INVESTORS

19. From 2005 to at least 2008, O'Rourke lied when Fund investors inquired about the Fund's liquidity. O'Rourke repeatedly misrepresented that the Fund was liquid, and at times stated that the Fund's illiquid investments (including Ameranth) comprised only about 25% of Fund assets. Specifically, O'Rourke sent the following emails from his Western Pacific email account:

- On June 6, 2005, O'Rourke emailed Client A regarding the Fund, stating that "your account will have exactly the same liquidity availability that you currently enjoy at Waterhouse." At the end of June, O'Rourke invested 99% of the Fund's assets in Ameranth.

- On October 12, 2005, in response to Client A's email notifying O'Rourke that there were "liquidity requirements" for a line of credit he had, O'Rourke told Client A, who had invested $1 million in the Fund, that "[a]s far as liquidity is concerned, we consider [Lighthouse] to be a very liquid investment, but the subscription agreement provides for some advance notification as the fund stays pretty much fully invested at all times . . . and we ask for some time

to liquidate some of the investments to provide for any requested redemptions."

- On February 19, 2007, O'Rourke emailed Client A that "[w]e do hold some 'illiquid' positions as you know. . . . The percent of illiquid investments is about 25%."

- On March 8, 2007, in response to Client A's request for further confirmation regarding the Fund's illiquid positions, O'Rourke stated that "[t]he percentage of illiquid investments is 'about 25%' . . .," that the Fund's size was about "$7 million," and that as a result $1.55 million was invested in Ameranth and $200,000 was invested in another illiquid investment. Less than a month later, however, O'Rourke emailed the Fund's administrator that as of the end of March 2007, the Fund held $2,665,000 worth of Ameranth stock. The Fund's total assets at that time were less than $3 million.

- In February 2008, O'Rourke and a client who had invested $150,000 in the Fund ("Client D"), exchanged emails regarding the Fund's liquidity. Among other things, Client D asked O'Rourke to confirm that the two illiquid investments in the Fund made up only "25% of the portfolio?" On February 2, 2008, O'Rourke responded to Client D without clarifying that the illiquid investments actually comprised almost all of Lighthouse's assets. Two days later, when inquiring as to whether "[i]f needed, can some portion of funds be withdrawn," Client D specifically asked O'Rourke whether there was "any liquidity to investments in the Lighthouse Fund." In response, O'Rourke stated that "[o]ther than the two companies that you know of . . . all of the other investments are liquid." Again, O'Rourke did not clarify that almost all of the Fund's assets were in the two illiquid investments, misleading Client D into believing that there was sufficient liquidity in the Fund to accommodate withdrawals.

H. VIOLATIONS

20. As a result of the conduct described above, Western Pacific and O'Rourke willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

21. As a result of the conduct described above, Western Pacific and O'Rourke willfully violated Sections 206(1) and 206(2) of the Advisers Act by employing devices, schemes or artifices to defraud clients, and engaging in transactions, practices or courses of business that defrauded clients or prospective clients.

22. As a result of the conduct described above, Western Pacific and O'Rourke willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which prohibits fraudulent conduct by advisers to "pooled investment vehicles" with respect to investors or prospective investors in those pools.

23. As a result of the conduct described above, Western Pacific and O'Rourke willfully violated Section 15(a)(1) of the Exchange Act, which prohibits any entity from making use of the mails or any means or instrumentality of interstate commerce to effect transactions in securities without registering as a broker-dealer or, if a natural person, without being associated with broker-dealer.

24. As a result of the conduct described above, Western Pacific and O'Rourke violated Section 206(3) of the Advisers Act, which prohibits any investment adviser, when acting as broker for a person other than its client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which it is acting and obtaining the consent of the client to such transaction.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent Western Pacific pursuant to Section 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondent O'Rourke pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

E. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

F. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of

Section 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), 206(3) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, whether Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, and Section 203(i) of the Advisers Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, and Section 203 of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT of 1933
Release No. 9276 / November 10, 2011

Administrative Proceeding
File No.3-14620

In the Matter of UBS Securities LLC Respondent.	ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933 GRANTING A WAIVER OF THE RULE 602(c)(3) DISQUALIFICATION PROVISION

I.

UBS Securities LLC ("UBS" or "Respondent") has submitted a letter, dated October 18, 2011, requesting a waiver of the Rule 603(c)(3) disqualification from the exemption from registration under Regulation E arising from UBS's settlement of an administrative proceeding commenced by the Commission.

II.

On November 10, 2011, pursuant to UBS's Offer of Settlement, the Commission issued an Order Instituting Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against UBS. Under the Order, the Commission found that UBS violated Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 203(b) of Regulation SHO thereunder by inaccurately documenting the basis upon which locates had been granted to customers for the purpose of engaging in short sales. A "locate" represents a determination by a broker-dealer that it has borrowed or has entered into a bona fide arrangement to borrow particular securities, or has reasonable grounds to believe that particular securities can be borrowed for delivery when due. According to the Order, UBS's locate practices caused locates to be granted without UBS documenting a reasonable basis for the locates, and created a risk of locates being granted based on sources that could not be relied upon if shares were needed for UBS's or another executing broker's settlement obligations. In the Order, the Commission ordered UBS to pay a civil money penalty in the amount of $8 million; to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the

Exchange Act and Rule 203 thereunder; and to comply with certain specified undertakings, including retention of a qualified independent consultant.

III.

The Regulation E exemption is unavailable for the securities of small business investment company issuers or business development company issuers if, among other things, any investment adviser or underwriter for the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. Rule 602(e) of the Securities Act of 1933 ("Securities Act") provides, however, that the disqualification "shall not apply . . . if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied." 17 C.F.R. § 230.602(e).

IV.

Based upon the representations set forth in UBS's request, the Commission has determined that pursuant to Rule 602(e) under the Securities Act a showing of good cause has been made that it is not necessary under the circumstances that the exemption be denied as a result of the Order.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65733 / November 10, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14620

In the Matter of **UBS Securities LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against UBS Securities LLC ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. These proceedings arise out of practices engaged in by the securities lending desk of UBS Securities LLC ("UBS") in providing and recording "locates" to its customers to enable the customers to execute short sales. The practices described herein have been in place at UBS since at least 2007.

2. Regulation SHO ("Reg SHO") prohibits broker-dealers from accepting short sale orders in equity securities or effecting a short sale in an equity security for its own account unless the broker or dealer has borrowed the security or entered into a bona fide arrangement to borrow the security or has reasonable grounds to believe the security can be borrowed for delivery when due, and has documented compliance with this requirement. A "locate" represents a determination by a broker-dealer that it has borrowed or has entered into a bona fide arrangement to borrow particular securities, or has reasonable grounds to believe that particular securities can be borrowed for delivery when due. In anticipation of, or coincident to, placing short sale orders, customers routinely contact broker-dealers to request locates. To comply with Reg SHO in circumstances where a manual locate process was required, UBS's securities lending desk created and maintained a record (a "locate log") purporting to show the basis upon which UBS had granted locates to its customers.

3. Accordingly, whenever a lending desk employee ("lending desk trader") approved a locate request, the lending desk trader recorded the particular source of the shares available to borrow on the UBS locate log, such as another financial institution that had shares available to lend to UBS. Specifically, each locate included either the name of an employee at the lender or an indication that the lending desk trader was relying on an electronic availability feed. Thus, UBS's locate log appeared to distinguish between locates granted based on UBS contacting a lender's employee to confirm availability of shares and locates granted based on an electronic availability feed that lenders typically broadcast simultaneously to many broker-dealers before the market opens each day. In practice, however, UBS securities lending desk traders routinely recorded the name of a lender's employee even when no one at UBS had actually contacted the lender employee to confirm availability.

4. UBS's locate documentation practices created an inaccurate record regarding the basis upon which locates had been granted and caused locates to be granted without UBS documenting a reasonable basis for locates. UBS's locate documentation practices created a risk of locates being granted based on sources that could not be relied upon if shares were needed for UBS's or another executing broker's settlement obligations. Accordingly, as a result of its actions, UBS violated Section 17(a) of the Exchange Act and Rule 203(b) of Regulation SHO thereunder.

Respondent

5. Respondent UBS Securities LLC, headquartered in Stamford, Connecticut, is dually-registered with the Commission as a broker-dealer and investment advisor. In 2005, UBS consented to the Commission's entry of an Order sanctioning it for violations of Exchange Act

Section 17(a) and Rule 17a-4 thereunder relating to its failure to preserve and timely produce certain emails.

Background

A. The UBS Securities Lending Desk

6. Although a large number of locate requests were handled by the Firm's auto-approval function, many inquiries were addressed manually. In determining whether to approve such locate requests received from UBS customers, UBS securities lending desk traders considered, among other things, whether they could reasonably expect to borrow the shares from other financial institutions when delivery was due. One potential source for information about shares available to borrow was electronic availability feeds sent to UBS by various institutions each day before the markets open. These electronic feeds typically identified the securities and quantities of each security that the institutions may have available to lend.

7. At times, market conditions and other factors may have made relying on electronic availability feeds to grant locate requests unreasonable. In these circumstances, UBS lending desk traders were trained to communicate to each other information they learned about the securities they handled, especially information about whether particular lenders had stopped lending or were lending on terms indicative of limited availability of shares to borrow. UBS expected these communications about limited availability to alert traders handling locate requests that they may need to confirm the availability of shares to borrow by contacting the lender directly in order to form a reasonable belief about the number of shares available.

B. The UBS "Locate Log"

8. UBS recorded every locate request received by its securities lending desk in a computerized system that generated what was referred to internally as an "ASAP report." The ASAP report, also called a "locate log," was a record created and maintained by UBS in order to fulfill its obligation under Reg SHO to document its compliance with the requirement that UBS either have borrowed a security or entered into a bona fide arrangement to borrow a security, or had reasonable grounds to believe that a security could be borrowed by the delivery date, before accepting a short sale order for a security.

9. UBS had written procedures in place that specified the information lending desk traders were required to record when granting locates toward fulfilling its Reg SHO obligations. The procedures required two key pieces of information. First, the trader was required to identify the name of a lender from which UBS could reasonably expect to borrow the security in question. And second, if the source was another financial institution, the trader was required to record the name of the contact at the lender or, if the trader relied on the electronic feed from the lender, then the trader was directed to enter "electronic feed."

10. Thus, on the face of the UBS locate log, each approved locate sourced to a potential lender appeared to represent an instance in which either (a) a lending desk trader had determined that a particular feed could reasonably be relied upon as a locate source; or (b) a lending desk trader had confirmed that the lender had shares available by contacting the lender employee identified in the log.

11. The locate log distinguished between locates based on a direct contact with a lender employee and locates based on an electronic feed to enable UBS to monitor whether its lending desk employees were satisfying their Reg SHO obligations by reviewing the grounds on which locates were granted for reasonableness under the circumstances and to provide a clear record for regulatory review and oversight of UBS's compliance with those same obligations.

C. UBS Violated Exchange Act Section 17(a) by Creating an Inaccurate Locate Log

12. In practice, UBS securities lending desk traders recorded locates sourced to employees of lenders even when nobody at UBS had actually contacted the lender employees to confirm the availability of shares to borrow. According to UBS lending desk supervisors and traders, a locate log entry reflecting a contact name at the lender could mean *either* that the lending desk trader directly contacted the lender to confirm the availability of shares to borrow *or* that the lending desk trader was relying on an electronic feed disseminated before the market opened.

13. The lending desk practice of recording locates sourced to lender employees whom it had never contacted was pervasive, extending to every security handled by the lending desk.

14. For example, thousands of locates were sourced to lender employees who were out of the office and could not have provided information to UBS on the availability of shares to borrow. Further, thousands of those locates were for securities that were Reg SHO threshold securities.[1] In addition, many locates were sourced to lender employees at times when the lenders were not lending the security. In some of these circumstances, other UBS securities lending desk traders were aware that the lender was not lending the security, and in all of these cases, UBS would have discovered that the lender was not lending the security if its lending desk traders had contacted the lender directly as the locate log indicated.

15. UBS knew it was the practice of its lending desk traders to record locates sourced to lender employees even when the lender had not been contacted to confirm availability, yet permitted that practice to continue.

16. UBS allowed lending desk traders to duplicate and reuse locate approval information from prior locates to document new locate approvals sourced to the same lender and the lending desk traders did so because it saved time in documenting locates. This practice further increased the potential for locates sourced to lender employees who had not actually confirmed the

[1] Rule 203(c)(6) of Reg SHO defines a "threshold security" as a security for which the aggregate number of fails to deliver at a registered clearing agency is 10,000 shares or more, and at least equal to .5% of the issue's total shares outstanding, for five consecutive settlement days.

availability of shares to borrow, and created a risk of locates being granted without UBS having reasonable grounds to believe the security could be borrowed.

17. By permitting a practice under which locate log entries sourced locates to lender employees regardless of whether the lending desk trader contacted the lender employee, UBS created a system of documentation from which it was not possible to tell the basis upon which the locates were actually granted.

18. Moreover, the misuse of lender employee names in documenting the basis for granting locates created an impression that the basis upon which those locates were granted was direct contact with the lender to confirm availability, even when that was not the case. In certain circumstances, it may not have been reasonable for UBS to rely on an electronic feed to grant locates, whereas contacting the lender directly to confirm the availability of shares would have been reasonable.

D. UBS's Practices Violated Reg SHO

19. As a result of UBS's practices in creating its locate log, UBS securities lending desk traders routinely documented inaccurately the basis upon which locates had been granted.

20. UBS's practices in documenting the basis for granting locates resulted in a locate log that suggested that UBS had acted reasonably in granting locates when that may not have been the case. Despite the notations in UBS's locate logs, locates may have been granted based on (i) electronic feeds on days when it would not have been a reasonable practice to do so or sourced to lenders who were not lending the particular security, including during periods of market stress when availability to borrow securities may have been constrained, and (ii) duplicated and reused locate approval information from prior locates to document new locate approvals sourced to the same lender.

21. As a result, in some circumstances, UBS's practices permitted lending desk traders to approve locates without accurately documenting reasonable grounds for the belief that shares could be borrowed by the delivery date.

22. Moreover, because UBS created a locate log that did not document accurately the basis on which locates were granted, UBS's locate log did not permit a determination of whether it had reasonable grounds to believe securities could be borrowed to satisfy its delivery obligations.

23. Although the issues discussed above concerning UBS's Reg SHO compliance persisted from at least 2007, the impact of its practices was mitigated by certain factors. First, some of the locates UBS granted were furnished to clients who did not execute short sales using the locates UBS granted or did so for share amounts smaller than the amounts for which approvals were granted. Second, some of the lenders may have had the ability to lend sufficient securities by the delivery date to allow UBS to meet its settlement obligations, notwithstanding the inaccurate documentation of the basis for granting the locates. Finally, UBS was generally able to meet its settlement obligations by borrowing stock from sources other than the lenders identified in its locate log.

Violations

24. As a result of the conduct described above, UBS willfully[2] violated Section 17(a) of the Exchange Act and Rule 203(b) of Regulation SHO thereunder. Rule 203(b) prohibits a broker or dealer from accepting a short sale order in an equity security or effecting a short sale in an equity security for its own account unless the broker or dealer has borrowed the security, entered into a bona fide arrangement to borrow the security or has reasonable grounds to believe that the security can be borrowed for delivery when due and has documented compliance with this requirement. Section 17(a) requires brokers and dealers, among others, to make, keep, and furnish to the Commission such records as the Commission proscribes by rule. Inherent in the record keeping requirement of Section 17(a) is a requirement that the records be accurate. *In the Matter of Prime Capital Servs., Inc.*, 2010 SEC LEXIS 2086 at *134 (Initial Decision June 25, 2010). As described above, UBS, by employing practices that allowed securities lending desk traders to source locates to lender employees even when the UBS trader did not contact the lender to confirm the availability of shares, failed to document reasonable grounds for granting locates in violation of Section 203(b) and the firm failed to make an accurate record of its basis for granting locates in violation of Section 17(a).

Undertakings

25. Respondent has undertaken to:

A. Retain, at Respondent's expense and within thirty (30) days of the issuance of this Order, a qualified independent consultant (the "Consultant") not unacceptable to the staff of the Division of Enforcement (the "Staff"). Respondent shall require the Consultant to conduct a comprehensive review of Respondent's Securities Lending Desk policies, procedures and practices with respect to granting locate requests and UBS's procedures to monitor compliance therewith, to satisfy its obligations under Section 17(a) of the Exchange Act and 203(b) of Reg SHO thereunder to (i) accept short sale orders for equity securities only if it has borrowed the securities or entered into a bona fide arrangement to borrow the securities or has reasonable grounds to believe that securities can be borrowed for delivery when due; and (ii) document compliance with Rule 203(b)(1).

B. Cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records, and personnel as reasonably requested for the review, obtaining the cooperation of employees or other persons under UBS's control, and permitting the Consultant to engage such assistance (whether clerical, legal, technological, or of any other expert nature) as necessary to achieve the purposes of the retention.

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[2] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" Id. (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

C. Require the Consultant to complete its review and submit a written preliminary report ("Preliminary Report") to UBS and Commission staff within ninety (90) days of the issuance of this Order. UBS shall require that the Preliminary Report address the issues described in paragraph A above, include a description of the review performed, the conclusions reached, recommendations for any changes in or improvements to UBS's policies and procedures, and a procedure for implementing such recommended changes.

D. Within ninety (90) days of receipt of the Preliminary Report, adopt and implement all recommendations contained in the Preliminary Report; provided, however, that as to any recommendation that UBS considers to be, in whole or in part, unduly burdensome or impractical, UBS may submit in writing to the Consultant and Commission staff, within thirty (30) days of receiving the Preliminary Report, an alternative policy, practice, or procedure designed to achieve the same objective or purpose. Within forty-five (45) days of receiving the Preliminary Report, UBS and the Consultant shall attempt in good faith to reach an agreement relating to each recommendation that UBS considers to be unduly burdensome or impractical. Within fifteen (15) days after the discussion and evaluation by UBS and the Consultant, UBS shall require that the Consultant inform UBS and Commission staff of the Consultant's final determination concerning any recommendation that UBS considers unduly burdensome or impractical, and UBS shall abide by the determinations of the Consultant and adopt and implement all recommendations within the 90-day time period set forth in this paragraph.

E. Within fourteen (14) days of UBS's adoption of all of the recommendations that the Consultant deems appropriate, certify in writing to the Consultant and Commission staff that UBS has adopted and implemented all of the Consultant's recommendations and that UBS has established policies, practices, and procedures consistent with its obligations under Rule 203(b) and Section 17(a).

F. Require that the Consultant review UBS's revised policies, practices, and procedures for the six month period following implementation of the Consultant's recommendations, and require that the Consultant submit a written final report ("Final Report") to UBS and Commission staff within thirty (30) days after the one-year anniversary of the issuance of this Order. The Final Report shall (i) describe the review made of UBS's revised policies, practices, and procedures; (ii) describe how UBS is implementing, enforcing, and auditing compliance with the policies, practices, and procedures; and (iii) provide an opinion of the Consultant concerning whether UBS is adequately implementing, enforcing, and auditing compliance with the policies, practices, and procedures.

G. Require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with UBS, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which the Consultant is affiliated or of which the Consultant is a member, and any person engaged to assist the Consultant in performance of the Consultant's duties under this

Order shall not, without prior written consent of Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with UBS, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

H. To ensure the independence of the Consultant, UBS shall not have the authority to terminate the Consultant without prior written approval of Commission staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

I. Within fourteen (14) days after the one-year anniversary of the issuance of this Order, certify in writing to Commission staff that as of the one-year anniversary date UBS has continued to implement and enforce all of the Consultant's recommendations and has continued to maintain policies, practices, and procedures consistent with its obligations under Rule 203(b) and Section 17(a).

J. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Assistant Director Stephanie Shuler, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

26. For good cause shown, the Commission's staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest, to impose the sanctions agreed to in Respondent UBS's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent UBS cease and desist from committing or causing any violations and any future violations of Section 17(a) the Exchange Act and Rule 203(b) of Regulation SHO thereunder.

B. Respondent UBS is censured.

C. Respondent UBS shall, within fifteen (15) days of the entry of this Order, pay a civil money penalty in the amount of $8 million to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies UBS as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Stephanie Shuler, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, N.Y., N.Y. 10281.

D. Respondent shall comply with the undertakings enumerated in paragraph 25 above.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

Release No. 34-65742

Reporting Line for the Commission's Ethics Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its rules to reflect that the Commission's Office of the Ethics Counsel is now a stand-alone Office of the Commission and that the head of the Office, the Ethics Counsel, reports directly to the Chairman of the Commission.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Shira Pavis Minton, Ethics Counsel, at (202) 551-7938, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION

I. Discussion

On September 16, 2011, the Commission's Office of the Inspector General ("OIG") issued a report recommending, among other things, that the Commission's Ethics Counsel report directly to the Chairman, rather than to the General Counsel.[1] On October 14, 2011, pursuant to Section 1 of Reorganization Plan No. 10 of 1950[2], the

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[1] Report of Investigation No. OIG-560, Sept. 16, 2011, pp. 116-117.

[2] 15 F.R. 3175, 64 Stat. 1265 (May 24, 1950).

Chairman implemented that recommendation and made the Office of the Ethics Counsel a stand-alone Office of the Commission.

These amendments conform the Commission's regulations, in part 200 of Title 17 of the Code of Federal Regulations, to the changes to the reporting line and organization of the Office of the Ethics Counsel. They do so by removing several references to oversight of the Ethics Counsel by the General Counsel. In addition, the amendments clarify that the Ethics Counsel, not the General Counsel, serves as Counselor to the Commission and its staff with regard to ethical and conflicts of interest questions and acts as the Commission's liaison on such matters with the Office of Administrative and Personnel Management, the Office of the Inspector General and the Department of Justice.

II. Related Matters

A. Administrative Procedure Act and Other Administrative Laws

The Commission has determined that these amendments to its rules relate solely to the agency's organization, procedure, or practice. Accordingly, the provisions of the Administrative Procedure Act regarding notice of proposed rulemaking and opportunity for public participation are not applicable.[3] The Regulatory Flexibility Act, therefore, does not apply.[4] Because these rules relate solely to the agency's organization, procedure, or practice and do not substantially affect the rights or obligations of non-agency parties, they are not subject to the Small Business Regulatory Enforcement

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[3] 5 U.S.C. 553(b).

[4] 5 U.S.C. 601 - 612.

Fairness Act.[5] Finally, these amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[6]

B. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The amendments adopted today are procedural in nature and will produce the benefit of conforming the Commission's rules to the changes to the reporting line and organizational structure of the Office of the Ethics Counsel. The Commission also believes that these rules will not impose any costs on non-agency parties, or that if there are any such costs, they are negligible.

C. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition. The Commission does not believe that the amendments that the Commission is adopting today will have any impact on competition.

STATUTORY AUTHORITY

The amendments to the Commission's rules are adopted pursuant to 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

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[5] 5 U.S.C. 804.

[6] 44 U.S.C. 3501 - 3520.

TEXT OF AMENDMENTS

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200 – ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

SUBPART A – ORGANIZATION AND PROGRAM MANAGEMENT

1. The authority citation for Part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

* * * * *

2. In § 200.21 paragraph (a), remove the 6th sentence, beginning with "He or she is responsible", and the 7th sentence, beginning with "He or she serves".

3. In § 200.21a:

a. In paragraph (a), remove the phrase "within the Office of the General Counsel of the Commission shall oversee compliance with subpart M of this part and 5 CFR part 2635.", and add in its place, "is responsible for administering the Commission's Ethics Program and for interpreting subpart M of this part and 5 CFR part 2635. He or she serves as Counselor to the Commission and its staff with regard to ethical and conflicts of interest questions and acts as the Commission's liaison on such matters with the Office of Administrative and Personnel Management, the Office of the Inspector General and the Department of Justice.";

b. In paragraph (b), remove the phrase "Subject to the oversight of the General Counsel or his or her delegate, the" and add in its place the word "The";

SUBPART M – REGULATION CONCERING CONDUCT OF MEMBERS AND EMPLOYEES AND FORMER MEMBERS AND EMPLOYEES OF THE COMMISSION

4. The authority citation for Part 200, Subpart M, continues to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 80a-37, 80b-11; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 36; 5 CFR 735.104 and 5 CFR 2634; and 5 CFR 2635, unless otherwise noted.

* * * * *

5. In § 200.735-11, remove the words "Commission's Office of the General Counsel's" in paragraphs (c), (d) and (e);

6. In § 200.735-15:

(a) In paragraphs (a), (b), (c), and (d), remove the words "General Counsel" and add in their place the words "Ethics Counsel";

(b) In paragraphs (b), (e), and (f), remove the phrase "Commission's Office of the General Counsel's".

7. In § 200.735-17, remove the phrase "Under the general direction of the General Counsel, the", and add in its place the word "The".

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Dated: November 14, 2011

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9277 / November 15, 2011

SECURITIES EXCHANGE ACT OF 1934
Release No. 65750 / November 15, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3314 / November 15, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29861 / November 15, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14623

In the Matter of **LEADDOG CAPITAL MARKETS, LLC, F/K/A LEADDOG CAPITAL PARTNERS, INC., CHRIS MESSALAS, AND JOSEPH LAROCCO, ESQ.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, AND RULE 102(e) OF THE SECURITIES AND EXCHANGE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), (f) and (k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against LeadDog Capital Markets, LLC, f/k/a LeadDog Capital Partners Inc. ("LeadDog"), Chris Messalas ("Messalas") and Joseph LaRocco, Esq. ("LaRocco") (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. From approximately November 2007 through approximately August 2009 (the "Relevant Period"), Respondents raised at least $2.2 million from twelve investors for investment in LeadDog Capital LP (the "Fund"), a purported hedge fund. Respondents Messalas and LaRocco jointly owned and controlled the Fund's adviser. During the Relevant Period, at Messalas' direction the Fund was almost entirely invested in illiquid penny-stocks or other micro-cap private companies, each of which had received "going concern" opinions from their auditors, all but one of which had a consistent history of net losses, and most of which Respondents or their affiliates owned or controlled.

2. Respondents, however, deliberately, or at a minimum recklessly, painted a materially different picture of the Fund to existing and/or prospective investors. To induce one elderly investor ("Investor A") to invest $500,000 in the Fund, for example, Respondents represented falsely orally and in written materials in or about February 2009 that at least half of the Fund's assets were liquid and could be marked to market each day, that other assets would be valued in conformity with GAAP, and, further, that Investor A could exit the Fund at any time. Respondents succeeded in obtaining $500,000 from Investor A between February and August 2009 (making him the Fund's largest single investor). In August 2009, when Investor A learned for the first time that the Fund was in fact heavily concentrated in illiquid securities, he demanded the return of his investment. Respondents refused, and disclosed to Investor A for the first time that the Fund's investments were illiquid. To date, Respondents have refused to liquidate anything other than a small portion of Investor A's investment in the Fund.

3. Respondents also made deliberate, or at a minimum, reckless, misrepresentations and material omissions of fact regarding LeadDog and the Fund on internet websites. Respondents used these websites to, among other things, tout their experience in the securities industry, but through misrepresentations and material omissions to the operators of those websites (who acted as conduits in publishing Respondents' information), deliberately concealed from the investing public that from 2004 through 2009 Messalas directly or indirectly was involved in at least one NASD customer arbitration asserting securities law violations against him, and at least one broker-dealer he controlled, Carlton Capital Markets, Inc. ("Carlton Capital"), had been repeatedly fined, censured and, ultimately, expelled by FINRA. Respondents also deliberately concealed these material facts from Investor A, in response to his direct written questions on the subject.

4. Respondents, finally, misrepresented to and concealed from existing and prospective investors the substantial conflicts of interests and related party transactions that characterized Respondents' relationship to the Fund's illiquid investments.

Respondents deliberately, or at a minimum recklessly, misrepresented in a May 13, 2009 letter to the Fund's auditor that the only related party transaction involving the Fund was a 2% management fee paid to Messalas and LaRocco. Respondents thus concealed from the auditor, and thus investors, that: (i) Messalas and LaRocco collected various undisclosed fees and other payments made in connection with LeadDog investment activities for the Fund; (ii) Messalas directed the Fund's investment in several companies in which he had a substantial ownership interest; and (iii) a substantial number of the companies the Fund had invested in were controlled by individuals connected to Respondents. As a result of Respondents' deliberate and material misrepresentations and omissions, the Fund's audit report disclosed none of the foregoing conflicts and related party transactions, and Messalas and LaRocco then distributed this false and misleading financial statement to existing and prospective investors in the Fund.

RESPONDENTS

5. **LeadDog** collectively refers to LeadDog Capital Partners, Inc. ("LD Partners"), LeadDog Capital Markets, LLC, ("LD Markets") and LeadDog Capital Equities, LLC ("LD Equities"), each of which Messalas and LaRocco owned and controlled, and which at different times served as general partners, investment advisers and/or administrators to the Fund. LD Partners, a Delaware company formed in 2007, was the general partner, investment adviser and administrator of the Fund through December 31, 2008, after which LD Markets (a New York company formed in 2008) became the general partner and investment adviser, with LD Equities (also a New York company formed in 2008) becoming the administrator. At all times during the Relevant Period LeadDog was an investment adviser within the meaning of the Advisers Act.

6. **Messalas**, age 45, resides in Staten Island, New York. Messalas owned 100% of LeadDog through September 2008, and 60% thereafter when LaRocco purchased a 40% interest, and he was primarily responsible both for LeadDog's investment decisions on behalf of the Fund and for determining the fair value of the Fund's holdings. From 1996 to 2009, Messalas was a registered representative of nine successive broker-dealers. During the Relevant Period alone, he was a registered representative of three successive broker-dealers, and held Series 7, 24 and 63 securities licenses. Messalas has a history of customer and FINRA complaints. In November 2004, Messalas entered into a $45,000 settlement with a customer whose NASD arbitration complaint alleged that Messalas caused $1.6 million in losses as a result of misrepresentations, omissions, churning and suitability violations. In August 2005, FINRA censured and fined the broker-dealer that Messalas owned and controlled, Carlton Capital, $10,000 for its failure to comply with the Bank Secrecy Act of 1970. In November 2008, FINRA censured and fined Carlton Capital $40,000 for improperly providing registered representatives with access to unrecorded telephone lines and permitting representatives to accept customer orders on unrecorded lines. In January 2009, FINRA expelled Carlton Capital for its failure to pay the $40,000. When that broker-dealer closed, Messalas opened a branch office of Brookstone Securities, Inc. ("Brookstone") at the same location, which he controlled. Messalas owned 100% of LD Partners through September 2008, and 60% thereafter. Messalas is a 60% owner of LD

Markets. At all times during the Relevant Period Messalas was an investment adviser within the meaning of the Advisers Act.

7. **LaRocco**, age 53, resides in New Canaan, Connecticut. Since September 2008, LaRocco has been a managing member, general counsel, and a 40% owner of LeadDog. LaRocco is an attorney, licensed in Connecticut, whose legal practice included advising hedge funds on compliance with federal securities laws and regulations. LaRocco was responsible for all legal functions on behalf of the Fund, and most administrative functions. LaRocco has practiced before the Commission, representing clients in several Commission investigations. LaRocco is not registered with the Commission in any capacity. LaRocco purchased a 40% interest in LD Partners in September 2008 from Messalas, and also owns 40% of LD Markets.

RELATED ENTITY

8. **The Fund** is organized as a Delaware limited partnership that offered up to $25 million of its securities to accredited investors via unregistered offerings, claiming an exemption from registration under Section 4(2) and Rule 506 of Regulation D of the Securities Act. The Fund purports to invest in private and publicly traded domestic and international securities, equities, debt instruments, convertible securities, options, and derivatives. Through June 2009, the Fund raised approximately $2.2 million from twelve investors.

FACTS

9. Messalas and LaRocco jointly own, operate and control LeadDog, the investment adviser to the Fund. Messalas was primarily responsible both for LeadDog's investment decisions on behalf of the Fund and for determining the fair value of the Fund's holdings. LaRocco provided legal services, and was principally responsible for all marketing and administrative functions, including compiling the Fund's private placement memoranda ("PPM") and marketing materials. LeadDog claimed total assets under management of $3.9 million as of September 2009, and approximately $4.25 million in assets under management as of July 2010. Investors in the Fund contributed approximately $2.2 million in capital, and its General Partners – Messalas and LaRocco – contributed approximately $16,000. Messalas and LaRocco personally solicited investors for the Fund orally and through written materials such as private placement memoranda, financial statements and written responses to investor questionnaires. Respondents also advertised the Fund and its performance on Hedgefund.net and Hedgeco.net, two public websites that provide subscribers with information about potential investment opportunities.

10. From November 2007 through August 2009, LeadDog and Messalas directed the Fund to acquire securities of the following public companies: Therabiogen, Inc., Paradise Music and Entertainment, Inc., United EcoEnergy Corp., The Center for Wound Healing Inc., American Post Tension Inc., and Spring Creek Capital Corp., (respectively, Therabiogen, Paradise, EcoEnergy, Wound Healing, Post Tension and Spring Creek). Each of these securities was illiquid and in 2008 and 2009, all but one of these

public portfolio companies reported net losses that ranged between $70,000 and $4 million, and each received a "going concern" opinion from its respective auditor. The Fund also held an investment in AudioStreet, Inc., an illiquid private company, and 3A NOW AG, an illiquid Swiss company that lists on the Frankfurt Stock Exchange.

11. In addition, the Fund made loans to two parties that had connections with the Respondents: (i) Philip Forman ("Forman"), an investor in the Fund, and officer or director of two companies in the Fund's portfolio, and (ii) FSR. Inc., an entity controlled by Terry Hickel ("Hickel"), an associate of Messalas who was also an officer or director of multiple public or private companies in the Fund portfolio.

12. Respondents created and distributed to prospective investors PPMs dated November 1, 2007, November 1, 2008, and January 1, 2009. The PPMs are substantially identical, and each sought to raise $25 million in limited partnership interests for the Fund. LeadDog also provided investors and prospective investors with audited financial statements for the period November 2007 through December 2008.

Respondents' Misrepresentations and Omissions to the Fund's Largest Investor

13. From February through August 2009, LeadDog and its principals successfully induced Investor A to invest $500,000 in the Fund, by deliberately misrepresenting the Fund's liquidity and the nature of its investment holdings, and the liquidity of Investor A's investment in the Fund. Respondents also deliberately concealed, in response to a question from Investor A, Messalas' history of customer and FINRA complaints against him and a broker-dealer he controlled.

14. After learning of the Fund as a potential investment opportunity from information Respondents published on Hedgeco.net, Investor A contacted Messalas on February 17, 2009, and requested that LeadDog submit written responses to a Due Diligence Questionnaire ("DDQ") that contained a series of direct questions concerning, among other things, the Fund's investments and LeadDog's operations. Six days later, LaRocco emailed Investor A (copying Messalas) and provided him with the Fund's PPM. Two days after that, Messalas and LaRocco both signed LeadDog's written responses to Investor A's DDQ and submitted it to him via fax.

15. Investor A asked Respondents in his DDQ: "What percent of the Fund assets are invested in non-liquid assets and cannot be marked to market each day?" Respondents responded falsely "50%." In response to another question from Investor A, Respondents also represented falsely, without qualification, that it would take approximately six months to liquidate the Fund's entire portfolio. Respondent's statements regarding the composition and liquidity of the fund's portfolio were false and misleading. In fact, all of the Fund's non-cash investments – 92% of the Fund's total assets – were illiquid, and none could be marked to market on a daily basis. Respondents knew these statements were false and misleading when they made them, or at a minimum acted with reckless disregard for the truth.

16. Respondents also falsely and deliberately, or at a minimum, recklessly, represented to Investor A orally in February 2009 that notwithstanding any lock-up provisions to the contrary, he could liquidate his entire investment in the Fund at any time.

17. In addition, Investor A asked Respondents in his DDQ whether Respondents were the subject of any civil, criminal or regulatory complaints. In response, Respondents deliberately and falsely concealed from Investor A Messalas' history of NASD and FINRA complaints, including the censures, fines and expulsion levied against his firm, Carlton Capital, referred to above in paragraph 6, and described in greater detail below in paragraph 23. On the contrary, Respondents deliberately provided a materially misleading biography of Messalas that omitted any discussion of Carlton Capital at all, but nonetheless touted that he had "over 15 years experience in the Securities industry," noted he was the "Managing Director of Private Equities" at Brookstone, and that he "has his series 7, 24 and 63 Securities licenses with Brookstone Securities, Inc., a broker-dealer firm licensed with the Financial Industry Regulatory Authority."

18. Respondents also deliberately and falsely misrepresented to Investor A in their responses to his DDQ that "Gary T. Amato, CPA, P.C." was the Fund's "Administrator." In reality, Amato served only as a bookkeeper to the Fund, and LeadDog was the Administrator to the Fund through January 1, 2009, at which point Messalas and LaRocco transferred the administrative functions to another entity they jointly controlled, LD Equities.

19. After receiving these oral and written material representations from Respondents, Investor A invested $500,000 in the Fund in stages from February through August 2009, an amount that constituted approximately 15% of the total capital invested in the Fund, and made him its largest single investor.

20. In August 2009, after he completed his investment in the Fund, Investor A reviewed the Fund's audited financial statements (which Respondents had sent him in July), and learned for the first time that Respondents' representation that 50% of the Fund's assets were in liquid securities was false. Investor A demanded the return of his investment, and except for $50,000 remitted to Investor A in December 2010, Respondents have refused to comply, admitting that the Fund was not sufficiently liquid to redeem his investment.

Respondents' Misrepresentations and Omissions
Regarding Messalas' History of Regulatory Complaints

21. LaRocco, with Messalas' knowledge, deliberately supplied false and misleading information about Messalas' regulatory history, as well as the Fund's operations, to Hedgefund.net and Hedgeco.net, two websites that provide background, performance and other information about hedge fund investment opportunities to subscribers. Hedgefund.net and Hedgeco.net published LeadDog's misrepresentations as part of their profile of LeadDog on the respective websites. LaRocco and Messalas were

aware that Hedgefund.net and Hedgeco.net would act as conduits in publishing the false information they provided to investors and prospective investors.

22. Hedgefund.net required Respondents to submit written responses to a questionnaire that contained questions concerning, among other things, any legal or regulatory disputes involving LeadDog or its employees. In their 2008 and 2009 responses to the Hedgefund.net questionnaire, Respondents represented falsely that there was no "litigation, complaints, arbitration, regulatory action and/or other disputes involving" LeadDog, or its employees, in the past 5 years.

23. As noted above, in reality, Messalas, acting either directly or through Carlton Capital, the broker-dealer he controlled, was involved in several NASD and FINRA complaints or actions during the preceding 5-year period. Respondents thus deliberately concealed material information that:

a. In November 2004, Messalas entered into a $45,000 settlement with a customer whose NASD arbitration complaint alleged that Messalas caused $1.6 million in losses as a result of misrepresentations, omissions, churning and suitability violations;

b. In August 2005, FINRA censured and fined Carlton Capital $10,000 for its failure to comply with the Bank Secrecy Act of 1970;

c. In November 2008, FINRA censured and fined Carlton Capital $40,000 for improperly providing registered representatives with access to unrecorded telephone lines and permitting representatives to accept customer orders on unrecorded lines; and

d. FINRA expelled Carlton Capital for its failure to pay the $40,000 fine in January 2009.

24. Respondents also misrepresented to Hedgefund.net and Hedgeco.net that Amato was the Fund's "Administrator." As described in paragraph 18, above, Amato served as a bookkeeper to the Fund. The Fund's Administrator was LeadDog and later LD Equities – both entities controlled jointly by Respondents Messalas and LaRocco.

Respondents Concealed from the Fund's Auditor and Investors Substantial Conflicts of Interests and Related Party Transactions

25. During the audit of the Fund's financial statements for the period ended December 31, 2008, its auditor sought confirmation from Respondents that there were no related parties or transactions, first orally, then in writing via a management representation letter. LaRocco, with Messalas' knowledge, lied to the auditors at the outset of the audit, and claimed that he and LeadDog had disclosed all related parties and transactions. Respondents then repeated this false representation in the management representation letter

dated May 13, 2009 that LaRocco signed, and provided to the auditor. Specifically, LeadDog represented:

> The following have been properly recorded or disclosed in the financial statement: [ ] Related-party transactions and other transactions with affiliates, including fees, commissions, sales, purchases, loans, transfers, leasing arrangements, guarantees, and amounts receivable from or payable to related parties.

26. The Respondents deliberately concealed from the Fund's auditor and the Fund's investors a tangled web of related party transactions and conflicts of interests. For example, the Respondents omitted to disclose that: (i) Messalas and LaRocco collected various undisclosed fees and other payments made in connection with LeadDog investment activities for the Fund; (ii) Messalas had invested the Fund in several companies in which he also had a substantial ownership interest; and (iii) Parties related to the Respondents controlled or participated extensively in Fund investments. Specifically, Respondents concealed the following material information from the Fund's auditor and investors:

Undisclosed Interests in the Fund's Portfolio Companies

a. Messalas formed AudioStreet in 2008, and designated himself as the company's president, secretary, treasurer, sole director, and chairman; Messalas was also AudioStreet's controlling shareholder. In February 2009, Messalas caused the Fund to purchase 1.5 million shares of AudioStreet.

b. Acting through an entity he solely controls, Roadrunner Capital Group, Inc. ("Roadrunner"), Messalas controlled 20% of EcoEnergy shares. In 2007, Messalas directed the Fund to purchase 2.1 million shares of EcoEnergy. With the 2.1 million shares, in total Messalas controlled 26% of EcoEnergy shares.

Undisclosed Compensation

c. Carlton Capital, Messalas' broker-dealer, obtained $20,000 in fees from the Fund for its role as placement agent for private offerings on behalf of EcoEnergy and Paradise.

d. Brookstone, the broker-dealer Messalas controlled, after FINRA expelled Carlton Capital, obtained approximately $30,000 in commissions from the Fund on the sale of EcoEnergy shares in private placements. LaRocco was also paid legal fees of $2,000 in connection with the EcoEnergy offering.

e. LaRocco obtained $5,000 in legal fees in connection with the Fund's purchase of convertible debentures issued by Paradise.

f. Messalas and LaRocco, as the managing members of LeadDog, also received $13,600 in undisclosed so-called "structuring and due diligence fees" related to the Fund's investments.

Undisclosed Related Parties

g. Spring Creek's registered investment adviser, Carlton Wealth Management LLC, was owned and operated by Messalas' sister-in-law and a LeadDog employee, Nicole DePasquale ("DePasquale"). Spring Creek paid Depasquale a monthly management fee of $1,500, plus a 3% performance fee, and she was employed by LeadDog as Messalas' assistant.

h. Hickel, a Fund investor and the Chairman of the Advisory Committee for LeadDog, was also an officer or director of five of the six public companies in the Fund's portfolio, as well as an officer or director of several other private companies in which Respondent LeadDog directed fund investments. Hickel was also an employee of the broker-dealer controlled by Respondent Messalas, Brookstone. In November 2008, the Fund lent $20,000 to an entity controlled by Hickel, and LeadDog recorded the loan as an asset of the Fund. When Hickel failed to satisfy the loan and the note went into default, the Respondents took no action to collect the loan or otherwise protect the Fund's interests.

i. Forman was an officer and/or director of two of the Fund portfolio companies, and a Fund investor. In November 2008, the fund lent $50,000 to Forman. The loan to Forman also went unpaid, and Respondents again took no action to collect the $50,000 the Fund is owed.

27. As a result of Respondents' deliberate false representations and omissions to the Fund's auditor, on May 13, 2009 the auditor issued a clean audit report on the Fund's financial statements. However, based on information provided by the Respondents, the Fund's audited financial statements represented falsely that the sole related party compensation relating to the Fund was the 2% management fee the Fund paid to Messalas and LaRocco.

28. Messalas and LaRocco distributed the false and misleading financial statements to Investor A and other current investors shortly thereafter, and began routinely providing the financials to prospective investors as part of the Fund's package of marketing materials.

29. Upon learning of Respondents' omissions in October 2009, the auditor resigned. Several weeks later it issued an audit retraction letter to LeadDog, citing its failure to disclose related party associations to the auditors during the course of the 2008 audit.

VIOLATIONS

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

31. As a result of the conduct described above, Messalas and LaRocco willfully aided and abetted and caused LeadDog's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

32. As a result of the conduct described above, LeadDog and Messalas willfully violated Section 206(4) of the Advisers Act which makes it "unlawful for any investment adviser . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative," and Rule 206(4)-8 thereunder, which makes it unlawful for an investment adviser to a pooled investment vehicle to engage in "fraudulent, deceptive, or manipulative" conduct with respect to any investor or prospective investor in a pooled investment vehicle.

33. As a result of the conduct described above, Messalas willfully aided and abetted and caused LeadDog's violations of Section 206(4) of the Advisers Act which makes it "unlawful for any investment adviser . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative," and Rule 206(4)-8 thereunder, which makes it unlawful for an investment adviser to a pooled investment vehicle to engage in "fraudulent, deceptive, or manipulative" conduct with respect to any investor or prospective investor in a pooled investment vehicle.

34. As a result of the conduct described above, LaRocco willfully aided and abetted and caused LeadDog's and Messalas' violations of Section 206(4) of the Advisers Act which makes it "unlawful for any investment adviser . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative," and Rule 206(4)-8 thereunder, which makes it unlawful for an investment adviser to a pooled investment vehicle to engage in "fraudulent, deceptive, or manipulative" conduct with respect to any investor or prospective investor in a pooled investment vehicle.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent LeadDog pursuant to Section 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent Messalas pursuant to Section 15(b)(6) of the Exchange Act, including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents Messalas and LaRocco pursuant to Section 203(f) of the Advisers Act, including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

E. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

F. What, if any, remedial action is appropriate in the public interest against Respondent LaRocco pursuant to Rule 102(e)(1) of the Commission's Rules of Practice, including, but not limited to, denying, temporarily or permanently, the privilege of appearing or practicing before the Commission.

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

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

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

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

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

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65757 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14627

In the Matter of **THE REGENCY GROUP, LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against The Regency Group, LLC ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Respondent is a Colorado limited liability company formed in 2002 and headquartered in Denver, Colorado. From at least 2004 through 2007, Respondent acted as a dealer, but failed to register as such with the Commission.

2. On October 31, 2011, an order was entered by consent against Respondent, permanently enjoining it from future violations of Exchange Act Sections 10(b), 15(a), 13(d), and 16(a); Exchange Act Rules 10b-5, 13d-1(a), 13d-2(a), and 16a-3; and Sections 17(a) and 5 of the Securities Act of 1933, in the civil action entitled Securities and Exchange Commission v. The Regency Group, LLC, et al., Civil Action Number 09-cv-00497, in the United States District Court for the District of Colorado.

3. The Commission's complaint alleged that Respondent acted as an underwriter in the unregistered distribution of shares in Xpention Genetics, Inc. ("Xpention") and HS3 Technologies, Inc. ("HS3"). The complaint also alleged that Respondent acted as an unregistered dealer by selling Xpention and HS3 shares to investors -- from an acquired inventory of shares -- for its own account and to raise funds for its clients Xpention and HS3, as part of its regular business. The complaint further alleged that, as part of its regular business, Respondent solicited investors to buy such shares, handled their money, and directed the transfer of shares to them.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent be, and hereby is:

barred from association with any broker or dealer.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order;

(c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro
Commissioner Walter
not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65755 / November 16, 2011

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3337 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14625

In the Matter of **MARTHA W. VLCEK, CPA** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Martha W. Vlcek, CPA ("Respondent" or "Vlcek") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings and the findings contained in Section III. 3. below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Vlcek, age 51, of Henderson, Nevada, served as the Director of Finance at Bally Gaming, Inc. ("Bally Gaming") from August 2002 to April 2003 and as Bally Gaming's Vice President of Finance from April 2003 to February 2005. Vlcek has been a certified public accountant licensed by the California Board of Accountancy since 1992 and currently holds an active license to engage in the practice of public accounting.

2. Bally Gaming is a wholly-owned subsidiary of Bally Technologies, Inc. ("Bally"), a Nevada corporation headquartered in Las Vegas, Nevada. During the relevant time period, Bally's common stock was registered with the Commission under Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and traded on the New York Stock Exchange. Bally's primary business was the design, manufacture, and sale of gaming machines and related casino monitoring systems, with Bally Gaming as its primary earnings center.

3. On October 21, 2011, a final judgment of permanent injunction was entered by consent against Vlcek, permanently enjoining her from future violations of Sections 17(a)(2) and (a)(3) of the Securities Act of 1933 ("Securities Act") and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, in the civil action entitled Securities and Exchange Commission v. Steven M. Des Champs and Martha W. Vlcek, Civil Action Number 2:08-CV-1279-KJD-GWF, in the United States District Court for the District of Nevada. Vlcek paid disgorgement in the amount of $10,849 together with $3,509 in prejudgment interest and a civil penalty in the amount of $30,000.

4. The Commission's complaint alleged, among other things, that Bally materially misstated its revenue in its Form 10-K for the fiscal year ended June 30, 2003 and in its Forms 10-Q for the quarters ended June 30, 2003, September 30, 2003, December 31, 2003, and December 31, 2004. The complaint alleged that in her position as Vice President of Finance of Bally Gaming, Vlcek aided and abetted Bally's violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, by providing substantial assistance to an issuer that files false and misleading annual, quarterly, and current reports with the Commission. The complaint further alleged that Vlcek aided and abetted Bally's violation of Exchange Act Section 13(b)(2)(A) by providing substantial assistance to an issuer that fails to make or keep books, records, and accounts, which, in reasonable detail, accurately and fairly

reflect the company's transactions and dispositions of its assets. The complaint also alleged that Vlcek violated Sections 17(a)(2) and (a)(3) of the Securities Act. .

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Vlcek is suspended from appearing or practicing before the Commission as an accountant.

B. After three years from the date of this Order, Respondent may request that the Commission consider her reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in her practice before the Commission will be reviewed either by the independent audit committee of the public company for which she works or in some other acceptable manner, as long as she practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which she is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which she is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges her responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that her state CPA license is current and she has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65754 / November 16, 2011

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3336 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14624

In the Matter of **STEVEN M. DES CHAMPS, CPA** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Steven M. Des Champs ("Respondent" or "Des Champs") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III. 3. below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Des Champs, age 46, of Las Vegas, Nevada, served as the Chief Accounting Officer ("CAO") of Bally Technologies, Inc. ("Bally" or "Bally Technologies") from February 2000 to March 2005; as Bally's Chief Financial Officer ("CFO") from March 2005 to March 2006; and as Bally's Senior Vice President, Business Analysis, from March 2006 to November 2006. Des Champs was licensed to practice as a certified public accountant in the state of Nevada from December 1990 until December 2008.

2. Bally Technologies is a Nevada corporation headquartered in Las Vegas, Nevada whose common stock during the relevant period was registered with the Commission under Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and traded on the New York Stock Exchange. Bally's primary business is the design, manufacture, and sale of gaming machines and related casino monitoring systems.

3. On October 21, 2011, a final judgment of permanent injunction was entered by consent against Des Champs, permanently enjoining him from future violations of Sections 17(a)(2) and (a)(3) of the Securities Act of 1933 ("Securities Act") and Rule 13a-14 of the Exchange Act, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, in the civil action entitled Securities and Exchange Commission v. Steven M. Des Champs et al., Civil Action Number 2:08-CV-1279-KJD-GWF in the United States District Court for the District of Nevada. Des Champs was ordered to pay disgorgement in the amount of $138,865, prejudgment interest in the amount of $47,655, and a civil penalty in the amount of $130,000.

4. The Commission's complaint alleged, among other things, that Bally materially misstated its revenue in its Form 10-K for the fiscal year ended June 30, 2003; its Forms 10-Q for the quarters ended June 30, 2003, September 30, 2003, December 31, 2003, December 31, 2004 and March 31, 2005; in Form S-8 registration statements filed May 7, 2004 and January 14, 2005; and in Forms 8-K filed August 5, 2003, October 15, 2003, January 15,

2004, February 1, 2005 and April 29, 2005. The complaint alleged that in his positions as CAO and CFO of Bally, Des Champs aided and abetted Bally's violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, by providing substantial assistance to an issuer that files false and misleading annual, quarterly, and current reports with the Commission. The complaint further alleged that Des Champs aided and abetted Bally's violation of Exchange Act Section 13(b)(2)(A) by providing substantial assistance to an issuer that fails to make or keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the company's transactions and dispositions of its assets. The complaint also alleged that Des Champs violated Sections 17(a)(2) and (a)(3) of the Securities Act; and certified Bally's Form 10-K for the year ended June 30, 2005, and its Form 10-Q for the period ended March 31, 2005, in violation of Exchange Act Rule 13a-14.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Des Champs is suspended from appearing or practicing before the Commission as an accountant.

B. After five years from the date of this Order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65756 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14626

In the Matter of

AARON S. LAMKIN,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Aaron S. Lamkin ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Colorado. From at least 2004 through 2007, Respondent acted as a dealer, but failed to register as such with the Commission, and was not associated with a registered broker or dealer. Respondent, 34 years old, is a resident of Castle Rock, Colorado.

2. On October 31, 2011, an order was entered by consent against Respondent, permanently enjoining him from future violations of Exchange Act Sections 10(b), 15(a), 13(d), and 16(a); Exchange Act Rules 10b-5, 13d-1(a), 13d-2(a), and 16a-3; and Sections 17(a) and 5 of the Securities Act of 1933, in the civil action entitled Securities and Exchange Commission v. The Regency Group, LLC, et al., Civil Action Number 09-cv-00497, in the United States District Court for the District of Colorado.

3. The Commission's complaint alleged that Respondent acted as an underwriter in the unregistered distribution of shares in Xpention Genetics, Inc. ("Xpention") and HS3 Technologies, Inc. ("HS3"). The complaint also alleged that Respondent acted as an unregistered dealer by selling Xpention and HS3 shares to investors -- from an acquired inventory of shares -- for his own account and to raise funds for his clients Xpention and HS3, as part of his regular business. The complaint further alleged that, as part of his regular business, Respondent solicited investors to buy such shares, handled their money, and directed the transfer of shares to them.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent be, and hereby is:

barred from association with any broker or dealer.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order;

(c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Paredes Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3316 / November 17, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14632

In the Matter of FTN FINANCIAL SECURITIES CORP. Respondent.	ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER.

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against FTN Financial Securities Corp. ("FTN" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. This case concerns a transaction between FTN and Sentinel Management Group, Inc. ("Sentinel") through which FTN was a cause of Sentinel's failure to maintain true, accurate and current books and records relating to its securities transaction liabilities in its year-end 2006 financial statements, which were used by Sentinel as part of its fraud against its advisory clients. Sentinel was a Northbrook, Illinois registered investment adviser that, prior to its bankruptcy, primarily managed investments of short-term cash for advisory clients, including futures commission merchants, hedge funds, financial institutions, pension funds, and individuals. Sentinel purported to invest its clients' assets primarily in highly liquid cash management products, when in fact, Sentinel employed leverage to invest in a substantial amount of illiquid securities, using client assets to collateralize a bank loan (the "Bank Loan") used to finance the trading.

2. Sentinel drew on the Bank Loan to finance a portion of its undisclosed leveraging strategy. Sentinel reported the amount of the Bank Loan in its year-end financial statements, which Sentinel provided to its trading counterparties and clients. Sentinel represented that its financial statements were prepared in conformity with generally accepted accounting principles ("GAAP").

3. Over year-end 2006 and beginning of year 2007, Sentinel engaged in a five-day reverse repurchase transaction ("Repo Transaction") with FTN, a broker-dealer headquartered in Memphis, Tennessee. Sentinel used the proceeds from the Repo Transaction to temporarily pay down a portion of its Bank Loan balance before year-end 2006 in order to reduce the amount reported in its year-end financial statements. Sentinel's 2006 financial statements failed to record a liability associated with Sentinel's obligation to repurchase the securities when the Repo Transaction was unwound.

4. Earlier in March 2006, before engaging in the Repo Transaction, FTN had engaged in a transaction with Sentinel to purchase securities from Sentinel at quarter-end, a transaction that Sentinel told FTN employees it needed to "make our loan look lower." In addition, towards the end of 2006, before engaging in the Repo Transaction, a Sentinel employee made statements to one of those same FTN employees suggesting that Sentinel intended to use the Repo Transaction to circumvent a regulatory requirement.

5. During its consideration of the year-end Repo Transaction, FTN's management became concerned that some of the securities that it believed Sentinel had purchased from FTN on behalf of certain of its clients and wished to include in the Repo Transaction did not meet those clients' year-end liquidity needs. Although FTN management restricted certain of Sentinel's future purchases, it approved the Repo Transaction. Based upon these concerns and the earlier March 2006 transaction, FTN should have known that Sentinel would use the Repo Transaction for an improper purpose.

6. As a result of this conduct, FTN was a cause of Sentinel's violations of Section 204(a) of the Advisers Act and Rule 204-2(a)(6) thereunder.

Respondent

7. FTN Financial Securities Corp., a Tennessee corporation headquartered in Tennessee, is a registered broker-dealer and a wholly owned subsidiary of First Tennessee Bank National Association, which is the principal subsidiary of First Horizon National Corporation, a registered bank holding company.

Related Party

Sentinel

8. Sentinel Management Group, Inc., formerly an Illinois corporation headquartered in Illinois, was registered with the Commission as an investment adviser since 1980. On August 17, 2007, Sentinel filed for Chapter 11 bankruptcy. At the time of its bankruptcy, it managed approximately 178 accounts for around 100 clients and had approximately $1.4 billion in assets under management. Sentinel is now under the control of a liquidation trustee.

Facts

PreTSL Securities

9. In or around 2000, FTN developed, with another unrelated broker-dealer, a type of security referred to as a Preferred Term Securities Ltd. ("PreTSL"). PreTSLs are collateralized debt obligations created by pooling and securitizing trust preferred securities issued by community and regional banks and thrifts, insurance companies and/or real estate investment trusts. PreTSL securities were sold in tranches, each with its own risk and liquidity profile, ranging from AAA rated senior notes to unrated residual interests known as "Income Notes." The PreTSL Income Notes were the highest yielding, most risky, and least liquid class of PreTSL securities. The offering memoranda for PreTSLs warned that "a purchaser must be prepared to hold the [securities] for an indefinite period of time or until the maturity thereof." PreTSL securities, including Income Notes, had a stated legal final maturity of 30 years.

Sentinel's Fraud

10. Sentinel fraudulently and deceptively told clients that it invested their assets in safe, highly-liquid cash management products in which the clients had a *pro rata* ownership interest, when in fact, it exposed clients to undisclosed risks by, among other things, employing substantial leverage through reverse repurchase transactions[2] ("repos") and use of the Bank Loan. Sentinel used this undisclosed leverage to fund purchases of high-yield, risky, and often illiquid securities such as PreTSL Income Notes and then used the yield from these securities to pay a higher rate of interest to its clients than its competitors and to enrich its owners and top executives.

[2] In a reverse repurchase transaction, one party sells a security to a counterparty with an agreement to repurchase the securities at a higher price on a later date. Absent default, the income received on the coupon from the underlying securities over the term of the borrowing still belongs to the borrower.

11. Partly as the result of Sentinel's use of this undisclosed leveraging strategy, Sentinel was unable to meet client redemption requests and collapsed in August 2007. On August 17, 2007, Sentinel filed for Chapter 11 bankruptcy protection.

12. Sentinel reported the amount of the Bank Loan as of December 31 in its annual financial statements, which it was required to accurately keep and maintain under the Advisers Act and rules thereunder. Towards the end of 2005 and 2006, Sentinel's management became concerned about reporting the large amount of the Bank Loan in its financial statements, and Sentinel employed various means to temporarily reduce the size of the Bank Loan for December 31, without disclosing the temporary means to its clients or counterparties. For example, in a December 29, 2005 email from a Sentinel employee to Sentinel's head portfolio manager, Charles Mosley, the employee reported that Sentinel's CEO, Eric Bloom, "said no matter what we have to get [the loan] down or we will lose about 700 million dollars from our current customers." The next day, Mosley reported to Bloom that he was unable to get the loan down to the $100 million level that Bloom desired. Bloom replied: "Hopefully, the bigger loan won't induce panic."

Sentinel's Suspicious End-of-Quarter Transaction in Early 2006

13. By mid-March 2006, Sentinel had purchased nearly $85 million in PreTSL securities from FTN.

14. In March 2006 emails between Mosley and Bloom, they discussed the need to reduce the size of the Bank Loan temporarily for quarter-end. In one email, Mosley told Bloom that he thought they needed to make the size of the Bank Loan look lower at quarter-end "so we can tell our clients" that the size of the Bank Loan at the prior "year-end was an aberration." In a follow-up email later that month, Bloom told Mosley that Sentinel needed to reduce the size of the Bank Loan for month-end even further because "I don't want to get anyone nervous."

15. In a telephone conversation that same month, Sentinel, through Mosley, approached FTN with a request for a "favor" that FTN engage in a transaction in which it would repurchase $8 million in PreTSL securities that it had previously sold to Sentinel and then sell them back to Sentinel after the end of the first quarter of 2006, or the end of March 2006. Mosley explained that Sentinel was having "balance sheet" issues and needed to get the securities "off" Sentinel's books for the end of the month.

16. In that same conversation, an FTN employee ("Employee A") asked Mosley why Sentinel needed to divest itself of particular PreTSL securities at month-end, adding that "[y]ou don't have to tell me if you don't want to." Mosley responded: "This is not to repeat to anybody else. They are sitting at our bank so they give us a loan so it blows us up...and it inflates what we have."

17. In a second telephone conversation that same day between Mosley, Employee A, and another FTN employee, Mosley told the FTN employees that the PreTSL securities Sentinel sought to get out of temporarily over quarter-end were "basically like sitting at our bank. The bank loans us money but it blows up." Mosley added: "If I could lend them out, I would keep

'em. So now it's just, at this time, we want to make our loan look lower, so literally, I mean I just have to have it off by the end of the month. I mean I could buy it back the next day."

18. Although FTN did not engage in the sell-buyback transaction requested by Mosley, FTN did assist Sentinel by entering into a swap transaction in which it purchased the $8 million in PreTSLs from Sentinel in exchange for Sentinel's purchase of approximately $6 million in PreTSL Income Notes from FTN, with settlement on the Income Note purchase to be delayed until the following month.

19. For quarter-end of the first quarter of 2006, Sentinel used the proceeds from its end of March sale of PreTSLs to FTN to temporarily reduce the size of the Bank Loan.

Sentinel and FTN Engage in the 2006 Year-end Repo Transaction

20. By October 2006, Sentinel had purchased nearly $210 million in PreTSL securities from FTN, including over $60 million in Income Notes.

21. As part of Sentinel's effort to reduce the size of the Bank Loan for December 31, 2006, Sentinel, through Mosley, contacted FTN in October 2006 about a year-end transaction. Sentinel proposed that before the end of 2006, FTN repurchase nearly all of the PreTSL Income Notes it had previously sold Sentinel and then resell those securities back to Sentinel at the beginning of 2007.

22. An FTN compliance team reviewed Sentinel's proposed end-of-year transaction. FTN's compliance team was concerned that a transaction being proposed by Sentinel (in which Sentinel's obligation to repurchase the securities was unclear) might be viewed as illegal "parking" of securities. The FTN compliance team ultimately concluded that a transaction structured as a reverse repurchase transaction would not constitute parking.

23. After FTN's compliance team reviewed the proposed end-of-year transaction, FTN's management became involved in evaluating the transaction. Initially, FTN's management rejected the proposed transaction, but discussions with Sentinel regarding its need for a year-end transaction continued.

24. In a phone call on November 28, 2006, Mosley explained to FTN's management that the reason Sentinel needed to engage in a year-end transaction was to raise cash so that Sentinel could meet certain clients' year-end liquidity needs. Mosley explained further that Sentinel was unable to meet those liquidity needs in part due to Sentinel's inability to "lend out" (i.e. repo) the PreTSL Income Notes that it held for its clients.

25. FTN's management became concerned that Sentinel had bought from FTN Income Notes that did not meet certain Sentinel clients' year-end liquidity needs. Certain members of FTN's management, as well as other FTN employees, looked at Sentinel's website, in which Sentinel represented that it would provide clients with immediate liquidity. An FTN manager who was aware of Sentinel's request believed Sentinel might have been lying about its reason for wanting the transaction – to meet client liquidity needs – and that Sentinel actually intended to use the Repo proceeds for different purposes.

26. On December 20, 2007, during a telephone conversation between Mosley and Employee A, Mosley made statements that suggested that Sentinel intended to use the Repo Transaction for an improper purpose. In that recorded call, the Employee A asked Mosley whether it would "screw you badly" if the Repo Transaction ended up leaving Sentinel short of its liquidity needs. After a lengthy pause, Mosley started to respond, then stopped, and asked Employee A whether his phones were recorded. Employee A replied that though he did not think so, "we can talk on our cell phones about that." But Mosley continued, "It is just a regulatory thing so if....It will be close and then if they miss it we're fine. But we have a new um ...." Employee A: "Regulator?" Mosley: "Well the person, same regulator, new person this year. So the old one we were comfortable with, but the new one is like oh [expletive]."

27. In late December 2006, despite the lingering concerns described above, FTN's management approved the Repo Transaction. On December 28, 2006, FTN purchased approximately $35 million par value of Income Notes from Sentinel for approximately $25 million. On January 2, 2007, FTN resold the Income Notes back to Sentinel to complete the transaction.

28. At the time of the Repo Transaction, FTN's general practice was to accept highly rated, liquid securities such as treasury and agency securities in repo transactions. FTN had never before engaged in a repo transaction in which PreTSL income notes were used as collateral. FTN also had a practice of not engaging in repo transactions with its brokerage customers. FTN's decision to engage in the Repo Transaction with Sentinel deviated from this practice.

29. The FTN compliance team that had initially reviewed the transaction was not involved in the ultimate decision of FTN's management to approve the transaction in late December.

Sentinel's Misleading Financial Statements

30. As a registered investment adviser, Sentinel was required to maintain true, accurate, and current books and records relating to its investment advisory business, including trial balances and financial statements.

31. Sentinel provided its year-end 2006 financial statements to various trading counterparties and prospective clients.

32. Sentinel purported to prepare its financial statements in accordance with GAAP. GAAP required Sentinel to account for its repos as secured borrowings with corresponding pledges of collateral, and to continue to report the securities used as collateral for the repos as assets.[3]

33. The Repo Transaction provided Sentinel with $25 million that it used to temporarily reduce its Bank Loan balance as of December 31, 2006. In its 2006 financial

[3] *See* FASB Statement of Financial Accounting Standards No. 140, "*Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities.*"

statements, Sentinel, using the proceeds from the Repo Transaction and other temporary measures, reported a loan balance of approximately $230 million, which was the lowest balance of the loan at any point in 2006 or 2007. Sentinel's average daily 2006 loan balance was approximately $282 million, and its average daily 2007 loan balance (before Sentinel's August 2007 collapse) was approximately $300 million. The $230 million year-end loan balance that Sentinel reported in its year-end 2006 financial statements was approximately 19% lower than its average daily 2006 loan balance and approximately 24% lower than its average daily 2007 loan balance. On the day Sentinel entered into the Repo Transaction, the Bank Loan balance declined more than 7%.

34. Sentinel's financial statements failed to include as a liability Sentinel's obligation from the Repo Transaction to repurchase the Income Notes from FTN. As a result, Sentinel's financial statements were not prepared in accordance with GAAP and understated Sentinel's liabilities by nearly 11%.

35. Sentinel did not disclose that the Bank Loan balance reported in its 2006 financial statements reflected proceeds from the non-recurring, short-term Repo Transaction, among other short-term transactions, which Sentinel engaged in solely to temporarily reduce the Bank Loan balance.

36. Based upon FTN's unresolved concerns and the earlier March 2006 transaction, FTN should have known that Sentinel would use the Repo Transaction for an improper purpose.

Legal Discussion

37. Sentinel recorded the Repo Transaction in an inaccurate manner in its internal books and records and failed to record liabilities associated with its securities repurchase obligations as described above. As a result, Sentinel violated Section 204(a) of the Advisers Act and Rule 204-2(a)(6) promulgated thereunder, which require every investment adviser registered under Section 203 of the Advisers Act to make and keep true, accurate and current books and records relating to its investment advisory business, including trial balances and financial statements.

38. Based on the facts discussed above, FTN should have known that by engaging in the Repo Transaction, it would be a cause of Sentinel's violations of Section 204(a) of the Advisers Act and Rule 204-2(a)(6) promulgated thereunder. Section 203(k) of the Advisers Act provides that the Commission may issue a cease-and-desist order against a person who is "a cause of [another person's] violation, due to an act or omission the person knew or should have known would contribute to such violation . . . ."

Undertakings

Respondent undertakes to:

39. Cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondent shall:

A. Produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission staff subject to any restrictions under the law of any foreign jurisdiction;

B. Use its best efforts to cause its officers, employees, and directors to be interviewed by the Commission staff at such time as the staff reasonably may direct;

C. Use its best efforts to cause its officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission staff; and

D. In connection with any testimony of Respondent's officers, employees, and directors to be conducted at deposition, hearing, or trial pursuant to a notice or subpoena, Respondent:

1. Agrees that any such notice or subpoena for Respondent's officers', employees', and directors' appearance and testimony may be served by regular or electronic mail on: Harry J. Weiss, Esq., Wilmer, Cutler, Pickering, Hale and Dorr, 1875 Pennsylvania Avenue, N.W., Washington, DC 20006; harry.weiss@wilmerhale.com.

2. Agrees that any such notice or subpoena for Respondent's officers', employees', and directors' appearance and testimony in any action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent FTN Financial Securities Corp. shall cease and desist from committing or causing any violations and any future violations of Section 204(a) of the Advisers Act and Rule 204-2(a)(6) promulgated thereunder;

B. Respondent FTN Financial Securities Corp. shall, within 10 days of the entry of this Order, pay disgorgement of $1,495,878.00 and prejudgment interest of $377,758.73. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to Frederick J. Grede, the Liquidation Trustee for the Sentinel Liquidation Trust created in *In re Sentinel Management Group, Inc.* Case No. 07-14987 (Bankr. N.D. Ill.) for immediate distribution on a pro rata basis solely to certain harmed Sentinel clients that invested in Sentinel's investment portfolios; and (C) submitted under cover letter that identifies FTN Financial Securities Corp. as a Respondent in

these proceedings, the file number of these proceedings, a copy of which cover letter and wire transfer, money order or check shall be sent to Robert Burson, Senior Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Chicago Regional Office, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65783 / November 17, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3318 / November 17, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14633

In the Matter of **DR. JOSEPH F. SKOWRON III,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Dr. Joseph F. Skowron III ("Skowron" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Skowron was, from at least January 2007 through February 2008, a managing director of Morgan Stanley, a co-portfolio manager of six healthcare related hedge funds, and an officer of the investment advisers to those funds. In this capacity, Skowron was an associated person of Morgan Stanley, a registered broker dealer, and of FrontPoint Universal GP, LLC, a registered investment adviser.

2. On November 16, 2011, a final judgment was entered by consent against Skowron, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled SEC v. Dr. Joseph F. "Chip" Skowron III, et al., Civil Action No. 10-CV-8266-DAB, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that Skowron ordered the sale of approximately six million shares of Human Genome Sciences Inc. ("HGSI") based on tips he received from Dr. Yves Benhamou, a medical researcher overseeing HGSI's trial for Albuferon, a potential drug to treat hepatitis C. These sales occurred in accounts held by the six health-care related funds that Skowron co-managed and took place during the six-week period prior to HGSI's public announcement of negative results from the Albuferon trial. The hedge funds sold their entire inventory of HGSI stock and thus had no exposure to HGSI by the close of markets on January 22, 2008. Indeed, two million of the six million shares were sold in a block trade just prior to the close of markets on January 22, 2008. The next morning, HGSI publicly announced changes to its Albuferon trial, including the elimination of one arm of the trial. HGSI's share price dropped 44 percent by the end of January 23, 2008. The hedge funds avoided losses of approximately $30 million.

4. On August 15, 2011, Skowron pled guilty to one count of conspiracy to commit securities fraud and obstruct justice, in violation of 18 U.S.C. § 371, in United States v. Joseph F. Skowron III, Case No. 11-CR-699-DLC (S.D.N.Y.), which carries, among other things, a maximum sentence of five years' imprisonment. The sentence stipulated by the United States Sentencing Guidelines is 60 months imprisonment and Skowron has agreed not to seek a sentence other than 60 months.

5. The counts of the criminal information to which Skowron pled guilty allege, inter alia, that:

> A. Skowron was a portfolio manager of six healthcare-related hedge funds affiliated with Hedge Fund A and was responsible for the hedge funds' investments in companies developing drug treatments for hepatitis C, including Human Genome Sciences, Inc. ("HGSI"). In or about December 2007 and January 2008, Dr. Yves M. Benhamou ("Benhamou"), a leading hepatologist with whom Skowron routinely consulted in the course of doing

research on healthcare-related stocks, provided Skowron with material non-public information relating to negative developments in a clinical drug trial conducted by HGSI on a hepatitis drug called Albuferon. On the basis of this material non-public information, Skowron caused the healthcare funds to sell their holdings of HGSI stock prior to HGSI's announcement of the negative developments on January 23, 2008, thereby avoiding approximately $30 million in losses. Skowron knew that Benhamou was a consultant to HGSI with respect to the Albuferon clinical trial and that Benhamou had an obligation to HGSI not to disclose confidential information about the Albuferon clinical trial. Skowron knew that Benhamou provided this information about the Albuferon clinical trial to Skowron for Benhamou's benefit, and to develop Benhamou's business and personal relationship with Skowron.

B. In or about February 2008, after the Securities and Exchange Commission commenced an investigation into the hedge funds' sales of HGSI common stock, Skowron and Benhamou agreed to provide false and misleading information to the Commission to conceal their involvement. Among other things, Skowron made a cash payment to Benhamou in April 2008 in furtherance of this conspiracy to provide false and misleading information to the Commission.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Skowron's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Skowron be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a

customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Paredes not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65799 / November 21, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14636

In the Matter of

MICHAEL S. KROME,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Michael S. Krome ("Respondent" or "Krome") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

II.

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . attorney . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Krome, age 50, is a U.S. citizen who lives in Lake Grove, New York.

2. Krome is and has been an attorney licensed to practice in the State of New York.

3. On November 2, 2011, a final judgment was entered by consent against Krome, permanently enjoining him from future violations of Sections 5(a) and (c) and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, in the civil action entitled *Securities and Exchange Commisston v. Jonathan R. Curshen, et al.*, Civil Action No. 1:11-2051(JLK), filed in the United States District Court for the Southern District of Florida. The final judgment also barred Krome from participating in any offering of penny stock.

4. The Commission's complaint alleged, *inter alia*, that in connection with a fraudulent pump-and-dump scheme in the common stock of CO2 Tech Ltd., which certain defendants perpetrated through Red Sea Management, Ltd., a Costa Rican asset protection company, from late 2006 through April 2007, defendants used the services of Krome, an attorney, who issued a fraudulent opinion letter to enable them to have the restrictive legend removed from their CO2 Tech stock certificate, giving them nearly full control over the freely tradeable shares of CO2 Tech stock. Defendants then used Red Sea to sell massive quantities of CO2 Tech stock to the investing public through its web of nominee brokerage accounts and caused materially false and misleading information about CO2 Tech to be disseminated in press releases and on its website.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Krome's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that

Krome is suspended from appearing or practicing before the Commission as an attorney.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3319 / November 21, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14635

In the Matter of **OLIVER R. GRACE, JR.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Oliver R. Grace, Jr. ("Grace" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Grace, during the relevant time period, was the co-owner of Drake Asset Management, LLC ("DAM"), which served as the investment adviser to two hedge funds, Drake Associates, L.P. ("Drake") and Diversified Long-Term Growth Fund, L.P. ("Diversified). DAM was not registered with the Commission. Grace, 57 years old, is a resident of Hobe Sound, Florida.

2. On November 7, 2011, a final judgment was entered by consent against Grace, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Drake Asset Management, LLC and Oliver R. Grace, Jr., Civil Action Number 11-01905, in the United States District Court for the District of Columbia.

3. The Commission's complaint, the allegations of which Grace neither admits nor denies, alleges that from 2003 to 2007, Grace employed a scheme to evade the group purchase limits in seven bank mutual-to-stock conversion offerings. The complaint alleges that Grace knowingly or recklessly failed to disclose on stock order forms his association with certain entities, including Drake and Diversified, which participated in five of the conversion offerings alongside Grace. The complaint also alleges that DAM, under Grace's oversight and supervision, knowingly or recklessly failed to disclose on Drake's and Diversified's stock order forms their association with Grace. The complaint further alleges that Grace arranged for his associated entities to use addresses or signatories on order forms that would prevent converting banks from associating those orders with Grace. By failing to disclose these entities, Grace was able to acquire stock that exceeded the conversion offerings' purchase limits, in violation of offering terms and banking regulations.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Grace's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Grace be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization, with the right to reapply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to

the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65839 / November 28, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14646

In the Matter of **AEC, I, Inc.,** **Aegir Ventures, Inc.,** **American Toy Vending, Inc.,** **Biometric Security Corp. (a/k/a Pender Financial Group Corp.), and** **Bridge-It Corp.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents AEC, I, Inc., Aegir Ventures, Inc., American Toy Vending, Inc., Biometric Security Corp. (a/k/a Pender Financial Group Corp.), and Bridge-It Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. AEC, I, Inc. (CIK No. 1274893) is a defaulted Nevada corporation located in Burlington, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AEC, I is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB/A for the period ended June 30, 2007, which reported a net loss of over $851,000 for the prior six months.

2. Aegir Ventures, Inc. (CIK No. 1210617) is a forfeited Delaware company located in Nara, Japan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Aegir Ventures is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB/A for the period ended March 31, 2006.

3. American Toy Vending, Inc. (CIK No. 1116794) is a revoked Nevada corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). American Toy Vending is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2002, which reported a net loss of $582 for the prior six months.

4. Biometric Security Corp. (a/k/a Pender Financial Group Corp.) (CIK No. 1000168) is a Wyoming corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Biometric Security is delinquent it its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1999, which reported a net loss of over $4.4 million (Canadian) for the prior nine months.

5. Bridge-It Corp. (CIK No. 926248) is a Canadian corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bridge-It is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F registration statement on June 30, 1994, which reported a net loss of $190,000 (Canadian) for the twelve months ended December 31, 1993.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16 requires foreign private issuers file reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

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

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3327 / November 30, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14650

In the Matter of **Chetan Kapur,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Chetan Kapur ("Respondent" or "Kapur").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Chetan Kapur, age 36, is a citizen of India and a resident of New York. He is the founder and sole managing principal of Lilaboc, LLC, d/b/a ThinkStrategy Capital Management, LLC ("ThinkStrategy"). ThinkStrategy is a Delaware limited liability company formed in November 2002, with its principal place of business in New York, New York. ThinkStrategy serves as general partner and investment adviser to TS Multi-Strategy Fund, L.P. and TS Multi-Strategy Fund, Ltd. ("Multi-Strategy Fund"), and previously served as general partner and investment adviser to ThinkStrategy Capital Fund, L.P. and ThinkStrategy Capital Fund, Ltd. ThinkStrategy was never registered with the Commission.

2. On November 16, 2011, a judgment was entered by consent against Kapur, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. Chetan Kapur, Civil Action Number 11-Civ-8094, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleges that Kapur and ThinkStrategy, over nearly seven years, misrepresented to their investors various information concerning the funds' investment performance, longevity, assets, and the credentials and experience of ThinkStrategy's management team. The complaint further alleges that, with respect to the Multi-Strategy Fund, Kapur and ThinkStrategy misstated the scope and quality of their due diligence checks on portfolio managers and hedge funds selected for investment. Had ThinkStrategy adhered to its stated due diligence standards, the Multi-Strategy Fund may not have invested detrimentally in several hedge funds that were later revealed to be Ponzi schemes or other serious frauds.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Kapur be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a

customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for **November 2011**, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Kathleen L. Casey served as SEC Commissioner
July 17, 2006 until August 5, 2011

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

MARY L. SCHAPIRO, CHAIRMAN

KATHLEEN L. CASEY, COMMISSIONER

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

(4 Documents)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65759 / November 16, 2011

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3338 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14629

In the Matter of **PAUL FREE, CPA** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS AND IMPOSING TEMPORARY SUSPENSION PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Rule 102(e)(3)[1] of the Commission's Rules of Practice against Paul Free ("Respondent" or "Free").

II.

The Commission finds that:

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[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

A. RESPONDENT

1. Free, age 55, a resident of Oakland, Michigan, is and has been a certified public accountant ("CPA") licensed to practice in the State of Missouri. Between 1998 and 2002, Free served as Controller and Chief Accounting Officer of Delphi Corporation.

B. CIVIL INJUNCTION

2. On October 31, 2011, the U.S. District Court for the Eastern District of Michigan entered a final judgment against Free, permanently enjoining him from violating and/or aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1 and 13b2-2 thereunder. Securities and Exchange Commission v. Delphi Corporation, et al., Civil Action Number 06-14891-Civ (E.D. Mich.)(Cohn, J.)(Dkt.378).

3. The Commission's complaint alleged that, while serving as Controller and Chief Accounting Officer of Delphi, Free engaged in conduct, detailed below, that resulted in Delphi materially misstating its financial condition and operating results in filings with the Commission, in offering documents, and in other statements to investors.

4. The Commission's complaint alleged that in the third quarter of 2000, Delphi improperly accounted for and disclosed a payment that it made to its former parent company, pursuant to a settlement agreement. Delphi treated the payment as if it related primarily to certain pension and other post-employment benefit matters, even though Delphi officers and employees, including Free, knew that the settlement in fact related exclusively to the warranty claims. As a result of these mischaracterizations, Delphi overstated its originally reported earnings per share ("EPS") for the third quarter 2000. The Commission alleged that several Delphi officers and employees, including Free, were responsible for this conduct.[2]

5. The Commission's complaint further alleged that in the fourth quarter of 2000, Delphi sold $270 million of inventory to two third parties, while simultaneously agreeing to repurchase the inventory in the following quarter for the original sales price, plus approximately $4 million in interest charges and structuring fees. By improperly accounting for the transactions as sales, rather than financing transactions, Delphi improperly recognized approximately $200 million in cash flow from operations. The Commission alleged that several Delphi officers and employees, including Free, were responsible for this fraudulent conduct.

6. The Commission's complaint further alleged that in the fourth quarter of 2001, Delphi solicited a $20 million lump sum payment from its largest IT service provider (the "IT Provider") in return for Delphi providing new business to the IT Provider and agreeing to repay the $20 million, with interest, over a five-year period. Despite knowing that this payment

[2] The jury did not find that Free's conduct violated the anti-fraud provisions of the securities laws on this transaction, but found instead that Free had violated the books and records and misrepresentations to auditors provisions of the securities laws.

should have been accounted for by Delphi as a Delphi liability to the IT Provider, Delphi and personnel of the IT Provider misrepresented the nature of the payment so that Delphi could improperly account for the payment as an immediate reduction of information technology expense in the fourth quarter. This resulted in Delphi overstating its originally reported EPS in 2001 for the fourth quarter. The Commission alleged that several Delphi officers and employees, including Free, were responsible for this fraudulent conduct.

III.

Based upon the foregoing, the Commission finds that a court of competent jurisdiction has permanently enjoined Free, a CPA, from violating the Federal securities laws within the meaning of Rule 102(e)(3)(i)(A) of the Commission's Rules of Practice. In view of these findings, the Commission deems it appropriate and in the public interest that Free be temporarily suspended from appearing or practicing before the Commission.

IT IS HEREBY ORDERED that Free be, and hereby is, temporarily suspended from appearing or practicing before the Commission. This Order shall be effective upon service on the Respondent.

IT IS FURTHER ORDERED that Free may within thirty days after service of this Order file a petition with the Commission to lift the temporary suspension. If the Commission within thirty days after service of the Order receives no petition, the suspension shall become permanent pursuant to Rule 102(e)(3)(ii).

If a petition is received within thirty days after service of this Order, the Commission shall, within thirty days after the filing of the petition, either lift the temporary suspension, or set the matter down for hearing at a time and place to be designated by the Commission, or both. If a hearing is ordered, following the hearing, the Commission may lift the suspension, censure the petitioner, or disqualify the petitioner from appearing or practicing before the Commission for a period of time, or permanently, pursuant to Rule 102(e)(3)(iii).

This Order shall be served upon Free personally or by certified mail at his last known address.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65785 / November 18, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14634

In the Matter of **Abviva, Inc.,** **ACTIS Global Ventures, Inc.,** **aeroTelesis, Inc.,** **Amwest Insurance Group, Inc., and** **Auto Underwriters of America, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Abviva, Inc., ACTIS Global Ventures, Inc., aeroTelesis, Inc., Amwest Insurance Group, Inc., and Auto Underwriters of America, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Abviva, Inc. ("ABVV") [1] (CIK No. 1084966) is a defaulted Nevada corporation located in Santa Barbara, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ABVV is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2008, which reported a net loss of $2,644,199 for the prior nine months. As of November 15, 2011, the common stock of ABVV was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link") , had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

[1] The short form of each issuer's name is also its stock symbol.

2. ACTIS Global Ventures, Inc. ("AGLV") (CIK No. 1161461) is a revoked Nevada corporation located in Carlsbad, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AGLV is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2007, which reported a net loss of $1,545,398 for the prior nine months. As of November 15, 2011, the common stock of AGLV was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. aeroTelesis, Inc. ("AOTL") (CIK No. 17544) is a void Delaware corporation located in Marina del Rey, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AOTL is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2007, which reported a net loss of $5,093,587 for the prior six months. As of November 15, 2011, the common stock of AOTL was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Amwest Insurance Group, Inc. ("AMWT") (CIK No. 780118) is a void Delaware corporation located in Calabasas, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AMWT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2000, which reported a net loss of $14,316,000 for the prior nine months. On July 24, 2001, AMWT filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Central District of California, was converted to a Chapter 7 petition on April 2, 2004, and was still pending as of November 15, 2011. As of November 15, 2011, the common stock of AMWT was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Auto Underwriters of America, Inc. ("ADWT") (CIK No. 726747) is a California corporation located in San Jose, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ADWT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2008, which reported a net loss of $2,823,786 for the prior nine months. As of November 15, 2011, the common stock of ADWT was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

6. As described in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

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

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

November 18, 2011

In the Matter of **Abviva, Inc.,** **ACTIS Global Ventures, Inc.,** **aeroTelesis, Inc.,** **Amwest Insurance Group, Inc., and** **Auto Underwriters of America, Inc.,** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Abviva, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ACTIS Global Ventures, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of aeroTelesis, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Amwest Insurance Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Auto Underwriters of America, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on November 18, 2011, through 11:59 p.m. EST on December 2, 2011.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65801 / November 21, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14637

In the Matter of **Shengtai Power International, Inc., and Singer Co. N.V.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Shengtai Power International, Inc. and Singer Co. N.V.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Shengtai Power International, Inc. (CIK No. 1448508) is a revoked Nevada corporation located in Shenzhen, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Shengtai Power is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10/A registration statement on December 24, 2008.

2. Singer Co. N.V. (CIK No. 875743) is a Netherland Antilles corporation located in Curacao, Netherland Antilles with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Singer is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form

20-F for the period ended January 3, 1998, which reported a net loss of $238.3 million for the prior twelve months.

B. DELINQUENT PERIODIC FILINGS

3. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

4. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16 requires foreign private issuers to file reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

5. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

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

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for **November 2011**, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Daniel M. Gallagher was sworn in as SEC Commissioner on November 7, 2011

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

MARY L. SCHAPIRO, CHAIRMAN

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

DANIEL L. GALLAGHER, COMMISSIONER

(17 Documents)

Commissioner Aguilar
Commissioner Gallagher
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65734 / November 10, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14622

In the Matter of **Longtop Financial Technologies Limited,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondent Longtop Financial Technologies Limited ("Longtop").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

Longtop (CIK No. 0001412494) is a Cayman Islands corporation with principal offices in Hong Kong and Xiamen, China, that provides software, consulting and support services for the financial services industry in the People's Republic of China. At all relevant times, Longtop's ordinary shares, have been registered with the Commission pursuant to Exchange Act Section 12(b). Longtop is a foreign private issuer and is required to file annual reports with the Commission. It filed annual reports on Form 20-F on July 1, 2008, for the year ended March 31, 2008; on June 29, 2009, for the year ended March 31, 2009; and on July 16, 2010, for the year ended March 31, 2010. Longtop's American depositary shares ("ADSs") were listed and traded on the New York Stock Exchange ("NYSE") under the symbol LFT beginning in October 2007, after an initial

public offering, until August 29, 2011, when the NYSE delisted LFT after finding that the ADSs were no longer suitable for continued listing and trading. Currently, Longtop's ADSs trade in the over-the-counter market under the ticker symbol "LGFTY."

B. LONGTOP'S REPORTING VIOLATIONS

1. Longtop (1) failed to file an annual report on Form 20-F for the year ended March 31, 2011; and (2) failed to provide the investing public with annual reports for 2008, 2009 and 2010 containing audited financial statements because Longtop's former independent auditor stated in May 2011 that continuing reliance should no longer be placed on its prior audit reports on financial statements contained in Longtop's Forms 20-F previously filed with the Commission.

2. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports. Exchange Act Rule 13a-1 requires issuers to file annual reports.

3. As a result of the foregoing, Respondent failed to comply with Exchange Act Section 13(a) and Rule 13a-1 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or to revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondent identified in Section II hereof.

IV.

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

IT IS HEREBY FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

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

This Order shall be served forthwith upon Respondent personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65739 / November 10, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14621

In the Matter of **Vincent L. Verdiramo, Esq.** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS AND IMPOSING TEMPORARY SUSPENSION PURSUANT TO RULE 102(e)(3)(i) OF THE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Rule 102(e)(3)[1] of the Commission's Rules of Practice against Vincent L. Verdiramo ("Respondent" or "Verdiramo").

II.

The Commission finds that:

A. RESPONDENT.

1. Vincent L. Verdiramo, Esq., age 74, is and has been an attorney licensed to practice law in the State of New Jersey and is a partner in the professional association of Verdiramo

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[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney . . . who has been by name . . . [p]ermanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

& Verdiramo, P.A., a law firm with offices in Jersey City, New Jersey. Verdiramo founded RECOV Energy Corporation and served as its Chairman, CEO, and President until March 1, 2000. He also served as counsel to RECOV.

B. RESPONDENT HAS BEEN ENJOINED FROM VIOLATING SECTION 5 OF THE SECURITIES ACT.

2. The Commission filed a complaint against Vincent L. Verdiramo and others in the U.S. District Court for the Southern District of New York ("the Court") that alleged, among other claims, that Verdiramo and others violated Section 5 of the Securities Act of 1933 ("Section 5") by selling shares of RECOV Energy Corporation in unregistered, non-exempt transactions.

3. On September 9, 2011, the Court entered a final judgment against Verdiramo concluding that he violated Section 5 and permanently enjoining him from future violations of Section 5. United States Securities and Exchange Commission v. Richard Verdiramo, et al., 10 Civ. 1888 (RMB).

III.

Based upon the foregoing, the Commission finds that a court of competent jurisdiction has permanently enjoined Verdiramo, an attorney, from violating the Federal securities laws within the meaning of Rule 102(e)(3)(i)(A) of the Commission's Rules of Practice. The Commission also finds that a court of competent jurisdiction has found that Verdiramo violated the federal securities laws within the meaning of Rule 102(e)(3)(i)(B) of the Commission's Rules of Practice. In view of these findings, the Commission deems it appropriate and in the public interest that Verdiramo be temporarily suspended from appearing or practicing before the Commission.

IV.

IT IS HEREBY ORDERED that Vincent L. Verdiramo be, and hereby is, temporarily suspended from appearing or practicing before the Commission as an attorney. This Order shall be effective upon service on the Respondent.

IT IS FURTHER ORDERED that Vincent L. Verdiramo may within thirty days after service of this Order file a petition with the Commission to lift the temporary suspension. If the Commission within thirty days after service of the Order receives no petition, the suspension shall become permanent pursuant to Rule 102(e)(3)(ii).

If a petition is received within thirty days after service of this Order, the Commission shall, within thirty days after the filing of the petition, either lift the temporary suspension, or set the matter down for hearing at a time and place to be designated by the Commission, or both. If a hearing is ordered, following the hearing, the Commission may lift the suspension, censure the petitioner, or disqualify the petitioner from appearing or practicing before the Commission for a period of time, or permanently, pursuant to Rule 102(e)(3)(iii).

This Order shall be served upon Vincent L. Verdiramo personally or by certified mail at his last known address.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9280 / November 16, 2011

SECURITIES EXCHANGE ACT OF 1934
Release No. 65760 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14630

In the Matter of

DANIEL J. GALLAGHER,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, AND SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), and Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Daniel J. Gallagher ("Respondent" or "Gallagher").

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. This action arises out of Gallagher's fraudulent offering of securities of Nano Acquisition Group, LLC (hereafter "NAG" or "the company"). From October 2009 through July 2010, Gallagher raised at least $427,000 from twelve investors through the sale of securities of NAG, an entity that Gallagher formed. Notwithstanding Gallagher's oral representations to investors that their funds would be used by NAG to acquire or develop certain nanotechnology assets, and written representations to the same effect contained in NAG's offering materials,

Gallagher withdrew approximately $392,000 – or 92% of the funds raised – for his personal use. He began to do so almost as soon as NAG was formed and even as he continued to raise additional money from investors. Gallagher never informed investors that he intended to misappropriate, or had already misappropriated, virtually all of their funds for his personal use.

RESPONDENT

2. **Gallagher**, age 46, resides in Port Washington, New York. Gallagher has been in the securities industry since 1990. From May 2001 until January 2010, Gallagher was a registered representative of Vision Securities, Inc. and, through a holding company, was one of Vision's two controlling shareholders. Gallagher has been the subject of a number of prior disciplinary actions, including a prior Commission enforcement action, SEC v. Christopher Castaldo et al., No. 08-Civ-8397 (JSR) (S.D.N.Y.), for his role in permitting Vision to employ an unlicensed securities salesman in connection with a private placement of Nanodynamics' securities.

RELATED ENTITIES

3. **Nano Acquisition Group, LLC** is a Delaware limited liability company formed in September 2009 with its principal place of business in Port Washington, New York. NAG has never been registered with the Commission in any capacity.

4. **Nanodynamics, Inc.** is a Delaware corporation that had its principal place of business in Buffalo, New York. On July 27, 2009, Nanodynamics filed for Chapter 7 bankruptcy. Nanodynamics owned and developed several patented technologies relating to the energy, environmental, and infrastructure markets, including certain nanotechnology and a fuel cell technology that NAG was interested in acquiring.

FACTS

Gallagher Formed NAG and Solicited Investors on Its Behalf

5. In September 2009, Gallagher formed NAG, for the ostensible purpose of raising capital, through an offering of securities, to be used to acquire the stock or assets, in whole or in part, of Nanodynamics, which was then in bankruptcy.

6. Although he had no formal role at NAG other than as a purported consultant, Gallagher had substantial influence over the management of NAG's affairs. He directed or conducted all aspects of NAG's securities offering, including retaining counsel, participating in the preparation of the offering materials, and soliciting all of the investments obtained in the offering.

7. Gallagher's involvement was not disclosed in NAG's offering materials. Instead, the offering materials, which included a Subscription Agreement and an Operating Agreement dated September 2009, as well as an undated Confidential Term Sheet (collectively, "offering materials"), designated a single "Managing Member" who was responsible "for the overall management of the company." During the relevant period, two individuals, appointed by

Gallagher, served successively as NAG's Managing Member. Although, according to the terms of NAG's offering materials, the designated Managing Members were responsible for all of NAG's affairs, neither of them played a meaningful role in the management of the company.

8. Gallagher raised all the funds for NAG. Specifically, he solicited all of NAG's investors and told them that NAG had been formed to acquire the assets of Nanodynamics. Gallagher also caused NAG's offering materials, which contained clear limitations on the use of the offering proceeds, to be distributed to the investors. These materials contained certain representations that the sole purpose of the offering was "to acquire the stock or assets, in whole or in part, of Nanodynamics, Inc.," and that "[i]f the acquisition [of Nanodynamics' stock or assets] is unsuccessful the Company will return Members' investments, minus expenses not to exceed 3% of the funds raised not including any sales commission charges."[1] The offering memorandum and operating agreement also stipulated that "[n]o fees or salaries shall be paid to the Managing Member or any employees of the Company until at least $1 million [of the $7.5 million total offering] is raised." Gallagher worked closely with NAG's counsel in the preparation of the offering materials and was well aware of these restrictions.

Gallagher Misappropriated the Proceeds of NAG's Securities Offering

9. From October 2009 through July 2010, Gallagher obtained at least $427,000 from twelve investors through the sale of interests in NAG. Gallagher first told investors that the money would be used to acquire the assets of Nanodynamics and, later, instead, to develop similar assets through a new company called Watt Fuel Cell Corporation.

10. Virtually none of the funds that Gallagher raised from NAG's investors were used to acquire the assets of Nanodynamics or develop similar assets through Watt Fuel Cell, yet no funds have been returned to the investors and none of the offering proceeds remain.

11. Instead, Gallagher misappropriated almost all of the funds he obtained from investors. Of the at least $427,000 NAG raised from investors, Gallagher withdrew at least $392,000 or 92% for his personal use. From October 2009 through July 2010, on an almost daily basis, Gallagher withdrew funds from NAG's bank accounts, by means of checks made out to himself or direct cash withdrawals, in amounts generally ranging from $500 to $3,000.

12. Gallagher began withdrawing funds for his personal use almost as soon as he began obtaining funds from investors and continued to do so even as he raised additional funds from investors. By the time he raised a total of $45,000 from two investors in December 2009, Gallagher had already withdrawn $44,250, or approximately 18%, of the $252,222 that he had raised from investors by that point. By the time he raised an additional $39,800 in June 2010, he

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[1] In addition, the offering materials disclosed that Vision, as placement agent for the offering, would receive 7% of the total funds that it raised as a commission. Before any funds were raised, however, Vision was ordered by the Financial Industry Regulatory Authority ("FINRA") to cease selling securities.

had already withdrawn approximately 89% of the amount he had raised from investors for his personal use.

Gallagher Concealed From Investors His Use of Their Funds

13. Gallagher never disclosed to NAG's investors that he withdrew, or intended to withdraw, most of their funds for his personal use.

14. On May 27, 2010, Gallagher wrote to NAG's investors, telling them "[a]fter nearly a year of sifting through the bankruptcy process of NanoDynamics . . . it has become apparent that the greatest potential for a return on investment is to develop the next generation fuel cell." Gallagher told the investors that their membership interests in NAG would be replaced by founders' shares in a Watt Fuel Cell, which would develop its own nanotechnology. Gallagher further represented that "[t]o date, Nano Acquisition Group, LLC has expended approximately $300,000 in connection with analyzing all the assets of NanoDynamics, Inc. and [the Nanodynamics subsidiary that owned the key technologies], participating in the bankruptcy process, maintenance of the LLC [NAG], and the development of the new company."

15. Gallagher's May 27, 2010 letter to investors was false and misleading. No more than approximately $35,000 of the approximately $300,000 that Gallagher had obtained from investors to that point had been spent in connection with analyzing the assets of Nanodynamics, participating in the bankruptcy process, maintaining itself, or developing a new company. Instead, Gallagher had used most of investors' funds – over $262,000 at that point – to compensate himself, a fact that he never disclosed to investors. Reasonable investors would not have purchased securities in NAG if they had known that Gallagher intended to misappropriate their money or had already done so.

VIOLATIONS

16. As a result of the conduct described above, Gallagher willfully violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)(2)], and 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].

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to,

disgorgement, prejudgment interest and civil penalties pursuant to Sections 21B and 21C of the Exchange Act.

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement and prejudgment interest pursuant to Section 8A(e) of the Securities Act, and Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 CFR § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65762 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14631

In the Matter of

MICHAEL CAMERON VAN ALPHEN,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Michael Cameron Van Alphen ("Van Alphen" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Van Alphen, age 30, is a Utah resident. Van Alphen used the mails or instrumentalities of interstate commerce to induce investors to purchase promissory notes from Crown Capital Management, LLC and related entities. This conduct took place over a period of months and on a regular basis during that period. Van Alphen acted as a broker, and thus as an associated person of that unregistered broker-dealer, by: (1) actively soliciting investors; (2) handling investor funds; (3) accepting orders from investors; (4) receiving transaction based compensation of approximately thirty thousand dollars; and (5) offering and arranging lines of credit for his investors via his shelf corporations to provide investors with a means of acquiring investment capital. Van Alphen was not registered as a broker-dealer or an associated person of a registered broker-dealer at the time the sales took place.

2. On February 7, 2011, Van Alphen was convicted of one count of securities fraud in violation of Utah Code Ann § 61-1-1, one count of sales by an unlicensed agent in violation of Utah Code Ann § 61-1-3 and one count of communications fraud in violation of Utah Code Ann § 76-10-1801 before the Fourth Judicial District Court, Utah County, Utah in State of Utah v. Van Alphen (Case No. 101402231). Van Alphen was sentenced to seven days in jail, fifteen years probation, fined $10,000, and ordered to pay $3,306,400 in restitution.

3. Section 15(b)(6)(A) of the Exchange Act authorizes the Commission to institute administrative proceedings and seek remedial sanctions (including a bar) against any person associated with a broker-dealer if it is in the public interest and, among other things, the person associated with it has willfully violated any of the provisions of the federal securities laws, has been convicted of an offense that involves the sale of a security, or has been enjoined from registering with the Commission in specified capacities or engaging in or continuing any conduct or practice in connection with the purchase or sale of a security.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Van Alphen's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and that Respondent Van Alphen be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a

broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65765; File No. S7-04-09)

November 16, 2011

ORDER EXTENDING TEMPORARY CONDITIONAL EXEMPTION FOR NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS FROM REQUIREMENTS OF RULE 17g-5 UNDER THE SECURITIES EXCHANGE ACT OF 1934 AND REQUEST FOR COMMENT

I. Introduction

On May 19, 2010, the Securities and Exchange Commission ("Commission") conditionally exempted, with respect to certain credit ratings and until December 2, 2010, nationally recognized statistical rating organizations ("NRSROs") from certain requirements in Rule 17g-5(a)(3)[1] under the Securities Exchange Act of 1934 ("Exchange Act"), which had a compliance date of June 2, 2010.[2] Pursuant to the Order, an NRSRO is not required to comply with Rule 17g-5(a)(3) until December 2, 2010 with respect to credit ratings where: (1) the issuer of the structured finance product is a non-U.S. person; and (2) the NRSRO has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S. ("covered transactions").[3] On November 23, 2010, the Commission extended the conditional temporary exemption until December 2, 2011 (the "Extension Order").[4] The Commission is extending the temporary conditional exemption exempting NRSROs from complying with Rule 17g-5(a)(3) with respect to rating covered transactions until December 2, 2012.

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1 See 17 CFR 240.17g-5(a)(3).

2 See Securities Exchange Act Release No. 62120 (May 19, 2010), 75 FR 28825 (May 24, 2010) ("Order").

3 See id. at 28827-28 (setting forth conditions of relief).

4 See Securities Exchange Act Release No. 63363 (Nov. 23, 2010), 75 FR 73137 (Nov. 29, 2010) ("Extension Order").

II. Background

Rule 17g-5 identifies, in paragraphs (b) and (c) of the rule, a series of conflicts of interest arising from the business of determining credit ratings.[5] Paragraph (a) of Rule 17g-5[6] prohibits an NRSRO from issuing or maintaining a credit rating if it is subject to the conflicts of interest identified in paragraph (b) of Rule 17g-5 unless the NRSRO has taken the steps prescribed in paragraph (a)(1) (i.e., disclosed the type of conflict of interest in Exhibit 6 to Form NRSRO in accordance with Section 15E(a)(1)(B)(vi) of the Exchange Act[7] and Rule 17g-1)[8] and paragraph (a)(2) (i.e., established and is maintaining and enforcing written policies and procedures to address and manage conflicts of interest in accordance with Section 15E(h) of the Exchange Act).[9] Paragraph (c) of Rule 17g-5 specifically prohibits seven types of conflicts of interest. Consequently, an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to these conflicts regardless of whether it had disclosed them and established procedures reasonably designed to address them.

In December 2009, the Commission adopted subparagraph (a)(3) to Rule 17g-5. This provision requires an NRSRO that is hired by an arranger to determine an initial credit rating for a structured finance product to take certain steps designed to allow an NRSRO that is not hired by the arranger to nonetheless determine an initial credit rating – and subsequently monitor that credit rating – for the structured finance product.[10] In particular, under Rule 17g-5(a)(3), an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to the conflict

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5 17 CFR 240.17g-5(b) and (c).

6 17 CFR 240.17g-5(a).

7 15 U.S.C. 78o-7(a)(1)(B)(vi).

8 17 CFR 240.17g-1.

9 15 U.S.C. 78o-7(h).

10 See 17 CFR 240.17g-5(a)(3); see also Securities Exchange Act Release No. 61050 (November 23, 2009), 74 FR 63832 ("Adopting Release") at 63844-45.

of interest identified in paragraph (b)(9) of Rule 17g-5 (i.e., being hired by an arranger to determine a credit rating for a structured finance product)[11] unless it has taken the steps prescribed in paragraphs (a)(1) and (2) of Rule 17g-5 (discussed above) and the steps prescribed in new paragraph (a)(3) of Rule 17g-5.[12] Rule 17g-5(a)(3), among other things, requires that the NRSRO must:

- Maintain on a password-protected Internet Web site a list of each structured finance product for which it currently is in the process of determining an initial credit rating in chronological order and identifying the type of structured finance product, the name of the issuer, the date the rating process was initiated, and the Internet Web site address where the arranger represents the information provided to the hired NRSRO can be accessed by other NRSROs;
- Provide free and unlimited access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g-5 that covers that calendar year;[13] and

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[11] Paragraph (b)(9) of Rule 17g-5 identifies the following conflict of interest: issuing or maintaining a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument. 17 CFR 240.17g-5(b)(9).

[12] 17 CFR 240.17g-5(a)(3).

[13] Paragraph (e) of Rule 17g-5 requires that an NRSRO seeking to access the hired NRSRO's Internet Web site during the applicable calendar year must furnish the Commission with the following certification:

The undersigned hereby certifies that it will access the Internet Web sites described in 17 CFR §240.17g-5(a)(3) solely for the purpose of determining or monitoring credit ratings. Further, the undersigned certifies that it will keep the information it accesses pursuant to 17 CFR §240.17g-5(a)(3) confidential and treat it as material nonpublic information subject to its written policies and procedures established, maintained, and enforced pursuant to section 15E(g)(1) of the Act (15 U.S.C. 78o-7(g)(1)) and 17 CFR §240.17g-4. Further, the undersigned certifies that it will determine and maintain credit ratings for at least 10% of the issued securities and money market instruments for which it accesses information pursuant to 17 CFR §240.17g-5(a)(3)(iii), if it accesses such information for 10 or more issued securities or money market instruments in the calendar year covered by the certification. Further, the undersigned certifies one of the following as applicable: (1) In the most recent calendar year during which it accessed information pursuant to §17 CFR 240.17g-5(a)(3), the undersigned accessed information for [Insert

- Obtain from the arranger a written representation that can reasonably be relied upon that the arranger will, among other things, disclose on a password-protected Internet Web site the information it provides to the hired NRSRO to determine the initial credit rating (and monitor that credit rating) and provide access to the Web site to an NRSRO that provides it with a copy of the certification described in paragraph (e) Rule 17g-5.[14]

The Commission stated in the Adopting Release that subparagraph Rule 17g-5(a)(3) is designed to address conflicts of interest and improve the quality of credit ratings for structured finance products by making it possible for more NRSROs to rate structured finance products.[15] For example, the Commission noted that when an NRSRO is hired to rate a structured finance

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Number] issued securities and money market instruments through Internet Web sites described in 17 CFR §240.17g-5(a)(3) and determined and maintained credit ratings for [Insert Number] of such securities and money market instruments; or (2) The undersigned previously has not accessed information pursuant to 17 CFR §240.17g-5(a)(3) 10 or more times during the most recently ended calendar year.

[14] In particular, under paragraph (a)(3)(iii) of Rule 17g-5, the arranger must represent to the hired NRSRO that it will:

(1) Maintain the information described in paragraphs (a)(3)(iii)(C) and (a)(3)(iii)(D) of Rule 17g-5 available at an identified password-protected Internet Web site that presents the information in a manner indicating which information currently should be relied on to determine or monitor the credit rating;

(2) Provide access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g-5 that covers that calendar year, provided that such certification indicates that the nationally recognized statistical rating organization providing the certification either: (i) determined and maintained credit ratings for at least 10% of the issued securities and money market instruments for which it accessed information pursuant to paragraph (a)(3)(iii) of Rule 17g-5 in the calendar year prior to the year covered by the certification, if it accessed such information for 10 or more issued securities or money market instruments; or (ii) has not accessed information pursuant to paragraph (a)(3) of Rule 17g-5 10 or more times during the most recently ended calendar year.

(3) Post on such password-protected Internet Web site all information the arranger provides to the NRSRO, or contracts with a third party to provide to the NRSRO, for the purpose of determining the initial credit rating for the security or money market instrument, including information about the characteristics of the assets underlying or referenced by the security or money market instrument, and the legal structure of the security or money market instrument, at the same time such information is provided to the NRSRO; and

(4) Post on such password-protected Internet Web site all information the arranger provides to the NRSRO, or contracts with a third party to provide to the NRSRO, for the purpose of undertaking credit rating surveillance on the security or money market instrument, including information about the characteristics and performance of the assets underlying or referenced by the security or money market instrument at the same time such information is provided to the NRSRO.

[15] Adopting Release at 63844.

product, some of the information it relies on to determine the rating is generally not made public.[16] As a result, structured finance products frequently are issued with ratings from only the one or two NRSROs that have been hired by the arranger, with the attendant conflict of interest that creates.[17] The Commission stated that subparagraph Rule 17g-5(a)(3) was designed to increase the number of credit ratings extant for a given structured finance product and, in particular, to promote the issuance of credit ratings by NRSROs that are not hired by arrangers.[18] The Commission's goal in adopting the rule was to provide users of credit ratings with more views on the creditworthiness of structured finance products.[19] In addition, the Commission stated that Rule 17g-5(a)(3) was designed to reduce the ability of arrangers to obtain better than warranted ratings by exerting influence over NRSROs hired to determine credit ratings for structured finance products.[20] Specifically, by opening up the rating process to more NRSROs, the Commission intended to make it easier for the hired NRSRO to resist such pressure by increasing the likelihood that any steps taken to inappropriately favor the arranger could be exposed to the market through the credit ratings issued by other NRSROs.[21]

Rule 17g-5(a)(3) became effective on February 2, 2010, and the compliance date for Rule 17g-5(a)(3) was June 2, 2010.

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16 Id.

17 Id.

18 Id.

19 Id.

20 Id.

21 Id.

III. Extension of Conditional Temporary Extension

In the Order, the Commission requested comment generally, but also on a number of specific issues.[22] The Commission received six comments in response to this solicitation of comment.[23] The commenters expressed concern that the extraterritorial application of Rule 17g-5(a)(3) could, in the commenter's view, among other things, disrupt local securitization markets,[24] inhibit the ability of local firms to raise capital,[25] and conflict with local laws.[26] Several commenters also requested that the conditional temporary exemption be extended or made permanent.[27] The Extension Order again solicited public comment on issues raised in connection with the extra-territorial application of Rule 17g-5(a)(3).[28] One comment letter requested that the Order be made permanent, citing many of the same reasons set forth in prior comment letters.[29]

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22 See Order, supra note 2, at 28828.

23 Letter from Masamichi Kono, Vice Commissioner for International Affairs, Financial Services Agency, Japan, to Elizabeth Murphy, Secretary, Commission, dated Nov. 12, 2010 ("Japan FSA Letter"); Letter from Masaru Ono, Executive Director, Securitization Forum of Japan, to Elizabeth Murphy, Secretary, Commission, dated Nov. 12, 2010 ("SFJ Letter"); Letter from Rick Watson, Managing Director, Association for Financial Markets in Europe / European Securitisation Forum, to Elizabeth Murphy, Secretary, Commission, dated Nov. 11, 2010 ("AFME Letter"); Letter from Jack Rando, Director, Capital Markets, Investment Industry Association of Canada, to Randall Roy, Assistant Director, Division, Commission, dated Sep. 22, 2010 ("IIAC Letter"); Letter from Christopher Dalton, Chief Executive Officer, Australian Securitisation Forum, to Randall Roy, Assistant Director, Division, Commission, dated Jun. 27, 2010 ("AuSF Letter"); Letter from Takefumi Emori, Managing Director, Japan Credit Rating Agency, Ltd. ("JCR") to Elizabeth Murphy, Secretary, Commission, dated Jun. 25, 2010 ("JCR Letter").

24 See Japan FSA Letter; SFJ Letter; AFME Letter; JCR Letter, AuSF Letter.

25 See AFME Letter; JCR Letter; AuSF Letter.

26 See Japan FSA Letter; AFME Letter; JCR Letter; AuSF Letter; IIAC Letter. With respect to local laws, we note that the European Commission in recent months has issued a relevant proposal for amendments to the European Union Regulation on Credit Ratings. See "Regulation of the European Parliament and of the Counsel on amending Regulation (EC) No 1060/2009 on credit rating agencies" (available at http://ec.europa.eu/internal_market/securities/docs/agencies/100602_proposal_en.pdf).

27 See Japan FSA Letter; SFJ Letter; AFME Letter; JCR Letter.

28 See Letter from Tom Deutsch, Executive Director, American Securitization Forum, and Chris Dalton, Chief Executive Officer, Australian Securitization Forum, to Randall Roy, Assistant Director, and Joseph Levinson, Special Counsel, Division, Commission, dated Aug. 9, 2011.

29 See id.

Given the continued concerns about potential disruptions of local securitization markets, and because the Commission's consideration of the issues raised will benefit from additional time to engage in further dialogue with interested parties and to monitor market and regulatory developments, the Commission believes extending the conditional temporary exemption until December 2, 2012 is necessary or appropriate in the public interest, and is consistent with the protection of investors.

IV. Request for Comment

The Commission believes that it would be useful to continue to provide interested parties opportunity to comment. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (http://www.sec.gov/rules/exorders.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-04-09 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7-04-09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/exorders.shtml). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F St. NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly

V. Conclusion

For the foregoing reasons, the Commission believes it would be necessary or appropriate in the public interest and consistent with the protection of investors to extend the conditional temporary exemption exempting NRSROs from complying with Rule 17g-5(a)(3) with respect to rating covered transactions until December 2, 2012.

ACCORDINGLY,

IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act, that a nationally recognized statistical rating organization is exempt until December 2, 2012 from the requirements in Rule 17g-5(a)(3) (17 CFR 240.17g-5(a)(3)) for credit ratings where:

(1) The issuer of the security or money market instrument is not a U.S. person (as defined under Securities Act Rule 902(k)); and

(2) The nationally recognized statistical rating organization has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any

arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S.

By the Commission.

Elizabeth M. Murphy
Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9279 / November 16, 2011

SECURITIES OF EXCHANGE ACT OF 1934
Release No. 65758 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14628

In the Matter of

MORGAN STANLEY INVESTMENT MANAGEMENT INC.,

Respondent.

ORDER UNDER SECTION 27A(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

Morgan Stanley has submitted a letter, on behalf of themselves and any of their current and future affiliates, dated October 20 , 2011, requesting a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from its settlement of an administrative proceeding instituted by the Commission.

II.

On November 16, 2011, pursuant to Morgan Stanley Investment Management Inc.'s ("MSIM") Offer of Settlement, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order") against MSIM. Under the Order, the Commission found that MSIM, the primary investment adviser to The Malaysia Fund, Inc. ("Fund"), represented to investors and the Fund's board of directors ("Board") that the Fund's Malaysian sub-adviser was providing certain services that the sub-adviser in fact was not

providing. MSIM also did not adopt and implement procedures governing its oversight of the Fund's Malaysian sub-adviser and its provision of information regarding the sub-adviser's services to the Board in connection with the investment advisory contract renewal process. Accordingly, the Commission found that MSIM willfully violated Sections 15(c) and 34(b) of the Investment Company Act, and Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. In the Order, the Commission ordered MSIM to cease and desist from committing or causing any violations and any future violations of Sections 15(c) and 34(b) of the Investment Company Act, and Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, ordered MSIM censured, and ordered MSIM to pay a civil money penalty in the amount of $1,500,000 and to comply with undertakings.

III.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer ... during the 3-year period preceding the date on which the statement was first made ... has been made the subject of a judicial or administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

IV.

Based on the representations set forth in Morgan Stanley's October 20, 2011 request, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the issuance of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Morgan Stanley and any current or future affiliates resulting from the issuance of the Commission's Order against MSIM is hereby granted.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9278 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14628

In the Matter of

MORGAN STANLEY INVESTMENT MANAGEMENT INC.,

Respondent.

ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933 GRANTING A WAIVER OF THE RULE 602(c)(3) DISQUALIFICATION PROVISION

I.

Morgan Stanley Investment Management Inc. ("MSIM" or "Respondent") has submitted a letter, dated October 20, 2011, requesting a waiver of the Rule 602(c)(3) disqualification from the exemption from registration under Regulation E arising from MSIM's settlement of an administrative proceeding commenced by the Commission.

II.

On November16, 2011, pursuant to Respondent's Offer of Settlement, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order") against MSIM. Under the Order, the Commission found that MSIM, the primary investment adviser to The Malaysia Fund, Inc. ("Fund"), represented to investors and the Fund's board of directors ("Board") that the Fund's Malaysian sub-adviser was providing certain services that the sub-adviser in fact was not providing. MSIM also did not adopt and implement procedures governing its oversight of the Fund's Malaysian sub-adviser and its provision of information regarding the sub-adviser's services to the Board in connection with the investment advisory contract renewal process. Accordingly, the Commission found that MSIM willfully violated Sections 15(c) and 34(b) of the Investment Company Act, and Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. In the Order, the Commission ordered MSIM to cease and desist from committing or causing any violations and any future violations of Sections 15(c) and 34(b) of the Investment Company Act, and Sections 206(2) and

and Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, ordered MSIM censured, and ordered MSIM to pay a civil money penalty in the amount of $1,500,000 and to comply with undertakings.

III.

The Regulation E exemption is unavailable for the securities of small business investment company issuers or business development company issuers if any investment adviser or underwriter for the securities to be offered is subject to an order of the Commission entered pursuant to Section 203(e) of the Advisers Act. Rule 602(e) under the Securities Act of 1933 ("Securities Act") provides, however, that the disqualification "shall not apply . . . if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied." 17 C.F.R. § 230.602(e).

IV.

Based upon the representations set forth in MSIM's request, the Commission has determined that pursuant to Rule 602(e) under the Securities Act a showing of good cause has been made that it is not necessary under the circumstances that the exemption be denied as a result of the Order.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3315 / November 16, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29862 / November 16, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14628

In the Matter of

MORGAN STANLEY INVESTMENT MANAGEMENT INC.,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Morgan Stanley Investment Management Inc. ("MSIM" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of

1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

These proceedings arise out of certain investment advisory fees improperly charged to a registered fund from 1996 to 2007. MSIM, the primary investment adviser to The Malaysia Fund, Inc. ("Fund"), represented to investors and the Fund's board of directors ("Board") that the Fund's Malaysian sub-adviser was providing certain services that the sub-adviser in fact was not providing. The Board approved the sub-adviser's fees each year based on MSIM's representations. As a result, the Fund paid approximately $1.8 million to the sub-adviser between 1996 and the end of 2007 (the "relevant time period") for advisory services it did not receive. In early 2008, after Commission examination staff inquired into the Fund's relationship with the sub-adviser, the sub-adviser's services were terminated.

Throughout the relevant time period, the Fund had a Research and Advisory Agreement with AMMB Consultant Sendirian Berhad ("AMMB") and MSIM, under which AMMB undertook to provide advice, research, and assistance to MSIM for the benefit of the Fund. Each year during the relevant period, in connection with the Fund's annual investment advisory contract approval process, AMMB submitted to MSIM a report for the Board that falsely claimed it was providing specific research, intelligence, and advice to MSIM. MSIM included this report as part of the materials it submitted to the Fund's Board for the renewal of its and AMMB's advisory agreements. MSIM also submitted two compliance reports to the Fund during the relevant period indicating that AMMB was providing advisory services. In reality, AMMB's advisory services were limited to preparing two minor monthly reports for MSIM, which MSIM's portfolio management team neither requested nor used in its management of the Fund. At the same time, MSIM, which was responsible for preparing the Fund's annual and semi-annual reports to shareholders, repeatedly issued reports representing that AMMB was providing advisory services to MSIM, when in fact it was not.

Section 15(c) of the Investment Company Act requires an investment adviser of a registered investment company to furnish such information as may reasonably be necessary for such company's directors to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of the company. As described above, MSIM did not provide the Fund's Board with information reasonably necessary for the Board to evaluate the nature, quality, and cost of AMMB's services. MSIM also represented to the Fund's Board and investors that AMMB was providing advisory services to MSIM for the benefit of the Fund when it was not. Finally, MSIM did not adopt and implement procedures governing its oversight of

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

AMMB and its provision of information regarding AMMB's services to the Board in connection with the investment advisory contract renewal process.

Respondent

1. MSIM, a Delaware corporation, is a registered investment adviser and wholly owned subsidiary of Morgan Stanley. MSIM has been the investment adviser to the Fund since its inception in 1987. MSIM has been registered with the Commission since January 1981.

Other Relevant Entities

2. The Fund is a Maryland corporation, formed in March 1987, as a closed-end investment company launched and managed by MSIM. The fund invests in equity securities of Malaysian companies.

3. AMMB, located in Kuala Lumpur, Malaysia, was an investment adviser registered with the Commission from May 8, 1987 until February 12, 2008, when it withdrew its registration. AMMB is a wholly owned subsidiary of AM Bank Group, one of the largest banking groups in Malaysia.

Background

4. The Fund is a closed-end investment company that is part of the Morgan Stanley funds complex, which is currently comprised of approximately 100 institutional and retail funds or portfolios and is overseen by a single board of directors, all but one of whom is not "interested" within the meaning of the Investment Company Act. The Fund's objective is long-term capital appreciation through investment in equity securities of Malaysian companies. As of June 30, 2011, the Fund reported net assets of $93.8 million.

5. MSIM serves as the primary investment adviser for the Fund. MSIM entered into a written advisory agreement with the Fund effective May 1, 1987, to provide the Fund with investment management services, including investment trading and maintenance of the Fund's books and records. The Fund pays MSIM a fee at an annual rate of 0.90% of the Fund's first $50 million of average weekly net assets; 0.70% of the Fund's next $50 million of average weekly net assets; and 0.50% of the Fund's average weekly net assets in excess of $100 million. MSIM is also the Fund's administrator and responsible for the overall management and administration of the Fund, including the preparation of the Fund's annual and semi-annual reports, preparation of materials for board of directors meetings, and compliance monitoring. For its administrative services, the Fund pays MSIM an annual fee, in monthly installments, of a percentage of the average weekly net assets of the Fund, plus $24,000 per annum.

6. AMMB served as a sub-adviser to the Fund from inception until it was terminated effective December 31, 2007, pursuant to a Research and Advisory Agreement with the Fund. MSIM was also a party to this agreement, which is separate from MSIM's advisory agreement with the Fund. This Research and Advisory Agreement, which is dated May 1, 1987 (and was amended June 1, 1997), specified that AMMB would register with the Commission as an

investment adviser under the Advisers Act and furnish MSIM "such investment advice, research and assistance, as [MSIM] shall from time to time reasonably request." AMMB did not exercise investment discretion or authority over any of the assets in the Fund. The agreement also provided for annual review and approval of its terms by the Board. MSIM undertook in the agreement to "work closely" with AMMB and assist it in "developing its research techniques, procedures and analysis." MSIM also agreed to work with AMMB "in order to make [the] relationship as productive as possible for the benefit of the Fund and to further the development of [AMMB's] ability to provide the services contemplated." To that end, MSIM agreed to furnish AMMB with informal memoranda reflecting MSIM's understanding of its "working procedures" with AMMB. MSIM took responsibility for monitoring AMMB's performance of services.

7. The Research and Advisory Agreement provided that the Fund would pay AMMB a fee at an annual rate of 0.25% of the Fund's first $50 million of average weekly net assets; 0.15% of the next $50 million of average weekly net assets; and 0.10% of the average weekly net assets in excess of $100 million. During the relevant time period, the Fund paid AMMB advisory fees totaling $1,845,000. As the fund administrator, MSIM facilitated the Fund's payment of AMMB's advisory fees.

Investment Advisory Contract Renewal Process

8. Under Section 15(a) of the Investment Company Act, it is unlawful for any person to serve or act as investment adviser to a registered investment company except pursuant to a written contract that satisfies certain criteria and that has been approved by a majority of the outstanding voting securities. The original contract can continue in effect for more than two years from its date of execution only so long as such continuance is specifically approved at least annually by the Board or by a vote of a majority of the outstanding voting securities. Section 15(c) of the Investment Company Act requires that the terms of any contract or agreement, whereby a person undertakes regularly to serve or act as investment adviser of a registered investment company, and any renewal thereof, be approved by a vote of the majority of a fund's disinterested directors or trustees at a meeting called for the purpose of voting on such approval. Section 15(c) also makes it the duty of an investment adviser of a registered investment company to furnish such information as may reasonably be necessary for fund directors to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company. The process by which a fund board evaluates and approves the renewal of an investment advisory contract is commonly referred to as the "15(c) process."

9. Each year, the Board evaluated the terms of MSIM's advisory agreements and all sub-advisory agreements with each fund in the Morgan Stanley fund complex. During the entire relevant time period, the Fund was one of two Morgan Stanley funds that had agreements with unaffiliated sub-advisers, such as AMMB.

10. The Board's investment advisory contract approval process worked in substantially the same way throughout the relevant time period. During the 15(c) process each year, MSIM provided the Board with detailed information regarding each adviser and sub-adviser. While the type of information MSIM provided to the Board varied over time, typical

information provided included copies of all advisory agreements and a description of any proposed changes in services or fees, a copy of each adviser's most current Form ADV Parts 1 and II, and current financial statements for each adviser.

11. The Board reviewed the information MSIM provided in order to evaluate the various advisory agreements. At a meeting held during the spring of each year during the relevant period, the Board voted to renew MSIM's and AMMB's advisory contracts with the Fund.

12. Every year since at least 1994 as part of the Fund's advisory contract renewal process, AMMB prepared a report to the Board of Directors on the "Continuance of [AMMB's] Research and Advisory Agreement" ("Report"). The stated purpose of the Report was to provide the Fund's Board with information AMMB believed "may reasonably be necessary for the Board to evaluate terms of the sub-adviser agreement." AMMB represented to the Board in each of the Reports that it provides the following services to MSIM: (a) research on Malaysian companies to identify and recommend stocks for investment by MSIM; (b) statistical reports to assist MSIM in making investment decisions; (c) market intelligence on local corporate developments; and (d) advice on changes in economic and political conditions in Malaysia. The Report also identified key AMMB personnel and included AMMB's unaudited financial statements.

13. AMMB provided the Reports directly to MSIM, which included them in the materials it submitted to the Board as part of the 15(c) process along with a copy of the Research and Advisory Agreement. In the years from 2005 to 2007, MSIM submitted these materials to the Board in connection with the 15(c) process and represented that the advisory services were as described in the relevant agreements and disclosure documents. MSIM also included, in the years 2006 and 2007, an annual compliance program review prepared pursuant to Rule 38a-1 of the Investment Company Act. These annual compliance reports state that AMMB "provides research and investment advisory services to MSIM Inc."

AMMB's Actual Services and MSIM's Oversight of Those Services

14. Contrary to AMMB's 15(c) Reports, AMMB did not provide any of the services it and MSIM represented to the Board it provided during the relevant period. Instead, AMMB provided two monthly reports that MSIM neither requested nor used in its management of the Fund. The first was a two-page list of the market capitalization of the Kuala Lumpur Composite Index. The second was a two-page comparison of the monthly performance of the Fund against other Malaysian equity trusts. Both reports were based on readily available public information. MSIM had no contact with AMMB about the two reports.

15. For twelve years, the Board relied on MSIM's representations and submissions of information regarding AMMB's services when it unanimously approved the continuation of AMMB's advisory contracts.

16. Even though MSIM took responsibility for monitoring AMMB's services, its oversight and involvement with AMMB during the relevant time period were wholly inadequate.

MSIM had no written procedures specifically governing its oversight of sub-advisers, and it did not have a procedure in place for reviewing work done by AMMB. MSIM did not conduct due diligence visits of AMMB and performed no other routine supervision of AMMB. Contrary to the advisory agreement, MSIM did not work with AMMB in developing research or engage in any regular communication or exchange any informal memoranda regarding their working relationship during the relevant time period. Controls such as this were particularly critical to MSIM due to its global advisory business which extended to numerous offices and service providers around the world.

Statements to Investors

17. Throughout the relevant time period, MSIM was responsible for preparing and filing the Fund's annual and semi-annual reports to shareholders. The Fund's notes to the financial statements in its annual and semi-annual reports stated that for an advisory fee, AMMB provided "investment advice, research and assistance on behalf of the Fund to Morgan Stanley Investment Management, Inc. under terms of a contract." In fact, AMMB was not providing MSIM with any advisory services. For twelve years, MSIM prepared and filed annual and semi-annual reports representing that AMMB was providing advisory services to MSIM for the benefit of the Fund, which AMMB was not.

Termination of the Advisory Contract with AMMB

18. In late 2007, in response to an examination by the Commission staff into the Fund's relationship with AMMB, MSIM initiated its own investigation into AMMB's advisory services. MSIM confirmed the staff's conclusion that since at least 2000, AMMB had been providing MSIM with two reports, which the applicable portfolio managers never used in their management of the Fund. As a result, in February 2008, the Board voted to terminate AMMB's agreement. MSIM acknowledged to the Board that the reports provided "fell short of what was described in the 15(c) reports to the Board" and noted that "certain internal controls needed improvement."

Violations of Law

19. Section 15(c) of the Investment Company Act requires, among other things, that the terms of any contract or agreement, whereby a person undertakes regularly to serve or act as investment adviser of a registered investment company, and any renewal thereof, be approved by a vote of the majority of a fund's disinterested directors or trustees at a meeting called for the purpose of voting on such approval. Section 15(c) also makes it the duty of an investment adviser of a registered investment company to furnish such information as may reasonably be necessary for fund directors to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company.

20. MSIM willfully[2] violated Section 15(c) of the Investment Company Act by failing to provide the Fund's Board with information necessary for the Board to evaluate the nature,

[2] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C.

quality, and cost of AMMB's services. Each year during the relevant period, MSIM provided the Board with, among other things, AMMB's 15(c) Report, which falsely represented the advisory services AMMB was providing to MSIM purportedly for the benefit of the Fund. In the years from 2005 to 2007, MSIM submitted AMMB's report and Research and Advisory Agreement to the Board in connection with the 15(c) process and represented that services were as described in the relevant agreements and disclosure documents. The Board relied on this information in approving the renewal of AMMB's advisory contracts. MSIM's violations resulted in the Fund paying for advisory services it did not receive.

21. Section 206(2) of the Advisers Act prohibits an investment adviser from engaging "in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client" and imposes on investment advisers a fiduciary duty to act in "utmost good faith," to fully and fairly disclose all material facts, and to use reasonable care to avoid misleading clients. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, 194 (1963). MSIM willfully violated Section 206(2) of the Advisers Act by representing and providing information to the Fund's Board that AMMB was providing advisory services to MSIM for the benefit of the Fund, which it was not.

22. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require registered investment advisers to adopt and implement written procedures reasonably designed to prevent violations of the Advisers Act. MSIM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 by failing to adopt and implement written policies and procedures tailored to the firm's advisory business that were reasonably designed to detect and prevent Advisers Act violations. MSIM failed to adopt and implement procedures governing its oversight of AMMB's services and its representations and provision of information to the Board regarding those services in connection with the investment advisory contract renewal process.

23. Section 34(b) of the Investment Company Act makes it unlawful for any person "to make any untrue statement of a material fact" in a document filed or transmitted pursuant to the Act. The same section makes it unlawful to omit from any such document any fact necessary in order to prevent the statements made therein from being materially misleading. *Brown v. Bullock*, 194 F. Supp. 207, 231 (S.D.N.Y. 1961). *See also SEC v. Advance Growth Capital Corp.*, 470 F.2d 40, 52 (7th Cir. 1972). MSIM willfully violated Section 34(b) of the Investment Company Act by preparing and distributing on behalf of the Fund materially false and misleading annual and semi-annual reports stating that AMMB provided "investment advice, research and assistance on behalf of the Fund to Morgan Stanley Investment Management, Inc. under terms of a contract." In fact, AMMB was not providing MSIM with any advisory services.

Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" Id. (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Undertakings

Respondent has agreed to the following undertakings:

24. MSIM shall, within 10 days of the entry of this Order, make a payment to the Fund in the amount of $1,845,000 to reimburse the Fund for the amount of advisory fees the Fund paid to AMMB from 1996 until the end of 2007, less a credit of $543,000 for the portion MSIM has already reimbursed to the Fund.

25. Within 45 days of the entry of this Order, MSIM shall implement and maintain policies and procedures specifically governing the Section 15(c) process and its oversight of advisers and sub-advisers, principal underwriters, administrators, and transfer agents (collectively "service providers"). Such policies and procedures shall include, but are not limited to, the following:

(i) MSIM's policies and procedures shall require MSIM personnel with direct knowledge of any applicable adviser's, sub-adviser's, or principal underwriter's agreements and services to review and verify any information and representations the adviser, sub-adviser, or principal underwriter provides or makes in the Section 15(c) contract renewal process;

(ii) MSIM's policies and procedures shall require MSIM to obtain from each unaffiliated service provider, other than unaffiliated sub-advisers, an annual certification that the services were performed. In the case of unaffiliated sub-advisers not exercising investment discretion, MSIM's policies and procedures shall require MSIM to obtain from such sub-adviser a quarterly certification that the services were performed. In addition, with respect to unaffiliated sub-advisers, MSIM personnel at the Executive Director level or above in MSIM's Global Equity Group and Operations Group shall certify on a quarterly basis that the services were performed. Furthermore, prior to MSIM paying the unaffiliated sub-advisers from the assets of any registered investment company, MSIM's Fund Administration Group shall review the last prior certifications received by it. It is the responsibility of MSIM's Global Equity Group and Operations Group to identify and ensure the appropriate MSIM personnel provide the certifications with respect to the unaffiliated sub-advisers;

(iii) MSIM shall implement policies and procedures to ensure that it provides accurate descriptions of any service providers and their services to any registered investment company sponsored by it for which it acts as investment adviser. As such, MSIM shall ensure that personnel with sufficient knowledge of the service providers' agreements and services review any descriptions of the services providers contained in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, and any financial statements and marketing materials.

26. MSIM shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Chad Alan Earnst, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in MSIM's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent MSIM cease and desist from committing or causing any violations and any future violations of Sections 15(c) and 34(b) of the Investment Company Act, and Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

B. Respondent MSIM is censured.

C. Respondent MSIM shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $1,500,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies MSIM as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and wire transfer, money order or check shall be sent to Bruce Karpati, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY 10281-1022.

D. Respondent shall comply with the undertakings enumerated in paragraphs 25 and 26 above.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33-9281; 34-65803; 39-2481; IC-29868]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual to reflect updates to the EDGAR system. The revisions are being made primarily to support the updates to submission form types ABS-15G and ABS-15G/A; to support changes in XBRL validations for filings containing Exhibit 101 documents; to update the OMB information on EDGARLite Form TA-W; and to add a new applicant type to the Form ID. The EDGAR system is scheduled to be upgraded to support this functionality on November 21, 2011.

The filer manual is also being revised to address changes previously made in EDGAR.

EFFECTIVE DATE: [Insert date of publication in the Federal Register.] The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: In the Division of Corporation Finance, for questions concerning submission form types ABS-15G and ABS-15G/A contact Heather Mackintosh, Office of Information Technology, at (202) 551-3600; in the Division of Trading and Markets for questions regarding new Form ID applicant type and OMB expiration date for Forms TA-W contact Catherine Moore, Special Counsel, Office of Clearance and Settlement, at (202) 551-5718; in the Division of Risk, Strategy, and Financial Innovation for questions concerning

XBRL validation requirements contact Walter Hamscher, at (202) 551-5397; and in the Office of Information Technology, contact Rick Heroux, at (202) 551-8800.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume I and Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML website.

The revisions to the Filer Manual reflect changes within Volume I entitled EDGAR Filer Manual, Volume I: "General Information," Version 11 (November 2011) and Volume II entitled EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 18 (November 2011). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[3]

The EDGAR system will be upgraded to Release 11.3 on November 21, 2011 and will introduce the following changes: EDGAR will be upgraded to support updates to submission form

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[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33-6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on August 5, 2011. See Release No. 33-9246 (August 1, 2011) [76 FR 47438].

[2] See Rule 301 of Regulation S-T (17 CFR 232.301).

[3] See Release No. 33-9246 (August 1, 2011) [76 FR 47438] in which we implemented EDGAR Release 11.2. For additional history of Filer Manual rules, please see the cites therein.

type ABS-15G and ABS-15G/A based upon final Rule 15Ga-1[4]. ABS-15G Item 1.02 will require start and end date of reporting period and also a file number if the securitizer has previously filed an ABS-15G under Item 1.01 for the same Asset Class as the report. ABS-15G Item 1.02 will have an option to indicate if the securitizer has no activity to report for the quarterly period pursuant to Rule 15Ga-1(c)(2)(i) and/or for the annual period pursuant to Rule 15Ga-1(c)(2)(ii). ABS-15G Item 1.01 will have an option to indicate that the securitizer has no activity to report for the initial period pursuant to Rule 15Ga-1(c)(1). Additionally, EDGAR will allow submission of multiple ABS-15G Item 1.01 submissions per CIK.

The validation rules processed for filings containing EX-101.INS XBRL documents will be changed to require all elements used to have US English standard labels and all non-English non-empty facts to have corresponding US English variants.

Submission form types 10-KT, 10-KT/A, 10-QT, 10-QT/A and POS AM can now be filed with XBRL documents. EX-101.INS XBRL documents included within POS AM submissions can have the element dei:DocumentType with content equal to F-1, F-3, F-4, F-9, F-10, S-1, S-3, S-4, S-11, POS AM or "Other".

The OMB expiration date on EDGARLite Form TA-W (Notice of Withdrawal from Registration as Transfer Agent) will be updated to July 31, 2014.

New applicant type 'Municipal Advisor' will be available for the filers to select when completing the Form ID to apply for EDGAR access codes. In addition, applicant types 'Investment Company (or insurance product separate account) or Business Development Company' and 'Non-Investment Company Applicant under the 1940 Act' will be updated to 'Investment Company, Business Development Company or Insurance Company Separate

[4] See Final Rule Release No.33-9175, Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Account' and 'Non-Investment Company Applicant under the Investment Company Act of 1940' respectively.

There will be a minor .dot release, EDGAR Release 11.3.1, that will be deployed after Release 11.3 to implement additional XBRL validation changes. On December 12, 2011, the validation rules processed for filings containing EX-101.INS XBRL documents will be changed to require four digit xs:gYear values and will allow distinct values for all outstanding common share classes instead of requiring a single value for dei:EntityCommonStockSharesOutstanding of annual financial statements. For EX-101.SCH documents, the xsd:complexType, or xsd:simpleType name attribute in UTF-8 must be less than 200 bytes of UTF-8 text. The content for targetnamespace, roleURI or arcroleURI attribute in UTF-8 must not exceed 255 bytes in length. For EX-101.INS documents, the local name part of the content for xbrli:measure:element must be less than 200 bytes of text.

The filer manual is also being revised to address minor software changes made previously in EDGAR. Submission form types SC 14N, SC 14N-S and their amendments were made available for use on EDGARLink Online. Form 8-K Item 5.08 (Shareholder Director Nominations) was also made available for use on submission form types 8-K, 8-K12B, 8-K12G3, 8-K15D5 and their amendments.

Submission form types 13F-HR, 13F-HR/A, 13F-NT and 13F-NT/A were updated to accept March 31, June 30, September 30, or December 31 as valid dates for the Period field. A future date will still be not allowed for the Period field.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE, Room 1543, Washington DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. We will post electronic format copies on the Commission's website; the address for the Filer Manual is http://www.sec.gov/info/edgar.shtml.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[5] It follows that the requirements of the Regulatory Flexibility Act[6] do not apply.

The effective date for the updated Filer Manual and the rule amendments is [Insert date of publication in the Federal Register]. In accordance with the APA,[7] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 11.3 is scheduled to become available on November 21, 2011. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S-T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[8] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange

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[5] 5 U.S.C. 553(b).

[6] 5 U.S.C. 601- 612.

[7] 5 U.S.C. 553(d)(3).

[8] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

Act of 1934,[9] Section 319 of the Trust Indenture Act of 1939,[10] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[11]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

TEXT OF THE AMENDMENT

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232 - REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 et seq.; and 18 U.S.C. 1350.

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2. Section 232.301 is revised to read as follows:

§232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: "General Information,"

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[9] 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

[10] 15 U.S.C. 77sss.

[11] 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

Version 11 (November 2011). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 18 (November 2011). Additional provisions applicable to Form N-SAR filers are set forth in the EDGAR Filer Manual, Volume III: "N-SAR Supplement," Version 2 (August 2011). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE, Room 1543, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Electronic copies are available on the Commission's website. The address for the Filer Manual is http://www.sec.gov/info/edgar.shtml. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

November 22, 2011

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3320 / November 22, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14638

In the Matter of BARRY J. MINKOW, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Barry J. Minkow ("Minkow" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

1. Minkow, age 45, is a resident of Crossville, Tennessee.

2. From at least 2007 until 2011, Minkow was the founder and principal of Fraud Discovery Institute, Inc., an unregistered investment adviser.

3. On March 22, 2011, Minkow pled guilty to one count of conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371 before the United States District Court for the Southern District of Florida in US v. Barry Minkow, Case No. 11-20209-CR-SEITZ.

4. The count of the criminal information to which Minkow pled guilty alleged, inter alia, that Minkow knowingly and intentionally conspired to execute a scheme and artifice to defraud in connection with Lennar Corporation ("Lennar") common stock and obtained, by means of false and fraudulent pretenses, representations, and promises, money and property in connection with the purchase and sale of Lennar securities, that the purpose of the conspiracy was to artificially manipulate and depress Lennar's stock price to induce Lennar to make payments of cash and common stock to Minkow's co-conspirator, and that Minkow induced a law enforcement agency to open a criminal investigation against Lennar with a false and misleading report, and subsequently misappropriated that information by trading in Lennar securities for his own personal benefit.

5. On July 21, 2011, Minkow was sentenced to five years in prison, and ordered to pay restitution in the amount of $583,500,000.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Minkow's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Minkow be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, or transfer agent.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Commissioner Walter
Commissioner Gallagher
not participating
Commissioner Paredes
Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65808 / November 22, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14639

In the Matter of

FIFTH THIRD BANCORP

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Fifth Third Bancorp ("Fifth Third" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. These proceedings arise out of Fifth Third's violation of Section 13(a) of the Exchange Act and Regulation FD. In May 2011, Fifth Third selectively disclosed to certain investors that it would be redeeming a class of its trust preferred securities for about $25 per share. At the time, the securities were trading for about $26.50 per share. Fifth Third did not issue a Form 8-K or other public notice of the redemption until it became aware that investors who appeared to have learned of the redemption had been selling the securities to buyers who appeared to be unaware of the redemption. Fifth Third violated Regulation FD because it failed to consider how its decision to redeem the securities would affect investors in the market for those securities.

Respondent

2. Fifth Third Bancorp, a diversified financial services company, is an Ohio corporation headquartered in Cincinnati, Ohio, where it also has its principal place of business. Fifth Third's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NASDAQ Stock Market.

Background

A. Fifth Third Issues Redeemable Trust Preferred Securities

3. In 2008, Fifth Third formed Fifth Third Capital Trust VII (the "Trust"), a Delaware statutory trust, for the purpose of raising capital through the issuance of trust preferred securities ("TruPS"). In May 2008, Fifth Third and the Trust co-issued about $400 million of TruPS ("CAP VII TruPS"). The Trust used the proceeds from the offering to purchase 8.875% notes from Fifth Third, and the Trust made periodic interest payments to the holders of the TruPS at a fixed rate of 8.875%. Fifth Third and the Trust were co-registrants of the CAP VII TruPS, which were issued using Fifth Third's shelf registration statement and listed on the New York Stock Exchange.

4. The CAP VII TruPS were redeemable by Fifth Third at $25 per share beginning in May 2013. However, the governing documents of the securities gave Fifth Third the option of redeeming the Cap VII TruPS earlier if a "capital treatment event" occurred. The offering documents described a "capital treatment event" as Fifth Third's reasonable determination that as a result of a change in law, "there is more than an insubstantial risk that Fifth Third will not be entitled to treat an amount equal to the aggregate liquidation amount of the Trust Preferred Securities as 'Tier 1 Capital' (or the then equivalent thereof)."

5. To redeem the securities, Fifth Third was required first to obtain approval from the Federal Reserve Bank of Cleveland, and then instruct the trustee for the Trust ("Trustee") to issue notice to the holders of the securities at least 30 days in advance of the redemption date. Though a

variety of institutions and individuals beneficially owned the securities, the governing documents required the Trustee to give notice only to the Depository Trust Company ("DTC"), which was the sole registered holder of the securities.

6. The CAP VII TruPS traded between $26.40 and $26.80 in early May 2011.

B. Fifth Third Decides to Redeem the Cap VII TruPS

7. The Dodd-Frank Act phases out the ability of bank holding companies to count TruPS as Tier 1 Capital. After determining that these limitations constituted a "capital treatment event," Fifth Third decided to redeem the CAP VII TruPS, which were costing Fifth Third about $63,000 each day in interest payments. In late April 2011, Fifth Third sought permission from the Federal Reserve Bank of Cleveland to redeem the CAP VII TruPS, which was granted on Friday, May 13.

8. Fifth Third gave the redemption instructions to the Trustee the next business day. On Monday, May 16, at 2:16 p.m., Fifth Third instructed the Trustee to redeem the CAP VII TruPS and "send all appropriate notices to the holders." At 3:51 p.m., the Trustee sent a "Notice of Full Redemption" to DTC, satisfying Fifth Third's notice requirement.

9. DTC subsequently informed the beneficial holders of the securities of the redemption by posting the redemption notice at 2:47 a.m. on May 17 to its Legal Notification System ("LENS"). LENS offers access to a comprehensive library of notices concerning securities that are published and furnished by courts, security issuers, and others. The system is available to DTC member banks and brokers and non-member subscribers, who may search the notices or elect to receive email alerts customized to their business needs. Accordingly, all DTC members and LENS subscribers had access to the information about the redemption early in the morning of May 17.

C. The Redemption of the Cap VII TruPS Was Material

10. The information that Fifth Third disclosed through the Trustee and DTC, but not initially to the public, was material information regarding these securities. It would be important to a reasonable investor that a security trading at about $26.50 was to be redeemed in 30 days for about $25.

11. At least one Fifth Third senior finance executive recognized that the decision to redeem the CAP VII TruPS would be important to the market in light of the capital treatment change under Dodd-Frank and that investors would be "very interested" in the redemption.

12. During the afternoon of May 16, after Fifth Third had given the redemption instructions, Fifth Third's Investor Relations Department prepared a draft "Q&A" that it intended to use as a guide to answer questions that it anticipated receiving about the redemption.

13. Though Fifth Third senior executives knew that the CAP VII TruPS were traded on the NYSE and that the security was trading at a price higher than the redemption amount, by the

end of the day on May 16, they had not considered these facts in connection with the redemption. Nor had they considered the ramification these facts would have on trading activity in the security once the redemption notice was provided to DTC member banks and brokers and non-member subscribers via LENS.

14. Investors' response to learning of the redemption underscores the redemption's materiality regarding the CAP VII TruPS. Many investors learned of the redemption either after the market closed on May 17 or before the market opened on May 18. Trading opened on May 18 at $26.66 and closed at $25.20 – two cents above the redemption amount of $25.18. During the preceding two days, the security traded between $26.49 and $26.68 – a range of less than $.20. Volume increased from fewer than 38,000 shares traded per day on those days to over 2 million shares traded in less than two hours on May 18. Numerous analysts and securities holders called Fifth Third on the morning of May 18 concerning the redemption and the trading.

D. Fifth Third's Failure to Issue a Form 8-K or Other Public Notice of the Redemption

15. The Adopting Release for Regulation FD alerts issuers to "types of information or events that should be reviewed carefully to determine whether they are material," a list of seven items that includes "events regarding the issuer's securities—*e.g.*, defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, public or private sales of additional securities . . . ." *See* Final Rule: Selective Disclosure and Insider Trading, 65 Fed. Reg. 51716, 51721 (Aug. 24, 2000). Notwithstanding this explicit guidance, Fifth Third did not consider the requirements of Regulation FD in connection with the redemption of the CAP VII TruPS, nor did it consider the effect that the selective disclosure of the redemption, without a simultaneous disclosure to the rest of the investing public, would have on the market for the CAP VII TruPS.

16. Fifth Third did not file a public notice of the redemption until it learned of the impact that the selective disclosure regarding the redemption had on the market. By 10:00 a.m. on Wednesday, May 18, Fifth Third noticed the unusually heavy trading in the CAP VII TruPS, and realized that investors with knowledge of the redemption may have been selling to purchasers without knowledge of it. Shortly thereafter, Fifth Third filed a Form 8-K that publicly disclosed the redemption. The Form 8-K was posted to EDGAR on May 18 at 11:28 a.m.

17. As a result of the conduct described above, Fifth Third violated Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), which requires that issuers file with the Commission such information and documents as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Exchange Act Section 12, 15 U.S.C. § 78l, and Regulation FD, 17 C.F.R. § 243.100, *et seq.*, which prohibits the selective disclosure of material, nonpublic information to securities market professionals or holders of the issuer's securities who may well trade on the basis of the information.

Fifth Third's Remedial Efforts

18. In determining to accept the Offer, the Commission considered the remedial acts promptly and voluntarily undertaken by Fifth Third — including its compensation of CAP VII TruPS investors harmed by the timing of its disclosure and its adoption and implementation of additional policies and procedures relating to the redemption of securities — and the cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Fifth Third's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Fifth Third cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Regulation FD, 17 C.F.R. § 243.100, *et seq*.

B. Respondent acknowledges that the Commission is not imposing a civil penalty, based in part upon its cooperation in a Commission investigation. If at any time following the entry of the Order the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and without prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may not, by way of defense to any resulting administrative proceeding: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Walter
Commissioner Gallagher
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65830 / November 28, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3322 / November 28, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14642

In the Matter of **Randall Merk,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Randall Merk ("Respondent" or "Merk").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Merk is an Executive Vice President at Charles Schwab Corporation, and formerly was the President of Charles Schwab Investment Management, Inc., an investment adviser registered with the Commission; an Executive Vice President at Charles Schwab & Co., Inc., a registered broker-dealer, transfer agent, and investment adviser; and trustee of the Schwab YieldPlus Fund ("YieldPlus"or the "Fund") and other Schwab funds. He has a Series 24 license. Merk, 57 years old, is a resident of Menlo Park, California.

On November 21, 2011, a final judgment was entered by consent against Merk, permanently enjoining him from future violations of Section 34(b) of the Investment Company Act of 1940, and from aiding and abetting violations of or otherwise violating Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, in the civil action entitled Securities and Exchange Commission v. Daifotis, et al., Civil Action Number 3:11-CV-0137, in the United States District Court for the Northern District of California.

The Commission's complaint alleged that Merk committed securities law violations in connection with the offer, sale and management of YieldPlus. According to the complaint, Merk misled or failed to adequately inform investors about the risks of investing in YieldPlus. The complaint also charged Merk with aiding and abetting violations of Section 206 of the Advisers Act for approving other Schwab funds' redemptions of their investments in YieldPlus at a time when he knew or was reckless in not knowing that a portfolio manager for those funds had received material, nonpublic information about YieldPlus without the authorization of the YieldPlus Fund's board of trustees.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest, to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Merk be, and hereby is:

> suspended for twelve (12) months from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65829 / November 28, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3321 / November 28, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14641

In the Matter of CHARLES L. RIZZO and GINA M. HORNBOGEN, Respondents.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTION 15(b)(6) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act") against Charles L. Rizzo and Gina M. Hornbogen ("Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Charles L. Rizzo. Rizzo co-founded Results One Financial, LLC ("Results One"), a registered investment adviser, in 2000 in Elmhurst, Illinois. Rizzo was a director and 35% equity owner of the firm until it dissolved in 2010. Rizzo had supervisory responsibility over Steven Salutric from 2002 through 2009. Rizzo is currently a principal of RH Financial Group, LLC, a registered investment adviser located in Oak Brook, Illinois. Rizzo holds Series 7, 24, and 63 licenses and has been a registered representative since 1996. Rizzo, age 61, is a resident of Oak Brook, Illinois.

2. Gina M. Hornbogen. Hornbogen joined Results One in 2000 and served as the firm's chief compliance officer from 2004 until 2010. Hornbogen also became a director and 2.5% equity partner of the firm in 2008. Hornbogen had supervisory responsibility over Steven Salutric from October 2004 through 2009. Hornbogen is currently a principal of RH Financial Group, LLC. Hornbogen holds Series 6, 7, 24, 63, and 66 licenses and has been a registered representative since 2001. Hornbogen, age 37, is a resident of Carol Stream, Illinois. Throughout the time of the conduct described herein, Rizzo and Hornbogen were associated with broker-dealers including Waterstone Financial, Inc., Questar Capital Corp., and most recently American Portfolios Financial Services, Inc. Rizzo and Hornbogen are currently associated with a broker-dealer.

B. OTHER RELEVANT ENTITIES AND INDIVIDUALS

3. Results One Financial, LLC. Results One was an Illinois Limited Liability Company located in Elmhurst, Illinois and was registered with the Commission as an investment adviser from 2000 until early 2010. In early 2010, Results One dissolved as a corporate entity. In early 2010, Results One withdrew its registration as an investment adviser. Rizzo and Hornbogen then formed a new firm, RH Financial Group, LLC, a registered investment adviser that claims to be responsible for approximately $150 million of client assets.

4. Steven Salutric. Salutric, age 51, is a resident of Carol Stream, Illinois. In 2000, Salutric co-founded Results One along with Rizzo and others. Salutric was a principal of Results One until early 2010. Salutric performed investment advisory services for Results One clients. Salutric was also a certified public accountant and performed accounting and tax services for Results One clients. On January 8, 2010, the Commission filed an emergency ex parte action against Salutric, seeking a temporary restraining order and preliminary and permanent injunctions against Salutric, alleging violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act. SEC v. Salutric, 10-cv-1115 (N.D. Ill.) (J. Dow). In its complaint, the Commission alleged that Salutric misappropriated millions of dollars from his advisory clients at Results One. On January 8, 2010, the District Court granted the emergency relief sought by the Commission, including a temporary restraining order.

C. FACTS

Salutric misappropriated $7 million from his clients.

5. From 2002 through 2009, Salutric misappropriated approximately $7 million from fifteen advisory clients at Results One. About $2.3 million of this amount was misappropriated from 2007 through 2009.

6. Results One client funds and securities were held by Charles Schwab & Co. ("Schwab"), which served as custodian of client funds. Pursuant to investment advisory agreements with clients, Results One personnel had authority to trade in clients' accounts without prior approval.

7. However, Results One personnel did not have authority to withdraw funds from the client accounts. Moreover, Schwab's internal procedures did not permit disbursements of client funds to third parties unless the client signed a wire transfer request.

8. In order to misappropriate client funds, Salutric forged client signatures on wire transfer requests, directing Schwab to wire funds from the clients' accounts to entities linked to Salutric. On occasions when his clients' accounts lacked sufficient funds, Salutric liquidated client securities to generate cash. The clients were not aware of, and did not approve of, Salutric's withdrawals.

9. Salutric transferred stolen client funds to entities under his control, to business ventures with which he was involved, and to some of his accounting clients. A number of these transfers were purportedly loans to the recipients of the funds.

10. Salutric's fraud finally ceased in December 2009, when one of his advisory clients discovered that almost $600,000 was missing from his account. This client's attorney brought this issue to the attention of Schwab and Results One. Shortly thereafter, Salutric admitted to Results One that he had forged this client's signature on wire transfer requests.

11. From at least 2002 until December 2009, Rizzo had supervisory responsibility over Salutric in Salutric's capacity as advisory representative.

12. From at least 2004 until December 2009, Hornbogen had supervisory responsibility over Salutric in Salutric's capacity as advisory representative.

13. From at least 2002 until December 2009, Rizzo and Hornbogen failed reasonably to investigate or otherwise respond to numerous red flags indicating possible violations by Salutric.

From 2002 through early 2004, Rizzo and Hornbogen failed reasonably to respond to suspicious patterns of Salutric client withdrawals.

14. Nearly every business day from late 2002 through December 2009, Results One operations department personnel sent Rizzo and Hornbogen emails listing all "large withdrawals" and "large deposits" in client accounts the previous day.

15. These emails provided notice to Rizzo and Hornbogen of significant client withdrawals, including most, if not all, of the funds Salutric misappropriated from his clients.

16. These emails provided notice to Rizzo and Hornbogen of suspicious amounts and patterns of withdrawals from the accounts of Salutric's clients.

17. For example, during the three months from April 2003 through June 2003, Rizzo and Hornbogen received emails revealing over $1.9 million in withdrawals, most of which were over $100,000. Six hundred thousand dollars of these withdrawals were made from the account of a single client, and another $500,000 in withdrawals was made from the account of one other

client.

18. In another instance, Rizzo and Hornbogen received an email showing over $900,000 in deposits into the accounts of four Salutric clients on a single day, June 12, 2003. Then, just four days later, Rizzo and Hornbogen received emails revealing that most of the $900,000 was wired out of the four clients' accounts.

19. On occasion, Rizzo and Hornbogen asked Salutric to explain large withdrawals from his clients' accounts. However, they routinely accepted, without further inquiry, whatever explanation Salutric gave them. At no point did Rizzo and Hornbogen contact Salutric's clients about the suspicious withdrawals.

20. Had Rizzo and Hornbogen contacted Salutric's defrauded clients regarding the suspicious withdrawals, Rizzo and Hornbogen likely would have discovered that these clients were unaware of the transactions and had not authorized them.

Schwab warned Rizzo and Hornbogen that the signature of a Salutric client had been forged.

21. In April 2004, Schwab received a $30,000 wire transfer request for the account of a Salutric client ("Client A"). Schwab personnel noticed that Client A's signature on this request did not match his signature on other documents in Client A's file.

22. Schwab personnel called Jason Helms ("Helms"), the head of operations at Results One. They told Helms they were concerned that Client A's signature was not authentic. Helms relayed the warning on to Hornbogen.

23. In the meantime, Schwab personnel contacted Client A. He informed Schwab that his signature had been forged on the letter of authorization and that he had been unaware of the withdrawal, although he subsequently ratified the transaction. Schwab personnel telephoned Rizzo and alerted him to Client A's statements.

24. Schwab personnel told Rizzo that he needed to investigate this issue to determine who forged Client A's signature.

25. Neither Rizzo nor Hornbogen ever called Client A to ask about the forged signature or the $30,000 transfer.

In June 2004, Schwab informed Rizzo and Hornbogen of $2.5 million in suspicious transactions which indicated possible fraud by Salutric.

26. On June 8, 2004, Rizzo and Salutric spoke by telephone with Schwab personnel regarding $2.5 million in suspicious transfers among the Schwab accounts of Salutric and several of his clients. The suspicious transfers took place between March 2003 and June 2004. Some of the transactions were transfers between Salutric's account and several of his clients' accounts. Others were transfers between accounts of Salutric clients. Rizzo later informed Hornbogen as

to the substance of this conversation.

27. Earlier, in April and May 2004, Schwab personnel had discussed some or all of these suspicious transfers with Rizzo in other telephone conversations.

28. During the June 8, 2004 telephone call, Salutric stated that the transfers were loans and that the documentation for the loans was at his home, not in Results One's offices.

29. During the June 8, 2004 call, Salutric stated that the transactions were none of Schwab's business because they were simply loans between clients.

30. Schwab personnel responded by stating that Rizzo and Salutric had a fiduciary duty to all Results One clients and that they had an obligation to act in the best interest of their clients.

31. Schwab insisted that Salutric provide detailed supporting documentation for all of the transactions discussed during this phone call.

32. During this phone call, Rizzo told Schwab personnel that he was considering resigning from Results One because he was worried about these transactions. Schwab personnel responded that Rizzo should be worried about these transactions, as they could indicate fraudulent activity by Salutric.

33. Rizzo took notes during this phone call. On the second page of his notes, Rizzo wrote: "Concerns: (1) Making & receiving loans from clients (PONZI Scheme)."

34. Rizzo did not contact the clients whose accounts were flagged by Schwab regarding the suspicious transfers.

35. In a June 15, 2004 telephone call, Rizzo told Schwab personnel that he was conducting an internal investigation into the transactions flagged by Schwab and that the investigation would include contacting all the clients involved.

36. Rizzo did not conduct an internal investigation into the transactions flagged by Schwab or contact any of the relevant clients.

Schwab demanded that Rizzo and Hornbogen no longer permit Salutric to manage client accounts held by Schwab.

37. On July 19, 2004, Rizzo and Hornbogen participated in a telephone call with Schwab personnel.

38. Schwab personnel told Rizzo and Hornbogen that because of the suspicious transactions involving Salutric, Schwab was no longer comfortable doing business with Salutric.

39. Schwab personnel directed Rizzo and Hornbogen to remove Salutric as an

authorized user of Schwab's trading platform.

40. Schwab personnel demanded that Rizzo and Hornbogen ensure Salutric no longer managed client accounts held by Schwab.

41. Schwab personnel added that if they ever found out that Salutric was managing any Schwab clients, the entire relationship between Schwab and Results One would be at risk.

42. Rizzo said that he understood Schwab's instructions and would follow them.

43. Rizzo also said that Results One was considering sending letters to all the clients involved in the suspicious transactions flagged by Schwab.

44. Results One, however, did not send letters to the clients involved in the transactions.

Rizzo deceived Schwab by causing Schwab personnel to believe that Results One was complying with their instructions.

45. Removing Salutric as an authorized user of Schwab's trading platform had little practical effect on his ability to manage client accounts at Schwab.

46. Specifically, Results One's procedures required advisory representatives to submit transaction requests to the operations department, primarily Helms, who would then submit the transactions to Schwab under his name – not the representative's name.

47. Rizzo and Hornbogen were aware of this procedure. Schwab was not.

48. Rizzo submitted Schwab paperwork removing Salutric as an authorized user, knowing that this would have little effect on Salutric's management of Schwab accounts.

49. Despite Rizzo's assurances that Schwab's instructions would be followed, Rizzo and Hornbogen permitted Salutric to continue managing accounts held by Schwab.

50. After July 2004, Rizzo and Hornbogen permitted Salutric to continue routing instructions for his clients' accounts through Results One's operations department.

Rizzo and Hornbogen ignored their attorney's advice to contact all clients whose accounts had been flagged by Schwab.

51. On July 20, 2004, Rizzo and Hornbogen met with the firm's securities counsel ("Attorney A"). Rizzo and Hornbogen had previously sent Attorney A the supporting documentation that Salutric provided to Schwab on June 24, 2004.

52. During this meeting, Attorney A advised Rizzo and Hornbogen that one of the transactions flagged by Schwab "looked like 'borrowing from Peter to pay Paul.'"

53. Attorney A also advised Rizzo and Hornbogen that Results One should not engage in this type of transactions in the future.

54. Attorney A also advised Rizzo and Hornbogen to "send a letter to clients regarding these transactions making sure they agree and understand the transactions and realize that Results One did not play any role in these transactions."

55. Rizzo and Hornbogen never sent any letters to these clients or made any other attempt to verify that the clients agreed with and understood the transactions.

56. Had Rizzo and Hornbogen contacted the clients, they likely would have learned that the clients were unaware of, and had not authorized, the transactions flagged by Schwab.

From October 2004 through 2009, Rizzo and Hornbogen failed to respond to still more suspicious withdrawals from accounts of Salutric clients.

57. From October 2004 through 2009, Rizzo and Hornbogen continued to receive emails notifying them of large, suspicious withdrawals from the accounts of Salutric clients.

58. These emails alerted Rizzo and Hornbogen to virtually all the instances when Salutric misappropriated funds from his clients' accounts between October 2004 and late 2009.

59. For example, between October and December 2004, Rizzo and Hornbogen received emails alerting them to nearly $1.4 million in large withdrawals from the account of a single Salutric client—including withdrawals of $500,000 and $308,000. Despite these warnings, Rizzo and Hornbogen did not contact the client to inquire about the withdrawals. As a result, Rizzo and Hornbogen did not discover that Salutric had misappropriated the funds from the client's account.

From July 2006 through October 2006, Hornbogen failed reasonably to respond to red flags concerning IRA accounts of two Salutric clients.

60. From December 2005 through October 2006, Schwab sent over thirty emails to Results One about two delinquent $100,000 loans previously made from Individual Retirement Accounts ("IRA") of two Salutric advisory clients ("Client B and Client C"). The loans had been made to a real estate company ("Company A"). Company A was one of Salutric's accounting clients. The $100,000 loans had matured the previous year, in July 2004.

61. The loans were required to be repaid into the clients' IRA accounts at Schwab when they matured. Otherwise, the transactions would likely be considered distributions for tax purposes, and the clients would be likely to incur liability for taxes and early withdrawal penalties. Schwab sought answers from Results One as to why these loans had not been repaid.

62. In reality, Salutric had fraudulently diverted the $200,000 to Company A without the knowledge or approval of Client B or Client C. Salutric falsely represented to Company A

that his clients had approved the purported loans.

63. Moreover, the $200,000 had already been repaid by Company A; Salutric had diverted the $200,000 paid by Company A to a third party as yet another purported loan.

64. From July 2006 through October 2006, Salutric provided Hornbogen with various incredible excuses and unfulfilled promises that the purported loans would be repaid soon.

65. Hornbogen repeatedly accepted, without further inquiry, Salutric's increasingly incredible excuses as to why the loans had not been repaid, despite mounting indications that he was lying to stall for time.

66. In late August 2006, Salutric provided Hornbogen with a copy of a check dated August 3, 2006 from Company A to Client B. Salutric told Hornbogen that he would mail the original of the check to Schwab.

67. In fact, the copy Salutric gave Hornbogen in August 2006 was a doctored version of a May 2006 check that Company A had written to Client B to repay the purported loan from Client B's IRA account. Company A had given the check to Salutric in May 2006. Instead of forwarding the check to Client B, however, Salutric forged Client B's endorsement on the check and diverted the money to another party.

68. Hornbogen emailed a copy of the check to Schwab, promising that the original of the check would be overnighted to Schwab so it could be deposited into Client B's account.

69. Hornbogen later discovered that Salutric did not send the check to Schwab, but she did nothing to follow up on the issue.

70. Salutric also falsely told Hornbogen that Client B and Client C had both received loan repayment checks directly from Company A and that they had mailed the checks to Results One. Salutric later falsely told Hornbogen that both of these checks had been lost in the mail. Hornbogen did not follow up on this suspicious explanation by Salutric.

71. Had Hornbogen contacted Client B, Client C, or Company A, she likely would have discovered that the $200,000 from Client B and Client C, along with another $1.3 million belonging to seven other Salutric clients, had been fraudulently diverted to Company A.

Hornbogen concealed Salutric's involvement in these transactions.

72. From July 2006 through October 2006, Hornbogen acted as a buffer between Schwab and Salutric when answering Schwab's questions about the purported loans from Client B and Client C to Company A.

73. Whenever Schwab inquired about the purported overdue loans, Hornbogen relayed the question to Salutric and then passed Salutric's response on to Schwab by email.

74. Hornbogen knew that Salutric was the person managing these advisory clients' IRA accounts, and she knew that Company A was Salutric's accounting client.

75. Hornbogen thus knew Salutric was the only person in the office who had communications with the individuals on both sides of the purported loans.

76. Hornbogen also knew that Salutric was not supposed to be managing the accounts of Client B and Client C—Schwab had instructed Rizzo and Hornbogen that Salutric was no longer permitted to manage client accounts held by Schwab back in July 2004.

77. Throughout her email exchanges with Schwab, Hornbogen refrained from using Salutric's name. Instead, she referred only to "the partner in charge of this client" or "the partner in charge at my firm."

78. Through her actions, Hornbogen concealed the fact that Salutric was still managing client accounts held by Schwab.

79. After October 2006, Rizzo and Hornbogen continued to receive emails from the Results One operations department notifying them of large withdrawals from the accounts of Salutric clients.

80. Rizzo and Hornbogen failed reasonably to respond to these emails.

Rizzo and Hornbogen failed reasonably to respond to indications that Salutric had serious financial problems.

81. During a September 2006 meeting, Salutric informed Rizzo that, due to difficulties in distributing a motion picture Salutric co-produced, Salutric and his partners were at risk of defaulting on a $2 million bank loan. During this meeting, Salutric told Rizzo that he might have to declare personal bankruptcy to resolve his debts related to this business venture.

82. In November and December 2006, over $1 million in checks drawn on Salutric's personal Schwab account were returned for insufficient funds. In January and February 2007, a total of $1.7 million in checks drawn on Salutric's Schwab account were returned for insufficient funds. Most of these bounced checks were written to Salutric's clients as personal loans.

83. Rizzo and Hornbogen knew about several of the checks Salutric bounced between November 2006 and February 2007.

84. Nevertheless, Rizzo and Hornbogen did not inquire into the bounced checks.

85. After February 2007, Rizzo and Hornbogen continued to receive emails from the Results One operations department notifying them of large withdrawals from the accounts of Salutric clients.

86. Rizzo and Hornbogen failed reasonably to respond to these emails.

Rizzo failed reasonably to respond to emails raising still more red flags about Salutric.

87. Rizzo failed reasonably to respond to emails indicating that Salutric had facilitated purported loans from his Results One advisory clients to his business partner and had engaged in undisclosed outside business activities and investments.

88. For example, in December 2007, Rizzo reviewed a July 2007 email from Salutric to his business partner in connection with a motion picture ("Partner A") revealing that Salutric had facilitated $640,000 in purported loans from four of his advisory clients to Partner A.

89. Rizzo never took any steps to investigate these transactions. Had Rizzo contacted any of the clients identified in the email, he likely would have learned that they were unaware of the transfers and had not approved the purported loans to Partner A.

90. In December 2008, Rizzo reviewed an email between Salutric and another business partner revealing that Salutric was the managing partner of a company called Celluloid Distribution, and that this entity had an investment in a business venture called The Word of Promise, also with Partner A.

91. This email also revealed that Celluloid Distribution had purportedly borrowed over $900,000 from one of Salutric's advisory clients. In reality, Salutric misappropriated this $900,000 from the client.

92. Salutric never disclosed his interests in Celluloid Distribution and The Word of Promise on his Results One code of ethics forms, as was required.

93. Rizzo took no steps to verify that Salutric's investments in Celluloid Distribution and The Word of Promise had been disclosed on Salutric's Results One code of ethics forms.

94. Rizzo never contacted the client from whom Salutric had misappropriated the $900,000 purportedly loaned to Celluloid Distribution.

95. Despite being made aware of the numerous serious indications of misconduct by Salutric between 2002 and 2009 described above, Rizzo and Hornbogen conducted virtually no investigation into these red flags, thus permitting Salutric's fraud to continue unhindered until December 2009, when he was finally caught. Had Rizzo and Hornbogen conducted a reasonable investigation into any of the red flags described above, they likely would have discovered Salutric's fraud long before December 2009.

D. VIOLATIONS

96. In connection with the conduct described above, Salutric violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

97. In connection with the conduct described above, Salutric violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection

with any purchase or sale of security.

98. As a result of the conduct described above, Respondents Rizzo and Hornbogen failed reasonably to supervise Salutric.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondents Rizzo and Hornbogen pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act; and

C. What, if any, remedial action is appropriate in the public interest against Respondents Rizzo and Hornbogen pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act.

IV.

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

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3324 / November 28, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29874 / November 28, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14644

In the Matter of

Asset Advisors, LLC,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Asset Advisors, LLC ("Asset Advisors" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that

Summary

From October 2004 through April 2007, Asset Advisors, a registered investment adviser, failed to adopt written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. In May 2007, Asset Advisors adopted written compliance policies and procedures only after the Commission's exam staff alerted Asset Advisors to its compliance failures. Thereafter, Asset Advisors failed to fully implement a compliance program, taking minimum steps to satisfy its compliance obligations only when the exam staff notified it of an impending exam. Similarly, from January 2005 through April 2007, the firm failed to adopt a written code of ethics, as required under Section 204A of the Advisers Act and Rule 204A-1 thereunder. In May 2007, after the exam staff alerted the firm of its obligations, Asset Advisors adopted a code of ethics. Nevertheless, the firm failed to maintain and enforce the code by failing to collect written acknowledgements of the code's receipt from supervised persons and failing to periodically collect from access persons the required securities reports.

Respondent

1. **Asset Advisors**, was founded in 1999 by Carl Gill ("Gill") and registered with the Commission as an investment adviser in May 2002. The firm is located in Troy, Michigan and, according to its most recent Form ADV filed on May 4, 2011, has 325 discretionary accounts and nearly $27 million in assets under management ("AUM"). The firm focuses on investing clients' money in mutual funds, variable annuities, blue chip stocks and REITs. The firm has six employees.

Other Relevant Persons

2. **Carl Gill**, age 57, resides in Troy, Michigan and is Asset Advisors' owner, managing member and Chief Compliance Officer ("CCO"). Gill is the only firm employee that provides investment advice to clients. He holds series 3, 7, 63 and 65 securities licenses and a license for selling life, disability and variable insurance contracts. Prior to Asset Advisors, Gill worked as a registered representative at various broker-dealers. He had no previous experience as an investment advisory representative or a compliance officer before Asset Advisors. Gill also is a registered representative of an unaffiliated broker-dealer, which

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

shares office space with Asset Advisors. Gill supervises two registered representatives located in other offices.

Background

3. Effective October 5, 2004, Rule 206(4)-7, promulgated under Section 206(4) of the Advisers Act, requires that a registered investment adviser: (1) "[a]dopt and implement written policies and procedures reasonably designed to prevent violation" of the Advisers Act and its rules; (2) review the adequacy of the written policies and procedures and the effectiveness of their implementation on at least an annual basis; and (3) designate a CCO.

4. Effective January 7, 2005, Rule 204A-1, promulgated under Section 204A of the Advisers Act, requires that a registered investment adviser establish, maintain and enforce a written code of ethics that includes: (1) a standard of business conduct reflecting the adviser's and its supervised persons' fiduciary obligations; (2) the requirement that all staff comply with the federal securities laws; (3) requirements that access persons submit for review a securities transaction report on a quarterly basis and a securities holdings report upon hiring and then at least annually thereafter, and submit for pre-approval any purchase of securities in an initial public offering or limited offering; (4) the requirement that supervised persons report any code violations to the CCO; and (5) the requirement that the code and any amendments are provided to supervised persons and the supervised persons provide a written acknowledgement of their receipt.

5. On April 30, 2007, the Commission's exam staff contacted Gill to announce an on-site exam of Asset Advisors. During the call, Gill first learned that Asset Advisors was required to adopt and implement a written compliance program under Rule 206(4)-7. Asset Advisors hired a consultant to conduct a risk assessment and draft the compliance manual, which was delivered to the exam staff at the end of the exam in May 2007.

6. Asset Advisors also adopted its first code of ethics in May 2007 in response to the exam staff's comments. The code provided that access persons must report personal securities holdings and transactions to Gill as CCO, and the firm's compliance manual detailed the specific reporting requirements. Asset Advisors collected holdings reports from employees one week before the 2007 exam began.

7. Asset Advisors' September 4, 2007 response to the exam staff's deficiency letter – which was written by the firm's consultant and signed by Gill as CCO – stated that the firm "recognize[s] that compliance is not a project, but a process, and the importance of devoting appropriate time and resources." The letter further stated that Gill,"[a]s [CCO], . . . will ensure that all personal trading and holding reports are collected and reviewed as required and as set forth in our 2007 Policies and Procedures Manual."

8. Gill reluctantly became CCO by default in mid-2007, since there was no one else to fill the role. Gill had no prior experience in compliance and, other than talking to Asset Advisors' consultant, he did not do anything to prepare himself for the CCO role.

Furthermore, he did not attend any training or continuing education on compliance after he assumed the CCO position. As CCO, Gill referred to the manual about twice a year and was not aware of any of his staff regularly referring to it in executing their job responsibilities. No one else at Asset Advisors had any compliance responsibilities.

9. Asset Advisors took no steps to implement the compliance policies and procedures in any meaningful way, aside from distributing the compliance manual to employees in May 2007. The firm did not provide any training on the compliance manual. In fact, during the years 2007 through 2010, Asset Advisors' implementation was limited to holding semiannual meetings with its staff. And, during those meetings, discussion of compliance issues was limited to antifraud and privacy policy issues. Typically, materials were not distributed during the meetings, although the compliance manual would be on hand.

10. In 2008, Asset Advisors failed to conduct an annual review of its compliance manual and did not collect any securities transactions or holdings reports, as required by its code of ethics.

11. Despite its promise to devote the proper time and resources to its compliance program, the firm waited until November 2009 to amend the compliance manual to incorporate comments made by the exam staff during the 2007 exam. The comments related to the firm's policies regarding stock selection, fees, custody and marketing materials. The timing of the amendments coincided with the exam staff announcing its 2009 exam of Asset Advisors. Aside from distributing the amended manual and holding its semiannual meeting, Asset Advisors did nothing to train staff or to implement the manual's amended policies and procedures.

12. In October 2009, Asset Advisors' consultant conducted an annual review, and the firm collected annual holding reports. These activities only occurred because the exam staff had announced an on-site exam for the latter part of 2009.

13. In 2010, the firm again failed to conduct an annual review and to collect any securities reports. No Commission exam occurred during that year.

14. On June 30, 2010, the exam staff sent a deficiency letter to Asset Advisors based upon the December 2009 exam. Among other things, the exam staff noted that the amended version of the compliance manual did not address certain aspects of Asset Advisors' business and was largely written in general terms that did not provide any detail as to how compliance processes would be executed. The staff also found the manual deficient in setting forth policies and procedures relating to portfolio management processes, suitability of variable annuity products, safeguarding client assets, safeguarding clients' private information and implementation of policies and procedures. Finally, the staff noted that the 2009 annual review was inadequate. The staff wrote that the review was merely a summary of policies and procedures followed by a risk management review matrix, which listed and described what types of forensic testing the firm could perform. The staff found that the review was not customized to reflect Asset Advisors' business risks and did not adequately describe records reviewed, analysis performed or findings resulting from the review.

15. The firm once again waited a number of months before it amended its compliance manual to reflect the exam staff's comments. In March 2011 – or nine months after the firm received the deficiency letter and around the same time that the Enforcement staff opened its investigation – the firm finally incorporated the exam staff's comments into its compliance manual.

16. Before March 2011, Asset Advisors did not collect from its staff written acknowledgements that the staff received the code of ethics. Additionally, before March 2011, the firm did not collect any quarterly transaction reports from any of its access persons and did not pre-clear any of its access person's transactions in initial public offerings or limited offerings.

17. As a result of the conduct described above, Asset Advisors willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires that a registered investment adviser: (1) implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; and (2) review at least annually its written policies and procedures and the effectiveness of their implementation.

18. As a result of the conduct described above, Asset Advisors willfully violated Section 204A of the Advisers Act and Rule 204A-1 thereunder, which requires that a registered investment adviser maintain and enforce a written code of ethics that at a minimum includes provisions requiring: (1) access persons to submit for review a securities transaction report on a quarterly basis and a securities holdings report upon hiring and then at least annually thereafter; (2) access persons to submit for pre-approval any purchase of securities in an initial public offering or limited offering; and (3) to provide the code and any amendments to supervised persons and to collect from such persons written acknowledgement of their receipt.

Undertakings

19. Respondent Asset Advisors undertakes to:

a. Within thirty (30) days of the entry of this Order, and subject to completion of the undertakings listed in paragraphs 19.c. through 19.e., close operations and dissolve itself as a limited liability company;

b. Within thirty (30) days of the entry of this Order, and subject to completion of the undertakings listed in paragraphs 19.c. through 19.e., file a Form ADV-W with the Commission to fully withdraw its registration as an investment adviser;

c. Subject to client consent, transfer existing advisory accounts to an investment adviser (the "new firm") registered with the Commission that has (1) established, fully-developed and fully-implemented written compliance policies and procedures; (2) an established, fully-developed, fully-enforced and maintained written

code of ethics; and (3) a designated CCO responsible for administering the written compliance policies and procedures;

d. Within thirty (30) days of the entry of the Order, provide a copy of this Order to each of its advisory clients existing as of the date of the Order – or clients that had transferred from Asset Advisors to the new firm within the sixty (60) day period preceding this Order – via mail, electronic mail, or such other method as may be acceptable to Commission staff, together with a cover letter in a form not unacceptable to Commission staff; and

e. Certify (through Gill), in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent (through Gill) agrees to provide such evidence. The certification and supporting material shall be submitted to Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois, 60604, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

20. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Asset Advisors' Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Asset Advisors cease and desist from committing or causing any violations and any future violations of Sections 204A and 206(4) of the Advisers Act and Rules 204A-1 and 206(4)-7 promulgated thereunder.

B. Respondent Asset Advisors is censured.

C. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $20,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F

St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Asset Advisors as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Bruce Karpati, Co-Chief, Asset Management Unit, Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, New York 10281-1022.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65838 / November 28, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3325 / November 28, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29875 / November 28, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14645

In the Matter of

FELTL & COMPANY, INC.,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 15(b)(4) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Feltl & Company, Inc. ("Feltl" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and

Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that

Summary

From February 2008 through March 2011, Feltl, a dually-registered broker-dealer and investment adviser, failed to adopt and implement comprehensive written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules for its growing advisory business, as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. This failure resulted in Feltl engaging in hundreds of principal transactions with its advisory clients' accounts without making the proper disclosures and obtaining consent in violation of Section 206(3) of the Advisers Act. It also resulted in Feltl charging undisclosed fees to its clients participating in Feltl's wrap fee program by charging both wrap fees and commissions in violation of Section 206(2) of the Advisers Act. In addition, Feltl neglected to adopt a Code of Ethics and collect the required securities disclosure reports from its staff, as required under Section 204A of the Advisers Act and Rule 204A-1 thereunder. Feltl's compliance breakdown was caused by its failure to invest necessary resources in the firm's advisory business as it changed and grew in relation to its brokerage business.

Respondent

1. **Feltl & Company, Inc.**, a dually-registered broker-dealer and investment adviser, was founded in June 2002 and is headquartered in Minneapolis, Minnesota with six branches in Minnesota and one in Missouri. It is owned by John C. Feltl and a trust controlled by his mother, Mary Joanne Feltl.

Background

Overview of Feltl's Operations and Advisory Business

2. Feltl has two primary business lines: Retail Sales and Equity Capital Markets.

3. Feltl's Retail Sales business encompasses Feltl's brokerage and investment advisory businesses. The brokerage business, which accounts for approximately 70% of Feltl's revenue, consists of 125 registered representatives and about 12,000 to 13,000 accounts holding close to $1.2 billion in assets. Feltl's brokerage customers are primarily individuals or households, with some corporate accounts. The advisory business, which accounts for

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

approximately 10% of Feltl's revenues, consists of twenty-eight investment advisory representatives, who are also registered representatives in Feltl's brokerage business. As of March 31, 2011, Feltl had 547 non-discretionary advisory accounts with $107.8 million in assets under management ("AUM"). All advisory accounts are wrap fee accounts, which pay one bundled or "wrap" fee for advisory, execution, clearing and custodial services in the form of a percentage of the accounts' AUM.

4. Feltl's Equity Capital Markets business, which has approximately twenty-two employees, includes the firm's investment banking arm, institutional sales and research. It also includes the firm's market making segment, which makes a market in about eighty small- to mid-cap equities. Equity Capital Markets contributes about 10% to Feltl's revenues.

5. Initially, Feltl viewed its advisory business as an accommodation to brokerage customers who were active traders and preferred to pay one bundled, asset-based fee (versus multiple transaction-based fees) through Feltl's wrap fee program. Accordingly, while these accounts were advisory due to their asset-based, wrap fees, Feltl and its representatives treated them no differently than their brokerage accounts.

6. The nature of Feltl's advisory business changed over time. In the fall of 2007, two advisory representatives moved to Feltl with a significant book of business that pushed Feltl's AUM over $25 million. This caused Feltl to register as an investment adviser with the Commission in February 2008. By March 2011, Feltl's advisory business had evolved so that nine of the twenty-eight advisory representatives actively managed their clients' accounts on a non-discretionary basis. They accounted for $84.2 million of AUM. The remaining nineteen representatives had accounts that were advisory due to the wrap fee feature. While Feltl's advisory representatives do not follow any prescribed investment strategy, their clients' assets are typically invested in mutual funds, ETFs and equity securities.

7. Feltl's Compliance Department consists of three individuals, the Chief Compliance Officer ("CCO"), a compliance officer and an administrative employee with some compliance responsibilities. The CCO, who began working for Feltl in August 2003, performs the majority of the compliance duties. During the relevant period, his oversight of the advisory accounts did not differ from his oversight of the brokerage accounts.

8. From 2008 through 2010, the CCO spent about 95% of his time on compliance-related issues for the brokerage business. In contrast, he spent less than 5% of his time on compliance-related issues for the advisory business.

9. The Commission's exam staff conducted two separate exams of Feltl's advisory business during the relevant period, the first in August 2009 and the second in June 2010. On December 9, 2010, the exam staff issued a deficiency letter to Feltl noting, among other things, Feltl's compliance failures and its failure to disclose and obtain client consent in transacting principal trades.

Feltl Failed to Adopt and Implement
Written Compliance Policies and Procedures for its Advisory Business

10. Effective October 5, 2004, Rule 206(4)-7, promulgated under Section 206(4) of the Advisers Act, requires that a registered investment adviser: (1) "[a]dopt and implement written policies and procedures reasonably designed to prevent violation" of the Advisers Act and its rules; (2) review the adequacy of the written policies and procedures and the effectiveness of their implementation on at least an annual basis; and (3) designate a CCO. While the Rule does not dictate the content of an adviser's compliance program, the Commission's adopting release on the Rule states that an adviser's manual should, at a minimum, address certain topics such as portfolio management processes, proprietary trading by the adviser and the valuation process of client assets to the extent that they are relevant to the adviser. *See Compliance Programs of Investment Companies and Investment Advisers*, Release Nos. IA-2204 and IC-26299; 68 F.R. 74714 (Dec. 24, 2003).

11. During the relevant time, Feltl maintained one compliance manual that encompassed both the brokerage and advisory businesses. The manual was an off-the-shelf manual purchased, customized and periodically updated. The firm essentially treated its brokerage and advisory accounts the same for compliance purposes.

12. Nothing aside from a four-page chapter at the end of the manual specifically addressed the advisory business. The chapter (and the rest of the manual) did not address all of the areas set forth in the Commission's adopting release on Rule 206(4)-7. *See* Rel. No. IA-2204 and IC-26299, 68 F.R. 74714. Feltl did not make any changes to the chapter relating to its advisory business between August 2003 and the March 2011. Additionally, Feltl did not conduct any sort of review regarding the sufficiency of the chapter at the time it registered as an adviser with the Commission in February 2008.

13. In its December 9, 2010 deficiency letter, the Commission exam staff noted that Feltl's compliance manual dated March 1, 2008 did not meet Rule 206(4)-7's requirements. Specifically, the staff noted that Feltl did not adequately address the following areas in its manual: (1) pre-trade disclosure and consent for principal trades with advisory clients; (2) monitoring and reviewing the execution of cross trades; (3) ensuring the accuracy of quarterly advisory fees; (4) ensuring best execution; and (5) monitoring bond pricing for trades executed through the bond desk.

14. After learning of Rule 206(4)-7's annual review requirement from the Commission's exam staff, Feltl conducted its first annual review in November 2010 and concluded that the entire compliance program for its advisory business needed to be revamped and revised. Before this, Feltl annually reviewed its overall compliance program using a FINRA checklist, but did not specifically look at its advisory policies.

15. In April 2011, in response to the Commission staff's exams and investigation, Feltl adopted a new and separate compliance manual for its advisory business. Additionally, in June 2011, Feltl transferred all of its advisory accounts to a new clearing

platform separate from its brokerage accounts. Among other things, the new platform provides new reporting functions for the compliance department and formalizes account opening processes.

Feltl Engaged in Hundreds of Principal Transactions without Making Required Disclosures and Obtaining Client Consent

16. Between January 2008 and March 2011, Feltl knowingly engaged in approximately 1,634 principal transactions with its advisory accounts (the "Relevant Principal Transactions"). Feltl failed to disclose in writing the principal nature of the transactions and obtain client consent before the trades were completed. Although Feltl's trade confirmations identified the transactions as "principal," they contained no other information about the capacity in which Feltl was acting or the clients' ability to withhold consent.

17. The vast majority of principal transactions – or 1,141 of the 1,634 total transactions – were in securities in which Feltl made a market. No mark-ups or mark-downs were charged on these transactions and some, but not all, were riskless.

18. The rest of the principal transactions were attributable to initial public offerings that Feltl was either underwriting ("proprietary IPOs") or that were available to Feltl's clients based on Feltl's relationship with it clearing firm ("syndicate IPOs"). Feltl received revenue in the form of a sales credit in connection with each of these transactions. For example, if the sales credit was $.50 and the share price was $10, Feltl charged the client $10, but only sent $9.50 to the issuer.

19. Feltl executed twenty transactions in proprietary IPOs and 473 transactions in syndicate IPOs on behalf of advisory clients, receiving revenues of $96,143 from the transactions.

20. The principal transactions resulted from Feltl's failure to maintain sufficient compliance policies and procedures regarding its advisory business. Had Feltl's compliance manual properly addressed the requirements of Section 206(3) of the Advisers Act, the firm likely would have properly disclosed the principal nature of the transactions to its clients and obtained their consent before completing the transactions.

21. In April 2010, in response to a summary of findings from the August 2009 Commission exam, Feltl made changes to its trade execution procedures to ensure that advisory trades in securities for which Feltl made a market were no longer made on a principal basis.

Feltl Charged Undisclosed Fees to Wrap Fee Clients

22. Between January 2008 and early June 2011, Feltl charged undisclosed fees on its client accounts by charging commissions of $46,384 in addition to wrap fees on 1,073 transactions (the "Relevant Overcharged Transactions"). Because the advisory accounts were part of the wrap fee program, Feltl should have charged only the asset-based, wrap fees absent

additional disclosure. Therefore, the commission charges were duplicative and violated Section 206(2) of the Advisers Act.

23. Feltl's overcharges resulted from advisory representatives improperly entering commission amounts in the wrong fields in Feltl's system so that Feltl's exception reports did not detect the billing errors. Had Feltl maintained sufficient compliance procedures relating to its advisory billing process, it would have likely caught the overcharges.

24. Feltl alerted the Commission staff to the duplicative billing issue during the course of its investigation.

Feltl Failed to Adopt a Code of Ethics and Collect Required Employee Reports

25. Effective January 7, 2005, Rule 204A-1, promulgated under Section 204A of the Advisers Act, requires that a registered investment adviser establish, maintain and enforce a written code of ethics that includes: (1) a standard of business conduct reflecting the adviser's and its supervised persons' fiduciary obligations; (2) the requirement that all staff comply with the federal securities laws; (3) requirements that access persons submit for review a securities transaction report on a quarterly basis and a securities holdings report upon hiring and then at least annually thereafter, and submit for pre-approval any purchase of securities in an initial public offering or limited offering; (4) the requirement that supervised persons report any code violations to the CCO; and (5) the requirement that the code and any amendments are provided to supervised persons and the supervised persons provide a written acknowledgement of their receipt.

26. Feltl did not develop a written code of ethics specific to its advisory business until June 2010, during the course of a Commission exam. It implemented the code in March 2011 around the same time it adopted its compliance manual for its advisory business. While the CCO collected and reviewed account statements and trade confirmations for advisory representatives' personal accounts held outside of Feltl, and reviewed advisory representatives' personal trades in Feltl accounts on a daily basis, Feltl did not require the representatives to submit annual holdings reports to its compliance department before March 2011.

Violations

27. As a result of the conduct described above, Feltl willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require that a registered investment adviser: (1) adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; and (2) review at least annually its written policies and procedures and the effectiveness of their implementation.

28. As a result of the conduct described above, Feltl willfully violated Section 206(3) of the Advisers Act, which prohibits an investment adviser, acting as principal for its own account, from knowingly selling securities to or purchasing securities from the adviser's clients without disclosing to such clients in writing before the completion of such transactions the

capacity in which the adviser is acting and obtaining the consent of the clients to such transactions.

29. As a result of the conduct described above, Feltl willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client, in that Feltl charged undisclosed fees on its advisory client accounts that participated in Feltl's wrap fee program by charging both wrap fees and commissions without disclosing such duplicative billing.

30. As a result of the conduct described above, Feltl willfully violated Section 204A of the Advisers Act and Rule 204A-1, which require that a registered investment adviser maintain and enforce a written code of ethics that at a minimum includes provisions requiring: (1) access persons to submit for review a securities transaction report on a quarterly basis and a securities holdings report upon hiring and then at least annually thereafter; and (2) to provide the code and any amendments to supervised persons and to collect from such persons written acknowledgement of their receipt.

Feltl's Remedial Efforts

31. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Feltl and cooperation afforded the Commission staff.

Undertakings

32. Respondent undertakes to take the following actions.

33. Independent Compliance Consultant. With respect to the retention of an independent compliance consultant, Respondent has agreed to the following undertakings:

a. Feltl shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant (the "Independent Consultant") that is not unacceptable to the Commission staff. The Independent Consultant's compensation and expenses shall be borne exclusively by Feltl.

b. Feltl shall require that the Independent Consultant conduct during the first quarter of 2012 and the first quarter of 2013 comprehensive reviews of Feltl's supervisory, compliance, and other policies and procedures reasonably designed to detect and prevent breaches of fiduciary duty and federal securities law violations by Feltl and its employees (the "Reviews"), including: (1) conflicts and other compliance factors creating risk exposure for Feltl and its advisory clients in light of Feltl's particular operations; (2) Feltl's policies and procedures required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, including policies and procedures designed to detect and prevent fee overcharges to advisory clients; (3) Feltl's policies and procedures designed to detect and prevent violations of the disclosure and consent requirements of

Section 206(3) of the Advisers Act to the extent that Feltl engages in principal trades with advisory clients; and (4) the adequacy of Feltl's written code of ethics and Feltl's compliance with the requirements of Section 204A of the Advisers Act and Rule 204A-1 thereunder.

c. Feltl shall provide to the Commission staff, within thirty (30) days of retaining the Independent Consultant, a copy of an engagement letter detailing the Independent Consultant's responsibilities, which shall include the Reviews to be made by the Independent Consultant as described in this Order.

d. Feltl shall require that, within forty-five (45) days from the end of the applicable quarterly period, the Independent Consultant shall submit a written and dated report of its findings to Feltl and to the Commission staff (the "Report"). Feltl shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to Feltl's policies and procedures and/or disclosures to clients, and a procedure for implementing the recommended changes in or improvements to Feltl's policies and procedures and/or disclosures.

e. Feltl shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, Feltl shall in writing advise the Independent Consultant and the Commission staff of any recommendations that Feltl considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Feltl considers unduly burdensome, impractical or inappropriate, Feltl need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

f. As to any recommendation with respect to Feltl's policies and procedures on which Feltl and the Independent Consultant do not agree, Feltl and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Feltl and the Independent Consultant, Feltl shall require that the Independent Consultant inform Feltl and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Feltl considers to be unduly burdensome, impractical, or inappropriate. Feltl shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between Feltl and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, Feltl shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

g. Within ninety (90) days of Feltl's adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Feltl shall certify in writing to the Independent Consultant

and the Commission staff that Feltl has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois, 60604, or such other address as the Commission staff may provide.

h. Feltl shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of their files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

i. To ensure the independence of the Independent Consultant, Feltl: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

j. Feltl shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Feltl, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Feltl, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

34. Recordkeeping. Feltl shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of Feltl's compliance with the undertakings set forth in this Order.

35. Notice to Advisory Clients. Within ten (10) days of the entry of this Order, Feltl shall post prominently on its principal website a summary of this Order in a form and location acceptable to the Commission staff, with a hyperlink to the entire Order. Feltl shall maintain the posting and hyperlink on Feltl's website for a period of twelve (12) months from the entry of this Order. Within thirty (30) days of the entry of this Order, Feltl shall provide a copy of the Order to each of Feltl's existing advisory clients as of the entry of this Order via mail, e-mail, or such other method as may be acceptable to the Commission staff, together with a cover

letter in a form not unacceptable to the Commission staff. Furthermore, for a period of twelve (12) months from the entry of this Order, to the extent that Feltl is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 of the Advisers Act, Feltl shall also provide a copy of this Order to such client and/or prospective client at the same time that Feltl delivers the brochure.

36. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

37. Certifications of Compliance by Respondents. Feltl shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Feltl agrees to provide such evidence. The certification and supporting material shall be submitted to Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois, 60604, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Feltl's Offer.

Accordingly, pursuant to Section 15(b)(4) of the Exchange Act, Sections 203(e) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Feltl cease and desist from committing or causing any violations and any future violations of Sections 204A, 206(2), 206(3), and 206(4) of the Advisers Act and Rules 204A-1 and 206(4)-7 promulgated thereunder.

B. Feltl is censured.

C. Feltl shall pay disgorgement and prejudgment interest as follows:

(1) Feltl shall pay disgorgement of $142,527 and prejudgment interest of $10,645, consistent with the provisions of this Subsection C. Within ten (10) days of the entry of this Order, Feltl shall deposit the full amount of the disgorgement (the "Disgorgement Fund") into an escrow account acceptable to the Commission staff and Feltl shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. In addition, within ten (10) days of the entry of this Order, Feltl shall pay the full amount of the prejudgment interest to

the Commission for transmittal to the United States Treasury, in the manner provided in paragraph (5) below of Subsection C. If timely deposit of the Disgorgement Fund or timely payment of the prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

(2) Feltl shall be responsible for administering the Disgorgement Fund. Feltl shall pay applicable portions of the Disgorgement Fund to affected current and former advisory clients who engaged in the Relevant Principal Transactions and the Relevant Overcharged Transactions, pursuant to a disbursement calculation (the "Calculation") that has been submitted to, reviewed and approved by the Commission staff in accordance with this Subsection C. If the total amount otherwise payable to a client is less than $20.00, Feltl shall instead pay such amount to the Commission for transmittal to the United States Treasury as provided in this Subsection C.

(3) Feltl shall, within sixty (60) days from the entry of this Order, submit a proposed Calculation to the Commission staff for its review and approval that identifies, at a minimum: (i) the name and account number of each affected advisory client; (ii) the exact amount of the payment to be made to such client; and (iii) a description of the Relevant Principal Transactions or Relevant Overcharged Transactions to which the client's payment relates. Feltl also shall provide to the Commission staff such additional information and supporting documentation relating to the Relevant Principal Transactions and the Relevant Overcharged Transactions as the Commission staff may request for the purpose of its review. No portion of the Disgorgement Fund shall be paid to any client account directly or indirectly in the name of or for the benefit of Feltl. In the event of one or more objections by the Commission staff to Feltl's proposed Calculation and/or any of its information or supporting documentation, Feltl shall submit a revised Calculation for the review and approval of the Commission staff and/or additional information or supporting documentation within ten (10) days of the date that Feltl is notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection C.

(4) Feltl shall complete the transmission of all amounts otherwise payable to affected advisory clients pursuant to a Calculation approved by the Commission staff within one hundred and twenty (120) days of the entry of this Order, unless such time period is extended as provided in paragraph (9) of this Subsection C.

(5) If Feltl does not distribute or return any portion of the Disgorgement Fund for any reason, including an inability to locate an affected advisory client or any factors beyond Feltl's control, or if Feltl has not transferred any portion of the Disgorgement Fund to a client because that client is due less than $20.00, Feltl shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury after the final accounting provided for in this Subsection C is approved by the Commission. Any such payment shall be: (i) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F St., N.E., Stop 6042, Washington, DC 20549; and (iv) submitted under cover letter that identifies Feltl as a Respondent in these proceedings, and the file number of these proceedings, a copy of which

cover letter and money order or check shall be sent to Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois, 60604, or such other address as the Commission staff may provide.

(6) Feltl shall be responsible for any and all tax compliance responsibilities associated with the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Feltl and shall not be paid out of the Disgorgement Fund.

(7) Within two hundred and ten (210) days after the date of entry of this Order, Feltl shall submit to the Commission staff for its approval a final accounting and certification of the disposition of the Disgorgement Fund, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; (v) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (vi) any amounts to be forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation that the amounts paid to the affected advisory clients represent a fair and reasonable calculation of the compensation received by Feltl from January 2008 through June 2011 with respect to the Relevant Principal Transactions and the Relevant Overcharged Transactions. Feltl shall submit proof and supporting documentation of such payment (whether in the form of fee credits, cancelled checks, or otherwise) in a form acceptable to the Commission staff and under a cover letter that identifies Feltl as a Respondent in these proceedings and the file number of these proceedings to Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois, 60604, or such other address the Commission staff may provide. Feltl shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(8) After Feltl has submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any remaining amount to the United States Treasury.

(9) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Disgorgement Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

D. Feltl shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (1) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money

order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F St., N.E., Stop 6042, Washington, DC 20549; and (4) submitted under cover letter that identifies Feltl as a Respondent in these proceedings, and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert Kaplan, Co-Chief, Asset Management Unit, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549, or such other address as the Commission staff may provide.

E. Feltl shall comply with the undertakings enumerated in Section III, paragraphs 32 through 37 above.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65837 / November 28, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3323 / November 28, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29873 / November 28, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14643

In the Matter of

OMNI Investment Advisors Inc.
and
Gary R. Beynon,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 15(b)(6) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against OMNI Investment Advisors, Inc. ("OMNI") and Sections 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act") against Gary R. Beynon ("Beynon") (OMNI and Beynon referred to collectively as "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the

Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

These proceedings arise out of OMNI's complete failure to adopt and implement a compliance program between September 2008 and August 2011. OMNI, a registered investment adviser based in Utah, failed to adopt and implement written compliance policies and procedures, as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. For most of that period, OMNI had no compliance program or Chief Compliance Officer ("CCO"), and OMNI's advisory representatives were completely unsupervised. In November 2010, Beynon, the sole owner and Chief Executive Officer ("CEO") of the firm, assumed the CCO responsibilities, but he was living in Brazil on a religious mission. As a result, he failed to perform virtually any compliance responsibilities after being named CCO. Similarly, OMNI failed to establish, maintain and enforce a written code of ethics, as required under Section 204A of the Advisers Act and Rule 204A-1 thereunder. Finally, OMNI failed to maintain and preserve certain books and records, as required under Section 204(a) of the Advisers Act and Rule 204-2(a)(10) thereunder. In particular, in response to a subpoena, OMNI produced client advisory agreements with Beynon's signature evidencing his supervisory approval when, in fact, Beynon had never reviewed the agreements. Beynon signed those agreements with incorrect dates one day before the documents were produced to the Commission.

Respondents

1. OMNI Investment Advisors, Inc. ("OMNI"), located in Draper, Utah, was incorporated in Utah on April 16, 1985 and registered with the Commission as an investment adviser on November 15, 1990. Beynon is currently the sole owner. According to its most recent Form ADV filed March 31, 2011, OMNI provided customized discretionary portfolio management services to approximately 190 clients with assets under management of approximately $65 million.

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

On August 19, 2011, OMNI filed Form ADV-W to withdraw its registration with the Commission, which became effective immediately, and its clients were transferred to a new investment advisory firm registered with the state of Utah.

2. Gary R. Beynon ("Beynon"), age 56, was at all relevant times the sole owner and CEO of OMNI, and functioned as its CCO from November 2010 to August 2011. Beynon currently holds Series 7, 22, 24, 27, and 63 licenses. In addition, Beynon also held ownership positions and was associated with two broker-dealers registered with the Commission, OMNI Brokerage, Inc. and Orchard Securities, LLC. Beynon left Utah in June 2008 for a three-year religious mission in Brazil. Beynon has a prior disciplinary history relating to his supervisory responsibilities. Beynon currently resides in Salt Lake City, Utah.

Facts

3. Effective October 5, 2004, Rule 206(4)-7, promulgated under Section 206(4) of the Advisers Act, requires that a registered investment adviser: (1) adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules, (2) review the adequacy of the written policies and procedures and the effectiveness of their implementation on at least an annual basis, and (3) designate a CCO.

4. Effective January 7, 2005, Rule 204A-1, promulgated under Section 204A of the Advisers Act, requires that a registered investment adviser establish, maintain and enforce a written code of ethics that includes: (1) a standard of business conduct reflecting the adviser's and its supervised persons' fiduciary obligations, (2) the requirement that all staff comply with the federal securities laws, (3) requirements that access persons submit for review a securities transaction report on a quarterly basis and a securities holdings report upon hiring and then at least annually thereafter, and submit for pre-approval any purchase of securities in an initial public offering or limited offering, (4) the requirement that supervised persons report any code violations to the CCO, and (5) the requirement that the code and any amendments are provided to supervised persons and the persons provide a written acknowledgement of their receipt.

5. In 2007, the Commission examined OMNI and issued a deficiency letter noting several issues, including OMNI's failure to conduct an adequate annual review of its compliance program. Beynon was the CEO of OMNI at that time and was the firm's majority owner. OMNI's minority owner was the firm's CCO at that time.

6. In June 2008, Beynon left Utah for a three year religious mission in Brazil. While in Brazil, he maintained his position as CEO of the firm, but generally did not perform any supervisory or compliance functions. The minority owner remained CCO of the firm until September 2008 when he sold his interest to Beynon and left the firm, leaving it with two advisory representatives.

7. In November 2010, the Commission began another examination of OMNI and attempted to contact the individual listed as the CCO on the firm's Form ADV. The

examiners learned that the CCO had left the firm after he sold his ownership interest in OMNI to Beynon in September 2008.

8. When the exam began, the Commission was provided with a Compliance Manual dated November 3, 2010, which was one day after OMNI responded to the examiners' request to initiate an examination. OMNI was unable to provide the Commission with any compliance manual adopted and implemented prior to November 3, 2010. Additionally, OMNI was unable to provide any policies and procedures that would have been in effect prior to November 3, 2010. The November 3, 2010 Compliance Manual appeared to be an off-the-shelf compliance manual that included language from both broker-dealer and investment adviser regulations, and was not specifically tailored to OMNI's business.

9. The exam revealed that OMNI had no compliance program in place between September 2008 and November 2010, and OMNI's advisory representatives were completely unsupervised during that period of time. Moreover, no person was functioning as OMNI's CCO between September 2008 and November 2010. Finally, OMNI never conducted an annual review of its written compliance policies and procedures during this time period.

10. The November 3, 2010 Compliance Manual named Beynon as the firm's CCO and assigned all supervisory responsibilities to Beynon, who was still located in Brazil. Despite explicitly taking on these responsibilities in the context of the November 2010 SEC exam, Beynon failed to perform any supervisory or compliance activities between November 2010 and August 2011, other than requiring (in his role as CCO) that the two advisory representatives associated with the firm acknowledge receipt of the latest version of the Compliance Manual. As a result, no person at OMNI ensured that the provisions of the Compliance Manual relating to supervision were implemented.

11. In May 2011, the Commission issued a subpoena to OMNI for documents relating to Beynon's work as CCO from November 2010 through May 2011. Among other documents produced in response, OMNI provided numerous new client advisory agreements which contained Beynon's signature and indicated that his signature had been affixed on various dates between November 2010 and May 2011. The Compliance Manual required Beynon, as the supervisor, to approve these new agreements and his signature was required to document that approval.

12. The Commission later discovered that Beynon had backdated his signature on the new client advisory agreements after they had been subpoenaed by the Commission as part of an investigation. Even though each agreement generally showed Beynon's signature date as occurring a few days after the advisory representative's signature, Beynon had actually signed all of the agreements one day before the documents were produced to the staff in response to the May 2011 subpoena. Beynon did not review the agreements before signing each contract, and instead simply signed a collection of signature pages for all of the agreements.

13. OMNI also failed to enforce its code of ethics because the CCO never performed numerous functions, including reviewing access persons' financial reports, assessing whether access persons are following required internal procedures, and evaluating transactions to identify any prohibited practices.

14. Between September 2008 and August 2011, Beynon earned approximately $12,800 from his ownership of OMNI. Beynon wanted to keep OMNI in business while he was in Brazil so he could return to the firm when his three year religious mission ended.

15. As a result of the conduct described above, OMNI willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires that a registered investment adviser: (1) implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, (2) review at least annually its written policies and procedures and the effectiveness of their implementation, and (3) designate a Chief Compliance Officer responsible for administering the policies and procedures. As the CEO and CCO of OMNI, Beynon willfully aided and abetted and caused the firm's violations.

16. As a result of the conduct described above, OMNI willfully violated Section 204A of the Advisers Act and Rule 204A-1, which requires that a registered investment adviser maintain and enforce a written code of ethics that at a minimum includes provisions requiring: (1) access persons to submit for review a securities transaction report on a quarterly basis and a securities holdings report upon hiring and then at least annually thereafter, (2) access persons to submit for pre-approval any purchase of securities in an initial public offering or limited offering, and (3) to provide the code and any amendments to supervised persons and to collect from such persons written acknowledgement of their receipt. As the CEO and CCO of OMNI, Beynon willfully aided and abetted and caused the firm's violations.

17. As a result of the conduct described above, OMNI willfully violated Section 204(a) of the Advisers Act and Rule 204-2(a)(10) thereunder, which require that investment advisers registered with the Commission maintain and preserve certain books and records. Rule 204-2(a)(10) requires that registered investment advisers "make and keep true, accurate and current . . . all written agreements . . . entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such." As the CEO and CCO of OMNI, Beynon willfully aided and abetted and caused the firm's violations.

Undertakings

18. Respondent OMNI undertakes to:

a. Within thirty (30) days of the entry of the Order, provide a copy of this Order to each of OMNI's advisory clients that existed at any time between September 2008 and August 2011– via mail, electronic mail, or such other method as may be acceptable to the Commission's staff, together with a cover letter in a form not unacceptable to the Commission's staff; and

b. Cause Beynon to certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent (through Beynon) agrees to provide such evidence. The certification and supporting material shall be submitted to James Scoggins, Assistant Regional Director, Denver Regional Office, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver, CO 80202 with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

19. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act against OMNI, and Sections 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Section 15(b)(6) of the Exchange Act against Beynon, it is hereby ORDERED that:

A. Respondents OMNI and Beynon cease and desist from committing or causing any violations and any future violations of Sections 204(a), 204A, 206(4) of the Advisers Act and Rules 204-2(a)(10), 204A-1, 206(4)-7 promulgated thereunder.

B. Respondents OMNI and Beynon are censured.

C. Respondent Beynon be, and hereby is, barred from association in a compliance capacity and a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor or principal underwriter. Any reapplication for association by Beynon will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the

Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Beynon shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Beynon as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Julie K. Lutz, Associate Regional Director, Denver Regional Office, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver, CO 80202.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3326 / November 29, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29877 / November 29, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14649

In the Matter of

HANES MORGAN & CO., INC.

and

UCHE AKWUBA,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, and SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER.

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Hanes Morgan & Co., Inc. ("Hanes Morgan") and Uche Akwuba ("Akwuba") (together, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the

purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds that:

A. SUMMARY

1. Hanes Morgan & Co., Inc. is a Brooklyn, New York based investment adviser doing business as Mega Trakker Endowments ("Mega Trakker"), and Akwuba is Hanes Morgan's sole employee and principal. Between July 29 and November 29, 2010, Hanes Morgan was registered with the Commission as an investment adviser.

2. At all relevant times, Hanes Morgan's website, www.megatrakker.com, falsely claimed that it owned trading platforms located in major American banks, that it had a staff of "professional stock traders," and that its trading was "consistently successful" because of a "scientific" trading system called ChenTrak, which was able to "deliver a guaranteed growth rate of 10% a year, compounded."

3. Via the website, Respondents solicited potential clients to open a "Wall Street Savings Account" for a minimum initial investment of $2,150. In exchange, they promised potential investors their funds would be invested using ChenTrak. According to the Mega Trakker website, these accounts would "achieve a stated growth rate, even if the stock market goes down." Respondents also told potential investors that "[t]he money and its compounded growth, regardless of total size, are guaranteed 100% safe."

4. At all times, Akwuba controlled the Mega Trakker website and was personally responsible for its content.

5. Respondents' statements on their website were false and misleading. Among other things, Hanes Morgan had no traders other than Akwuba, and ChenTrak was not based on science and could not provide 10% guaranteed risk-free returns. In addition, Respondents did not identify Akwuba by name, nor did they disclose Akwuba's 1998 wire fraud conviction or his 1991 bar from association with any NASD member firm.

6. By virtue of the conduct described herein, Hanes Morgan willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act, and Rules 206(4)-1(a)(3), 206(4)-1(a)(5)

and 206(4)-4(a)(2) thereunder, and Akwuba willfully violated Sections 206(1) and 206(2) of the Advisers Act and willfully aided and abetted and caused Hanes Morgan's violations.

B. RESPONDENTS

7. Hanes Morgan, d/b/a Mega Trakker Endowments, is a Wyoming corporation with its place of business in Brooklyn, New York. Between July 29 and November 29, 2010, Hanes Morgan was registered as an investment adviser pursuant to Section 203(a) and Rule 203A-2(d) of the Advisers Act.

8. Akwuba, age 73 and a resident of Brooklyn, New York, is Hanes Morgan's principal. In 1998, Akwuba was convicted of conspiracy to commit wire fraud and to transport money interstate and was sentenced to 46 months imprisonment followed by three years supervised release, and ordered to pay $2,150,000 restitution. In 1991, Akwuba was fined $20,000 and barred from association with any member of the NASD.

C. FACTS

9. From at least 2010, Respondents publicly solicited potential clients on the internet concerning their investment advisory services. Respondents invited potential clients to open a "Wall Street Savings Account" at Hanes Morgan for a minimum initial investment of $2,150. In exchange, they promised potential investors their funds would be invested using its purported trading system, ChenTrak.

10. The company's website, www.megatrakker.com, claimed that Hanes Morgan owned trading platforms located in major American banks, that it had a staff of "professional stock traders," and that its trading was "consistently successful" because ChenTrak was able to "deliver a guaranteed growth rate of 10% a year, compounded." According to the website, ChenTrak was a "scientific" system, "developed by a brilliant mathematician," and is "market tested and proven." Also according to the website, investor accounts would "achieve a stated growth rate, even if the stock market goes down" and that "[t]he money and its compounded growth, regardless of total size, are guaranteed 100% safe."

11. The Mega Trakker website claimed that Hanes Morgan had a staff of professional stock traders. The website showed photographs of people working at computer screens, handing charts to each other and making telephone calls. These statements and photos falsely represented Hanes Morgan as a substantial trading organization. In fact, Hanes Morgan was a one-person shop, and Akwuba was its only trader.

12. Contrary to Respondents' claim that Hanes Morgan was a Wall Street firm with trading platforms at banks, Hanes Morgan and its trading platform were located at Akwuba's residence in Brooklyn.

13. Contrary to Respondents' claim, ChenTrak is not a scientific system developed by a "brilliant mathematician." In fact, ChenTrak is nothing more than Akwuba's intuition regarding

investment decisions. Akwuba is the so-called mathematician who purportedly developed ChenTrak. Akwuba has no specialized math training, and in any event, his intuition does not employ any math skills.

14. On their website, Respondents never identified Akwuba by name and did not disclose Akwuba's criminal conviction or NASD bar.

15. ChenTrak was not market-tested to achieve a guaranteed 10% return without risk. Rather, Respondents' testing consisted of back testing a dummy account. That is, Akwuba chose a time in the past, claimed he would have selected stocks that had increased in value over a certain period, and calculated how well those stocks performed. Respondents did not disclose this explanation on their website.

D. VIOLATIONS

16. As a result of the conduct described above, Hanes Morgan willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act, and Rules 206(4)-1(a)(3), 206(4)-1(a)(5) and 206(4)-4(a)(2) thereunder, and Akwuba willfully violated Sections 206(1) and 206(2) of the Advisers Act and willfully aided and abetted and caused Hanes Morgan's violations. Rule 206(4)-1(a)(3) prohibits any registered investment adviser, directly or indirectly, to represent "that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them." Rule 206(4)-1(a)(5) prohibits any registered investment adviser, directly or indirectly, "to publish, circulate or distribute any advertisement ... which contains any untrue statement of a material fact, or which is otherwise false or misleading." Rule 206(4)-4(a)(2)[1], prohibits any investment adviser to fail to disclose "a legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients."

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents Hanes Morgan and Akwuba shall cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 206(4) and Rule 206(4)-1 promulgated thereunder.

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[1] Rule 206(4)-4 was withdrawn by Release No. IA-3060 (July 28, 2010) (effective October 12, 2010). Accordingly, this Order constitutes a finding that Respondents violated this Rule, but does not order them to cease and desist from violating the Rule.

B. Respondent Akwuba be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

C. Respondent Hanes Morgan is censured.

D. Any reapplication for association by Akwuba will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

E. Hanes Morgan shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Hanes Morgan as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew Calamari, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.

F. Akwuba shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Akwuba as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew Calamari, Associate Regional

Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary