

SECURITIES AND EXCHANGE COMMISSION

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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

(62 Documents)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 66492 / March 1, 2012

ADMINISTRATIVE PROCEEDING

File No. 3-14782

In the Matter of

Aduddell Industries, Inc.,
Calypso Wireless, Inc.,
Capital Markets Technologies, Inc.,
Challenger Powerboats, Inc., and
CLX Medical, 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 the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Aduddell Industries, Inc. ("ADDL")¹ (CIK No. 928373) is an Oklahoma corporation located in Oklahoma City, Oklahoma with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ADDL 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 \$7,642,416 for the prior nine months. As of February 27, 2012, the common stock of ADDL was quoted on OTC Link, had ten market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

¹The short form of each issuer's name is also its stock symbol.

2. Calypso Wireless, Inc. ("CLYW") (CIK No. 719729) is a Delaware corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CLYW 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 \$1,816,278 for the prior nine months. On June 7, 2011, the Commission issued an order suspending trading in the securities of CLYW for ten business days based on questions regarding the adequacy and accuracy of information about the company, including, among other things, its assets, business operations, and current financial condition. Exchange Act Rel. No. 64612 (June 7, 2011). As of February 27, 2012, the common stock of CLYW was traded on the over-the-counter markets.

3. Capital Markets Technologies, Inc. ("CMKT") (CIK No. 1082275) is a dissolved Florida corporation located in Chicago, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CMKT 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 \$2,045,770 for the prior nine months. As of February 27, 2012, the common stock of CMKT was quoted on OTC Link, had nine market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

4. Challenger Powerboats, Inc. ("CPBXQ") (CIK No. 1114908) is a revoked Nevada corporation located in Washington, Missouri with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CPBXQ 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 December 31, 2007, which reported a net loss of \$4,656,940 for the prior year. As of February 27, 2012, the common stock of CPBXQ 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. CLX Medical, Inc. ("CLXM") (CIK No. 317438) is a Colorado corporation located in Austin, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CLXM 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, 2008, which reported a net loss of \$1,570,674 for the prior nine months. On September 29, 2008, CLXM consented to the entry of an order that it cease and desist from committing or causing any violations of Sections 17(g), 18(a), 18(i), 18(d) and 56(a) of the Investment Company Act of 1940 and Rules 17g-1 and 38a-1 thereunder, and permanently suspending its exemption under Regulation E of the Investment Company Act of 1940. *CLX Medical, Inc.*, Admin. Proc. File No. 3-13257 (Sept. 29, 2008). As of February 27, 2012, the common stock of CLXM 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

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.

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

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-66495/March 1, 2012]

Order Making Fiscal Year 2012 Mid-year Adjustments to Transaction Fee Rates

I. Background

Section 31 of the Securities Exchange Act of 1934 ("Exchange Act") requires each national securities exchange and national securities association to pay transaction fees to the Commission.¹ Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.² Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association other than on an exchange.³

Section 31 of the Exchange Act requires the Commission to annually adjust the fee rates applicable under Sections 31(b) and (c) to a uniform adjusted rate, and in some circumstances, to also make a mid-year adjustment. The Dodd-Frank Act amendments to Section 31 of the Exchange Act establish a new method for annually adjusting the fee rates applicable under Sections 31(b) and (c) of the Exchange Act. Specifically, the Commission must now adjust the fee rates to a uniform adjusted rate that is reasonably likely to produce aggregate fee collections (including assessments on security futures transactions) equal to the regular appropriation to the Commission for the applicable fiscal year.⁴ For fiscal year 2012, the regular appropriation to the

¹ 15 U.S.C. 78ee.

² 15 U.S.C. 78ee(b).

³ 15 U.S.C. 78ee(c).

⁴ See 15 U.S.C. § 78ee(j)(1) (The Commission must adjust the rates under Sections 31(b) and (c) to a "uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments

Commission is \$1,321,000,000.⁵ On January 20, 2012 the Commission issued an order under Section 31(j)(1) of the Exchange Act setting the fee rates applicable under Sections 31(b) and (c) for fiscal year 2012.⁶

II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2012

Under Section 31(j)(2) of the Exchange Act, the Commission must make a mid-year adjustment to the fee rates under Sections 31(b) and (c) in fiscal year 2012 if it determines, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year, that the baseline estimate \$71,646,369,036,088 is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal year 2012.⁷ To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal year 2012.

Based on data provided by the national securities exchanges and the national securities association that are subject to Section 31,⁸ the actual aggregate dollar volume of sales during the first four months of fiscal year 2012 was \$21,401,568,899,359.⁹ Using these data and a

collected under [Section 31(d)] that are equal to the regular appropriation to the Commission by Congress for such fiscal year.”).

⁵ Id.

⁶ Order Making Fiscal Year 2012 Annual Adjustments to Transaction Fee Rates, Rel. No. 34-66202 (January 20, 2012).

⁷ The amount \$71,646,369,036,088 is the baseline estimate of the aggregate dollar amount of sales for fiscal year 2012 calculated by the Commission in its Order Making Fiscal Year 2012 Annual Adjustments to Transaction Fee Rates, Rel. No. 34-66202 (January 20, 2012).

⁸ The Financial Industry Regulatory Authority, Inc. (“FINRA”) and each exchange is required to file a monthly report on Form R31 containing dollar volume data on sales of securities subject to Section 31. The report is due on the 10th business day following the month for which the exchange or association provides dollar volume data.

⁹ Although Section 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2012 “based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year,” data are only available for the first four months of the fiscal year as of the date the Commission is

methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal year 2012 (developed after consultation with the Congressional Budget Office and the OMB),¹⁰ the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal year 2012 to be \$42,485,082,013,879. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal year 2012 will be \$63,886,650,913,238.

Because the baseline estimate of \$71,646,369,036,088 is more than 10% greater than the \$63,886,650,913,238 estimated actual aggregate dollar volume of sales for fiscal year 2012, Section 31(j)(2) of the Exchange Act requires the Commission to issue an order adjusting the fee rates under Sections 31(b) and (c).

III. Calculation of the Uniform Adjusted Rate

Section 31(j)(2) specifies the method for determining the mid-year adjustment for fiscal 2012. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a “uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of fiscal year 2012, is reasonably likely to produce aggregate fee collections under Section 31 (including fees collected during such 5-month period and assessments collected under Section 31(d)) that are equal to \$1,321,000,000.”¹¹ In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of

required to issue this order, *i.e.*, March 1, 2012. Dollar volume data on sales of securities subject to Section 31 for February 2012 will not be available from the exchanges and FINRA for several weeks.

¹⁰ See Appendix A.

¹¹ 15 U.S.C. 78ee(j)(2). The term “fees collected” is not defined in Section 31. Because national securities exchanges and national securities associations are not required to pay the first installment of Section 31 fees for fiscal 2012 until March 15, the Commission will not “collect” any fees in the first five months of fiscal 2012. See 15 U.S.C. 78ee(e). However, the Commission believes that, for purposes of calculating the mid-year adjustment, Congress, by stating in Section 31(j)(2) that the “uniform adjusted rate . . . is reasonably likely to produce aggregate fee collections under Section 31 . . . that are equal to [\$1,321,000,000],” intended the Commission to include the fees that the Commission will collect based on transactions in the six months before the effective date of the mid-year adjustment.

the new rate and assessments collected under Section 31(d) during all of fiscal year 2012 from \$1,321,000,000, which is the amount to be collected for fiscal year 2012. That difference is then divided by the revised estimate of the aggregate dollar volume of sales for the remainder of the fiscal year following the effective date of the new rate.

The Commission estimates that it will collect \$597,429,581 in fees for the period prior to the effective date of the mid-year adjustment and \$16,425 in assessments on round turn transactions in security futures products during all of fiscal year 2012. Using the methodology referenced in Part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal year 2012 following the effective date of the new rate will be \$32,330,785,567,489. This amount reflects more recent information on the dollar amount of sales of securities than was available at the time of the setting of the initial fee rate for fiscal year 2012, and indicates a significant reduction in sales. Based on these estimates, and employing the mid-year adjustment mechanism established by statute, the uniform adjusted rate must be adjusted to \$22.40 per million of the aggregate dollar amount of sales of securities.¹² The aggregate dollar amount of sales of securities subject to Section 31 fees is illustrated in Appendix A.

IV. Effective Date of the Uniform Adjusted Rate

Section 31(j)(4)(B) of the Exchange Act provides that a mid-year adjustment shall take effect on April 1 of the fiscal year in which such rate applies. Therefore, the exchanges and the national securities association that are subject to Section 31 fees must pay fees under Sections 31(b) and (c) at the uniform adjusted rate of \$22.40 per million for sales of securities transacted on April 1, 2012, and thereafter until the annual adjustment for fiscal 2013 is effective.

¹² The calculation is as follows: $(\$1,321,000,000 - \$597,429,581 - \$16,425) / \$32,330,785,567,489 = 0.0000223797$. Round this result to the seventh decimal point, yielding a rate of \$22.40 per million.

V. **Conclusion**

Accordingly, pursuant to Section 31 of the Exchange Act,¹³

IT IS HEREBY ORDERED that each of the fee rates under Sections 31(b) and (c) of the Exchange Act shall be \$22.40 per \$1,000,000 of the aggregate dollar amount of sales of securities subject to these sections effective April 1, 2012.

By the Commission.



Elizabeth M. Murphy
Secretary

¹³ 15 U.S.C. 78ee.

APPENDIX A

A. Baseline estimate of the aggregate dollar amount of sales.

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (January 2002 - January 2012). The data obtained from the exchanges and FINRA are presented in Table A. The monthly aggregate dollar amount of sales from all exchanges and FINRA is contained in column C.

Next, calculate the change in the natural logarithm of ADS from month-to-month. The average monthly change in the logarithm of ADS over the entire sample is 0.007 and the standard deviation 0.126. Assume the monthly percentage change in ADS follows a random walk. The expected monthly percentage growth rate of ADS is 1.5 percent.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for January 2012 (\$236,326,110,324) to forecast ADS for February 2012 (\$239,879,615,120 = \$236,326,110,324 × 1.015).¹⁴ Multiply by the number of trading days in February 2012 (20) to obtain a forecast of the total dollar volume for the month (\$4,797,592,302,406). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column G of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).
2. For each month t , calculate the change in ADS from the previous month as $\Delta_t = \log(ADS_t / ADS_{t-1})$, where $\log(x)$ denotes the natural logarithm of x .
3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \dots, \Delta_{120}\}$. These are given by $\mu = 0.007$ and $\sigma = 0.126$, respectively.
4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t .
5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t / ADS_{t-1} is given by $\exp(\mu + \sigma^2/2)$, or on average $ADS_t = 1.015 \times ADS_{t-1}$.
6. For February 2012, this gives a forecast ADS of $1.015 \times \$236,326,110,324 = \$239,879,615,120$. Multiply this figure by the 20 trading days in February 2012 to obtain a total dollar volume forecast of \$4,797,592,302,406.
7. For March 2012, multiply the February 2012 ADS forecast by 1.015 to obtain a forecast ADS of \$243,486,551,999. Multiply this figure by the 22 trading days in March 2012 to obtain a total dollar volume forecast of \$5,356,704,143,984.

¹⁴ The value 1.015 has been rounded. All computations are done with the unrounded value.

8. Repeat this procedure for subsequent months.

B. Using the forecasts from A to calculate the new fee rate.

1. Determine the aggregate dollar volume of sales between 10/1/11 and 2/20/12 to be \$24,520,003,895,923. Multiply this amount by the fee rate of \$19.20 per million dollars in sales during this period and get \$470,784,075 in actual and projected fees collected during 10/1/11 and 2/20/12. Determine the projected aggregate dollar volume of sales between 2/21/12 and 3/31/12 to be \$7,035,861,449,826. Multiply this amount by the fee rate of \$18.00 per million dollars in sales during this period and get an estimate of \$126,645,506 in projected fees collected during 2/21/12 and 3/31/12.
2. Estimate the amount of assessments on security futures products collected during 10/1/11 and 9/30/12 to be \$16,425 by summing the amounts collected through January 2012 of \$5,716 with projections of a 1.5% monthly increase in subsequent months.
3. Determine the projected aggregate dollar volume of sales between 4/1/12 and 9/30/12 to be \$32,330,785,567,489.
4. The rate necessary to collect \$1,321,000,000 in fee revenues is then calculated as:
$$(\$1,321,000,000 - \$470,784,075 - \$126,645,506 - \$16,425) \div \$32,330,785,567,489 = 0.0000223797.$$
5. Round the result to the seventh decimal point, yielding a rate of 0.0000224000 (or \$22.40 per million).

Table A. Estimation of baseline of the aggregate dollar amount of sales.
 (Methodology developed in consultation with the Office of Management and Budget and the Congressional Budget Office.)

Fee rate calculation.						
a. Baseline estimate of the aggregate dollar amount of sales, 10/1/11 to 2/20/12 (\$Millions)						24,520,004
b. Baseline estimate of the aggregate dollar amount of sales, 2/21/12 to 3/31/12 (\$Millions)						7,035,861
c. Baseline estimate of the aggregate dollar amount of sales, 4/1/12 to 9/30/12 (\$Millions)						32,330,786
d. Estimated collections in assessments on security futures products in FY 2012 (\$Millions)						0.016
e. Implied fee rate (((\$1,321,000,000 - 0.0000192*a - 0.0000180*b - d) / c)						\$22.40
Data						
(A)	(B)	(C)	(D)	(E)	(F)	(G)
Month	# of Trading Days in Month	Aggregate Dollar Amount of Sales	Average Daily Dollar Amount of Sales (ADS)	Change in LN of ADS	Forecast ADS	Forecast Aggregate Dollar Amount of Sales
Jan-02	21	2,149,243,312,432	102,344,919,640	-		
Feb-02	19	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,985,859,756,557	90,266,352,571	-0.038		
Jun-02	20	1,882,185,380,609	94,109,269,030	0.042		
Jul-02	22	2,349,564,490,189	106,798,385,918	0.126		
Aug-02	22	1,793,429,904,079	81,519,541,095	-0.270		
Sep-02	20	1,518,944,367,204	75,947,218,360	-0.071		
Oct-02	23	2,127,874,947,972	92,516,302,086	0.197		
Nov-02	20	1,780,816,458,122	89,040,822,906	-0.038		
Dec-02	21	1,561,092,215,646	74,337,724,555	-0.180		
Jan-03	21	1,723,698,830,414	82,080,896,686	0.099		
Feb-03	19	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,699,581,267,718	80,932,441,320	0.085		
Apr-03	21	1,759,751,025,279	83,797,667,870	0.035		
May-03	21	1,871,390,985,678	89,113,856,461	0.062		
Jun-03	21	2,122,225,077,345	101,058,337,016	0.126		
Jul-03	22	2,100,812,973,956	95,491,498,816	-0.057		
Aug-03	21	1,766,527,686,224	84,120,366,011	-0.127		
Sep-03	21	2,063,584,421,939	98,265,924,854	0.155		
Oct-03	23	2,331,850,083,022	101,384,786,218	0.031		
Nov-03	19	1,903,726,129,859	100,196,112,098	-0.012		
Dec-03	22	2,066,530,151,383	93,933,188,699	-0.065		
Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,613,808,754,550	113,643,858,893	-0.009		
Apr-04	21	2,418,663,760,191	115,174,464,771	0.013		
May-04	20	2,259,243,404,459	112,962,170,223	-0.019		
Jun-04	21	2,112,826,072,876	100,610,765,375	-0.116		
Jul-04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug-04	22	2,033,343,354,640	92,424,697,938	-0.130		
Sep-04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct-04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov-04	21	2,577,513,374,160	122,738,732,103	0.065		
Dec-04	22	2,673,532,981,863	121,524,226,448	-0.010		
Jan-05	20	2,581,847,200,448	129,092,360,022	0.060		
Feb-05	19	2,532,202,408,589	133,273,810,978	0.032		
Mar-05	22	3,030,474,897,226	137,748,858,965	0.033		
Apr-05	21	2,906,386,944,434	138,399,378,306	0.005		
May-05	21	2,697,414,503,460	128,448,309,689	-0.075		
Jun-05	22	2,825,962,273,624	128,452,830,619	0.000		
Jul-05	20	2,604,021,263,875	130,201,063,194	0.014		
Aug-05	23	2,846,115,585,965	123,744,155,912	-0.051		
Sep-05	21	3,009,640,645,370	143,316,221,208	0.147		
Oct-05	21	3,279,847,331,057	156,183,206,241	0.086		
Nov-05	21	3,163,453,821,548	150,640,658,169	-0.036		
Dec-05	21	3,090,212,715,561	147,152,986,455	-0.023		

Jan-06	20	3,573,372,724,766	178,668,636,238	0.194		
Feb-06	19	3,314,259,849,456	174,434,728,919	-0.024		
Mar-06	23	3,807,974,821,564	165,564,122,677	-0.052		
Apr-06	19	3,257,478,138,851	171,446,217,834	0.035		
May-06	22	4,206,447,844,451	191,202,174,748	0.109		
Jun-06	22	3,995,113,357,316	181,596,061,696	-0.052		
Jul-06	20	3,339,658,009,357	166,982,900,468	-0.084		
Aug-06	23	3,410,187,280,845	148,269,012,211	-0.119		
Sep-06	20	3,407,409,863,673	170,370,493,184	0.139		
Oct-06	22	3,980,070,216,912	180,912,282,587	0.060		
Nov-06	21	3,933,474,986,969	187,308,332,713	0.035		
Dec-06	20	3,715,146,848,695	185,757,342,435	-0.008		
Jan-07	20	4,263,986,570,973	213,199,328,549	0.138		
Feb-07	19	3,946,799,860,532	207,726,308,449	-0.026		
Mar-07	22	5,245,051,744,090	238,411,442,913	0.138		
Apr-07	20	4,274,665,072,437	213,733,253,622	-0.109		
May-07	22	5,172,568,357,522	235,116,743,524	0.095		
Jun-07	21	5,586,337,010,802	266,016,048,133	0.123		
Jul-07	21	5,938,330,480,139	282,777,641,911	0.061		
Aug-07	23	7,713,644,229,032	335,375,836,045	0.171		
Sep-07	19	4,805,676,596,099	252,930,347,163	-0.282		
Oct-07	23	6,499,651,716,225	282,593,552,879	0.111		
Nov-07	21	7,176,290,763,989	341,728,131,619	0.190		
Dec-07	20	5,512,903,594,564	275,645,179,728	-0.215		
Jan-08	21	7,997,242,071,529	380,821,051,025	0.323		
Feb-08	20	6,139,080,448,887	306,954,022,444	-0.216		
Mar-08	20	6,767,852,332,381	338,392,616,618	0.098		
Apr-08	22	6,150,017,772,735	279,546,262,397	-0.191		
May-08	21	6,080,169,766,807	289,531,893,657	0.035		
Jun-08	21	6,962,199,302,412	331,533,300,115	0.135		
Jul-08	22	8,104,256,787,805	368,375,308,537	0.105		
Aug-08	21	6,106,057,711,009	290,764,652,905	-0.237		
Sep-08	21	8,156,991,919,103	388,428,186,624	0.290		
Oct-08	23	8,644,538,213,244	375,849,487,532	-0.033		
Nov-08	19	5,727,998,341,833	301,473,596,939	-0.221		
Dec-08	22	5,176,041,317,640	235,274,605,347	-0.248		
Jan-09	20	4,670,249,433,806	233,512,471,690	-0.008		
Feb-09	19	4,771,470,184,048	251,130,009,687	0.073		
Mar-09	22	5,885,594,284,780	267,527,012,945	0.063		
Apr-09	21	5,123,665,205,517	243,984,057,406	-0.092		
May-09	20	5,086,717,129,965	254,335,856,498	0.042		
Jun-09	22	5,271,742,782,609	239,624,671,937	-0.060		
Jul-09	22	4,659,599,245,583	211,799,965,708	-0.123		
Aug-09	21	4,582,102,295,783	218,195,347,418	0.030		
Sep-09	21	4,929,155,364,888	234,721,684,042	0.073		
Oct-09	22	5,410,025,301,030	245,910,240,956	0.047		
Nov-09	20	4,770,928,103,032	238,546,405,152	-0.030		
Dec-09	22	4,688,555,303,171	213,116,150,144	-0.113		
Jan-10	19	4,661,793,708,648	245,357,563,613	0.141		
Feb-10	19	4,969,848,578,023	261,570,977,791	0.064		
Mar-10	23	5,563,529,823,621	241,892,601,027	-0.078		
Apr-10	21	5,546,445,874,917	264,116,470,234	0.088		
May-10	20	7,260,430,376,294	363,021,518,815	0.318		
Jun-10	22	6,124,776,349,285	278,398,924,967	-0.265		
Jul-10	21	5,058,242,097,334	240,868,671,302	-0.145		
Aug-10	22	4,765,828,263,463	216,628,557,430	-0.106		
Sep-10	21	4,640,722,344,586	220,986,778,314	0.020		
Oct-10	21	5,138,411,712,272	244,686,272,013	0.102		
Nov-10	21	5,279,700,881,901	251,414,327,710	0.027		
Dec-10	22	4,998,574,681,208	227,207,940,055	-0.101		
Jan-11	20	5,043,391,121,345	252,169,556,067	0.104		
Feb-11	19	5,114,631,590,581	269,191,136,346	0.065		
Mar-11	23	6,499,355,385,307	282,580,668,926	0.049		
Apr-11	20	4,975,954,868,765	248,797,743,438	-0.127		
May-11	21	5,717,905,621,053	272,281,220,050	0.090		
Jun-11	22	5,820,079,494,414	264,549,067,928	-0.029		
Jul-11	20	5,189,681,899,635	259,484,094,982	-0.019		
Aug-11	23	8,720,566,877,109	379,155,081,613	0.379		

Sep-11	21	6,343,578,147,811	302,075,149,896	-0.227		
Oct-11	21	6,163,272,963,688	293,489,188,747	-0.029		
Nov-11	21	5,493,906,473,584	261,614,593,980	-0.115		
Dec-11	21	5,017,867,255,600	238,946,059,790	-0.091		
Jan-12	20	4,726,522,206,487	236,326,110,324	-0.011		
Feb-12	20				239,879,615,120	4,797,592,302,406
Mar-12	22				243,486,551,999	5,356,704,143,984
Apr-12	20				247,147,724,390	4,942,954,487,796
May-12	22				250,863,947,801	5,519,006,851,628
Jun-12	21				254,636,050,005	5,347,357,050,113
Jul-12	21				258,464,871,221	5,427,762,295,633
Aug-12	23				262,351,264,299	6,034,079,078,884
Sep-12	19				266,296,094,918	5,059,625,803,434

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 1, 2012

In the Matter of

**Aduddell Industries, Inc.,
Capital Markets Technologies, Inc.,
Challenger Powerboats, Inc., and
CLX Medical, 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 Aduddell Industries, 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 Capital Markets Technologies, 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 Challenger Powerboats, Inc. because it has not filed any periodic reports since the period ended December 31, 2007.

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

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securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on March 1, 2012 and terminating at 11:59 p.m. EDT on March 14, 2012.

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. 66496 / March 1, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-12448

In the Matter of

STRONG CAPITAL MANAGEMENT,
INC.,

Respondent.

ORDER DIRECTING
DISBURSEMENT OF FAIR
FUND

On August 3, 2011, the United States Securities and Exchange Commission ("Commission") issued a Notice of Proposed Plan of Distribution and Opportunity for Comment (Exchange Act Rel. No. 65023) pursuant to Rule 1103 of the Commission's Rules on Fair Funds and Disgorgement, 17 C.F.R. §201.1103. The Notice advised parties they could obtain a copy of the Distribution Plan at www.sec.gov. The Notice also advised that all persons desiring to comment on the Distribution Plan could submit their comments, in writing, within thirty (30) days of the date of the Notice. No comments were received by the Commission in response to the Notice. On October 3, 2011, the Commission issued an Order Approving Plan of Distribution. (Exchange Act Rel. No. 65465).

The Distribution Plan provides that the Commission will arrange for distribution of the Fair Fund when a payment file listing the payees with the identification information required to make the distribution has been received and accepted. The validated payment file has been received and accepted in the amount of \$2,310,666.29.

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Accordingly, it is ORDERED that the Commission staff shall disburse the Fair Fund in the amount stated in the validated payment file of \$2,310,666.29, as provided for in the Distribution Plan.

By the Commission.

Elizabeth M. Murphy
Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

*Commissioner Paredes
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66509 / March 5, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14784

In the Matter of

SYNTAX-BRILLIAN
CORPORATION,

Respondent.

ORDER INSTITUTING PROCEEDINGS,
MAKING FINDINGS, AND REVOKING
REGISTRATION OF SECURITIES 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 proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Syntax-Brilliant Corporation ("Syntax" 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, Respondent consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ 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.

A. Syntax-Brilliant Corporation, a Delaware corporation headquartered in Tempe, Arizona, developed and marketed, among other things, high-definition liquid crystal display televisions.

On July 8, 2008, Syntax and its related privately-held companies Syntax-Brilliant SPE, Inc., and Syntax Groups Corporation (collectively, the "Debtors"), each filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. Syntax has had no ongoing operations since it filed for bankruptcy.

On July 6, 2009, the Bankruptcy Court entered an order confirming the Debtors' liquidation plan that created the Lender Trust and SB Liquidation Trust (collectively, the "Trusts") that hold the assets of the Debtors. On July 7, 2009, the effective date of the liquidation plan, the Trusts were formed and came into being. Geoffrey L. Berman was appointed to serve as the trustee of the Trusts on the same date.

B. Syntax's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Syntax's common stock was listed and traded on the NASDAQ Stock Market ("NASDAQ") under the stock symbol "BRLC." On July 22, 2008, NASDAQ suspended trading in Syntax's common stock and delisted the common stock effective September 25, 2008 based on Syntax's bankruptcy filing and failure to comply with exchange rules.

C. Syntax failed to comply with Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1 and 13a-13, while its common stock was registered with the Commission in that it has not filed an Annual Report on Form 10-K since the period ended June 30, 2007 or periodic or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ended September 30, 2007.²

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

² Nothing herein is intended to or shall be deemed an admission or finding regarding any wrongdoing by the Trusts or the trustee of the Trusts.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-66514

March 5, 2012

Order Granting Temporary Exemption of Morningstar Credit Ratings, LLC from the Conflict of Interest Prohibition in Rule 17g-5(c)(1) of the Securities Exchange Act of 1934

I. Introduction

Rule 17g-5(c)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) prohibits a nationally recognized statistical rating organization (“NRSRO”) from issuing or maintaining a credit rating solicited by a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equaling or exceeding 10% of the total net revenue of the NRSRO for the fiscal year. In adopting this rule, the Commission stated that such a person would be in a position to exercise substantial influence on the NRSRO, which in turn would make it difficult for the NRSRO to remain impartial.¹

II. Application and Exemption Request of Morningstar Credit Ratings, LLC

Morningstar Credit Ratings, LLC (“Morningstar”), formerly known as Realpoint LLC (“Realpoint”), is a credit rating agency registered with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act. Morningstar traditionally has operated mainly under the “subscriber-paid” business model, in which the NRSRO derives its revenue from restricting access to its ratings to paid subscribers. After Morningstar acquired Realpoint in the spring of 2010, Morningstar began to expand the scope of its business and initiated an issuer-paid ratings service for initial ratings on commercial mortgage-backed securities. In connection with this expansion, Morningstar has requested a temporary and limited exemption from Rule 17g-5(c)(1) on the grounds that the restrictions imposed by Rule 17g-5(c)(1) would pose a

¹ Release No. 34-55857 (June 5, 2007), 72 FR 33564, 33598 (June 18, 2007).

substantial constraint on the firm's ability to compete effectively with large rating agencies offering comparable ratings services. Specifically, Morningstar argues that because the fees typically associated with issuer-paid engagements tend to be relatively high when compared to the fees associated with its existing subscriber-based business, in the early stages of its expansion the fees associated with a single issuer-paid engagement have exceeded ten percent of its total net revenue for the fiscal year. Accordingly, Morningstar has requested that the Commission grant it an exemption from Rule 17g-5(c)(1) for any revenues derived from non-subscription based business during calendar years 2012 and 2013, which are the end of Morningstar's 2011 and 2012 fiscal years, respectively.

III. Discussion

The Commission, when adopting Rule 17g-5(c)(1), noted that it intended to monitor how the prohibition operates in practice, particularly with respect to asset-backed securities, and whether exemptions may be appropriate.² The Commission has previously granted three temporary exemptions from Rule 17g-5(c)(1), including one on June 28, 2008 to Realpoint, as Morningstar was formerly known, in connection with its initial registration as an NRSRO ("Realpoint Exemptive Order").³ The Commission noted several factors in granting that exemption, including the fact that the revenue in question was earned prior to the adoption of the rule, the likelihood of smaller firms such as Realpoint being more likely to be affected by the rule, Realpoint's expectation that the percentage of total revenue provided by the relevant client would decrease, and the increased competition in the asset-backed securities class that could result from Realpoint's registration. In granting the Realpoint Exemptive Order, the Commission also noted that an exemption would further the primary purpose of the Credit

² Release No. 34-55857 (June 5, 2007), 72 FR 33564, 33598 (June 18, 2007).

³ Release No. 34-58001 (June 23, 2008), 73 FR 36362 (June 26, 2008).

Rating Agency Reform Act of 2006 (“Rating Agency Act”) as set forth in the Report of the Senate Committee on Banking, Housing, and Urban Affairs accompanying the Rating Agency Act: to “improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry”.⁴

Previously, on February 11, 2008, the Commission, citing the same factors it later set forth in the Realpoint Exemptive Order, issued a similar order granting LACE LLC (“LACE”) a temporary exemption from the requirements of Rule 17g-5(c)(1) in connection with LACE’s registration as an NRSRO (“LACE Exemptive Order”).⁵ Most recently, the Commission issued an order granting Kroll Bond Rating Agency, Inc. (“Kroll”), formerly known as LACE, a temporary, limited and conditional exemption from Rule 17g-5(c)(1) allowing Kroll to enter the market for rating structured finance products (“Kroll Exemptive Order”).⁶ In this order, the Commission noted that an exemption is consistent with the Commission’s goal of improving ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry.

The Commission believes that a temporary, limited and conditional exemption allowing Morningstar to expand in the market for rating structured finance products on an issuer-paid basis is consistent with the Commission’s goal of improving ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry. In order to maintain this exemption, Morningstar will be required to publicly disclose in Exhibit 6 to Form NRSRO, as applicable, that the firm received more than 10% of its net revenue in fiscal years 2011 and 2012 from a client or clients that paid it to rate

⁴ See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850, Credit Rating Agency Reform Act of 2006, S. Report No. 109-326, 109th Cong., 2d Sess. (Sept. 6, 2006).
Release No. 34-57301 (Feb. 11, 2008), 73 FR 8720 (Feb. 14, 2008).

⁵ Release No. 34-57301 (Feb. 11, 2008), 73 FR 8720 (Feb. 14, 2008).

⁶ Release No. 34-65339 (Sept. 14, 2011), 76 FR 58319 (Sept. 20, 2011).

asset-backed securities. This disclosure is designed to alert users of credit ratings to the existence of this specific conflict and is consistent with exemptive relief the Commission has previously granted to Realpoint, LACE and Kroll. In addition to Morningstar's existing obligations as an NRSRO to maintain policies, procedures, and internal controls, by the terms of this order, Morningstar will also be required to maintain policies, procedures, and internal controls specifically designed to address the conflict created by exceeding the 10% threshold. Furthermore, the exemption would also require that revenue from a single client does not exceed 25% of Morningstar's total net revenue for either fiscal year 2011 or 2012.

Section 15E(p) of the Exchange Act, as added by Section 932(a)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, requires Commission staff to conduct an examination of each NRSRO at least annually. As part of this annual examination regimen for NRSROs, Commission staff will closely review Morningstar's activities with respect to managing this conflict and meeting the conditions set forth below and will consider whether to recommend that the Commission take additional action, including administrative or other action.

The Commission therefore finds that a temporary, limited and conditional exemption allowing Morningstar to expand in the market for rating structured finance products on an issuer-paid basis is consistent with the Commission's goal, as established by the Rating Agency Act, of improving ratings quality by fostering accountability, transparency, and competition in the credit rating industry, and is necessary and appropriate in the public interest and is consistent with the protection of investors, subject to Morningstar's making public disclosure of the conflict created by exceeding the 10% threshold; its maintenance of policies, procedures and internal controls to address that conflict; and that revenue from a single client does not exceed 25% of Morningstar's

total net revenue for either the fiscal year ending December 31, 2011 or the fiscal year ending December 31, 2012.

IV. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,

IT IS HEREBY ORDERED that Morningstar Credit Ratings, LLC, formerly known as Realpoint LLC, is exempt from the conflict of interest prohibition in Exchange Act Rule 17g-5(c)(1) until January 1, 2013, with respect to any revenue derived from issuer-paid ratings, provided that: (1) Morningstar Credit Ratings, LLC publicly discloses in Exhibit 6 to Form NRSRO, as applicable, that the firm received more than 10% of its total net revenue in fiscal year 2011 or 2012 from a client or clients; (2) in addition to fulfilling its existing obligations as an NRSRO to maintain policies, procedures, and internal controls, Morningstar Credit Ratings, LLC also maintains policies, procedures, and internal controls specifically designed to address the conflict created by exceeding the 10% threshold; and (3) revenue from a single client does not exceed 25% of Morningstar's total net revenue for either the fiscal year ending December 31, 2011 or the fiscal year ending December 31, 2012.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66516 / March 6, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14785

In the Matter of

JAMES CLEMENTS,

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 James Clements ("Clements" 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.

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III.

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

1. From 2005 until the summer of 2007, Clements jointly controlled MRT, LLC; MRT Holdings, LTD; and Maximum Return Transaction, LLC (collectively "MRT"), with his partner. Clements solicited investors to purchase MRT's securities, handled investor funds, received and facilitated the payment of transaction-based compensation to MRT's account managers, and met with MRT's account managers to instruct them on MRT's changing investment strategy. He also offered and sold MRT's securities to investors. Clements was neither registered as a broker or dealer with the Commission nor associated with a registered broker or dealer.

2. On February 7, 2012, a judgment was entered by consent against Clements, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, and Sections 15(a) and 10(b) of the Exchange Act and Exchange Act Rule 10b-5, in the civil action entitled Securities and Exchange Commission v. James Clements & Zeina Smidi, Civil Action Number 0:11-60673-CIV-WPD, in the United States District Court for the Southern District of Florida.

3. The Commission's complaint alleges that, from 2005 until the end of 2007, Clements and his partner operated a Ponzi scheme that offered investors guaranteed monthly returns. Clements falsely told investors MRT used investor proceeds to trade foreign currencies and guaranteed monthly returns of up to 11%. In June 2007, Clements told account managers MRT would no longer trade foreign currencies; instead, Clements falsely claimed that MRT was working with the best Swiss banks and advisors, allowing investors to roll over their existing investment and make future ones into high-yield, fixed-rate savings accounts. Clements and his partner, however, actually operated a Ponzi scheme with investors' money. Clements and his partner siphoned approximately \$3 million of MRT investor money to their personal bank accounts, and paid out approximately \$3 million for travel, expenses, and luxury items.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Clements be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent.

Respondent be, and hereby is, 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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 66519 / March 6, 2012

ADMINISTRATIVE PROCEEDING

File No. 3-14786

In the Matter of

**Toolex International N.V.,
topjobs.net PLC,
Tribridge Enterprises Corp. (n/k/a
Northern Lion Gold Corp.),
Tropika International Ltd.,
Tsunami Media Corp.,
T.Z.F. International Investments, Inc., and
Vantage Enterprises Corp. (n/k/a
African Gemstones Ltd.),**

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 Toolex International N.V., topjobs.net PLC, Tribridge Enterprises Corp. (n/k/a Northern Lion Gold Corp.), Tropika International Ltd., Tsunami Media Corp., T.Z.F. International Investments, Inc., and Vantage Enterprises Corp. (n/k/a African Gemstones Ltd.).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Toolex International N.V. (CIK No. 1012370) is a Netherlands company located in Veldhoven, The Netherlands with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Toolex International is delinquent

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in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended December 31, 2000, which reported a net loss over \$13 million for the prior twelve months.

2. topjobs.net PLC (CIK No. 1082802) is an England & Wales company located in Birchwood, Warrington, United Kingdom with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). topjobs.net 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 March 31, 2000, which reported net loss of over \$25.3 million for the prior twelve months.

3. Tribridge Enterprises Corp. (n/k/a Northern Lion Gold Corp.) (CIK No. 1011351) is a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Tribridge Enterprises is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F/A registration statement on September 11, 1997, which reported a net loss of over \$3.5 million (Canadian) for the twelve-month period ended December 31, 1996. As of February 29, 2012, the company's stock (symbol "NLGCF") was traded on the over-the-counter markets.

4. Tropika International Ltd. (CIK No. 1088164) is an Ontario corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Tropika International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F/A registration statement on February 4, 2000, which reported a net loss of over \$711,000 (Canadian) for the three-month period ended August 31, 1999.

5. Tsunami Media Corp. (CIK No. 1071179) is a Texas corporation located in Calgary, Alberta, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Tsunami Media 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 over \$2.9 million for the twelve-month period ended March 31, 2000.

6. T.Z.F. International Investments, Inc. (CIK No. 1116350) is a Nevada corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). T.Z.F. International Investments 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, 2003, which reported a net loss of over \$1.2 million for the prior six months.

7. Vantage Enterprises Corp. (n/k/a African Gemstones Ltd.) (CIK No. 1044531) is a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Vantage Enterprises 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

August 11, 1997, which reported a net loss of over \$1 million (Canadian) for the nine-month period ended April 30, 1997.

B. DELINQUENT PERIODIC FILINGS

8. 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.

9. 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.

10. 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

Securities Act of 1933
Release No. 9300/March 7, 2012

Securities Exchange Act of 1934
Release No. 66529/March 7, 2012

**ORDER REGARDING REVIEW OF FASB ACCOUNTING SUPPORT FEE FOR
2012 UNDER SECTION 109 OF THE SARBANES-OXLEY ACT OF 2002**

The Sarbanes-Oxley Act of 2002 (the "Act") provides that the Securities and Exchange Commission (the "Commission") may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard setting body that meets certain criteria. Consequently, Section 109 of the Act provides that all of the budget of such a standard setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the "recoverable budget expenses" of the standard setting body. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board ("FASB") and its parent organization, the Financial Accounting Foundation ("FAF"), satisfied the criteria for an accounting

standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as "generally accepted" under Section 108 of the Act.¹ As a consequence of that recognition, the Commission undertook a review of the FASB's accounting support fee for calendar year 2012. In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2012.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board ("GASB"), the FASB's sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

After its review, the Commission determined that the 2012 annual accounting support fee for the FASB is consistent with Section 109 of the Act.

Accordingly, IT IS ORDERED, pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

By the Commission.



Elizabeth M. Murphy
Secretary

¹ Financial Reporting Release No. 70.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 66530 / March 7, 2012

Admin. Proc. File No. 3-14486

In the Matter of

ROBERT HARDEE QUARLES
c/o Craig L. Landauer, Esq.
Pickard and Djinis LLP
1990 M Street, NW, Suite 660
Washington, DC 20036

ORDER GRANTING PETITION TO VACATE ADMINISTRATIVE BAR ORDER

I.

Robert Hardee Quarles ("Quarles") has petitioned the Commission to vacate an administrative bar order imposed on him in 1985. For the reasons set forth below, we have determined to grant Quarles's petition.

II.

Background. In 1984, an administrative law judge rendered an initial decision finding, inter alia, that Quarles had violated Sections 5(a), 5(c), 17(a)(2), and 17(a)(3) of the Securities Act of 1933 ("Securities Act") by offering and selling non-exempt securities without a valid and effective registration statement and also by misleading his customers regarding the nature and risks of those securities. The law judge suspended Quarles from association with a broker or dealer for six months and barred him permanently from associating with a broker or dealer in a supervisory or proprietary capacity. On February 13, 1985, the initial decision of the law judge with respect to Quarles became the final decision of the Commission.

Quarles served his suspension, which ended in October 1985, without incident. In August 1987, NASD approved his application to associate with a member firm as a general securities representative and notified the Commission of that decision. With the exception of the period from March 1989 to April 1990, Quarles has been continuously employed with securities firms since his August 1987 re-entry into the securities profession and has been associated with his current employer for more than 20 years.

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without regulatory difficulties for 24 years. Additionally, the Division cites to three cases in which the Commission has granted relief from administrative bars in cases with facts and circumstances similar to those presented by Quarles's petition.²

IV.

Analysis. We have stated that “[i]n reviewing requests to lift or modify administrative bar orders, the Commission will determine whether, under all the facts and circumstances presented, it is consistent with the public interest and investor protection to permit the petitioner to function in the industry without the safeguards provided by the bar.”³ However, our longstanding approach to Commission administrative bars has been that they “will remain in place; relief will be appropriate only in compelling circumstances.”⁴ This approach “ensures that the Commission, in furtherance of the public interest and investor protection, retains its continuing control over such barred individuals’ activities.”⁵ We have held, however, that we “will act in response to those situations in which, under all the facts and circumstances, the equitable need for relief, consistent with the public interest and investor protection, warrants vacating or modifying a Commission bar order.”⁶

Consideration of a range of factors guides the Commission’s public interest/investor protection inquiry, and no one factor is dispositive. Among these factors are (1) the nature of the misconduct at issue in the underlying matter; (2) the time that has passed since issuance of the administrative bar; (3) the compliance record of, and any regulatory interest in, the petitioner since issuance of the administrative bar; (4) the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the

² *Mark E. Ross*, Securities Exchange Act Rel. No. 43033 (July 13, 2000), 72 SEC Docket 2587; *John W. Bendall, Jr.*, Securities Exchange Act Rel. No. 38326 (Feb. 24, 1997), 63 SEC Docket 2790; *Ralph J. Hayes*, Securities Exchange Act Rel. No. 36604 (Dec. 19, 1995), 60 SEC Docket 2880.

³ *Ciro Cozzolino*, 57 S.E.C. 175, 181 (2003); *Edward I. Frankel*, 57 S.E.C. 186, 193 (2003); *Stephen S. Wien*, 57 S.E.C. 162, 170 (2003).

⁴ *Cozzolino*, 57 S.E.C. at 181; *Frankel*, 57 S.E.C. at 193; *Wien*, 57 S.E.C. at 170.

⁵ *Cozzolino*, 57 S.E.C. at 182; *Frankel*, 57 S.E.C. at 194; *Wien*, 57 S.E.C. at 171.

⁶ *Cozzolino*, 57 S.E.C. at 182-83; *Frankel*, 57 S.E.C. at 194-95; *Wien*, 57 S.E.C. at 171.

III.

Parties' Contentions. Quarles is 70 years old and has been subject to his administrative supervisory and proprietary bar for more than 26 years. More than 30 years have passed since the misconduct underlying the bar. Quarles represents – and the Division does not contest – that he has complied with all aspects of the Commission's bar order, and that he has been almost continuously employed in the securities industry for the past 24 years, including for more than 20 years with his current employer. In the decades since the Commission's action, he has not incurred any further regulatory interest.¹

Quarles's violations occurred in the late 1970s, when he was a new broker in his first job in the securities industry. The securities that he sold in violation of the registration and non-scienter antifraud provisions of the securities laws were "standby with pair-off agreements" for the purchase and sale of exempt government securities. (Although the underlying government securities were exempt from registration, the standby with pair-off agreements were not.) Quarles argues that his employer misled him as to the nature of the securities and the risks that his customers would incur. For example, Quarles argues that the standby with pair-off agreements appeared on their surface to be similar to government securities that he knew to be exempt from registration, and his firm did not advise him or his colleagues otherwise. Additionally, his firm assured him and his colleagues in training sessions that their customers could not lose money on these transactions and that the firm would provide all of the customers with a guarantee to that effect.

Quarles asserts that he continues to suffer consequences as a result of the supervisory and proprietary bar, but that such consequences are no longer in the public interest. For example, the proprietary portion of the bar prevents Quarles from participating in his current employer's employee partnership plan, which allows employees to purchase ownership interests in the firm. The supervisory portion of the bar also prevents him from participating in his employer's mentor program, in which the firm's senior employees provide training and guidance to the firm's more junior employees.

The Division supports Quarles's petition and urges the Commission to grant the requested relief. The Division acknowledges that the law judge found several factors that mitigated Quarles's misconduct, including his lack of securities sales experience at the time of his misconduct, his confusion over whether the securities were required to be sold in registered offerings, and the misleading acts and representations of his superiors. The Division also acknowledges that Quarles has been almost continuously employed in the securities industry

¹ In his petition, Quarles represents that in the late 1980s, he applied to become registered with the State of Florida, which denied his application based on the Commission's action against him and the administrative bar. According to Quarles, the denial was a collateral consequence of that action and the bar; it was not based on any new or uncharged conduct by Quarles. The Division has not challenged or objected to Quarles's representations.

administrative bar; (5) whether the petitioner has identified verifiable, unanticipated consequences of the bar; (6) the position and persuasiveness of the Division of Enforcement, as expressed in response to the petition for relief; and (7) whether there exists any other circumstance that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors.⁷

On balance, based on a review of all the facts and circumstances, we deem it appropriate to vacate our prior order. Quarles is 70 years old. More than 26 years have passed since the bar was imposed, a time frame that is lengthy and weighs in favor of relief. Moreover, since the bar was imposed, he has been almost continuously employed in the securities profession. His six-month suspension ended on October 5, 1985. In August 1987, NASD approved his application to associate with a member firm as a general securities representative. From that time, Quarles has been almost continuously employed in the securities industry as a general securities representative, including a span of more than 20 years with his current firm.

Quarles has no record of further regulatory or compliance problems. He has represented that his record since the imposition of the bar has been unblemished, and that the Commission's action against him was the only regulatory action taken against him in some 30-plus years in the securities profession. This factor also weighs in favor of relief.

Accordingly, IT IS ORDERED that the February 13, 1985 bar order entered against Robert Hardee Quarles be, and it hereby is, VACATED.

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. 66524 / March 7, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14787

In the Matter of

PRIME STAR GROUP,
INC.,

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 and 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").

II.

After an investigation, the Division of Enforcement alleges that:

RESPONDENT

1. Prime Star Group, Inc. ("Prime Star" or "Respondent") is a Nevada corporation headquartered in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Section 12(g) of the Exchange Act. Prime Star's common stock (ticker "PSGI") has been trading on the "grey market" and was previously quoted on OTC Link operated by OTC Markets Group, Inc.

DELINQUENT FILINGS

2. Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers with classes of securities registered pursuant to Section 12 of the Exchange Act to file with

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the Commission current and accurate information in periodic reports. Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

3. Prime Star filed its last Form 10-K for the year ended December 31, 2009 on May 14, 2010 and amended on June 16 and November 30, 2010, and its last Form 10-Q for the three months ended September 30, 2010 on November 15, 2010 and amended on January 28, 2011. Since then, Prime Star has not submitted its required periodic filings.

4. As discussed above, Prime Star is delinquent in its periodic filings with the Commission. The following periodic filings are delinquent.

Form	Period Ended	Due on or about
10-K	December 31, 2010	March 31, 2011
10-Q	March 31, 2011	May 15, 2011
10-Q	June 30, 2011	August 14, 2011
10-Q	September 30, 2011	November 14, 2011

5. As a result of the conduct described above, Prime Star has failed to comply with Section 13(a) of the Exchange Act 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 to institute public administrative proceedings to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford 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 revoke the registration of each class of securities of the Respondent registered pursuant to Section 12 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 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 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 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 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 Watter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3380 / March 7, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14788

In the Matter of

JASON PFLAUM,

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 Jason Pflaum ("Pflaum" 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 admits the Commission's jurisdiction over him and the subject matter of these proceedings and 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.

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III.

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

1. Pflaum, age 39, resides in Wayzata, Minnesota. From 2008 to 2010, Pflaum was employed as a technology analyst at Barai Capital Management, an unregistered investment adviser based in New York, New York.

2. On February 8, 2011, the Commission filed a civil action against Pflaum in SEC v. Longoria, et al., Civil Action No. 11-CV-0753 (S.D.N.Y.). On February 21, 2012, the Court entered an order permanently enjoining Pflaum, by consent, from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

3. The Commission's amended complaint alleged that, in connection with the purchase or sale of securities, Pflaum knew, recklessly disregarded, or should have known, that material non-public information he received from a tipper was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence, and Pflaum is liable for the trading by Barai Capital because he directly or indirectly caused Barai Capital to place trades and/or unlawfully tipped inside information to Barai Capital.

4. On December 17, 2010, Pflaum pleaded guilty to charges of securities fraud and conspiracy to commit securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 371 before the United States District Court for the Southern District of New York, in United States v. Jason Pflaum, 10-cr-01265 (JGK).

5. The counts of the criminal indictment to which Pflaum pled guilty alleged, inter alia, that Pflaum, and others, participated in a scheme to defraud by executing securities trades based on material nonpublic information that had been disclosed or misappropriated in violation of duties of trust and confidence, and that he unlawfully, willfully and knowingly did so, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, in connection with the purchase and sale of securities.

IV.

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

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

barred from association with any broker, dealer, investment adviser, 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

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 9, 2012

In the Matter of

Advanced Growing Systems, Inc.,
Advantage Capital Development Corp.,
Amazon Biotech, Inc.,
Andover Holdings, Inc.
a/k/a Andover Energy Holdings, Inc.,
Bravo! Brands, Inc., and
BSML, 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 Advanced Growing Systems, Inc. because it has not filed any periodic reports since the period ended June 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advantage Capital Development Corp. because it has not filed any periodic reports since the period ended December 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Amazon Biotech, Inc. because it has not filed any periodic reports since the period ended October 31, 2007.

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

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It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bravo! Brands, Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BSML, Inc. because it has not filed any periodic reports since the period ended March 28, 2009.

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 March 9, 2012, through 11:59 p.m. EDT on March 22, 2012.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No.66549 / March 9, 2012

Admin. Proc. File No. 3-14544

In the Matter of the Application of

JAMES LEE GOLDBERG
c/o Simon S. Kogan, Esq.
Attorney at Law
27 Weaver Street
Staten Island, NY 10312

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF ASSOCIATION
ACTION DENYING WAIVER OF EXAMINATION REQUIREMENTS

Registered securities association denied the request by a member firm, on behalf of a registered general securities representative seeking registration as an investment banking representative, that the applicable qualification examination be waived and that the representative be permitted to obtain that license without qualifying by examination. *Held*, review proceeding *dismissed*.

APPEARANCES:

Simon S. Kogan, for James Lee Goldberg.

Marc Menchel, Jennifer C. Brooks, and Michael J. Garawski, for Financial Industry Regulatory Authority, Inc.

Appeal filed: September 6, 2011
Last brief received: December 21, 2011

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I.

James Lee Goldberg, a registered representative associated with Katalyst Securities, LLC ("Katalyst"), a FINRA member firm, seeks review of a FINRA action. FINRA denied a request by Katalyst, on Goldberg's behalf, for a waiver of the qualification examination required by NASD Membership and Registration Rules 1031(c) and 1032(i), for a Series 79 (investment banking representative) securities license.¹ We base our findings on an independent review of the record.

II.

In December 1985, Goldberg passed the Series 7 (general securities representative) examination. Since then, Goldberg has served as a registered general securities representative with seven different member firms and has also worked periodically as a self-employed consultant, in both investment related and non-investment related capacities.² As detailed below, Goldberg's Series 7 license had lapsed by late 2007. In January 2011, Goldberg joined Katalyst. He became a Katalyst general securities representative on March 3, 2011, after FINRA granted him a waiver of the Series 7 examination requirement. Goldberg has never taken the Series 79 qualification examination.

A. Goldberg's Prior Associations with Westor Capital Group, Inc.**1. First Association: October 2007 – July 2008**

In October 2007, Goldberg was hired by Westor Capital Group, Inc. ("Westor"), then a FINRA member firm. On October 31, 2007, Westor filed a Uniform Application for Securities Industry Registration or Transfer ("Form U4") seeking to register Goldberg as a Series 7 general securities representative.³ FINRA did not approve Goldberg's registration with Westor because

¹ FINRA was formed on July 26, 2007, as a result of the merger of the member firm regulatory functions of the National Association of Securities Dealers, Inc. ("NASD") and NYSE Regulation, Inc. ("NYSE"). Securities Exchange Act Rel. No. 56148 (July 26, 2007), 91 SEC Docket 522. FINRA has since begun consolidating NASD and NYSE rules as new FINRA rules; however, many NASD rules, including NASD Membership Rules 1031, remain in effect. Exchange Act Rel. No. 58643 (Sept. 25, 2008), 73 Fed. Reg. 57,174 (Oct. 1, 2008).

² In addition to our consideration of the record in this case, we take official notice of the various filings and general information regarding Goldberg in the Central Registration Depository ("CRD"), an electronic database maintained by FINRA and *available at* <https://crd.finra.org>. 17 C.F.R. § 201.323.

³ Goldberg's previous registration with FINRA had terminated in June 2006.

Goldberg had failed to complete a required continuing education course.⁴ On April 28, 2008, because Goldberg failed to timely complete the course, FINRA's Central Registration Depository ("CRD") system automatically changed his registration status to "purged."⁵

Two days later, Westor filed an amended Form U4. This action gave Goldberg an additional 120 days to renew his registration by taking the continuing education course. Goldberg completed the course on May 12, 2008. By this time, however, FINRA had suspended Westor's membership for the firm's failure to file an annual report for 2007 and thus Goldberg's registration was not approved. On July 8, 2008, Westor terminated Goldberg's association with the firm by filing a Uniform Termination Notice for Securities Industry Registration ("Form U5"). The Form U5 explained that Goldberg's resignation was "voluntary" because Westor was "unable to facilitate deals at this time." Goldberg's Form U4 represents that, for a period thereafter, he was self-employed as a "consultant."

2. Second Association: June 2009 – April 2010

In June 2009, Goldberg rejoined Westor. However, he learned shortly thereafter that his previous registration with FINRA had been purged and that he was no longer licensed.

On April 20, 2010, Westor filed a Form U4 seeking to register Goldberg as a Series 7 "general securities representative." FINRA granted Goldberg a waiver of the Series 7 examination requirement in August 2010, conditioned on Goldberg's completion of a continuing education course within ninety days; however, Goldberg did not complete the required course during the time provided. In subsequent correspondence with FINRA, Goldberg stated that he was unable to take the course because Westor "owed FINRA \$2,000 for prior registration and fees . . . [and it] was unwilling to pay the outstanding balance . . . [which] left my waiver in limbo."⁶

On November 15, 2010, FINRA withdrew its conditional waiver of the Series 7 examination requirement and Goldberg's Series 7 registration with Westor was never approved. On January 25, 2011, Westor filed a Form U5 terminating Goldberg's association. The Form U5

⁴ Goldberg states on appeal that he "was duly registered with [Westor] until 2008." This is not accurate. Despite numerous attempts commencing in 2007, Goldberg was never registered with Westor.

⁵ See FINRA, *Web CRD Firm User's Manual* at p. 5-32, available at <http://finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p005317.pdf>.

⁶ The record does not clarify the basis for the connection between the purported amount owed by Westor to FINRA and Goldberg's failure to take the continuing education course.

stated the reason for the termination was "voluntary" but also stated, without explanation, that the termination date for Goldberg's association was April 23, 2010, three days after Westor filed a Form U4 on Goldberg's behalf.⁷

3. The November 2009 – May 2010 "Opt-In" Period for the Series 79 Exam

During Goldberg's second association with Westor, FINRA adopted amendments to NASD Rule 1032 requiring "individuals whose activities are limited to investment banking . . . to pass [a] new Limited Representative – Investment Banking Qualification Examination (Series 79 Exam)."⁸ As part of the new requirement, FINRA offered a six-month transitional "opt-in" period, between November 2, 2009 and May 3, 2010, in which "[i]nvestment bankers who hold the Series 7 registration . . . may opt in to the Investment Banking Representative registration, provided that, as of the date they opt in, such individuals are engaged in investment banking activities."⁹ To opt in, the individual's member firm was required to "submit an amended Form U4 to request the Limited Representative—Investment Banking registration."¹⁰ Individuals who qualified for the "opt-in" relief were exempt from taking the Series 79 examination. After the opt-in period, any person who sought to engage in investment banking activities would be required "to pass the Series 79 Exam or obtain a waiver" from FINRA.

Westor did not file an amended Form U4 seeking an Investment Banking Representative registration on Goldberg's behalf during the Series 79 opt-in period. In February 2010, Goldberg's counsel sent a letter to FINRA in connection with the reinstatement of Goldberg's Series 7 registration. That letter did not indicate that Goldberg intended to obtain a Series 79 securities license.

B. Goldberg Joins Katalyst

1. Katalyst Requests Waiver of the Series 7 and 79 Exams

In February 2011, Katalyst filed a Form U4 seeking to register Goldberg as a general securities representative and as an investment banking representative. Katalyst also requested waiver of the Series 7 and 79 examination requirements on Goldberg's behalf. FINRA granted Katalyst's Series 7 waiver request on February 17, 2011, conditioned on Goldberg taking a

⁷ This April 2010 termination date is also reflected in Goldberg's employment history in CRD.

⁸ FINRA Notice to Members 09-41, at *1 (July 2009).

⁹ *Id.* at *3.

¹⁰ *Id.* at *6.

required continuing education course. Goldberg completed the required course and FINRA approved his Series 7 registration on March 3, 2011.

On February 22, 2011, FINRA's Department of Testing and Continuing Education (the "Department") requested additional information regarding Katalyst's waiver request for the Series 79 qualification examination. The Department asked for a description of what Goldberg's duties would be at Katalyst, an explanation of "why [Westor] did not opt-in [Goldberg] to the [Investment Banking] position" previously, and a "detailed description" of Goldberg's investment banking experience.

On March 8, 2011, Katalyst responded that Goldberg would be involved in "the private placement of securities" and "various corporate restructurings and M&A activities." Katalyst also included a statement by Goldberg that he believed that Westor did not opt him into the Series 79 because of "the firm's financial problems."

With respect to his past investment banking experience, Goldberg represented that over the preceding five years he had "assisted several companies requiring investment banking services." Goldberg stated that he provided "business and financial planning strategies[,] introductions to potential financing candidates[,] discussions with legal and accounting specialists[,] and offering solutions to management and stakeholder's goals and expectations during the entire process." According to Goldberg, he also worked "alongside" the ex-treasurer of PepsiCo, with whom he "assisted companies with deal structure, contract negotiations, corporate and securities compliance issues, exit strategies, buy-sell arrangements, merger and acquisitions, among other services on an as needed basis."

2. FINRA's Determination

On March 29, 2011, the Department denied Katalyst's Series 79 examination waiver request. The Department stated that, after "carefully considering the material [Katalyst] presented" on Goldberg's behalf, "neither [Katalyst's] representations . . . nor the official registration record, provide a basis for waiving the required qualification examination." On April 15, 2011, Goldberg appealed that decision to the Waiver Subcommittee of FINRA's National Adjudicatory Council ("Waiver Subcommittee"), asserting that the Series 79 examination requirement should be waived "for the same reasons that his Series 7 exam was waived." In this connection, Goldberg referred the Waiver Subcommittee to an e-mail from FINRA staff regarding the expiration of his Series 7 license, three letters of recommendation from individuals with whom Goldberg previously worked, and a statement from a compliance official from STG Secure Trading Group, Inc. ("STG"), indicating that Goldberg had no "outstanding issues" with that firm as of May 22, 2006.¹¹

¹¹ These letters describe Goldberg's investment banking experience by saying that Goldberg was "a prime mover in . . . efforts to raise investment capital for clients, in areas such (continued...)

On August 2, 2011, the Waiver Subcommittee affirmed the Department's denial of the waiver request. The Waiver Subcommittee found that Goldberg's waiver request did not present the "exceptional case" that would justify "accept[ing] other standards as evidence of [his] qualification for registration" in lieu of passing the Series 79 examination. According to the Waiver Subcommittee, Katalyst "present[ed] limited evidence concerning Goldberg's experience with the wide variety of tasks that the Series 79 examination qualifies one to perform." In addition, the Waiver Subcommittee found insufficient evidence supporting Goldberg's claim that a waiver was warranted because of an alleged filing error by Westor for failing to opt him into the Series 79 category during his association with the firm. Goldberg appealed the Waiver Subcommittee's decision.

III.

We review FINRA denial of a request for waiver of an examination requirement pursuant to Section 19(f) of the Securities Exchange Act.¹² In accordance with that section, we must dismiss an application for review of a denial of a waiver request if we find that: (1) the specific grounds upon which FINRA based its denial "exist in fact"; (2) the action is in accordance with FINRA rules; (3) FINRA applied its rules in a manner consistent with the purposes of the Exchange Act; and (4) the action does not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹³

A. Specific Grounds for Denying Waiver Exist in Fact

NASD Membership and Registration Rules 1031 and 1032(i) require associated persons seeking to engage in investment banking activities to pass the Series 79 qualification examination. FINRA designed the Series 79 examination to "provide a more targeted assessment

¹¹ (...continued)

as identifying potential investors, conducting pre-money business evaluations and analysis of comparables, developing investor exit strategies, and negotiating financing terms"; "particularly helpful in assisting with the preparation of business plans, identifying potential investors, preparing investor presentations, structuring deals, and negotiating financing agreements"; and "essential in establishing relationships and structure in every aspect of Investment Banking."

¹² 15 U.S.C. § 78s(f); see *Gina M. Guzzone*, 57 S.E.C. 592, 596 (2004) (explaining that a "denial of a waiver . . . , in effect, constitutes a bar . . . from associating" with a FINRA member firm).

¹³ *Fog Cutter Capital Group v. SEC*, 474 F.3d 822, 825 (D.C. Cir. 2007). Goldberg mistakenly states that we review this proceeding pursuant to Section 19(e) of the Exchange Act. He also argues that the Act "requires FINRA to evaluate if its determinations impose a burden on competition" and that FINRA improperly failed to make this evaluation. The Act requires the Commission, not FINRA, to make this determination.

of the competency of investing banking personnel to perform their unique job functions and, as a result, provide investors better protection."¹⁴ In accordance with NASD Membership and Registration Rule 1070(d), FINRA may "in exceptional cases and where good cause is shown" waive an examination requirement and accept "other standards as evidence of an applicant's qualifications for registration."

FINRA "examines the merits of any waiver request based on its Waiver Guidelines,"¹⁵ a non-exhaustive list of factors "to assist member firms in recognizing situations where a basis may exist for requesting a waiver."¹⁶ Goldberg based his Series 79 examination waiver request on two factors in the Waiver Guidelines: (1) an alleged filing error caused by Westor's failure to "opt" him into the Series 79 category during the opt-in period, and (2) Goldberg's experience in the securities industry. We find that specific grounds for the Waiver Subcommittee's denial of Goldberg's waiver request existed in fact.

1. The Waiver Guideline applicable to a filing error provides that FINRA may grant a waiver to an individual who has been functioning in good faith in the securities industry and believes himself to be properly registered, but whose application forms had been incorrectly filed and are therefore not reflected in the CRD. The Waiver Guideline requires that the "firm(s) involved document the nature of the filing error" as well as evidence showing the individual's "good faith" belief, notwithstanding the filing error, that he or she was appropriately registered.

The record amply supports the Waiver Subcommittee's conclusion that Westor's failure was a result of a "purposeful" financial decision by the firm, rather than an inadvertent filing mistake, as contemplated by the Waiver Guideline.¹⁷ Goldberg presented no evidence that, during the opt-in period for the Series 79 license, he believed in good faith that he was properly

¹⁴ Series 79 Exam Adopting Release, 74 Fed. Reg. at 39,985.

¹⁵ *Michael Stegawski*, Exchange Act Rel. No. 59326 (Jan. 30, 2009), 95 SEC Docket 13819, 13823 (citing NASD Notice to Members 04-59 (Aug. 2004)).

¹⁶ FINRA, Qualification Examination Waiver Guidelines, *available at* <http://www.finra.org/RegistrationQualifications/BrokerGuidanceResponsibility/Qualifications/p010600> (last visited January 26, 2012).

¹⁷ Waiver Guidelines, *supra* note 16 (noting that, "[i]n a typical case, a member firm files an incomplete application that is eventually purged from the CRD system. After two years, the CRD system will reschedule the appropriate qualification examination if the individual re-submits an application for registration. This normally occurs when the individual attempts to transfer to another firm.").

registered as a Series 79 licensee.¹⁸ To the contrary, the February 2010 letter from Goldberg's attorney admits that Goldberg knew since at least June 2009 that he lacked even a Series 7 license, the prerequisite for seeking an exemption from the Series 79 examination during the "opt-in" period. Moreover, Westor did not file a Series 79 opt-in application on behalf of Goldberg, much less claim that any error had been made in connection with such an application, as required by the Waiver Guideline. Goldberg essentially conceded that he knew Westor never submitted such an application when he admitted that he believed the main reason Westor failed to seek an exemption during the "opt-in" period was due to Westor's "financial problems" at the time.

Goldberg further argues that he was "deprived of the opportunity to opt in to the Series 79 registration because of a registration error involving his Series 7 license." Even if a filing error with respect to one licensing application could be the basis for a waiver of another, different license, Goldberg has not established any such error with respect to his Series 7 application. The lapse in his Series 7 registration was due initially to his failure to complete a continuing education course. This does not constitute a "filing error," but rather a failure to meet his continuing education obligations as required by FINRA Rule 1250.¹⁹ Rule 1250 prescribes the frequency with which registered persons must take continuing education courses, and that, during any period of non-compliance with the continuing education requirements a registered person must cease to perform any duties as a registered person. Since Goldberg was required to be aware of his continuing education obligations, it is unclear how he could have been eligible for a "filing error" waiver based on a good faith belief that he was properly registered, at least until he completed his continuing education course in May of 2008.²⁰

When Goldberg eventually took the course, his Series 7 registration was not approved because Westor's membership had been suspended for failure to file its 2007 annual report. This does not constitute a "filing error" in connection with Goldberg's Series 7 application, but a filing failure in connection with Westor's annual report.

¹⁸ *Jon G. Symon*, 54 S.E.C. 102, 108 (1999) (finding applicant failed to provide sufficient evidence supporting his claim of a registration error).

¹⁹ Former NASD Rule 1120.

²⁰ Registered persons such as Goldberg are required to be familiar with all applicable FINRA rules. *Ryan Henry*, Exchange Act Rel. No. 53957 (June 8, 2006), 88 SEC Docket 587, 592 n.13. Goldberg blames FINRA for not notifying him of his Series 7 continuing education deficiency during his association with Westor. We have long held that "[a]pplicants 'cannot shift their burden of compliance to [FINRA].'" *CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325 (Jan. 30, 2009), 95 SEC Docket 13802, 13813 n.33 (quoting *Hans N. Beerbaum*, Exchange Act Rel. No. 55731 (May 9, 2007), 90 SEC Docket 1863, 1871 n.22).

Goldberg blames his failure to take his required continuing education course during his second association with Westor on Westor's failure to pay outstanding fees owing to FINRA. However, Westor's failure to pay fees is not a "filing error" with respect to Goldberg's registration. Moreover, the record is clear that Goldberg was aware of his unregistered status throughout his second association with Westor, and therefore could not have in good faith believed himself to be properly registered and therefore eligible for a "filing error" waiver for his Series 7 registration.

Goldberg asserts that but for "the SNAFU with respect to his Series 7 registration . . . Goldberg would have opted in to the [Series] 79" category. This assertion is not supported by the record. Westor did not seek an "opt-in" for Goldberg at any time. Moreover, the February 2010 letter sent by Goldberg's counsel to FINRA during the Series 79 opt-in period made no reference to any intention of Goldberg to register as an investment banking representative. Even if Goldberg had sought to take advantage of the opt-in period, he was not eligible because his Series 7 registration had lapsed.²¹

2. There is also ample support for the Waiver Subcommittee's denial of Goldberg's waiver request based on his purported investment banking experience. The Waiver Guidelines provide six factors that FINRA considers in determining whether to grant a waiver request based on applicant's industry experience.²² Goldberg based his waiver request on four of those factors: (1) the length and quality of his experience; (2) the specific registration he requested and type of business he would conduct; (3) his previous registration history; and (4) the nature of any regulatory matters as disclosed on his application for registration.

In assessing his investment banking credentials, the Waiver Subcommittee considered Goldberg's more than eleven years as a registered general securities representative (although that experience was not consecutive), his current registration in that capacity, and the various letters submitted by individuals with whom he has worked. The Waiver Subcommittee, however, determined that Goldberg's experience did not present "an exceptional case," finding that Goldberg's description of his investment banking experience was "only in general terms," that "he has no direct experience in investment banking as a registered representative," and that Katalyst presented "limited evidence concerning Goldberg's experience with the wide variety of tasks that the Series 79 examination qualifies one to perform."

²¹ We are unclear about the basis for Goldberg's assertion on appeal that "[d]uring the past few years, believing that he was properly registered at both STG and [Westor], Mr. Goldberg was actively engaged in investment banking activities," at least with respect to Goldberg's tenure at Westor. The lapse of his Series 7 registration during the entire opt-in period, of which he was admittedly aware, required him to cease all duties as a registered person during the lapse. CRD shows that his registration with STG ended in June 2006, well before the events at issue.

²² Waiver Guidelines, *supra* note 16.

We agree with FINRA's assessment. Goldberg has not demonstrated, under NASD Rule 1070, that his industry experience presents an "exceptional case" to waive the Series 79 examination requirement. Passing the Series 79 examination qualifies an investment banking representative to advise on or facilitate debt or equity offerings through a private placement or public offering or to advise or facilitate mergers or acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions.²³ Goldberg's waiver request, however, consisted of a four-line, unspecified list of "investment banking services" with which he "assisted" for "several companies," without any indication of the level or breadth of his involvement, or the specific services in which he was involved.

Moreover, although Goldberg's waiver request represented that, "for the past five years, [he] actively provided investment banking on wide variety of matters," FINRA found that "he has no direct experience in investment banking as a registered representative and gained -- at best -- only 15 months of investment banking experience at Westor" Goldberg offered little explanation of his past associations or his consulting practice to provide a basis to determine whether they compare with being an investment banking representative associated with a regulated broker-dealer. The letters of recommendation submitted on Goldberg's behalf were also vague, giving little indication of the kinds of investment banking services Goldberg provided.²⁴

²³ NASD Membership and Registration Rule 1032(i). The Series 79 examination covers four main topics (in order of concentration): (1) collection, analysis, and evaluation of data (75 questions); (2) underwriting/new financing transactions, types of offerings and registration of securities (43 questions); (3) mergers and acquisitions, tender offers and financial restructuring transactions (34 questions); and (4) general securities industry regulations (23 questions). Series 79 Exam Adopting Release, 74 Fed. Reg. at 39,985.

²⁴ We disagree with Goldberg's assertion that his lack of recent disciplinary history is indicative of his specific qualification to serve as an investment banking professional. See *Symon*, 54 S.E.C. at 108 (denying waiver request despite applicant's "thirty-one years of experience in the securities industry, unblemished record," and investment management experience).

B. Waiver Denial Was in Accordance with FINRA Rules

FINRA conducted its review of Katalyst's waiver request on behalf of Goldberg in accordance with its rules. An applicant may request an exemption from FINRA's examination requirements pursuant to the procedures set forth in the 9600 Series of NASD's Code of Procedure. In addition, the Waiver Guidelines provide guidance to member firms regarding the proper procedures for submitting examination waiver requests on behalf of individual applicant.²⁵

On February 16, 2011, Katalyst filed a Form U4 requesting a Series 79 waiver on Goldberg's behalf. On March 29, 2011, the Department rendered a written decision, in accordance with NASD Procedural Rule 9620, denying the request. On April 15, 2011, and in accordance with NASD Procedural Rule 9630, Goldberg filed a timely written appeal of the Department's decision to the Waiver Subcommittee. The Waiver Subcommittee gave Goldberg an opportunity to provide an explanation for the basis of his appeal. On May 16, 2011, Goldberg submitted a brief in support of his appeal to the Waiver Subcommittee. On August 2, 2011, the Waiver Subcommittee issued a written decision "setting forth its findings and conclusions" denying the waiver request, in accordance with NASD Procedural Rule 9630(e).²⁶

Goldberg argues that the Department's denial of his waiver request was arbitrary and capricious for failing to provide a basis for the denial. The Department's decision, however, is not before us in this appeal. The Waiver Subcommittee considered the Department's decision *de novo*,²⁷ and its decision is the one before us on appeal.²⁸

C. FINRA Applied Its Rules Consistently with Exchange Act's Purposes

We also find that FINRA applied its rules in a manner consistent with the purposes of the Exchange Act. Exchange Act Section 15(b)(7) authorizes the Commission to regulate persons associated with broker-dealers by establishing qualification standards.²⁹ Among these standards is Exchange Act Rule 15b7-1, which requires associated persons to "pass[] any required

²⁵ Waiver Guidelines, *supra* note 16.

²⁶ *See Stegawski*, 95 SEC Docket at 13828 n.27 (explaining that FINRA created the Waiver Subcommittee as a means of providing expedited review of appeals of waiver requests).

²⁷ FINRA Rule 9630(e)(2).

²⁸ *Cf. Harry Friedman*, Exchange Act Rel. No. 64486 (May 13, 2011), 101 SEC Docket 41227 (holding that in disciplinary cases, NAC decisions, not Hearing Panel decisions, are subject to Commission review). *Accord Philippe N. Keyes*, Exchange Act Rel. No. 54723 (Nov. 8, 2006), 89 SEC Docket 792, 800 n.17.

²⁹ 15 U.S.C. § 78o(b)(7).

examinations" established by the rules of the self-regulatory organizations.³⁰ In adopting that rule, we stated that "[self-regulatory organization] qualification of associated persons of broker-dealers is of substantial importance in promoting compliance with the substantive requirements of the federal securities laws," that we "rely principally on the [self-regulatory organizations] in the formulation and administration of qualification standards, subject to [our] review and oversight," and that requiring compliance with such standards advances "investor protection."³¹

Goldberg has failed to show that he currently possesses the requisite skills necessary to competently perform the functions of an investment banking professional. Thus, we agree with the Waiver Subcommittee's conclusion that "it is important for Goldberg to familiarize himself with the relevant rules through the [Series 79] examination process." The Series 79 examination, as part of FINRA's qualification examination program, is specifically designed "to measure the degree to which each candidate possesses the knowledge, skills and abilities needed to perform the major functions of an entry-level investment banker."³² We find that requiring Goldberg to pass the Series 79 examination is fully consistent with the purposes of the Exchange Act by helping ensure that he possesses the minimum standards of competency and awareness of his responsibilities as an investment banking professional before engaging in his firm's investment banking activities,³³ which in turn "provide[s] investors better protection."³⁴

D. FINRA Action Did Not Impose an Undue Burden on Competition

We also reject Goldberg's claim that FINRA's denial of his waiver request imposed an undue burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. We have previously held that denying a waiver request does not impose an undue burden on

³⁰ 17 C.F.R. § 240.15b7-1.

³¹ *Requirement of Broker-Dealers to Comply with SRO Qualification Standards*, Exchange Act Rel. No. 32261 (May 4, 1993), 54 SEC Docket 39, 40.

³² FINRA, *Investment Banking Representative Qualification Examination (Test Series 79) Content Outline* (2010), at 2, available at <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/industry/p119446.pdf>.

³³ *Stegawski*, 95 SEC Docket at 13828 (finding that requiring applicant "to retake the qualification examination for the Series 7 license" after over four years away since his last Series 7 terminated "is fully consistent with the Exchange Act's statutory goal of ensuring the requisite levels of knowledge and competency of associated persons"); see also *Report of the Special Study of Securities Markets*, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. I, 54 (1963) ("The way should be left open for newcomers to enter the securities business, as with any other business, but the public interest demands that newcomers meet minimum standards of competency and show an awareness of their responsibilities before being allowed to approach the public as brokers, dealers, or underwriters.").

³⁴ Series 79 Exam Adopting Release, 74 Fed. Reg. at 39,985.

competition because "[a]ll other similarly situated applicants are required to take the applicable examinations before being issued licenses."³⁵ Goldberg contends that the denial of his waiver "imposed a burden on competition" because any concerns about "the depth and breadth of his investment banking knowledge can be easily alleviated by conditioning his waiver on [his] completion of appropriate continuing education modules." However, we agree with the Waiver Subcommittee's determination that Goldberg has not demonstrated the requisite level of experience to qualify for a waiver. Goldberg must pass the Series 79 examination before acting as an investment banking representative. Any burden on Goldberg, individually, or his firm, Katalyst, for him in the short term to take and pass the required examination is outweighed by the public interest in ensuring that he is competent to serve as an investment banking representative.³⁶

We therefore find that FINRA properly denied Goldberg's request for waiver of the Series 79 examination requirement. Based on the foregoing, we dismiss Goldberg's appeal.

An appropriate order will issue.³⁷

By the Commission (Chairman SCHAPIRO and Commissioners WALTER, AGUILAR, PAREDES and GALLAGHER).


Elizabeth M. Murphy
Secretary

³⁵ *Symon*, 54 S.E.C. at 110.

³⁶ *Exchange Servs., Inc. v. SEC*, 797 F.2d 188, 191 (4th Cir. 1986) (stating that "any burden on competition created by the overly comprehensive exam is outweighed by the necessity for the public interest protection").

Goldberg claims that, "[h]istorically, FINRA has implemented . . . and enforced [its] rules in a manner design[ed] to burden competition at the expense of smaller broker dealers and their representatives," referencing issues confronting FINRA's predecessor nearly 20 years ago in connection with its then-existing automated system for executing small orders. Without further elaboration, Goldberg concludes "[t]here can be no question that denying Mr. Goldberg the requested waiver under the guise of protecting the public, FINRA is reducing Katalyst's ability to compete in the Investment Banking marketplace." The connection between the referenced issues and the instant case is not clear, and the claim concerning any impact on Katalyst's competitive posture is not substantiated. For the reasons stated in the text, we reject Goldberg's claim that FINRA's action is anti-competitive.

³⁷ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Rel. No. 66549 / March 9, 2012

Admin. Proc. File No. 3-14544

In the Matter of the Application of

JAMES LEE GOLDBERG
c/o Simon S. Kogan, Esq.
Attorney at Law
27 Weaver Street
Staten Island, NY 10312

For Review of Action Taken by

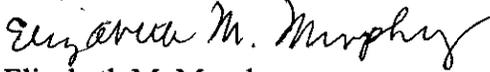
FINRA

ORDER DISMISSING REVIEW PROCEEDING

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by James Lee Goldberg, be, and it hereby is, dismissed.

By the Commission.


Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66546 / March 9, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14794

In the Matter of

**Advanced Growing Systems, Inc.,
Advantage Capital Development Corp.,
Amazon Biotech, Inc.,
Andover Holdings, Inc.
(n/k/a Andover Energy Holdings, Inc.),
Bravo! Brands, Inc., and
BSML, 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 the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Advanced Growing Systems, Inc. ("AGWS")¹ (CIK No. 1369608) is a revoked Nevada corporation located in Alpharetta, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AGWS 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, 2009, which reported a net loss of \$2,022,516 for the prior nine months. As of March 6, 2012, the common stock of AGWS was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

¹The short form of each issuer's name is also its stock symbol.

2. Advantage Capital Development Corp. ("AVCP") (CIK No. 54175) is a permanently revoked Nevada corporation located in Aventura, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AVCP 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 December 31, 2006, which reported a net loss of \$327,769 for the prior nine months. As of March 6, 2012, the common stock of AVCP was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Amazon Biotech, Inc. ("AMZO") (CIK No. 1088781) is an expired Utah corporation located in West Palm Beach, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AMZO 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 October 31, 2007, which reported a net loss of \$161,204 for the prior three months. As of March 6, 2012, the common stock of AMZO was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Andover Holdings, Inc. a/k/a Andover Energy Holdings, Inc. ("ADEH") (CIK No. 1126533) is a Florida corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ADEH 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 \$854,327 for the prior year. As of March 6, 2012, the common stock of ADEH was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Bravo! Brands, Inc. ("BRVO") (CIK No. 1061029) is a void Delaware corporation located in North Palm Beach, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BRVO 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, 2007, which reported a net loss of \$29,393,750 for the prior three months. On September 21, 2007, BRVO filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Southern District of Florida, which was still pending as of March 6, 2012. As of March 6, 2012, the common stock of BRVO was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. BSML, Inc. ("BSMLQ") (CIK No. 866734) is an expired Utah corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BSMLQ 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 28, 2009, which reported a net loss of \$598,000 for the prior thirteen weeks. On April 8, 2011, BSMLQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Southern District of Florida, which was converted to a Chapter 11 proceeding on May 3, 2010, subsequently reconverted to a Chapter 7 proceeding on January 12, 2011, and was still pending as of March 6, 2012. As of March 6, 2012, the common stock of BSMLQ 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

7. 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.

8. 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.

9. 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

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66550; File No. SR-FICC-2008-01)

March 9, 2012

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Amended Proposed Rule Change to Allow the Mortgage-Backed Securities Division to Provide Guaranteed Settlement and Central Counterparty Services

I. Introduction

On March 12, 2008, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-FICC-2008-01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4² thereunder. On November 21, 2011, FICC amended the proposed rule change. The amended proposed rule change was published for comment in the Federal Register on December 12, 2011.³ On January 10, 2012, the Commission extended the time within which to take action on the proposed rule change to March 9, 2012.⁴ The Commission received one comment on the proposed rule change.⁵ This order approves the proposal.

II. Description

The proposed rule changes consist of modifications to the rules of FICC's MBSD to allow MBSD to provide guaranteed settlement and central counterparty ("CCP") services. These

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 65899 (Dec. 6, 2011), 76 FR 77287 (Dec. 12, 2011). A non-substantive correction to the notice of the proposed rule change was published on December 14, 2011. See Securities Exchange Act Release No. 65899A (Dec. 12, 2011), 76 FR 77865 (Dec. 14, 2011).

⁴ Securities Exchange Act Release No. 66124 (Jan. 10, 2012), 77 FR 2103 (Jan. 13, 2012).

⁵ Letter from Christopher Killian, Managing Director, Securities Industry and Financial Markets Association (Dec. 19, 2011).

modifications necessitated the MBSD to draft a new rulebook, which is also part of this rule filing.⁶

A. MBSD Rulebook Changes

As noted above, the current MBSD rulebook will be replaced in its entirety by a new proposed rulebook that incorporates parts of the current MBSD rulebook where appropriate. Set forth below is an overview of the significant substantive and structural changes to the rules.

1. Definitions

The MBSD rules will have a revised Rule 1, "Definitions," which will include terminology applicable to new MBSD processing and procedures. For example, terms relevant to pool netting have been included (such as "pool deliver obligation" and "pool receive obligation"). Where practical and/or applicable, the MBSD rulebook uses terms from the current GSD rules, in order to harmonize language between the Divisions.

2. Membership

Rule 2, "Members", Rule 2A, "Initial Membership Requirements," Rule 3, "Ongoing Membership Requirements," and Rule 3A, "Cash Settling Bank Members," govern membership types, member application requirements, and ongoing reporting requirements.

i. *Membership Categories*

The new MBSD rules will provide for two membership types (as set forth in Rule 2): Clearing Members and Cash Settling Bank Members. Those entities qualifying for clearing membership will be guaranteed service members of the MBSD – trades submitted by these

⁶ Certain provisions in the current MBSD rulebook that reflect processes that will continue unchanged after introduction of the CCP services are retained in the proposed MBSD rulebook. In order to promote uniformity between FICC's two divisions and to increase transparency for common members, the new MBSD rulebook follows the structure of the Government Securities Division rulebook and, where appropriate, the language of equivalent provisions mirror each other.

members will be guaranteed at the point of comparison, and eligible, as applicable, for pool comparison, netting, and settlement. Clearing membership categories include: (i) registered brokers or dealers; (ii) other registered clearing agencies; (iii) registered investment companies; (iv) banks⁷; (v) government securities issuers/government sponsored enterprises; (vi) insurance companies;⁸ and (vii) unregistered investment pools ("UIPs").⁹ In addition, the MBSD will have the discretion to make its services available to other entity types which it deems appropriate subject to the approval of the Commission. Membership requirements for Cash Settling Bank Members are set forth in Rule 3A, "Cash Settling Bank Members." These requirements remain unchanged from the current MBSD rulebook and they mirror the requirements of the GSD-equivalent members.

ii. *Initial Membership Requirements*

The initial membership requirement for the MBSD members mirrors the current requirements for the GSD netting membership where there is an existing identical membership type in the GSD rules. The two membership categories where there are no GSD equivalents are registered investment companies and UIPs. In addition to standard requirements regarding financial and operational responsibility applicable to all Clearing Members, registered investment companies must be registered under the Investment Company Act of 1940 and have

⁷ The term "Banks" includes Federal Savings Associations.

⁸ The MBSD does not currently have any insurance company Clearing Members. Financial and other membership requirements for this category may be established in a future rule filing.

⁹ The MBSD currently has two members that do not fit into any of the new listed membership types. These entities remain members of the MBSD under Article III, Rule 1, Section (1)(f) of the MBSD rules and remain subject to the MBSD rulebook and all ongoing membership requirements.

minimum net assets of \$100 million. In addition to standard requirements regarding financial and operational responsibility applicable to all Clearing Members, UIPs must:

- have an investment advisor domiciled in the United States and registered with the Commission under the Investment Advisors Act of 1940; and
- the UIP must have (i) \$250 million in net assets, or (ii) \$100 million in net assets and the UIP's investment advisor must advise an existing UIP Clearing Member that has assets under management of \$1.5 billion.

iii. *Ongoing Membership Requirements*

Required membership levels must be maintained by all members on an ongoing basis as a condition of membership. Current provisions applicable to the GSD netting membership under the GSD rules have been incorporated to the MBSD rules to apply to certain member types. For example, the GSD currently assesses a premium against any member whose Clearing Fund requirement exceeds its specified regulatory capital figure.¹⁰ The MBSD will also apply this premium to members. Also, bank, broker-dealer, and UIP members of the MBSD will be rated. Among other things, financial measures relevant to these types of entities will be assessed. Any member that receives a poor rating may be monitored more closely and/or placed on FICC's internal watch list.

¹⁰ By way of example, under the current GSD rules, if a member has a Clearing Fund requirement of \$11.4 million and excess net capital of \$10 million, its "ratio" is 1.14 (or 114 percent), and the applicable collateral premium would be 114 percent of \$1.4 million (which is equal to the amount by which the member's Clearing Fund requirement exceeds its excess net capital), or \$1,596,000. The current GSD rules provide that FICC has the right to: (i) apply a lesser collateral premium (including no premium) based on specific circumstances (such as a member being subject to an unexpected haircut or capital charge that does not fundamentally change its risk profile), and (ii) return all or a portion of the collateral premium amount if it believes that the member's risk profile does not require the maintenance of that amount. These rights will be carried over to the proposed MBSD rules.

The MBSD will take additional risk management measures with respect to UIP members. Specifically, the "value at risk" ("VaR") confidence level for UIP members will be set at 99.5%, half a percentage higher than the confidence level used for a VaR calculation for non-UIP Clearing Members.¹¹ UIP members also are required to achieve a qualitative assessment rating of at least "medium" as part of the initial membership requirement. Qualitative assessments will be based on such factors as management, capital, strategy and risk profile, valuation procedures, and internal risk management controls. Current UIP members that become rated less than "medium" may be subject to increased Required Fund Deposits and may also become subject to revocation of membership. Finally, the Clearing Fund requirement of UIPs shall be no less than \$1 million.¹²

3. Clearing Fund and Loss Allocation

The conversion of the MBSD to a CCP increases the amount of risk for the clearing agency. The CCP assumes the counterparty credit risk of the other Clearing Members which primarily includes: (1) the market risk associated with liquidating the defaulted Member's portfolio, and (2) the liquidity risk associated with maintaining sufficient liquid resources to finance the defaulted Clearing Member's scheduled settlement obligations. FICC believes that

¹¹ The MBSD rules will provide FICC with the discretion to increase the confidence level for UIP and non-UIP Clearing Members if it determines that it is appropriate to do so with respect to a particular Clearing Member or Clearing Members generally. The MBSD rules will require Clearing Fund requirements to each Clearing Member within each membership type to be applied on a consistent and non-discriminatory basis. See MBSD Proposed Rule 4 (Clearing Fund and Loss Allocation), Section 2(c).

¹² The MBSD rules will provide FICC with the discretion to increase the minimum charge if it determines that it is appropriate to do so with respect to a particular Clearing Member or Clearing Members generally. The MBSD rules will require Clearing Fund requirements to each Clearing Member within each membership type to be applied on a consistent and non-discriminatory basis. See MBSD Proposed Rule 4 (Clearing Fund and Loss Allocation), Section 2(c).

the MBSD has established a robust risk management framework to manage the credit risks from its Clearing Members and the credit and liquidity risks involved with its payment, clearing, and settlement process.

The MBSD relies on many different controls to manage its counterparty risk. These controls include: (i) membership standards, (ii) initial and variation margins, (iii) back and stress testing, (iv) position and risk monitoring, and (v) non-margin collateral. The first set of controls aims to prevent the CCP from conducting business with counterparties that have unacceptably high probabilities of default. As noted above, concurrent with the introduction of CCP services, the MBSD will increase its minimum financial standard for clearing membership eligibility to mirror GSD eligibility standards and enhance its risk monitoring for UIPs.

The second line of defense is the margins collected from counterparties in the form of cash and highly liquid government securities in the Clearing Fund. The dual purpose of the Clearing Fund is to provide readily accessible liquidity to facilitate settlement and reduce loss-related costs which may be incurred in the event of a Clearing Member's insolvency or failure to fulfill its contractual obligations to the MBSD. Margins are intended to cover possible losses between the time of default of a counterparty, at which point the CCP would inherit its positions, and the close-out of these positions through selling or hedging. For this purpose, the MBSD marks Clearing Member portfolios to the market on a daily basis and charges variation margins accordingly, and establishes initial margins to cover a minimum 99th percentile of expected possible losses that could arise over a 3-day settlement period utilizing a VaR-based approach.¹³

In order to further enhance the MBSD's risk framework, the MBSD will add two components - the margin requirement differential and the coverage charge - to the Clearing

¹³ An index-based haircut methodology will be used for securities with insufficient pricing data.

Fund, as well as additional MBSD mark-to-market items related to the new pool netting services. The MBSD also has the ability to collect charges above the systemically generated Clearing Fund charges when it deems it appropriate in order to protect FICC and its Clearing Members. If any loss were incurred in the liquidation of a Clearing Member that was not covered by the Clearing Member's Clearing Fund deposit or amounts available under the cross-guaranty arrangement to which FICC is a party, the MBSD would invoke its loss allocation process.

The MBSD uses regular back and stress testing to monitor the sufficiency of collected margin levels vis-a-vis the risk represented by the 99th percentile of expected possible losses from Clearing Member portfolios and to monitor its tail risk exposure that is beyond the 99th percentile. If a Clearing Member portfolio does not pass a back test, additional margin will be collected via the coverage charge. Stress tests are also used to evaluate margin adequacy. The MBSD's framework reflects stress events from the last 10 years as well as special stress events outside of the past 10 years and takes the form of swap rate shifts and credit spread shocks that reflect market conditions for the instruments that the MBSD clears or holds as collateral. As described more fully below, the MBSD analyzes and reviews on an intraday basis certain components of the Clearing Fund that are recalculated using updated positions and prices if there is increased exposure in a Clearing Member's portfolio intraday. In addition, the MBSD may at its discretion call for additional collateral on an intraday basis if exposures are in excess of predefined thresholds.

Finally, aside from the risk of loss that could be encountered from a Clearing Member failure, a central counterparty could also face liquidity risk, defined as the risk that the central counterparty has insufficient financial resources to cover a default by a Clearing Member to which it has the largest exposure. To that end, the MBSD maintains sufficient resources to meet

its observed liquidity risk. The Clearing Fund would be the primary source to fulfill the liquidity need incurred if MBSD had to complete settlement on behalf of the defaulting Clearing Member. Other conventional funding tools such as loans secured via the MBSD clearing banks and/or tri-party repo transactions would also be used to fulfill the liquidity need, but if those were unavailable or insufficient, the MBSD would invoke the "Capped Contingency Liquidity Facility," as described below, to provide additional financing in the event of a Clearing Member default.

Tail risk is one of the risks the MBSD has to manage. The MBSD addresses this risk through a continuous process of: (1) reviewing margin methodologies with stakeholders; (2) analyzing and monitoring margin and collateral requirements; (3) actively reviewing and timely acting on market conditions and credit events; (4) reviewing back and stress tests, and (5) identifying, assessing, and managing risks associated with the products and services provided by the MBSD and FICC.

i. *Clearing Fund*

The underlying Clearing Fund methodology is designed primarily to account for market risks associated with a Clearing Member's unsettled portfolio. The Clearing Fund model is back tested on a monthly basis and periodically validated by outside experts. Additional charges and premiums may be considered to address additional risks (i.e., credit, reputation, and legal) or non-compliance with the MBSD rules. The Clearing Fund is calculated every business day for each MBSD Clearing Member.

Clearing Fund requirements will be calculated in accordance with the VaR model. The Clearing Fund components will consist of the VaR charge,¹⁴ the coverage charge, the margin requirement differential charge, and the deterministic components charge (which will include the mark-to-market charges, cash obligation items, and accrued principal and interest). The VaR methodology will utilize the prior 252 days of historical information for cash positions, including prices, spreads, and market variables to simulate the market environments in the forthcoming three days. Projected portfolio losses are then calculated assuming these simulated environments actually will be realized. The coverage charge is an additional charge to bring the Clearing Member's coverage to a targeted confidence level. The margin requirement differential considers intra-day portfolio variations and estimates the potential increased risk intra-day and the risk that the next margin call will not be satisfied. The deterministic risk component combines the mark-to-market of the portfolio, gain or loss for the difference between the original contract value and the internally generated netting price derived from the to-be-announced netting process, principal and interest adjustments on failed positions, and other miscellaneous cash items. The deterministic risk component can result in an increase or decrease to a member's total clearing fund requirement.

In order to further mitigate risk, and as part of FICC's efforts to enhance its intraday monitoring capabilities, FICC has determined to expand its intraday monitoring to recalculate the mark-to-market elements of the deterministic risk component. This component of the risk calculations will be updated at least hourly using intraday pricing and position feeds for FICC

¹⁴ The definition of "VaR Charge" (which is referred to as "VaR Component" in the current rules) is being amended to remove the reference to the application of "minimum amounts" to such VaR Charge. The MBSD is currently applying a minimum 5-basis point charge which will not be applicable when the MBSD CCP becomes a CCP because of the addition of the other components to the overall Clearing Fund calculation. Minimum Clearing Fund deposit amounts per Rule 4 remain applicable.

members and compared against the amounts that were previously collected in the Clearing Fund. If the exposures increase above certain defined thresholds, Risk Management staff will be alerted to consider additional intraday margin calls outside of the formal Clearing Fund collection process. These intraday margin calls would need to be satisfied by the affected members within one hour of FICC's notice. The initial thresholds will be based on changes to a Clearing Member's position size, composition, and price changes on the constituent securities. Qualitative factors including, but not limited to, Watch List status and internal rating will also be considered in the application of intraday mark-to-market.

ii. *Use of Payments and Deposits*

FICC is providing additional disclosure relating to its use of a Clearing Member's deposits and payments to the Clearing Fund for temporary financing needs. The rulebook also clarifies that whenever the Clearing Fund is charged for any reason, other than to satisfy a clearing loss attributable to a Clearing Member solely from that Clearing Member's Clearing Fund deposit, FICC will provide the reasons therefore to each Clearing Member.¹⁵

iii. *Loss Allocation*

FICC is introducing a new loss allocation methodology for the MBSD. If a defaulting Clearing Member's Clearing Fund and any amounts of the defaulting member available under a cross-guaranty agreement are not sufficient to cover losses incurred in the liquidation of the defaulting Clearing Member's positions ("Remaining Losses"), the MBSD's loss allocation methodology will be invoked. Under this proposed loss allocation methodology, Remaining Losses will first be allocated to the retained earnings of FICC attributable to the MBSD, in the amount of up to 25 percent of the retained earnings or such higher amount as may be approved

¹⁵ The Clearing Fund is "charged" when FICC has applied the Clearing Fund for more than 30 days and is allocating the amount as a loss or for other loss allocation purposes.

by the Board of Directors of FICC. If a loss still remains, MBSD Clearing Members are placed into one of two tiers for loss allocation purposes: Tier One members are subject to loss mutualization, whereas Tier Two members are not subject to loss mutualization.¹⁶ FICC will divide the Remaining Losses between the Tier One members and Tier Two members. The division of Remaining Losses is based on the amount each solvent Clearing Member would have lost or gained if it had closed out its original outstanding trades with the defaulting Clearing Member on a bilateral basis.¹⁷ FICC then will determine the relevant share of each Tier One member's bilateral losses (members with a bilateral liquidation profit are ignored) in the total of all Clearing Members' bilateral losses and sum these shares to determine the Tier One Remaining Loss. Similarly, FICC will determine the relative share of each Tier Two member's bilateral loss in the total of all Clearing Members' bilateral losses and sum these shares to determine the Tier Two Remaining Loss.

Tier One Remaining Losses will be allocated to Tier One members first by assessing the Required Fund Deposit of each such Member in the amount of up to \$50,000 equally. If a loss remains, Tier One members will be assessed ratably, in accordance with the respective amounts of their Required Fund Deposits, based on the average daily amount of the Clearing Member's Required Fund Deposit over the prior twelve months. Tier Two Remaining Loss will be allocated to Tier Two Clearing Members based on each Tier Two member's original trading activity with the Defaulting Member that resulted in a loss. Tier Two members will only be

¹⁶ Tier Two members are those that are legally prohibited from participating in loss mutualization. Currently, only Registered Investment Companies qualify as Tier Two members.

¹⁷ Brokered trades are done on a "give-up basis," and brokers are thus not considered parties to fully-matched trades. However, for purposes of loss allocation, broker members will be subject to loss allocation for certain partially-matched trades. Brokers are considered Tier One members, and as such will be subject to loss mutualization.

subject to loss to the extent they originally traded with the Defaulting Member consistent with regulatory requirements applicable to the Tier Two members. FICC shall assess such loss against the Tier Two members ratably based upon their loss as a percentage of the entire amount of the Tier Two Remaining Loss. Tier Two counterparties will be liable for losses related to both direct and brokered trades¹⁸ including partially-matched trades for which the Tier Two member did not submit a statement to FICC denying the existence of the trade.¹⁹

¹⁸ Brokered trades involve a broker intermediary between two dealers. Each dealer and broker must submit the trade details to the MBSD for trade comparison. This means that each dealer submits against the broker and the broker submits against each dealer. A fully matched trade will be achieved when both dealers match against the broker (i.e. all submissions discussed above match). With a fully matched trade, both dealers assume principal status, which results in the broker having no settlement obligations with respect to the trade; the broker cannot be subject to any loss with respect to such trade. A partially matched trade results when only one of the two submissions achieves a bilateral match versus the broker. The dealer who has matched with the broker will have a settlement guarantee and is subject to Clearing Fund requirements with respect to such trade. If the unmatched dealer submits a statement to FICC denying the existence of the trade, the broker becomes responsible for such trade from a risk management perspective and loss allocation. If the unmatched dealer does not submit a statement to FICC denying the existence of the trade, the dealer becomes responsible for the settlement and risk management and the broker is released from these responsibilities.

¹⁹ To illustrate the proposed MBSD Tier One ("T1") /Tier 2 ("T2") loss allocation rules, consider an example where the \$20 million Clearing Fund requirement of an insolvent MBSD member X turns out to be insufficient to cover the \$30 million liquidation loss that the MBSD incurred as a result of closing out all of X's open positions. If X doesn't have any excess collateral, MBSD would need to allocate a \$10 million remaining loss.

Assume that X has unsettled trades with three Tier One original counterparties (T1A, T1B and T1C) and three Tier Two original counterparties (T2A, T2B and T2C), all executed directly. Further assume that the bilateral liquidation results of X's solvent original counterparties are as follows: T1A: \$5 million; T1B: (\$5 million); T1C: (\$15 million); T2A: (\$20 million); T2B: (\$10 million); T2C: \$15 million; Total: (\$30 million). Also assume that there are no secondary defaults and no off-the-market trades.

Based on these assumptions, the bilateral Tier One liquidation losses amount to \$20 million (\$5 million attributable to T1B and \$15 million attributable to T1C), while the bilateral Tier Two liquidation losses amount to \$30 million (\$20 million attributable to T2A and \$10 million attributable to T2B). This means that out of a total of \$50 million bilateral liquidation losses, 40% or \$20 million can be attributed to Tier One counterparties and 60% or \$30 million to Tier Two counterparties. As a result, the Tier One remaining loss would be \$4 million (i.e.,

4. Trade Processing

Under the proposed MBSD rules, each Clearing Member will be required to submit to the MBSD for processing transactions with other Clearing Members in all securities that are netting-eligible according to MBSD rules and procedures.²⁰ Eligible transactions will be submitted to FICC's Real-Time Trade Manager ("RTTM") system for matching purposes.²¹ FICC will

40% of the MBSD's \$10 million overall remaining loss) and the Tier Two remaining loss would be \$6 million (i.e., 60% of the MBSD's \$10 million overall remaining loss). Given that T2A's and T2B's bilateral losses represent 2/3 and 1/3 respectively of the Tier Two Remaining Loss, T2A's loss allocation will be \$4 million and T2B's loss allocation will be \$2 million.

The \$4 million Tier One Remaining Loss would first be assessed equally to each Tier One member's clearing fund, up to an amount of \$50,000 per Tier One member. If a loss still remains, the amount is allocated among Tier One members, pro-rata based on each Tier One member's average daily level of clearing fund over the prior twelve months (or shorter period if a member did not maintain a clearing fund deposit over the full twelve month period).

The loss allocation results are not impacted by whether the defaulting Clearing Member is a Tier One or a Tier Two member.

²⁰ Currently, the MBSD recognizes two types of trades: (i) "to be announced" ("TBA") trades and (ii) specified pool trades ("SPTs"). A TBA is a contract for the purchase or sale of agency mortgage-backed securities to be delivered at an agreed-upon future date; however, the actual pool identities and/or the number of pools that will be delivered to fulfill the trade obligation or terms of the contract are unknown at the time of the trade. TBA trades may proceed through the Settlement Balance Order engine for netting or may settle on a trade-for-trade basis ("TFTD"). In an SPT contract, required pool data, including the pool number to be delivered on settlement date, is specified at the time of execution.

Clearing Members may use FICC's Interactive Submission Method, Multiple Batch Submission Method, or Single Batch Submission Method to submit trade data to the MBSD.

²¹ Trade data submitted to the MBSD must include such identifying information as the MBSD may require and must be submitted in the form and manner and in accordance with the time schedules prescribed by the MBSD rules or otherwise set forth by FICC from time to time. The symbol corresponding to the name of a Clearing Member that is printed, stamped, or written on any form, document, or other item issued by the Clearing Member pursuant to Rule 5 Section 2 shall be deemed to have been adopted by the Clearing Member as its signature and shall be valid and binding upon the Clearing Member in all respects as though it had manually affixed its signature to such form document or other item.

provide a trade guarantee for all existing types of trades upon comparison of trade details submitted by members.²²

Additionally, the MBSD will introduce "pool comparison" and "pool netting" and interpose itself as settlement counterparty to certain settlement obligations. Specifically, after the netting of TBA transactions, settlement obligations will be issued between Clearing Members and Clearing Members will allocate pools for settlement through the MBSD's Electronic Pool Notification ("EPN") Service.²³ Clearing Members then will submit pool details for those netted TBA settlement obligations through the RTTM system for pool comparison and for consideration for pool netting.²⁴ Upon FICC's issuance of pool netting results to Clearing Members, those pools that are netted will be novated; i.e., settlement obligations between the Clearing Members will be replaced with settlement obligations between each Clearing Member

²² Comparison is deemed to occur at the point at which the MBSD makes available to both of the counterparties an output indicating that the trade data has been compared. FICC generates the output indicating that a trade is compared contemporaneous with successful comparison of the trade data in FICC's RTTM system.

²³ Because Clearing Members will be required to allocate pools via EPN and RTTM in order for pool allocations to proceed to pool comparison and netting, all MBSD Clearing Members will be required to be EPN members.

²⁴ Not every compared pool will be included in the pool netting system. FICC will determine which guaranteed trades would receive maximum benefit from pool netting by considering such factors as trading velocity and projected netting factor. SPTs are not eligible for pool netting under this proposal.

Pool allocation information ("Pool Instructs") may be submitted up to the point that pool netting is executed. Pool Instructs must bilaterally compare (i.e., mandatory comparison pool data submitted by the seller must match the mandatory comparison pool data submitted by the buyer) in order for the Pool Instructs to be eligible for consideration for pool netting. Pool Instructs must also be assigned by the MBSD to a valid, open TBA position, meaning that the trade terms submitted on the Pool Instructs must match the trade terms of a TBA CUSIP that has a sufficient open position. Only compared and assigned Pool Instructs will be evaluated for inclusion in pool netting.

and FICC. For all other transactions, settlement will occur outside of FICC between the original settlement counterparties and must be reported to FICC through a Notification of Settlement ("NOS").²⁵ Obligations that fail to settle will not be re-netted, as they are in the GSD.²⁶

5. Settlement

i. *Settlement with FICC as Counterparty*

As stated above, obligations generated by the pool netting system will settle versus FICC. Clearing Members will be required to designate a clearing bank for purposes of delivering securities to, and receiving securities from, the MBSD in satisfaction of settlement obligations. All deliveries and receipts of securities in satisfaction of pool deliver obligations and pool receive obligations will be required to be made against simultaneous payment. These securities settlement procedures mirror the current GSD securities settlement rule.

ii. *Settlement Outside of FICC*

Clearing Members will be required to settle trades ineligible for pool netting and allocated pools that are not processed through the pool netting system bilaterally with applicable settlement counterparties outside of FICC. As noted above, these trades remain guaranteed for settlement by FICC but are not novated. The settlement obligations between the Clearing Members are not replaced with settlement obligations between each Clearing Member and FICC. Clearing Members must submit to FICC NOSs on the applicable clearance date for each transaction. When the MBSD receives an NOS from each counterparty to a transaction, the MBSD will report clearance of the applicable transaction back to each Clearing Member. At this

²⁵ These obligations include: (i) SPTs, which are ineligible for pool netting; (ii) transactions for which Clearing Members do not submit allocation information for pool netting; and (iii) transactions with incomplete pool information on file.

²⁶ The MBSD retains the discretion to re-net fails or to conduct pair-offs if it believes that such actions are necessary to protect itself or its Clearing Members due to market conditions or events.

point, the MBSD will stop collecting margin on the transaction and will no longer be responsible for principal and interest payments.

iii. *Cash Settlement*

Several items have been added to the calculation of each Clearing Member's cash settlement obligation, including: (a) a "net pool transaction adjustment payment" (to reflect the difference between the pool net price²⁷ and a settlement price established at the TBA level); (b) principal and interest payment amounts related to fails; and (c) a "clearance difference amount"²⁸ (to take into account the delivery to FICC of mispriced securities by a Clearing Member).

6. Capped Contingency Liquidity Facility

FICC is adding a provision to the MBSD rulebook that introduces a "Capped Contingency Liquidity Facility," which is a procedure designed to ensure that the MBSD has sufficient liquidity resources to cover the largest failure of a family of accounts. This facility will only be invoked if FICC declares a default or a "cease to act" against a Clearing Member and FICC does not have the ability to obtain sufficient liquidity through its Clearing Fund cash deposits and its established repurchase agreement arrangements ("CCLF Event"). FICC believes that the Capped Contingency Liquidity Facility provides Clearing Members with finality of settlement and allows firms to prepare for and manage their potential financing requirements in the event of a Clearing Member's default. Once a CCLF Event has been declared, FICC will contact Clearing Members that are due to deliver obligations to FICC that are owed to a

²⁷ "Pool Net Price" is defined as the uniform price for a pool (expressed in dollars per unit of par value), not including accrued interest, established by FICC on each business day, based on current market information for each eligible security.

²⁸ "Clearance Difference Amount" is defined as the absolute value of the dollar difference between the settlement value of a pool deliver obligation or a pool receive obligation and the actual value at which such pool deliver obligation or pool receive obligation was settled.

defaulting Clearing Member. FICC will either cancel the Clearing Member's obligations or instruct the Clearing Member to hold the obligations (or a portion thereof) and await instructions as to when to make these deliveries. With respect to the obligations subject to financing ("Financing Amount") up to the Clearing Member's defined liquidity contribution cap ("Defined Capped Liquidity Amount"),²⁹ FICC as counterparty, will enter into repurchase agreements with the Clearing Member equal to the Financing Amount pursuant to the terms of the deemed 1996 SIFMA Master Repurchase Agreement (without referenced annexes). If a liquidity need still exists ("Remaining Financing Amount"), FICC will inform Clearing Members

²⁹ The "Defined Capped Liquidity Amount" is the maximum amount that a Clearing Member shall be required to fund during a CCLF Event. The Defined Capped Liquidity Amount will be established as follows:

(a) For those Clearing Members that are eligible for and that have established borrowing privileges at the Federal Reserve Discount Window or for those Clearing Members who have an affiliate that is eligible for and has established borrowing privileges at the Federal Reserve Discount Window, FICC will conduct a study every six months, or such other time period as FICC shall determine from time to time as specified in Important Notices to Clearing Members, to determine each Clearing Member's largest liquidity requirement for the applicable time period based on a Clearing Member's sell positions versus other Clearing Members at the family level on a bilateral net basis within a TBA CUSIP. Based on the overall study, FICC will define an adjustable percentage (the initial percentage will be set at 60%), as determined by FICC from time to time, and multiply that percentage amount against the maximum amount to establish each Clearing Member's Defined Capped Liquidity Amount; and

(b) For those Clearing Members that are ineligible for or have not established borrowing privileges at the Federal Reserve Discount Window and for those Clearing Members that do not have an affiliate that is eligible for or has established borrowing privileges at the Federal Reserve Discount Window, FICC will conduct a study every month or such other time period as FICC shall determine from time to time as specified in Important Notices to Clearing Members, to determine each Clearing Member's largest liquidity requirement for the applicable time period based on a Clearing Member's sell positions versus other Clearing Members at the family level on a bilateral net basis within a TBA CUSIP. The Clearing Member's largest liquidity requirement for the past month, adjusted in each case of a CCLF Event to be no greater than the actual pool delivery obligation to the defaulting Clearing Member, will represent the Clearing Member's Defined Capped Liquidity Amount. Clearing Members in this category will have a defined non-adjustable percentage amount set to 100%. Clearing Members in this category will not be required to finance any Remaining Financing Amount.

that are below the Defined Capped Liquidity Amount and also inform Clearing Members that do not have a delivery obligation to the defaulting Clearing Member.³⁰ After these Clearing Members have been notified, FICC will distribute the remaining financing need to such Clearing Members on a pro rata basis and enter into repurchase agreements pursuant to the terms of the deemed 1996 SIFMA Master Repurchase Agreement (without referenced annexes). These transactions would remain open until FICC completes the liquidation of the underlying obligations and a haircut based on market conditions will be applied to the transactions.

Once FICC completes the liquidation of the underlying obligation, FICC will instruct the Clearing Member to deliver the securities back to FICC. FICC will then close the repurchase transaction and deliver the securities to complete settlement on the contractual settlement date of the liquidating trade. Because FICC would be receiving and delivering securities on the same day, FICC would not have a liquidity need resulting from the transaction of a defaulting Clearing Member.

7. Corporation Default

FICC is adding provisions to the MBSD rulebook to make explicit the close-out netting of obligations running between FICC and its Clearing Members in the event that FICC becomes insolvent or defaults in its obligations to its Clearing Members. FICC represents that its Clearing Members have stated that the proposed rule changes will provide clarity in their application of balance sheet netting to their positions with FICC under U.S. GAAP in accordance with the criteria specified in the Financial Accounting Standards Board's Interpretation No. 39, Offsetting

³⁰ Applicable to those Clearing Members that are eligible for and that have established borrowing privileges at the Federal Reserve Discount Window or to those Clearing Members who have an affiliate that is eligible for and has established borrowing privileges at the Federal Reserve Discount Window.

of Amounts Related to Certain Contracts (FIN 39). The firms have stated further that the provisions would allow them to comply with Basel Accord Standards relating to netting. Specifically, firms are able to calculate their capital requirements on the basis of their net credit exposure where they have legally enforceable netting arrangements with their counterparties, which includes a close-out netting provision in the event of the default of the counterparty (in this case, the division of the clearing corporation acting as a central counterparty).

8. Fails Charge

To encourage market participants to resolve fails promptly, FICC is applying a fails charge recommended by the Treasury Market Practices Group (“TMPG”) that expands the applicability of the fails charge to settlement of pools versus FICC involving failing agency MBS issued or guaranteed by Fannie Mae, Freddie Mac and Ginnie Mae.³¹ A fails charge will not apply to TBA and pool level “round robins.”³² FICC believes that the fails charge will reduce the incidence of delivery failures and supporting liquidity in these markets.

The proposed charge will be equal to the greater of (a) 0 percent and (b) 2 percent per annum minus the federal funds target rate. The charge accrues each calendar day a fail is

³¹ TMPG is a group of market participants active in the Treasury securities market and sponsored by the Federal Reserve Bank of New York. The Commission has approved similar rule proposals at the GSD. See Securities Exchange Act Release No. 59802 (Apr. 20, 2009), 74 FR 19248 (Apr. 28, 2009) and Securities Exchange Act Release No. 65910 (Dec. 8, 2011), 76 FR 77861 (Dec. 14, 2011) (expanding applicability of the fails charge to Agency debt securities transactions).

³² “Round robins” are a circular series of transactions between multiple parties where there is no ultimate long and short position to be settled. For example, if A sells to B and B sells to C and C sells to A, this group of transactions constitutes a round robin. In a round robin, there is no settlement of securities, but there is satisfaction of money across all interested parties. There can be a fail in a round robin transaction when a deliver obligation arises because the trade submission of certain members of the round robin do not match. The MBSD will not apply the fails charge to a round robin if each affected Clearing Member in the round robin provides the MBSD with the required information to resolve the trade.

outstanding. The MBSD will not impose a fails charge if delivery occurs on either of the two business days following the contractual settlement date. The MBSD will not employ a minimum fail charge amount, but, instead, will apply the fails charge to any pool for which delivery has not occurred within the two business day grace period.³³ Each business day, the MBSD will provide reports reflecting fail charge amounts to Clearing Members and will generate a consolidated monthly report at month end. Failing parties with a net debit (i.e., the fails charge amounts such party owes exceed the fails charge amounts it is owed) will be required to pay such net amount in respect of those pools that have settled the previous month and that are reflected in the previous month's consolidated month end report by the Class "B" payable date (as established by SIFMA guidelines) of the month following settlement in conjunction with other cash movements. The fails charge funds received by the MBSD then will be used to pay Clearing Members with fail net credits.

The MBSD will implement a rate change procedure so that if fails accrue at one rate and the rate changes, the fail will keep the original accrual and new fails calculations will be subject to the new rate. When there is a substitution of the underlying pool, the fails charge will be calculated pursuant to the above formula, using (in the formula) the federal funds target rate for each day of the substitution period beginning on the contractual settlement date.

In the event that the MBSD is the failing party because (i) the MBSD received Agency MBS issued or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae too late to make redelivery or for any other reason or (ii) MBSD received a substitution of a pool deliver

³³ FICC is not establishing a minimum charge because the MBSD, as counterparty in multiple transactions, may owe a net credit to one counterparty that is financed by multiple small net debits owed to it by multiple counterparties. The lack of a threshold minimum charge deviates from the TMPG recommendation of a \$500 threshold. FICC notified Clearing Members of this deviation in an Important Notice (MBS 119.11) and received no objection.

obligation of agency MBS issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae too late for same day redelivery of securities or for any other reason, the fails charge will be distributed pro-rata to the Clearing Members based upon usage of the MBSD's services.

The MBSD will not guarantee fails charge proceeds in the event of a default (i.e., if a defaulting Clearing Member does not pay its fail charge, Clearing Members due to receive fails charge proceeds will have those proceeds reduced pro-rata by the defaulting Clearing Member's unpaid amount). Failure by a Clearing Member to meet its obligations in connection with a fails charge may be a violation of the MBSD rules that is subject to disciplinary actions consistent with the MBSD rule book. FICC's Board of Directors (or appropriate Committee thereof) will retain the right to revoke application of the charges if industry events or practices warrant such revocation. The fails charges will apply to applicable transactions entered into on or after the date of this order, as well as to transactions that were entered into, but remain unsettled as of the date of this order. For transactions entered into prior to, and unsettled as of, the date of this order, the fails charge will begin accruing on the later of the date of this order or the contractual settlement date. The following are examples of fails scenarios and the applicable fails charge in each scenario:

Example 1: A delivery is contracted to occur on settlement date (S), a Tuesday, but does not occur until the second business day following contractual settlement, Thursday (S+2). The Clearing Member would not be subject to a fails charge because delivery occurs within the two business days following the contractual settlement date.

Example 2: A delivery is contracted to occur on settlement date (S), a Tuesday, but does not occur until the third business day following contractual settlement, Friday (S+3). The Clearing Member would be subject to a three-day fails charge.

Example 3: A delivery is contracted to occur on settlement date (S), a Wednesday, but does not occur until the third business day following contractual settlement, Monday (S+3). The Clearing Member would be subject to a five-day fails charge, as the charge accrues on each calendar day in the fail period.

Example 4: A delivery is contracted to occur on settlement date (S), May 10th, but does not occur until the month following the contractual settlement date; it settles on June 8th. The Clearing Member will not be subject to collection of the fails charge in June (the month following the contractual settlement date) because delivery did not occur in May. The participant will be subject to the collection of the fails charge in July (on the Class "B" payable date) because delivery occurred in June. The charge will be recalculated for 29 days.

9. Suspension of Rules in Emergency Circumstances

The MBSD rule regarding suspension of its rules in emergency situations is being revised to specify that: (i) the rule applies to emergency circumstances; (ii) an emergency shall exist in the judgement of the FICC Board or a FICC Officer, which causes the Board or the FICC Officer, as applicable, to believe that an extension, waiver, or suspension of the MBSD rules is necessary for FICC to continue to facilitate the prompt and accurate clearance and settlement of securities transactions; (iii) FICC shall notify the Commission of such extension, waiver, or suspension of the MBSD rules within 2 hours of such determination;³⁴ (iv) the written report of such extension shall include the nature of the emergency, along with the other requirements listed in the current rules; (v) such written report shall be submitted to the Commission no later

³⁴ But no later than one hour before the close of the Federal Reserve Banks' Fedwire Funds Service if such determination relates to the extension of time for settlement and is made on a settlement day.

than three calendar days after the implementation of the extension, waiver, or suspension of the MBSD rules; and (vi) any suspension shall not last for more than thirty calendar days from the date of the event or events giving rise to the suspension unless the MBSD submits a proposed rule change to the Commission seeking approval of a further extension.

10. Ceasing to Act, Wind-Down Members, and Insolvency

The MBSD's rules regarding restrictions on access to services, ceasing to act, winding-down Clearing Members, and Clearing Member mirror the current GSD rules, conformed to apply to the specifics of MBSD processing as applicable. For example, upon the MBSD ceasing to act for a Clearing Member, Clearing Members will be required to submit immediate NOS so that the MBSD has all necessary settlement information with respect to a defaulting Clearing Member to affect a close-out of such Clearing Member. In addition, the MBSD will have the right, with respect to specified pool trades, to substitute alternate pools as necessary.³⁵

11. DTCC Audit Committee

While FICC MBSD does not have a rule and it is not adding a rule to require an audit committee, FICC is governed by the DTCC Audit Committee and such Committee could not be dismantled without a proposed rule change filed with the Commission.

12. Summary of Other Rule Changes

i. *Current MBSD Rules Not Reflected in Proposed Rulebook*

The following current MBSD rules are not included in the new rulebook:

- With respect to Article III (Participants), in the current MBSD rules: Rule 1, "Requirements Applicable to Participants and Limited Purpose Participants"; Section

³⁵ In the event of a close-out of a defaulting Clearing Member, broker members will be responsible for partially-matched trades for which FICC has received a statement denying the existence of the trade.

5; "Supplemental Agreement of Participants and Limited Purpose Participants"; and Section 14 "Special Provisions Applicable to Partnerships" are not included in the proposed MBSD rules because each of these rules is no longer necessary because proposed Rule 2A harmonizes the MBSD rules with the GSD rules on this subject. Rule 1, "Requirements Applicable to Participants and Limited Purpose Participants" Section 15 "Special Provisions Applicable to Non-Domestic Participants" is not included in the proposed MBSD rules because as with the GSD, the MBSD will be using the Netting Agreement for foreign members and not the master agreement format. Proposed Rule 2A, "Initial Membership Requirements," Section 5, "Member Agreement" covers the provisions of the membership agreement generally and thereby serves to harmonize the proposed MBSD rules with the GSD rules with respect to this subject.

- Rule 3, "Corporation Declines to Act for a Participant or Limited Purpose Participant" Section 2 "Other Grounds for Ceasing to Act for a Participant or Limited Purpose" of the current MBSD rules is not included in the proposed MBSD rules because it is being replaced by proposed MBSD Rule 14 "Restrictions on Access to Services" and Rule 16 "Insolvency of a Member" which cover the same matters and harmonize these provisions with those in the GSD rules.
- In an effort to harmonize with the GSD rules, Rule 3, "Corporation Declines to Act for a Participant or Limited Purpose Participant" Section 3 is not reflected in the proposed MBSD Rules. FICC does not believe it is necessary to state the current MBSD concept in the proposed MBSD rules because it would apply regardless of whether it is stated in the rules. Rule 3, "Corporation Declines to Act for a Participant

or Limited Purpose Participant” Sections 5(a) “Disposition of Open Commitments” is not included in the proposed MBSD rules because FICC does not accept Letters of Credit as a permissible form of Clearing Fund collateral as a routine matter; however, FICC reserves the right to accept this type of collateral, if needed. In addition, the current MBSD rule addresses the liquidation of other types of collateral posted by the defaulting Clearing Member. Under the proposed MBSD rule, close-out processes, in general, are covered by Rule 17, which has been drafted to be harmonized with the equivalent GSD Rule to the extent possible. Section 5(c) of the current MBSD Rule 3 in Article III is not reflected in proposed rulebook because it addresses non-defaulting Clearing Members engaging in the close-out of the defaulting Clearing Member’s positions, which will be undertaken by the MBSD as CCP under the proposed rules.

- Under the section titled “Schedule of Charges Broker Account Group” in the appendix to the proposed MBSD rules, FICC no longer provides hardcopy output from microfiche. As a result, the reference to this charge is being removed.

ii. *New MBSD Rules*

The following rules are being added to the MBSD rulebook in connection with this filing and have not been addressed separately above:

- Rule 3, Section 6 “General Continuance Standard” of the proposed MBSD rules includes additional language which states that FICC may require that increased or modified Required Fund Deposits be deposited by the Clearing Member on the same Business Day on which the FICC requests additional assurances from such Clearing Member. FICC has always interpreted the current rules to permit such action; this additional language makes this point explicit.

- Rule 5, "Trade Comparison" Section 1 "General" and Section 3 "Trade Submission Communication Methods" includes disclosure relating to the means by which data may be entered and submitted to FICC. Section 10 "Modification of Trade Data" of this rule allows FICC to unilaterally modify trade data submitted by Clearing Members if FICC becomes aware of any changes to the transaction that invalidates the original terms upon which it was submitted or compared and Rule 12 "Obligations" of Section 10 discusses the point at which trade data becomes a settlement obligation.
- With respect to the computation of cash balances under Rule 11, "Cash Settlement," FICC has included a new process with respect to fail tracking. Fail tracking is an automated process that takes place when the actual settlement date of a transaction is beyond the contract date. An adjustment is made when one or more beneficiary dates (i.e., certain securities have a record date that does not represent the end of the accrual period and instead the beneficiary date is the actual date the accrual period ends) fall between the contract date and the settlement date. The adjustment results in the payment of funds from the message originator to the message receiver through the Federal Reserve's National Settlement Service. This eliminates a cumbersome manual process for tracking and clearing adjustments from securities transaction counterparties and it impacts all Fed-eligible mortgage-backed securities, including Freddie Mac, Fannie Mae, and Ginnie Mae.
- With respect to Rule 26, "Financial Reports and Internal Accounting Control Reports", Section 1 "Financial Reports" has been revised to state that FICC will: (i) prepare its financial statements in accordance with Generally Accepted Accounting

Principles; (ii) make unaudited financial statements for the fourth quarter available to its Clearing Members within 60 days following the close of FICC's calendar year; and (iii) provide a certain level of minimum disclosures in its quarterly financial statements. This rule has also been revised to include Section 2 "Internal Accounting Control Reports," which requires FICC to make internal accounting control reports available to its Clearing Members.

- The proposed MBSD rules also introduce pool netting fees. Below is a description of each fee:
 1. Matched Pool Instruct ("PID") (per side): When a pool instruct is matched resulting from either an instruct or an affirmation (with or without pending status), a matched fee is charged to both sides.
 2. Customer Delivery Request ("CDR") Pool Instruct Fee: When a pool instruct in a matched status is included in the net (vs. FICC) a CDR fee is charged at the instruct PID level to the Clearing Member that submitted the CDR.
 3. Cancel of Matched Pool Instruct: This fee is assessed to the Clearing Member submitting a unilateral cancel on a matched pool instruct.
 4. Pool Obligation: This fee is charged to the net long and short Clearing Member when a Pool Obligation ("POID") is created versus FICC.
 5. Post Net Subs: This fee is charged to the Clearing Member that submits a substitution (the net seller) on a POID vs. FICC.
 6. Clearance of Pool vs. FICC: This is a fee associated with clearing a POID versus FICC.

7. Financing Charges (Financing costs are the costs of carrying positions overnight): For each Clearing Member, a pass-through charge calculated on a percentage of the total of all such costs incurred by FICC, allocated by Agency product.

iii. *Revised MBSD Rules to Harmonize with GSD Rules*

The provisions listed below are revised to harmonize them with similar provisions in the current GSD rules and in some cases updated as appropriate to reflect the mortgage-backed securities market:

- Rule 3 Section 12 (Excess Capital Premium)
- Rule 5 Section 10 (Modification of Trade Data by the Corporation)
- Rule 14 (Restrictions on Access to Services)
- Rule 15 (Wind-Down of a Member)
- Rule 16 (Insolvency of a Member)
- Rule 17 (Procedures For When the Corporation Ceases to Act) (revised for the mortgage-backed securities market)
- Rule 17A (Corporation Default)
- Rule 18 (Charges for Services Rendered)
- Rule 19 (Bills Rendered)
- Rule 26 (Financial Reports and Internal Accounting Control Reports) (revised as explained above)
- Rule 27 (Rule Changes)
- Rule 28 (Hearing Procedures)
- Rule 29 (Governing Law and Captions)
- Rule 30 (Limitations of Liability)
- Rule 31 (General Provisions)
- Rule 32 (Cross-Guaranty Agreements)
- Rule 33 (Suspension of Rules in Emergency Circumstances) (revised as explained above)
- Rule 34 (Action by the Corporation)
- Rule 35 (Notices)

- Rule 20 (Admission to Premises of the Corporation, Powers of Attorney, etc.)
- Rule 21 (Forms)
- Rule 22 (Release of Clearing Data)
- Rule 23 (Lists to be Maintained) (revised for the mortgage backed-securities market)
- Rule 24 (Signatures)
- Rule 25 (Insurance)
- Rule 36 (Interpretation of Terms)
- Rule 37 (Interpretation of Rules)
- Rule 38 (Disciplinary Proceedings)
- Rule 39 (DTCC Shareholders Agreement)

III. Comments

The Commission received one comment to the proposed rule change, from SIFMA.³⁶

The commenter supported the proposed rule change, stating that the proposed rule change would both reduce risk and increase efficiency in the mortgage-backed security market. The commenter believes that the proposed rule change would reduce risk because it would decrease the number of settlements through the pool netting process and as a result likely would reduce the number of fails in the market. Furthermore, the commenter believes the proposed rule change would provide for a less risky process for the liquidation of positions of a defaulting member.³⁷ The commenter believes that the proposed rule change would increase efficiency

³⁶ See supra note 5.

³⁷ The Commission notes that FICC, consulting with market participants and regulators and using emergency powers under its rulebook, has temporarily provided certain central counterparty services in two instances to alleviate liquidity pressure on the market: (i) to facilitate the orderly liquidation of Lehman Brothers' positions and (ii) to facilitate the orderly liquidation of MF Global positions. In both instances, FICC significantly reduced the number of deliveries required by netting deliver and receive obligations among members.

because as the total number of settlements is reduced through pool netting, market participants likely would have to deal with fewer settlement-related issues, such as pool notifications, resolution disputes, and fails, for which they currently dedicate significant time and resources.

IV. Discussion

The Commission has carefully considered the proposed rule change and the comment thereto and the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder.

The Commission agrees with the commenter that the proposed rule change likely will reduce risk and promote efficiency in the mortgage-backed security market by reducing the number of settlements that are performed and as a result reducing the number of settlement-related risks and costs that confront counterparties. The Commission also believes that the FICC guarantee and the provision of CCP services will reduce risks of bilateral counterparty default. The Commission believes that these changes are consistent with the Exchange Act, including Section 17A, because they should help facilitate the prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of securities and funds under FICC's control or for which FICC is responsible. In particular, the Commission believes that these changes to the MBSD's rules should result in a more efficient system of settlement for the mortgage-backed security market.

The Commission also notes that the MBSD marks Clearing Member portfolios to the market on a daily basis and charges variation margins accordingly, and establishes initial margins designed to cover a minimum 99th percentile of expected possible losses that could arise over a 3-day settlement period utilizing a VaR-based approach. In addition, in order to further enhance the MBSD's risk framework, the MBSD will add two components - the margin requirement differential and the coverage charge - to the Clearing Fund, as well as additional

MBSD mark-to-market items related to the new pool netting services. Furthermore, the MBSD uses regular back and stress testing to monitor the sufficiency of collected margin levels vis-a-vis the risk represented by the 99th percentile of expected possible losses from Clearing Member portfolios and to monitor its tail risk exposure that is beyond the 99th percentile. The Commission believes these steps should, consistent with Section 17A(b)(3)(A) of the Exchange Act,³⁸ facilitate the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds under FICC's custody or control or for which FICC is responsible.

V. Conclusion

On the basis of the foregoing, the Commission finds that the amended proposed rule change is consistent with the requirements of the Exchange Act and in particular Section 17A of the Exchange Act and the rules and regulations thereunder.³⁹

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (File No. SR-FICC-2008-01) be, and hereby is, approved.⁴⁰

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

Dated: March 9, 2012

³⁸ 15 U.S.C. 78q-1(b)(3)(A).

³⁹ 15 U.S.C. 78q-1.

⁴⁰ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9301/ March 12, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 66573 / March 12, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 29978 / March 12, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14388

In the Matter of

ARMANDO RUIZ, and
MARADON HOLDINGS, LLC,

Respondents.

ORDER MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER 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

I.

On May 16, 2011, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings 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 Armando Ruiz ("Ruiz") and Maradon Holdings, LLC ("Maradon" and, together with Ruiz, "Respondents").

II.

In response to 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 Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933,

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Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

SUMMARY

1. This matter concerns materially false and misleading statements made by Ruiz in the offer and sale of securities of Maradon, an entity that Ruiz formed in May 2007 and controlled thereafter. Ruiz told investors that his goal was to develop Maradon into a financial firm serving the Hispanic community.

2. From April 2008 through May 2009, Ruiz raised approximately \$705,000 from eight equity investors and an additional \$112,500 from a ninth investor who made a loan to Maradon that was convertible into Maradon equity, for a total of \$817,500. The eight equity investors included a relative of Ruiz, an individual who later became Maradon's Chief Executive and President, and six other individuals. In addition to representing to the investors that they were purchasing an equity interest in Maradon, Ruiz told the investors that their funds would be used to help develop Maradon into a financial services firm serving the Hispanic community. Ruiz knew or should have known that representations he made about Maradon and Maradon securities were materially false and misleading because: (i) Maradon never issued stock or any form of equity interest to the investors; and (ii) Ruiz used a large part of the offering proceeds to pay personal expenses and trade stocks rather than fund the development of Maradon's business.

3. During the relevant period, Ruiz was a registered representative associated with Legend Securities, Inc. ("Legend"), a registered broker-dealer.

4. By virtue of this conduct, Ruiz willfully² violated and committed, or caused Maradon's violations of, Section 17(a)(2) of the Securities Act and Section 15(a) of the Exchange Act.

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.

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)).

RESPONDENTS

5. **Maradon** is a Delaware limited liability company ("LLC") with a purported principal place of business in Rancho Santa Fe, California. According to Delaware filings, Elizabeth Ruiz, Ruiz's wife, organized Maradon in May 2007, but Elizabeth Ruiz appears to have had no role in Maradon's operations, which were controlled by Ruiz during the relevant period.

6. **Ruiz**, age 46, resides in Rancho Santa Fe, California. Ruiz was a registered representative associated with Legend from June 2008 until April 2011. He has held Series 7 and 63 licenses and been a broker since 1988. From 1995 through 2008, Ruiz was also self-employed as a money manager.

RELEVANT ENTITY

7. **Legend** is a New York corporation with its principal offices in New York, New York and multiple branch offices located in other states in the region. Legend has been a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act since 1998.

THE RESPONDENTS' VIOLATIONS

The Formation of Maradon and Solicitation of Investors

8. Maradon was formed as an LLC in May 2007. Maradon's organizational documents, including its LLC agreement, named Elizabeth Ruiz, Ruiz's wife, as the sole member and manager of Maradon. No change was ever made to the LLC agreement or any other relevant documents to add or substitute other individuals as members or managers of Maradon. Despite lacking actual authority to act on Maradon's behalf, Ruiz unilaterally opened bank accounts, signed contracts and otherwise exercised exclusive control over Maradon during the relevant period.

9. Beginning in approximately April 2008, Ruiz began soliciting investments in Maradon. Eight individuals invested a total of \$705,000 with Ruiz in 2008 and 2009, and a ninth investor made a loan of \$112,500 to Maradon in 2009 that is convertible into equity.

10. While discussing investing in Maradon with these investors, Ruiz misrepresented at least two material facts. First, Ruiz told the investors that they were purchasing an equity interest in Maradon, and he told some of them that the equity interest they were purchasing was preferred stock. Second, Ruiz told investors that Maradon was a start-up venture that Ruiz was seeking to develop into a financial services company serving the Hispanic community, thus representing that the funds which they invested would be used to finance those development efforts. The representations made by Ruiz were false, as Maradon never issued an equity or ownership interest of any kind to the investors and Ruiz used the \$817,500 offering proceeds to day-trade stocks and fund personal expenses. Ruiz knew or should have known that his representations were false, because he controlled all of Maradon's activities and spent the investor funds.

Maradon's Inability to Issue Stock or Any Other Equity Interest to the Investors

11. Although Ruiz told all the investors that they would be owners of Maradon, none of the investors actually received the investment instrument that Ruiz told them they were purchasing. At least five of the nine investors received letters from Ruiz setting forth the investors' agreement to purchase Maradon securities. Although Ruiz was the one who sent these letters to the investors, the letters were addressed to Ruiz, as "President" of "Maradon Holdings LLC," and read as if they came from the investors, with Ruiz counter-signing on behalf of Maradon. According to these letters, the investors were purchasing shares of "Series A Preferred Stock" of Maradon. That was false, as Maradon was a Delaware LLC and, based on its LLC agreement and Delaware law, could not lawfully issue shares of preferred or any other form of stock. In fact, Maradon did not issue stock, equity or any other kind of ownership interest in Maradon to any of the investors.

12. Equity or ownership interests in an LLC -- *e.g.* an interest in a portion of the profits and losses of the LLC and a right to receive a distribution of LLC assets -- are in the form of membership interests, not stock. After formation of an LLC, a person can be admitted as a member of the LLC, and receive a membership interest in the LLC, only in the manner provided in the LLC agreement or, if the agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the LLC. Maradon's LLC agreement states as follows with respect to transfers of interests and the admission of additional members: "The Member shall be permitted to transfer all or any portion its interest in the [LLC]. One or more additional members may be admitted to the [LLC] with the consent of the Member."

13. Maradon did not issue membership interests to any of the investors in the manner described above or in any other legally effective manner. There is no record of any proper amendment to Maradon's organizational documents reflecting the addition of new members, which would require the managing member's approval. Ruiz's wife was and remains the sole member and manager of Maradon, and she did not execute any documents with respect to the issuance or conveyance of any interest of any kind in Maradon to the investors. Absent proper legal action by Ruiz's wife, an investor could not actually receive a membership interest. Ruiz knew or should have known while he was selling purported interests in Maradon that his wife had not taken any steps to approve the admission of new members, yet Ruiz continued to sell membership interests without disclosing to investors that the interests did not exist and that he lacked the authority to create them.

Ruiz's Misrepresentations About the Use of the Offering Proceeds

14. In a document that Ruiz prepared and provided to at least four investors, Ruiz laid out the details of Maradon's purported business plan and its anticipated future growth based on various planned initiatives. Among other relevant passages in this document, Ruiz made the following statements about Maradon's planned activities:

- a. Maradon "is a new breed of financial services company that will capitalize on the 'Hispanization' of the United States by targeting the developing, but currently under-served, Hispanic financial services market."
- b. Maradon "intends to capture revenue by not only servicing Hispanic individuals through its retail brokerage business, but by targeting private and public pension funds which invest with minority owned financial service providers."
- c. "During this initial phase of development, Maradon is in the process of opening individual retail brokerage accounts with a primarily Hispanic clientele. During this startup phase, these accounts are maintained at an existing broker dealer. However, within the next [eight to twelve months], Maradon intends to raise sufficient capital to either form its own broker-dealer or purchase an existing broker dealer through which to service its clients."
- d. "In its second phase of development, Maradon will also target private and public pension funds that are seeking minority financial services providers to service their funds."
- e. "Given Maradon's breadth of experience in the financial markets and its commitment and uncommon access to the Hispanic community, pursuing private and public pension funds as a source of revenue is a natural compliment [sic] to its retail brokerage business."

15. Ruiz also made similar statements about Maradon's business plan in his conversations with investors. He told them, among other things, that Maradon was a start-up company that was going to be a broker-dealer and investment advisory firm serving the Hispanic community with the goals of giving Spanish-speaking investors an understanding of how the markets work and providing financial services to them. Ruiz also told investors that Maradon would use their money to fund start-up expenses, build the business and attract other investors.

Ruiz's Misuse of Offering Proceeds

16. Rather than use all of the investor funds to develop Maradon's purported business, Ruiz used the offering proceeds in large part to fund various personal expenses, notwithstanding his representations to investors that their investments were going to be used to fund the development of a Hispanic financial services firm.

17. All of the investor funds were deposited into Maradon's bank accounts. Seven individuals, including two of the Maradon investors (a relative of Ruiz, and a friend who later became Maradon's Chief Executive and President) also made loans to Ruiz and/or Maradon that totaled approximately \$619,719. In each instance, the proceeds of these loans were wired directly to one of Maradon's two bank accounts and commingled with the funds that came from the investors who purportedly purchased an equity interest in Maradon.

18. In fact, Maradon did not engage in, or take any meaningful steps towards engaging in, any of the business activities described above. Nevertheless, of the \$817,500 that Ruiz obtained from those who invested in Maradon, there was little more than \$1,000 left in Maradon's bank accounts as of June 30, 2009. Ruiz used a large part of the investors' money to engage unsuccessfully in high risk "day-trading" of stocks, pay personal living, travel and entertainment expenses or make other, unexplained expenditures with no connection to Maradon's purported start-up business activities.

19. When soliciting investors for Maradon, Ruiz did not disclose that he would be using the invested funds to day-trade or otherwise trade stocks, whether for his own account or for Maradon's account, and to finance his own personal living, travel and entertainment expenses. Ruiz had already begun using investor funds for these purposes while continuing to solicit additional investors.

20. In October 2009, six of Maradon's nine investors were repaid the amount of their investment. The amounts refunded to these six investors totaled \$180,000. Each of these investors received a letter from Maradon, signed by its purported new "Managing Member, Chief Executive and President." The letter stated, among other things, that Ruiz had commingled investor funds with his own funds and had used investor funds to pay for personal expenses, as follows: "The problem is that Armando used his money, my money, your money, etc without separating Maradon's trading, its costs and expenses from his own."

21. The three investors who were not repaid are (i) a relative of Ruiz; (ii) the individual who took over as Chief Executive and President of Maradon and signed the letter that accompanied the repayments to the six investors; and (iii) an investor who invested \$112,500 in the form of a loan purportedly convertible to equity in Maradon (the "Investor"). Ruiz has made interest payments on the loan to the Investor.

22. As a result of the conduct described above, Maradon violated Section 17(a)(2) of the Securities Act, which prohibits the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstance under which they were made, not misleading.

23. As a result of the conduct described above, Ruiz willfully violated and committed, and caused Maradon's violations of, Section 17(a)(2) of the Securities Act.

24. Although Ruiz solicited investors for Maradon while he was associated with Legend, the Maradon offering was not conducted through Legend, but by Ruiz independently and separate from Legend. As a result, Ruiz willfully violated Section 15(a) of the Exchange Act, which prohibits a broker or dealer from effecting transactions in, or inducing or attempting to induce the purchase or sale of, any security unless such broker or dealer is registered with 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 Respondents' 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. Respondent Ruiz shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and Section 15(a) of the Exchange Act.

B. Respondent Maradon shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

C. Respondent Ruiz is censured.

D. Respondent Ruiz be, and hereby is:

1. barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;
2. 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
3. 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 three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

E. Any reapplication for association by Respondent Ruiz 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 Respondent Ruiz, 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.

F. Respondent Ruiz shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 to the United States Treasury. Respondent Ruiz shall also pay disgorgement of \$112,500 to the Securities and Exchange Commission, which reflects the \$112,500 investment made by the Investor described in Paragraph III.B.21 above, plus agreed upon post-Order interest of \$2,076.31 pursuant to SEC Rule of Practice 600, for a total of \$114,576.31. Payment of disgorgement and interest shall be made in four installments according to the following schedule:

- Payment #1, in the amount of \$28,956.43, due within 90 days after the entry of this Order.
- Payment #2, in the amount of \$28,747.44, due within 180 days after the entry of this Order.
- Payment #3, in the amount of \$28,539.96, due within 270 days after the entry of this Order.
- Payment #4, in the amount of \$28,332.48, due within 360 days after the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. All payments pursuant to this paragraph 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 Armando Ruiz 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 David Rosenfeld, Associate Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY 10281.

G. After receipt of all payments of civil money penalties and disgorgement, the Securities and Exchange Commission shall pay the disgorgement and additional interest accrued pursuant to SEC Rule of Practice 600 to the Investor.

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. 66579 / March 13, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14797

In the Matter of
Kings Road Entertainment, Inc.,
Respondent.

ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES 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 proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Kings Road Entertainment, Inc. ("Kings Road Entertainment" 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, Respondent consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

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

1. Kings Road Entertainment (CIK No. 773588) is a delinquent Delaware corporation located in Beverly Hills, California. At all times relevant to this proceeding,

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the securities of Kings Road Entertainment have been registered under Exchange Act Section 12(g). On January 15, 2009, the Commission entered a cease-and-desist order against Kings Road Entertainment ordering it to cease and desist from committing or causing any violations and any future violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder. As of November 9, 2011, the company's stock (symbol "KREN") was traded on the over-the-counter markets.

2. Kings Road Entertainment has failed to comply with Exchange Act Section 13(a) and Rule 13a-1 and 13a-13 thereunder, and is in violation of the January 15, 2009 cease-and-desist order entered against it by the Commission, because Kings Road Entertainment has not filed any periodic reports with the Commission since the period ended January 31, 2011.

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

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. 66578 / March 13, 2012

ADMINISTRATIVE PROCEEDING

File No. 3-14796

In the Matter of

Silvermex Resources Inc.,

Respondent.

ORDER INSTITUTING PROCEEDINGS, MAKING
FINDINGS, AND REVOKING REGISTRATION OF
SECURITIES 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 proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Silvermex Resources Inc. ("Silvermex Resources" 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, Respondent consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

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

1. Silvermex Resources (CIK No. 1207685) is a British Columbia corporation located in Vancouver, British Columbia, Canada. At all times relevant to this proceeding,

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the securities of Silvermex Resources have been registered under Exchange Act Section 12(g). As of December 12, 2011, the company's stock (symbol "GGCRF") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc., had eleven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Silvermex Resources has failed to comply with Exchange Act Section 13(a) and Rule 13a-1 thereunder because it has not filed any annual periodic reports with the Commission from the period ended December 31, 2003 through the period ended December 31, 2009.

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

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. 66585 / March 13, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3382 / March 13, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14798

In the Matter of

ALISSA JOELLE KUENG,

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 Alissa Joelle Kueng ("Respondent" or "Kueng").

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 her 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)

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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. During the relevant period, Kueng was a sales specialist at J.P. Morgan Securities Inc., a registered broker-dealer and investment adviser based in New York City. Currently, Kueng is 31 years old and resides in San Francisco, California.
2. On March 9, 2012, a final judgment was entered by consent against Kueng, permanently enjoining her from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in the civil action entitled Securities and Exchange Commission v. Alissa Joelle Kueng, Civil Action Number 09-8763 (KBF), in the United States District Court for the Southern District of New York.
3. The Commission's complaint alleged that in December 2005 Kueng received material nonpublic information regarding an issuer known as Jamdat Mobile, Inc. ("Jamdat"), which she knew or should have known was provided to her in breach of a fiduciary duty to the issuer, and that Kueng tipped material nonpublic information regarding Jamdat's acquisition to a trader in her firm and to her clients, which resulted in trading in the securities of Jamdat.

IV.

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

with the right to apply for reentry after ten years from the date of the issuance of this Order 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

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Commissioner Parades
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 66586 / March 13, 2012

ADMINISTRATIVE PROCEEDING

File No. 3-14799

In the Matter of

China MediaExpress Holdings, Inc.,

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 China MediaExpress Holdings, Inc. ("China Media").

II.

After an investigation, the Division of Enforcement alleges that:

A. China Media (CIK No. 0001399067) is a Delaware corporation with principal offices in Hong Kong and Fuzhou, China. At all relevant times, China Media's securities have been registered with the Commission pursuant to Exchange Act Section 12(b). China Media's securities were listed and traded on the NASDAQ under the symbol CCME beginning in June 2010 until May 19, 2011, when the NASDAQ delisted CCME for, among other things, failure to timely file required financial reports. Currently, China Media's securities trade in the over-the-counter market under the symbol "CCME.PK."

B. 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

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13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

C. China Media is delinquent in its periodic filings with the Commission.

D. China Media (1) failed to file an annual report on Form 10-K for the period ended December 31, 2010; (2) failed to provide the investing public with an annual report for the year ended December 31, 2009 because China Media's former independent auditor stated in March 2011 that continued reliance should no longer be placed on its prior audit report on China Media's 2009 Form 10-K previously filed with the Commission; and (3) failed to file any periodic reports since November 8, 2010, when it filed its Form 10-Q for the period ended September 30, 2010.

E. As a result of the foregoing, China Media has failed to comply with Section 13(a) of the Exchange Act 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 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

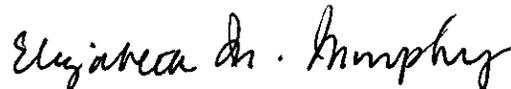
Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66598 / March 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14802

In the Matter of

John B. Frohling, Esq.

Respondent

ORDER OF FORTHWITH SUSPENSION
PURSUANT TO RULE 102(e)(2) OF THE
COMMISSION'S RULES OF PRACTICE

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of John B. Frohling ("Frohling") pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. 200.102(e)(2)].¹

II.

The Commission finds that:

1. Frohling was an attorney admitted to practice law in New Jersey.
2. On February 1, 2011, the Supreme Court of New Jersey entered an order, with Frohling's consent, barring Frohling from the practice of law in New Jersey.

III.

In view of the foregoing, the Commission finds that Frohling is an attorney who has been barred from practicing law within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice. Accordingly, it is **HEREBY ORDERED** that Frohling is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

¹ Rule 102(e)(2) provides in pertinent part: "Any attorney who has been suspended or disbarred by a court of the United States or of any State; or any person whose license to practice as a[] . . . professional or expert has been revoked or suspended in any State . . . shall be forthwith suspended from appearing or practicing before the Commission."

*Commissioner Gallagher
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66594 / March 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14800

In the Matter of

SHARESPOST, INC. AND
GREG B. BROGGER

Respondents.

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 SharesPost, Inc. ("SharesPost") and pursuant to Section 21C of the Exchange Act against Greg B. Brogger ("Brogger") (collectively "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 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.

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III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. These proceedings arise out of an investigation into the secondary market trading of shares in private, venture-backed companies. This market proliferated in 2009 with the emergence of new online platforms and was driven, in part, by investors seeking to participate in popular private companies, including social media, clean technology, and others that had remained private beyond the life cycle typically experienced by companies during the so-called "dot com" boom of the early 2000s.

2. SharesPost has played a significant role in the emerging marketplace for the stock of companies that have not yet conducted an initial public offering (IPO). SharesPost holds itself out to the public as an online service to help match buyers and sellers of pre-IPO stock. It allows accredited investors to post indications of interest to buy or sell stock in private companies. During the relevant period, SharesPost personnel charged commissions through affiliated broker-dealers for effecting these transactions. As of March 2011, SharesPost had more than 60,000 members. SharesPost also collects and publishes on its website third-party provided information concerning issuers' financial metrics, SharesPost-funded research reports, and a SharesPost-created valuation index. It also has engaged in publicity to gain members for its website. Finally, a SharesPost affiliate managed a series of pooled investment vehicles designed to purchase stock in single private companies and interests in those funds were made available on the SharesPost platform.

3. Through these and other actions SharesPost was engaged in the business of effecting transactions in securities for the account of others without registering as a broker with the Commission. Registered broker-dealers are required to comply with an array of regulations and supervisory structures that are intended to promote confidence in the securities markets by ensuring that persons who effect transactions for the account of others can be relied upon to understand and faithfully execute their obligations to customers and the markets. Regulatory obligations that are incumbent on a registered broker-dealer include: membership in a self-regulatory organization and in the Securities Investor Protection Corporation, extensive recordkeeping and reporting obligations, suitability requirements, and capital and margin requirements. In addition, registered broker-dealers are subject to statutory disqualification standards and the Commission's disciplinary authority, which are designed to prevent persons with adverse disciplinary histories from becoming, or becoming associated with, registered broker-dealers.

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.

4. As detailed below, through its conduct, SharesPost violated Section 15(a) of the Exchange Act. Brogger, SharesPost's founder and president, caused SharesPost's violations.

Respondents

5. SharesPost, Inc. is a Delaware corporation with its principal place of business in San Bruno, California. During the relevant period it was not registered with the Commission in any capacity. SharesPost operates an online platform that supports the purchase and sale of private company stock. SharesPost has bulletin boards for about 140 private companies. SharesPost offers a number of services to users including third-party research reports on companies listed on the SharesPost site, a Venture Index that tracks the valuation of several prominent companies presented on SharesPost, and auctions of units in limited liability companies designed to correlate with the value of popular private companies' stock, thus allowing buyers to aggregate their capital to purchase blocks of private company stock.

6. Greg Brogger resides in Park City, Utah and is the founder and president of SharesPost, Inc. He has a background in early-stage private companies and founded an incubator that provided seed money for SharesPost. He is the majority shareholder of that incubator, which is a large shareholder of SharesPost. In late 2010, Brogger ceased serving as SharesPost's chief executive officer and became its president.

Background

7. SharesPost's website began operations in June 2009. Initially, SharesPost sought to operate as a bulletin board where interested buyers and sellers of private company stock could meet and match interests. As SharesPost gained popularity and it confronted the complexity of shepherding these transactions to completion, the company repeatedly changed its business model.

8. SharesPost initially charged members a \$39 fee for access to the platform. Once on the platform, potential buyers and sellers interacted with each other to arrange transactions similar to other online bulletin boards, with little involvement by SharesPost. SharesPost discovered, however, that because of the complexity of private company stock transactions, few members were able to transact successfully without substantial assistance from SharesPost and/or a representative of a registered broker-dealer.

9. In the spring of 2010, SharesPost created a "Company Specialist" position by entering into agreements with registered representatives at two registered broker-dealers. Each Specialist was assigned certain issuers' bulletin boards on the SharesPost site (e.g., one "Specialist" handled social media companies, another green tech issuers, etc.) and assisted potential buyers and/or sellers with transactions for those issuers. The Specialist charged members a commission for helping effect the transaction. This commission was payable to the registered broker-dealer with whom the Specialist was associated, who would then pay the Specialist pursuant to whatever agreement it had with the Specialist.

10. In addition to the agreement with his broker-dealer, the Specialist also had an agreement with SharesPost providing that the Specialist would pay 35% of the gross commissions he received to a broker-dealer designated by SharesPost. At the time, however, SharesPost had no agreement with any broker-dealer to serve in this function. SharesPost kept track of the amounts that would have been earned had the Specialists paid that 35% to SharesPost.

11. For example, when SharesPost terminated its relationship with one of its Company Specialists, it sought and succeeded in receiving payment of a portion of the Specialist's commissions earned pursuant to the Company Specialist Agreement as part of a global settlement with that Specialist.

12. By late fall 2010, SharesPost determined that maintaining arrangements with multiple registered representatives affiliated with multiple broker-dealers was cumbersome. Accordingly, it changed its business model by entering into a "Broker Dealer Independent Affiliate Agreement" with a selected broker-dealer ("Broker-Dealer A"). Under this model, a number of SharesPost employees who were registered representatives of a registered broker-dealer, including the chief executive officer who replaced Brogger, an executive vice-president, and another senior executive at SharesPost would earn commissions from effecting transactions on the SharesPost platform. Those commissions would be paid into a compensation pool held at Broker-Dealer A. The agreement provided that "the current Chief Executive Officer of SharesPost (the "CEO") shall provide to Broker Dealer in writing (including email) the percentage each Affiliate [the registered representative] and Broker Dealer shall receive of the then available Compensation Pool." The agreement further specified that the determinations of SharesPost's chief executive officer were final and not subject to challenge. At the direction of SharesPost, Broker-Dealer A has made distributions from the compensation pool to the broker-dealer's representatives, some of whom were also SharesPost employees.

13. In addition, SharesPost was involved in the securities transactions processed through its website. First, SharesPost provided various form documents including stock transfer agreements on its website and suggested its members use the forms. These documents were on SharesPost stationery bearing a SharesPost copyright. Second, SharesPost also recommended one particular bank to serve as the escrow agent for transactions, for which the bank charged a flat fee to the members. Third, SharesPost personnel, including persons who were not registered representatives at a registered broker-dealer, served as intermediaries between buyer, seller, issuer, and transfer agent. For example, in one representative transaction, a SharesPost employee emailed on multiple occasions with counsel for the issuer, its transfer agent, and the potential seller to secure signatures and inform each party where the transaction stands and what the expected timeline for closing the deal is. Another SharesPost employee who was not a registered representative at the time, described spending "literally hours" trying to help facilitate a transaction in one issuer's stock among the buyer and seller.

14. SharesPost added features to the website to assist its members in making investment decisions. SharesPost began providing free research reports from third parties – akin to analyst reports for public companies – containing detailed information about the issuers posted on the SharesPost website. SharesPost paid for this research and one of the research providers is owned by an entity in which a SharesPost director has an ownership interest. SharesPost also

created a "Venture Index" that aggregates and weighs certain known or estimated data points for the most active companies on the bulletin boards.

15. In late 2010, SharesPost decided to create multiple funds from a series of limited liability companies designed to purchase stock in one issuer per series. These single-purpose funds were managed by an entity that is a wholly owned subsidiary of SharesPost. The SharesPost principals used the platform to create an auction process whereby potential sellers of a company's stock would set a reserve price for the block of shares they wished to sell. In turn, SharesPost members who posted indications of interest to buy interests in the limited liability company were contacted by SharesPost personnel, who were registered representatives of Broker-Dealer A to see if they wanted to participate in the auction. The buyers were bidding on interests in the fund and the fund would in turn purchase the stock. The auction process began to feature prominently on the SharesPost website – thus, at that point, SharesPost was using the website to sell securities (interests in the fund) in which it had a financial interest. The SharesPost subsidiary management company entity charged a one-time service fee, which was five percent of the investment and a three percent fee on any distributions to the fund.

16. While he was CEO, Brogger did not require SharesPost to register as a broker-dealer. By no later than April 2010, Brogger was aware that SharesPost was engaging in activities that could be considered operating as a broker-dealer. For example, as Brogger was negotiating a Company Specialist Agreement, he commented that in the mid-term SharesPost would need to either sell itself to a registered broker-dealer or buy one. In October 2010, Brogger drafted a termination agreement that required a Company Specialist to pay SharesPost \$15,000 as SharesPost's share of the commissions the Specialist earned while effecting securities transactions through the SharesPost platform.

17. As a result of the conduct described above, SharesPost willfully² violated Section 15(a) of the Exchange Act. Section 15(a) makes it unlawful for any broker or dealer who makes use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered with the Commission. Brogger caused SharesPost's violation of Section 15(a) of the Exchange Act.

18. After the conduct described in Paragraphs 7 through 16 above, SharesPost acquired a registered broker-dealer, which is now a wholly owned subsidiary of SharesPost, and, on December 14, 2011, FINRA approved the related membership transfer agreement and authorized SharesPost to offer online services through the registered broker-dealer.

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' Offers.

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

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Respondent SharesPost is censured.

C. Respondent SharesPost shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$80,000 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 SharesPost 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 Michael S. Dicke, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104.

D. Respondent Brogger shall, within 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 Brogger 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 Michael S. Dicke, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104.

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 ACT OF 1933
Release No. 9302 / March 14, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3383 / March 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14801

In the Matter of

Laurence Albuquerk and
EB Financial Group, LLC,

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 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 8A of the Securities Act of 1933 ("Securities Act") and Section 203(k) of the Investment Advisers Act of 1940 ("Investment Advisers Act") against Laurence Albuquerk ("Albuquerk") and EB Financial Group, LLC ("EB Financial") (collectively, "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 Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondents' Offer, the Commission finds¹ that:

NATURE OF PROCEEDINGS

1. This proceeding involves two pooled investment funds—EBX FB I, LLC (“EBX FB I”), created May 21, 2010, and EBX FB II, LLC (“EBX FB II”), created November 29, 2010 (collectively, the “EBX FB Funds”)—that were established to satisfy demand for acquiring the securities of privately-held popular technology companies that had not yet issued stock through an Initial Public Offering (“IPO”). Respondents created and advised the EBX FB Funds to acquire, directly or indirectly, pre-IPO shares of Facebook, Inc. (“Facebook”) stock. In the course of offering the EBX FB Funds, Respondents provided investors with offering materials that misrepresented and failed to disclose the full amount of compensation Respondents would earn in the transactions described below.

RESPONDENTS

2. Laurence Albuquerque, age 44, is the sole owner and managing member of EB Financial. Albuquerque has been a registered representative since 2009 and currently holds FINRA Series 7 and 63 licenses through a registered broker-dealer. Since 1999, Albuquerque has served as the managing member of the general partner of five funds that allow entrepreneurs to invest a small portion of their founders' equity into a portfolio of other venture-capital-backed companies. Albuquerque is a resident of San Francisco, California.

3. EB Financial Group, LLC is a California limited liability company wholly owned and managed by Albuquerque, who organized the company on January 16, 2002. EB Financial serves as the investment adviser to the EBX FB Funds, which are pooled investment vehicles, as defined in Rule 206(4)-8 under the Investment Advisers Act, engaged primarily in the business of investing, directly or indirectly, in Facebook securities. Through January 2011, EB Financial raised about \$15.4 million from approximately 90 investors for the two EBX FB Funds. EB Financial is not registered with the Commission in any capacity.

OTHER RELEVANT ENTITIES

4. Zoom Ventures, LLC (“Zoom”) is a California limited liability company organized on March 3, 2003. Zoom is managed by Albuquerque's wife and, prior to the transactions described below, was wholly-owned by the Albuquerque family. Zoom purchased Facebook stock from existing Facebook shareholders and sold interests in Zoom to the EBX FB Funds.

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

FACTS

Background and the First Two EBX FB I Closings

5. Respondents created the EBX FB Funds to seek investment opportunities in pre-IPO Facebook stock. The operating agreements for the EBX FB Funds provided that, as the funds' Manager, EB Financial had full control over the business and affairs of the funds, including the discretion to make investment decisions for the funds. Among other things, EB Financial would decide the form, price, timing, and terms of any offer to acquire Facebook securities. EB Financial had the authority to determine whether to acquire Facebook securities directly or by acquiring interests in a limited liability company that held only Facebook stock. EB Financial also had the authority to purchase short-term securities with investor funds and discretion to meet requests for distributions before Facebook experienced a liquidation event (typically a merger or an IPO), including by distributing Facebook securities, cash, or other company property.

6. Respondents raised approximately \$5 million in two initial transactions on behalf of EBX FB I. In the first of these transactions, Respondents invited investors to participate in an offering of interests in EBX FB I. On September 7, 2010, Respondents informed investors that EBX FB I would acquire interests in an unrelated limited partnership whose sole activity at the time was holding Facebook stock. EBX FB I completed the purchase of interests in the limited partnership on September 20, 2010.

7. In the second transaction on behalf of EBX FB I, the offering materials informed investors that the fund would acquire units in Zoom in a similar way that EBX FB I previously acquired interests in the first transaction involving an unrelated limited partnership. The offering materials disclosed that Zoom was "affiliated with [EBX FB I] as it is wholly-owned by the Albuquerk family." On October 12, 2010, following Zoom's acquisition of Facebook stock, EBX FB I completed the purchase of interests in Zoom.

8. The offering materials provided to investors in connection with the first two EBX FB I transactions stated that EB Financial would charge five percent of the gross proceeds raised from investors as a "Services Fee," and three percent of any and all distributions to investors as a "Distribution Fee."

The Third EBX FB I Closing in November 2010

9. In the Fall of 2010, Respondents prepared for a third round of investments involving EBX FB I. On October 4, 2010, a broker-dealer with whom Albuquerk is affiliated entered into a Broker Agreement with a Facebook shareholder to assist it to sell its shares of Facebook stock. Albuquerk signed the Broker Agreement on behalf of the broker-dealer. The shareholder agreed to pay a \$0.70 per share broker's fee to the broker-dealer if and when the shareholder consummated a sale of Facebook stock. Under Albuquerk and the broker-dealer's existing agreement, Albuquerk would receive 90 percent of the broker's fee.

10. Respondents introduced Zoom to the Facebook shareholder as a potential purchaser of the stock. On October 6, 2010, Zoom entered into a contract with the Facebook

shareholder to purchase a block of shares at \$13.50 per share. The Facebook shareholder netted \$12.80 per share, equal to the purchase price less the fee due Albuquerk's affiliated broker-dealer.

11. On October 7, 2010, as required by restrictions attached to Facebook stock at its original issuance, the seller notified Facebook of its intention to sell stock to Zoom. Facebook had 30 days to exercise, waive, or allow to expire a right of first refusal on the shares. In other words, Facebook had the right to purchase the stock itself, assign that right to someone other than Zoom, or decline to exercise its rights and so allow Zoom to acquire the stock on the terms to which it had agreed with the seller.

12. Respondents distributed offering materials dated November 1, 2010, to potential investors for the third round of investments in EBX FB I. Albuquerk signed the offering materials as Manager of EB Financial. The offering memorandum stated that EBX FB I "was formed to invest in Facebook Securities offered for sale either directly from shareholders of Facebook or indirectly through intermediaries, including through the purchase of interests in other limited liability companies or limited partnerships that invest in, acquire, hold, and/or distribute Facebook Securities." The offering memorandum made no mention of Zoom, Albuquerk's affiliation with Zoom, the \$13.50 per share price that Zoom had negotiated with the seller, or the broker's fee to be paid to Albuquerk's affiliated broker-dealer.

13. As in the first two EBX FB I transactions, the offering memorandum provided that EBX FB I would pay EB Financial, the Manager, a Services Fee of five percent of the gross proceeds from the sale. In addition, EB Financial would charge EBX FB I a Distribution Fee equal to five percent of any and all distributions to its members. The offering memorandum stated that "[e]xcept for the Services Fee and Distribution Fee, the Manager will not charge any other fees to Members[.]"

14. On November 6, 2010, Facebook's right of first refusal expired, which meant that Zoom was free to complete the transaction with the Facebook shareholder at the previously agreed-upon price of \$13.50 per share. On November 10, 2010, Zoom contracted with EBX FB I to sell Zoom limited liability company interests at \$15.00 per unit. One unit of Zoom corresponded to the price of one share of Facebook stock. In other words, EBX FB I would pay \$1.50 per unit of Zoom more than Zoom paid per share of the Facebook stock.

15. On November 16, 2010, Respondents sent a letter to investors who had previously expressed an interest in investing in EBX FB I, notifying them of EBX FB I's anticipated third closing of its investment in "Facebook Securities at an effective Unit price of \$15.00." The letter asked investors to ratify their decision to invest in EBX FB I at that price within two days. Albuquerk signed the letter in his role as Manager of EB Financial.

16. The letter from Respondents did not explain to investors that EBX FB I was buying interests in Zoom, an entity in which the Albuquerk family had an ownership interest. The letter did not inform investors that Zoom paid \$13.50 per share for its Facebook stock or that Zoom charged an additional \$1.50 per unit to EBX FB I. Nor did the letter disclose that Albuquerk would receive 90 percent of the broker's fee for the sale of Facebook stock to Zoom.

17. On November 22, 2010, the third EBX FB I transaction closed at the equivalent of \$15.00 per share of Facebook stock. On the same day, EBX FB I wired funds raised from investors to Zoom. On November 23, 2010, Zoom then wired the purchase price, less the broker's fee, to the Facebook seller. Zoom separately wired the broker's fee directly to Albuquerque's affiliated broker-dealer, which later paid 90 percent of the total amount to Albuquerque. On or about November 24, 2010, Zoom acquired the shares of Facebook stock and EBX FB I completed the purchase of interests in Zoom.

18. At the close of the transaction, the selling Facebook shareholder received \$12.80 per share. The broker's fee and mark-up charged by Zoom thus increased the price by \$2.20 per share in the third EBX FB I closing. This difference amounted to a 14.6 percent fee in addition to the fees disclosed in the offering memorandum. Nearly all of the increased price went to the Albuquerque family or entities they control.

19. By representing in the offering memorandum that investors would only pay a five percent Services Fee and a five percent Distribution Fee, while failing to disclose the broker's fee, mark-up, and Respondents' affiliation with Zoom, Respondents misrepresented and omitted material facts about their compensation and investor fees in the offering materials. Respondents knew or should have known that the offering materials misrepresented and omitted material facts to investors and prospective investors in EBX FB I.

The EBX FB II Closing in January 2011

20. After the third EBX FB I closing, Albuquerque introduced another Facebook shareholder to Zoom to purchase a block of Facebook stock. On November 24, 2010, Albuquerque's affiliated broker-dealer entered into a Broker Agreement with the Facebook shareholder. Albuquerque signed the Broker Agreement on behalf of the broker-dealer. Under its terms, the Facebook shareholder agreed to pay a \$2.00 per share broker's fee to the broker-dealer if and when the shareholder consummated a sale of Facebook stock, agreeing that the shareholder would receive a net of \$22.00 per share. Under Albuquerque and the broker-dealer's existing agreement, Albuquerque would receive 90 percent of any broker's fee earned on the transaction.

21. Also on November 24, 2010, Zoom entered into a contract with the Facebook shareholder to purchase a block of shares at \$24.00 per share, equal to the sum of \$22.00 per share for the shareholder and the \$2.00 per share broker's fee. As required by restrictions attached to Facebook stock at its original issuance, the Facebook shareholder notified Facebook of his intention to sell stock to Zoom. As in the third EBX FB I closing, Facebook had 30 days to exercise, waive, or allow to expire a right of first refusal on the shares.

22. On November 29, 2010, Albuquerque formed EBX FB II to invest in Facebook securities offered for sale either directly from shareholders of Facebook or indirectly through intermediaries. In all material respects, EBX FB II operated similarly to EBX FB I.

23. Respondents distributed offering materials dated December 1, 2010, to potential investors in EBX FB II. Albuquerque signed the offering materials as Manager of EB Financial. The offering memorandum stated that EBX FB II "was formed to invest in Facebook

securities offered for sale either directly from shareholders of Facebook or indirectly through intermediaries, including through the purchase of interests in other limited liability companies or limited partnerships that invest in, acquire, hold and/or distribute Facebook Securities.” The offering memorandum made no mention of Zoom, Albuquerk’s affiliation with Zoom, the \$24.00 per share price negotiated with the seller, or the broker’s fee to be paid to Albuquerk’s affiliated broker-dealer.

24. The offering memorandum provided that EBX FB II would pay EB Financial, the Manager, a Services Fee of five percent of the gross proceeds from the sale. In addition, EB Financial would charge EBX FB II a Distribution Fee equal to five percent of any and all distributions to its members. The offering memorandum specifically stated that “[e]xcept for the Services Fee and Distribution Fee, the Manager will not charge any other fees to Members[.]”

25. On December 24, 2010, Facebook’s right of first refusal expired, which meant that Zoom was free to complete the transaction with the Facebook shareholder at the previously agreed-upon price of \$24.00 per share. On January 1, 2011, Zoom agreed to sell interests in Zoom to EBX FB II at \$25.00 per unit. One unit of Zoom corresponded to the price of one share of Facebook stock. In other words, EBX FB II would pay \$1.00 per unit of Zoom more than Zoom paid per share of the Facebook stock.

26. On January 7, 2011, Respondents sent a letter to investors who had previously expressed an interest in investing in EBX FB II. The letter, signed by Albuquerk, notified investors that EBX FB II would soon purchase interests in Zoom at \$25.00 per unit. The letter asked investors to ratify their decision to invest in EBX FB II at that price within five days. The letter disclosed that the Albuquerk family had an ownership interest in Zoom. The letter, however, did not explain to investors that Zoom paid \$24.00 per share for its Facebook stock. The letter also did not disclose that Albuquerk would receive 90 percent of the \$2.00 per share broker’s fee on the sale of Facebook stock to Zoom, or that the selling shareholder would receive \$22.00 per share.

27. On January 14, 2011, the EBX FB II transaction closed at the equivalent of \$25.00 per share of Facebook stock. On or around that day, EBX FB II wired funds raised from investors to Zoom. Zoom then wired the purchase price, less the broker’s fee, to the Facebook shareholder. Zoom separately wired the broker’s fee directly to Albuquerk’s affiliated broker-dealer, which later paid 90 percent of the total amount to Albuquerk. EBX FB II simultaneously completed the purchase of interests in Zoom.

28. At the close of the transaction, the selling Facebook shareholder received \$22.00 per share. The broker’s fee and mark-up thus increased the price by \$3.00 per share in the EBX FB II closing. This difference amounted to a 12 percent fee in addition to the fees disclosed in the offering memorandum. Nearly all of the increased price went to the Albuquerk family or entities they control.

29. By representing in the offering memorandum that investors would only pay a five percent Services Fee and a five percent Distribution Fee, while failing to disclose the broker’s fee and mark-up, Respondents misrepresented and omitted material facts about their compensation and investor fees in the offering materials. Respondents knew or should have known that the

offering materials misrepresented and omitted material facts to investors and prospective investors in EBX FB II.

Respondents' Rescission Offers

30. On January 18, 2011, four days after the EBX FB II transaction closed and after Commission staff sent a subpoena seeking information from EB Financial, Albuquerque sent a letter to all EBX FB II investors disclosing that Zoom had purchased Facebook stock at \$24.00 per share and sold interests to EBX FB II at \$25.00 per unit. The letter also explained that Albuquerque was compensated in the sale of the Facebook shares to Zoom through his affiliated broker-dealer, although the amount of the broker's fee was not disclosed. In the same letter, Albuquerque included a rescission offer: "[I]f for any reason you wish to unwind your investment, we will be happy to return your funds in full with no penalties or fees." Respondents did not offer to return any portion of the broker's fee or the mark-up to investors. When presented with the option of unwinding the transaction and giving up their interests in Facebook stock, none of the EBX FB II investors accepted the rescission offer.

31. On January 25, 2011, Albuquerque sent a letter to investors in the third EBX FB I transaction disclosing that Zoom was managed by his wife and that Zoom had purchased the Facebook stock at \$13.50 per share and sold interests to EBX FB I at \$15.00 per unit. The letter also explained that Albuquerque was compensated in the sale of the Facebook shares to Zoom through his affiliated broker-dealer, although the amount of the broker's fee was not disclosed. In the same letter, Albuquerque included a rescission offer: "[I]f for any reason, you wish to unwind your investment, we will be happy to return your funds in full with no penalties or fees." Respondents did not offer to return any portion of the broker's fee or the mark-up to investors. When presented with the option of unwinding the transaction and giving up their interests in Facebook stock, none of the EBX FB I investors accepted the rescission offer.

VIOLATIONS

32. As a result of the conduct described above, Respondents violated Section 17(a)(2) of the Securities Act, which prohibits the receipt of money or property by means of any untrue statement of material fact or omission, and Section 206(4) of the Investment Advisers Act and Rule 206-4(8) thereunder, which prohibit any fraudulent, deceptive, or manipulative act, practice, or course of business by an investment adviser to a pooled investment vehicle.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Section 203(k) of the Investment Advisers Act, it is hereby ORDERED that:

A. Respondents Albuquerk and EB Financial shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, Section 206(4) of the Investment Advisers Act, and Rule 206-4(8) thereunder.

B. Respondents Albuquerk and EB Financial shall jointly and severally pay disgorgement, prejudgment interest, and a civil monetary penalty as follows:

(1) Respondents shall jointly and severally pay disgorgement in the amount of \$203,287.00 and prejudgment interest in the amount of \$7,212.28 consistent with the provisions of this Subsection B.

(2) Respondents shall jointly and severally pay a civil monetary penalty in the amount of \$100,000.00 consistent with the provisions of this Subsection B.

(3) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest, and civil penalty referenced in Paragraph Nos. 1 and 2 of this Subsection B. Regardless 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 staff 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 one or both Respondents 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.

(4) Respondents shall, within 30 days of the entry of this Order, deposit the full amount of the disgorgement, prejudgment interest, and civil monetary penalty (collectively, the "Distribution Fund") into an escrow account acceptable to the Commission staff. Respondents shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit of the disgorgement is not made by the required payment date, additional interest shall accrue pursuant to Rule 600 of the Commission's Rules of Practice [17 C.F.R. § 201.600]. If timely deposit of the civil penalty is not made by the required payment date, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

(5) Respondents shall be responsible for administering the Distribution Fund. Respondents shall pay a *pro rata* portion of the Distribution Fund to current and former investors in the EBX FB I transaction that closed on November 22, 2010, and in the EBX FB II transaction that closed on January 14, 2011 (collectively, the "affected investors"), proportionate to each affected investor's investment and pursuant to a disbursement calculation (the "Calculation") that has been

submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection B. No portion of the Distribution Fund shall be paid to any affected investor directly or indirectly in the name of or for the benefit of Respondents.

(6) Respondents shall, within 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 of each affected investor; and (ii) the exact amount of the payment to be made to each affected investor. Respondents also shall provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondents' proposed Calculation or any of its information or supporting documentation, Respondents shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within 10 days of the date that Respondents are notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection B.

(7) Respondents shall complete the transmission of all amounts otherwise payable to affected investors pursuant to a Calculation approved by the Commission staff within 120 days of the entry of this Order, unless such time period is extended as provided in Paragraph No. 12 of this Subsection B.

(8) If Respondents do not distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected investor or any factors beyond Respondents' control, Respondents shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury after the final accounting provided for in Paragraph No. 10 of this Subsection B is submitted to the Commission staff. 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 Street, N.E., Stop 6042, Washington, DC 20549; and (iv) submitted under cover letter that identifies Laurence Albuquerk and EB Financial Group, LLC as Respondents 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 Michael S. Dicke, Associate Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California 94104.

(9) Respondents shall be responsible for any and all tax compliance responsibilities associated with the Distribution Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondents and shall not be paid out of the Distribution Fund.

(10) Within 180 days after the date of entry of this Order, Respondents shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution 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 Respondents have paid a *pro rata* portion of the Distribution Fund to affected investors, proportionate to each affected investor's investment and pursuant to the Calculation approved by the Commission staff. Respondents 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 Laurence Albuquerk and EB Financial Group, LLC as Respondents in these proceedings and the file number of these proceedings to Michael S. Dicke, Associate Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California 94104. Respondents 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.

(11) After Respondents have 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.

(12) The Commission staff may extend any of the procedural dates set forth in this Subsection B for good cause shown. Deadlines for dates relating to the Distribution 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.

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. 66604 / March 15, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14803

In the Matter of

ASP Ventures Corp.,

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 the respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. ASP Ventures Corp. ("APVE")¹ (CIK No. 1101298) is a dissolved Florida corporation located in Zollikon, Switzerland with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). APVE 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 \$142,989 for the prior nine months. As of March 8, 2012, the common stock of APVE 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

2. As discussed in more detail above, the Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic

¹ The short form of the issuer's name is also its ticker symbol.

reports, and, through its failure to maintain a valid address on file with the Commission as required by Commission rules, failed to receive the delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

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, 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.

3. As a result of the foregoing, the Respondent 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 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 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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

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 the 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 the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of 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 the 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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 15, 2012

In the Matter of

ASP Ventures Corp.,

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 ASP Ventures Corp. because it has not filed any periodic reports since the period ended September 30, 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 company. 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 company is suspended for the period from 9:30 a.m. EDT on March 15, 2012, through 11:59 p.m. EDT on March 28, 2012.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES AND EXCHANGE ACT OF 1934
Rel. No. 66611 / March 15, 2012

Admin. Proc. File No. 3-13687

In the Matter of the Application of

INTERNATIONAL POWER GROUP, LTD.
c/o John Benvenuto, CEO/President
1420 Celebration Blvd., Suite 313
Celebration, FL 34747

For Review of Action Taken by

DEPOSITORY TRUST COMPANY

OPINION OF THE COMMISSION

REGISTERED CLEARING AGENCY PROCEEDING

Denial of Access to Services

Registered clearing agency suspended book-entry clearing and settlement services with respect to issuer's securities held by clearing agency's Participants. *Held*, suspension constitutes denial or limitation of clearing agency's services with respect to any person, and proceeding is *remanded* to clearing agency in order to provide the requisite fair procedure.

APPEARANCES:

John Benvenuto, CEO and President, for International Power Group, LTD.

Gregg M. Mashberg, of Proskauer Rose LLP, New York, NY, for the Depository Trust Company.

Appeal filed: November 16, 2009

Last brief received: June 28, 2010

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International Power Group, Ltd. ("IPWG") has appealed from a decision of The Depository Trust Company ("DTC"), a registered clearing agency,¹ to suspend indefinitely book-entry clearing and settlement services to its Participants with respect to IPWG's common stock. DTC challenges IPWG's right to Commission review of DTC's decision.

I.

DTC provides clearing and settlement services for its "Participants," *i.e.*, broker-dealers and other firms that satisfy the requirements of DTC Rule 2, with respect to the Participants' trades of "Eligible Securities."² In order to make a new issue of securities DTC eligible, DTC requires issuers to submit an Eligibility Questionnaire, which, among other things, requires the issuer to provide information about the issue's registration or exemption status.³ DTC provides two levels of services to its Participants for "Eligible Securities": (1) a "full range of depository services," including "book-entry delivery and settlement through [DTC's] Underwriting Service," and (2) a "limited DTC service such as its Custody Service."⁴ IPWG's common stock was granted status as an Eligible Security. Prior to September 30, 2009, DTC provided the full range of services to its Participants for IPWG's common stock.

¹ DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation. DTC, as a registered clearing agency, falls within the definition of a self-regulatory organization ("SRO"). 15 U.S.C. § 78c(a)(26). DTC provides clearance, settlement, custodial, underwriting, registration, dividend, and proxy services for a substantial portion of all equities, corporate and municipal debt, exchange-traded funds, and money market instruments available for trading in the United States. In 2010, DTC processed 295,000,000 book-entry transfers of securities worth \$273.8 trillion.

² DTC Rule 5 defines an "Eligible Security" as "a Security accepted by the [DTC], in its sole discretion, as an Eligible Security. The [DTC] shall accept a Security as an Eligible Security only (a) upon a determination by the [DTC] that it has the operational capability and can obtain information regarding the Security necessary to permit it to provide its services to Participants and Pledgees when such Security is Deposited and (b) upon such inquiry, or based upon such criteria, as the [DTC] may, in its sole discretion, determine from time to time."

³ DTC's Operational Arrangements, Section I.A.1, state, "Generally, the issues that may be made eligible for DTC's book-entry delivery and depository services are those that: (i) have been registered with the United States Securities and Exchange Commission ('SEC') pursuant to the Securities Act of 1933, as amended ('Securities Act'); (ii) are exempt from registration pursuant to a Securities Act exemption that does not involve transfer or ownership restrictions; or (iii) are eligible for resale pursuant to Rule 144A or Regulation S (and otherwise meet DTC's eligibility criteria)."

⁴ DTC Operational Arrangements Section I.

On September 24, 2009, the Commission filed a complaint in the United States District Court for the Middle District of Florida against a number of defendants (the "Civil Litigation").⁵ Neither IPWG nor any of its officers or directors was named as a defendant. The complaint alleged that four issuers, including IPWG, issued shares of common stock to the defendants named in the complaint (the "Complaint Defendants") without adhering to the registration requirements of Section 5 of the Securities Act of 1933.⁶ The Complaint Defendants, in turn, sold the shares to the public in unregistered transactions when no exemption from registration was available.

As relevant here, the complaint alleged that IPWG assigned to Complaint Defendant Signature Leisure, Inc. ("Signature") "about \$270,000 of alleged debt that [IPWG] owed to one of its officers for loans he supposedly made to the company." The complaint further alleged that the debt agreements included convertibility provisions under which Signature could convert the debt into IPWG stock. The complaint alleged that Signature exercised these conversion rights and that IPWG issued over 162,000,000 shares to Signature. The complaint states, "As of August 17, 2009, Signature Leisure has sold less than half of these shares to the investing public. On information and belief, it maintains control of the remaining shares. Moreover, under the second agreement, about \$80,000 in 'debt' remains for possible conversion [into] more than one hundred million shares of International Power stock."⁷

On September 30, 2009, DTC issued an "Important Notice" to its Participants that stated, "As a result of [the Civil Litigation], DTC has suspended all services, except Custody Services, for the below-referenced issues," which included the common shares of IPWG. IPWG, when it learned of the Important Notice, requested DTC to provide a hearing, pursuant to DTC Rule 22, on the suspension of services announced by the Important Notice.⁸ DTC denied IPWG's request on November 3, 2009.

⁵ *SEC v. K&L Int'l. Enters., Inc. et al.*, No. 6:09-CV-1638-31KR (M.D. Fla. Sept. 28, 2009), Lit. Rel. No. 21224.

⁶ 15 U.S.C. § 77e.

⁷ The court entered, pursuant to settlement, a final judgment as to the Complaint Defendants on May 12, 2010. Under the terms of the settlement, Signature agreed, without admitting or denying the allegations of the complaint, to (1) an injunction against future violations of Section 5 of the Securities Act; (2) pay disgorgement in the amount of \$716,904, plus prejudgment interest thereon in the amount of \$16,456.52; (3) pay a civil penalty in the amount of \$50,000 under Section 20(d) of the Securities Act; and (4) a three-year bar from participating in an offering of penny stock under Section 20(g) of the Securities Act.

⁸ DTC Rule 22(f) provides an opportunity for Interested Persons to be heard on "any determination of the [DTC] that an Eligible Security shall cease to be such." IPWG, as an issuer of securities traded using DTC's services, is an "Interested Person" under DTC Rule 22.

DTC stated that Rule 22(f) was not applicable to the suspension announced in the Important Notice. According to DTC, IPWG common stock remained an "Eligible Security" under DTC's Rules because DTC continued to provide custodial services for IPWG common stock.⁹ DTC added that it would "lift the suspension on the provision of services for IPWG securities once the matter of the unregistered IPWG shares is resolved between IPWG and the SEC. In that regard, DTC urges [IPWG] to address its concerns to the SEC." DTC did not explain what action IPWG should seek from the Commission. IPWG filed the instant appeal.¹⁰

II.

IPWG's appeal raises two issues: (1) whether the Commission has jurisdiction to review the suspension as a limitation on access to services under Section 19(f) of the Securities Exchange Act of 1934,¹¹ and (2) whether IPWG has standing to request Commission review under Section 19(d) of the Exchange Act. Exchange Act Section 19(f) authorizes Commission review of SRO action prohibiting or limiting "any person with respect to access to services offered by [the SRO] or any member thereof." Exchange Act Section 17A(b)(3)(H) further requires clearing agency rules to provide fair procedures with respect to "the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency." The statutes do not specify who is included within the class of "any person" entitled to fair procedures and Commission review if they are denied or limited "with respect to access to services offered by" a clearing agency,¹² and we are unaware of any precedent

⁹ DTC confirmed in its brief that it has no express provision for reviewing denials or limitations on access other than those set forth in Rule 22.

¹⁰ In connection with IPWG's appeal, in March 2010, DTC requested oral argument before the Commission. IPWG did not oppose DTC's request for oral argument. On June 3, 2010, the Commission determined that, "based on the unique facts and circumstances of [IPWG's] appeal," it was appropriate to exercise the Commission's discretion to grant DTC's oral argument request. Oral argument was initially scheduled to occur in April 2011, but IPWG requested a delay of the date of the oral argument because its counsel had withdrawn from representing IPWG in this appeal. The oral argument was re-scheduled for July 2011. However, IPWG subsequently informed the Commission that it did not intend to appear at oral argument, and the Commission determined that, under the circumstances, it was appropriate to cancel the oral argument. DTC did not object to the cancellation of oral argument.

¹¹ Because DTC's action was not disciplinary in nature, the Commission does not have jurisdiction under Section 19(e) of the Exchange Act.

¹² Section 19(d)(2) provides that a person "aggrieved" by any SRO action set forth in Section 19(d)(1), including denials or limitations on access, may apply to the Commission for review. There is neither a statutory definition of nor legislative history concerning the term

(continued...)

construing the language in the context of services offered by a clearing agency. We note, however, that the Commission has previously included "issuers" as persons "having or seeking access to facilities of a . . . registered clearing agency."¹³

The legislative history of Sections 19(f) and 17A(b)(3)(H) does not address this issue directly. These provisions were added in the Senate bill.¹⁴ In support of its argument that it is entitled to a process for challenging DTC's suspension of services, IPWG cites the portion of the Senate Report that states, "With respect to non-members, the Committee believes the Exchange Act should be amended to require all self-regulatory agencies to adopt procedures which will afford constitutionally adequate due process to non-members directly affected by self-regulatory action."¹⁵ However, it appears that this statement refers to members and non-members of exchanges and registered securities associations, and thus is not directly apposite to clearing agency participants or non-participants.¹⁶

In support of its argument that IPWG is not within the class of persons entitled to a process for challenging DTC's actions, DTC looks to another portion of the Senate Report discussing the obligation of clearing organizations to provide fair procedures: "As self-regulatory organizations under this title, registered [clearing organizations have] responsibilities over participants and the conduct of participants."¹⁷ The next sentence in the Report refers the reader back to the Report's discussion of the fair procedures required of registered securities exchanges in the context of disciplinary actions against members of the exchange.¹⁸ However, as DTC acknowledges, the suspension of services with respect to IPWG's securities at issue here was not disciplinary in nature.

¹² (...continued)

"aggrieved" in the context of Section 19(d). We conclude that whether IPWG has standing as a person "aggrieved" by DTC's action turns on the determination of whether IPWG is "any person" within the meaning of Section 19(f) and Section 17A(b)(3)(H).

¹³ Self-Regulatory Organization Proposed Rule Changes, 40 Fed. Reg. 40509, 40510 (Sept. 3, 1975).

¹⁴ S. 249, 94th Cong. (1975) (enacted).

¹⁵ S. Rep. No. 94-75 at 25 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 204.

¹⁶ Compare Exchange Act Section 3(a)(3) (defining "member" for exchanges and registered securities association), 15 U.S.C. § 78c(a)(3), with Section 3(a)(24) (defining "participant" of clearing agency), 15 U.S.C. § 78c(a)(24).

¹⁷ 1975 U.S.C.C.A.N. at 302.

¹⁸ *Id.*

The Senate Report states that review is available for exchange or registered security association action that "prohibits or limits any person access to services offered by the self-regulatory organization or a member thereof" ¹⁹ Similarly, the Senate Report states that a clearing agency "must provide a fair and orderly procedure with respect to . . . the prohibition or limitation by the clearing agency of access by any person to services offered by the clearing agency."²⁰ However, neither statement specifically addresses the class of persons who may apply for review or be entitled to fair process.

Where an agency confronts such ambiguity in a statute it administers, the agency's textual construction of a statute is entitled to deference.²¹ We first note that the legislative history stressed the importance of any SRO's role and responsibilities, and the consequent need to hold SROs accountable for their actions through the provision of a fair process to hear challenges to their actions. In addition, one of the primary purposes of the 1975 amendments to the Securities Exchange Act of 1934, which created the National System for Clearance and Settlement of Securities ("NSCSS"), was to eliminate the need for the physical transfer of stock certificates in connection with the settlement among brokers and dealers of securities transactions.²² By reducing the temporal lags between trade of securities and settlement, the NSCSS provides a legal framework in which securities can be traded quickly and efficiently, while reducing the systemic risks that would otherwise exist. Under the NSCSS, registered clearing agencies like DTC maintain contractual relationships with and provide services directly to the holders of the securities traded using the clearing agencies' services, and not the issuers of those securities. Such a framework results in the enhanced efficiencies of a system of centralized clearing of securities trades. Our interpretation of the statute is informed by these overarching goals.

DTC urges that a person must receive a service directly from a registered clearing agency to be a person entitled to Section 19(f) review. DTC asserts that only Participants are such persons because they receive services directly from DTC, IPWG receives no services directly

¹⁹ *Id.* at 309.

²⁰ *Id.* at 301.

²¹ See *Chevron, U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 & n.11 (1984) (If . . . Congress has not directly addressed the precise question at issue [in a statute administered by a federal agency], . . . the question . . . is whether the agency's answer is based on a permissible construction of the statute"); *Salvatore F. Sodano*, Securities Exchange Act Rel. No. 59141 (Dec. 22, 2008), 94 SEC Docket 12714, 12716 & n.7 ("If the language of a statute entrusted to our administration is ambiguous, our interpretation of the text is entitled to deference by reviewing courts, as long as the interpretation is reasonable.") (citing *SEC v. Zandford*, 535 U.S. 813, 819-20 (2002) (citing *United States v. Mead Corp.*, 533 U.S. 218, 229-30 & n.12 (2001))); *Fin. Planning Ass'n. v. SEC*, 482 F.3d 481, 487 (D.C. Cir. 2007).

²² See 15 U.S.C. § 78q-1(e).

from DTC, and therefore IPWG is not a "person" covered by Section 19(f).²³ However, if DTC were correct about Congress's intent, a more obvious way to achieve that intent would have been to limit Section 19(f) review to denials or limitations of "any [Participant] . . . to access to services offered by [the clearing agency] to such [Participant]. . . ." Congress instead chose the terms "any person" and "with respect to access to services," suggesting a class of persons broader than those with direct access to services themselves. In this regard, Exchange Act Section 17A(b)(3)(H) (which was enacted at the same time as Sections 19(d) and (f)) shows that Congress knew how to differentiate between Participants and non-Participants. Section 17A(b)(3)(H) requires clearing agency rules to provide a fair procedure for "disciplining *participants*, [and] the denial of *participation* to any persons seeking *participation* therein," but then requires such a fair procedure for "the prohibition or limitation by the clearing agency of *any person* with respect to access to services offered by the clearing agency" (emphasis added).

We agree with DTC that the reach of "any person" in Sections 17A(b)(3)(H) and 19(f) is not limitless. However, we believe that issuers occupy a unique position in the regulatory scheme and conclude that "any person" in those provisions must include issuers of securities with respect to which a clearing agency provides clearance and settlement services. In establishing the NSCSS, Congress sought to eliminate the paper transfer of issuers' securities. DTC's role as an SRO and securities depository offering book-entry clearing and settlement services is central in this scheme, and those services are the fundamental ones offered by DTC. We have previously held that to be eligible for review under Sections 19(d) and (f), an SRO's action must deny or limit "the applicant's ability to utilize one of the fundamentally important services offered by the SRO."²⁴ Any suspension by DTC of clearance and settlement services with respect to an issuer's securities means that all trades in that issuer's stock would require the physical transfer of stock certificates, which affects the issuer of the suspended securities directly, because of the potential impact on liquidity and price for the issuer's stock due to the difficulties and uncertainties inherent in physical transfer of stock certificates.

²³ In support of this position, DTC notes that Exchange Act Section 6(b)(7), 15 U.S.C. § 78f(b)(7) (governing exchanges), and 15A(b)(8), 15 U.S.C. § 78o-3(b)(8) (governing registered securities associations), require fair procedures in the event of "the prohibition or limitation by the [exchange or association] of any person with respect to access to services offered by the [exchange or association] or a member thereof." Section 17A(b)(3)(H), as discussed above, does not include the language "or a member thereof." According to DTC, the absence of this language in Section 17A indicates that Congress intended that clearing agencies provide fair procedures only to Participants themselves, not to third parties who may receive services from a "member thereof." (DTC takes the further position that IPWG receives no services from either DTC or any of its Participants.) However, we note that Exchange Act Section 17A(b)(6) prohibits a registered clearing agency from prohibiting or limiting access by any person to services offered by one of its participants. Moreover, this argument does not address the significance of the terms "any person" and "with respect to access to services" in both Exchange Act Sections 19(f) and 17A(b)(3)(H). See discussion in text *infra*.

²⁴ *Morgan Stanley & Co., Inc.*, 53 S.E.C. 379, 385 (1997).

Broker-dealer Participants trading securities subject to a suspension may, of course, be affected by loss of or increased cost of doing business, or difficulties in fulfilling market-making obligations. While these negative impacts of a DTC suspension on a Participant could be remedied by challenging DTC's denial of the Participant's access to services,²⁵ however, a Participant may have the easier alternative of buying and selling other securities. Individuals who wish to buy or sell securities that have been suspended might be negatively affected as well,²⁶ but those negative effects are limited in scope. An owner wishing to sell a suspended security may suffer the one-time cost and inconvenience involved in a paper transaction, and a prospective buyer can either accept any cost and inconvenience of a paper transaction or opt to purchase a different security. For an issuer, however, the negative impact of a suspension is of indefinite duration and affects all transactions in its suspended securities.

We also note that DTC includes issuers whose securities cease to be Eligible Securities in the Rule 22 definition of Interested Persons who are entitled to an opportunity to be heard.²⁷ DTC suggests that, because DTC continues to provide custodial services for IPWG securities, IPWG remains an Eligible Security and is therefore not entitled to an eligibility hearing under DTC Rule 22.²⁸ However, DTC seems to recognize different degrees of "eligibility." For example, DTC's Operational Arrangements state that a security must either be registered with the Commission or subject to a valid exemption from registration in order for that security "to be made *eligible* for DTC's book-entry delivery and depository services" (emphasis added). The November 3, 2009 letter from DTC counsel to IPWG states that a material portion of the IPWG

²⁵ *But see infra* note 28 (under DTC's interpretation of Rule 22, Participants would not necessarily appear to have the right to challenge suspensions of this type).

²⁶ IPWG attached, as exhibits to one of its briefs in this appeal, statements from IPWG investors that broker-dealers restricted their ability to buy and sell IPWG shares during the period immediately after DTC suspended clearance and settlement services with respect to IPWG's securities. However, it nonetheless appears that trading continued after the suspension.

²⁷ The Commission order approving this amendment to Rule 22 states only that the amendment "would authorize an issuer or participant to contest a decision denying or terminating a security's depository-eligibility status." Exchange Act Rel. No. 23498 (Aug. 4, 1986), 36 SEC Docket 386, 387. It does not discuss what constitutes "eligibility" for purposes of fair process.

²⁸ Under DTC's narrow reading of Rule 22(f), even Participants would not have a right to a hearing to challenge the suspension at issue, notwithstanding DTC's concession that Participants are "persons actually affected by [DTC's] restriction on services." DTC does not address this anomaly other than to state that Participants "may present their concerns to DTC's executives."

securities held in DTC custody are neither registered nor exempt (the two criteria for eligibility). DTC's brief to us on appeal further states that tens of millions of unregistered, non-exempt IPWG shares had been deposited at DTC and that "[s]uch non-freely tradable shares are not DTC eligible."

DTC has not articulated an adequate rationale for providing a hearing to an issuer for whose securities DTC will provide no services, but not to an issuer whose securities are denied those clearance and settlement services that go to the heart of DTC's role as a clearing agency. DTC contends that its decision to deny IPWG's hearing request is consistent with DTC's Rules and the purposes of the Exchange Act, because IPWG's continuing status as an Eligible Security allows clearance and settlement services to resume immediately, as soon as IPWG "resolves [the matter]" "of the very serious problem of millions of its unregistered shares having been deposited at DTC." In contrast, according to DTC, if IPWG were no longer an Eligible Security, IPWG would have to re-apply and be confirmed for status as an Eligible Security before such services could resume. DTC has not explained, however, what IPWG must do to "resolve the matter," and, in the meantime, IPWG is substantially affected by the suspension of critical DTC services. IPWG argues, "[t]he only substantive difference between IPWG's indefinite and summary suspension and the determination that IPWG is not an Eligible Security is . . . the lack of procedural and administrative safeguards available to IPWG as an Interested Party [sic] under the summary suspension." Furthermore, consistent with DTC's position that only Participants, not issuers, have a right of Commission review pursuant to Section 19(f), even issuers entitled to a Rule 22 hearing in the event eligibility is either denied or revoked in its entirety would not have a right to challenge the fairness of, or action taken by DTC at the conclusion of, such a hearing. This result seems anomalous, and DTC offers no rationale to explain this outcome.

We conclude, based on the analysis above, that the language "any person with respect to access to services" in Exchange Act Sections 19(f) and 17A(b)(3)(H) requires fair procedures at the registered clearing agency and permits Commission review of denial of access to issuers, such as IPWG, whose securities have been suspended from clearance and settlement services offered by a clearing agency, even if those services are not provided directly to the issuer.²⁹ DTC's rules cannot control the scope of the statutory terms in Exchange Act Sections 17A(b)(3)(H) or 19(f). Moreover, while DTC does not have a contractual relationship with

²⁹ DTC's assertion that it provides services only to its Participants is based in part on its Rule 6, which lists the services it provides and does not include in that list the acceptance of issuer securities as eligible, and in part on its argument that it has contractual relationships only with its Participants, not with issuers.

issuers, it does have a business relationship with them. As noted, DTC requires issuers to provide it with proof that their shares are either registered with the Commission or subject to a valid exemption before DTC will deem the shares eligible and has accorded the right to a Rule 22(f) hearing to issuers whose securities cease to be Eligible Securities under Rule 22.³⁰

Accordingly, we find that IPWG is a "person" entitled both to "fair procedures" under Exchange Act Section 17A(b)(3)(H) in connection with DTC's suspension of clearance and settlement services with respect to IPWG's securities held by DTC Participants and to Commission review under Exchange Act Section 19(f) of DTC's suspension determination.

III.

Exchange Act Section 17A(b)(5)(B) states that, when a registered clearing agency determines that "a person shall be . . . prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for . . . prohibition or limitation under consideration and keep a record." Section 19(f) further provides that any Commission review will be based on the record before the self-regulatory organization, suggesting the necessity of compiling a record adequate to support any decision by DTC.

³⁰ In support of DTC's position that it owes no fair procedure to issuers like IPWG, DTC states, "Otherwise, the door may be flung open to all those who do business with a participant, including their institutional and retail customers." We believe, based on the analysis above, that DTC's relationships with the issuers of Eligible Securities are distinguishable from those between DTC and the institutional and retail customers of its Participants.

For example, in order to be able to trade securities using DTC's services, individual and retail customers of Participants are not required to provide information directly to DTC, nor is there any direct contact between DTC and those customers. Issuers, on the other hand, must provide DTC with a completed questionnaire in connection with eligibility requests.

Further, DTC has submitted, as an exhibit to its brief, evidence indicating that, on November 20, 2009, several weeks after DTC's suspension of services, trading volume in IPWG's securities was over 5,000,000 shares. Thus, individual shareholders were able to avoid the effects of the suspension by selling their shares, at least as of November 20, 2009. However, unlike individual shareholders, IPWG remains subject to the stigma of the suspension over two years after its initial imposition. Moreover, there might be other long-term effects on IPWG if the lengthy continuation of the suspension affected liquidity and share prices.

For many issuers, DTC does provide some recourse in circumstances such as those in which IPWG finds itself. An issuer may pursue, through a DTC Participant, the withdrawal of its securities from Eligible Security status.³¹ Once a Participant's request to withdraw the issuer's securities from eligibility status is granted, the issuer can, with the assistance of a DTC Participant, re-apply for status as an Eligible Security. As part of the re-application for eligibility, the issuer may need to obtain an opinion of counsel stating that its securities were either registered with the Commission or the subject of a valid exemption from registration.³²

The option of pursuing a withdrawal of and re-application for eligibility through a Participant, however, may not be available to all issuers, especially relatively small companies such as IPWG, simply because Participants may find that not enough of their customers hold the issuer's securities for pursuit of the withdrawal and re-application for eligibility to be worthwhile to the Participant. If an issuer is unable to find a Participant willing to engage in this process with the issuer and also has no independent recourse when denied access by DTC to clearing and settlement services, then, in those circumstances, no person may have a means of challenging DTC's suspension of this central service in the NSCSS and ensuring DTC's accountability for its action. Thus, this indirect route for an issuer to respond to an order denying some but not all services with respect to its securities is not an adequate substitute for a direct opportunity for the issuer to be heard by DTC.

Given the record currently before us, we cannot conclude that DTC provided IPWG with the procedural safeguards required by Section 17A. DTC's Important Notice fails to meet the statutory requirements because (1) it was not sent to IPWG itself, but rather to DTC's Participants;³³ and (2) it merely points to the existence of the Commission's complaint against certain IPWG shareholders without any additional explanation of why the existence of the complaint warrants the suspension of clearance and settlement services with respect to IPWG's securities. Moreover, although Section 17A states that parties such as IPWG must receive an

³¹ An issuer's securities may be withdrawn from their status as Eligible Securities only with the assistance of a Participant. See Exchange Act Rel. No. 47978 (June 4, 2003), 80 SEC Docket 1309, 1310 ("DTC's proposed rule change provides that upon receipt of a withdrawal request from an issuer, DTC will take the following actions: (1) DTC will issue an Important Notice notifying its [P]articipants of the receipt of the withdrawal request from the issuer and reminding [P]articipants that they can utilize DTC's withdrawal procedures if they wish to withdraw their securities from DTC; and (2) DTC will process withdrawal requests submitted by [P]articipants in the ordinary course of business but will not effectuate withdrawals based upon a request from the issuer.").

³² See "Information for Securities to be Made 'DTC-Eligible'," http://www.dtcc.com/products/documentation/asset/Securities_DTCEligibility.pdf, pp. 4-5.

³³ The record indicates that IPWG learned of the suspension a few days after the Important Notice was issued after being informed by a customer of a DTC Participant.

opportunity to be heard, DTC's November 3, 2009 letter responding to IPWG's request for a hearing states that "DTC declines [IPWG's hearing] request." The Important Notice also does not specify the expected duration of the suspension, nor does it specify the actions that IPWG must take to remove the suspension.

DTC asserts that it informally provided IPWG "an analogous procedure," implying it has satisfied any Section 17A requirements it may have with respect to IPWG. Specifically, DTC avers that it: (1) provided several oral responses to inquiries from IPWG's counsel regarding the reasons for the suspension of services, as well as possible means of lifting it; (2) reviewed IPWG's October 26, 2009 letter requesting a Rule 22 hearing on the suspension of services; and (3) issued a letter on November 3, 2009, responding to IPWG's October 26 letter, setting forth its reasons for the suspension of services and suggesting possible avenues for its resolution. However, the content of the discussions between DTC and IPWG's counsel are not part of the record currently before the Commission.³⁴ Moreover, in the November 3, 2009 letter and before us, DTC claims that IPWG should "address its concerns to the SEC" in order to remove the suspension, but, as noted, neither the Important Notice, nor DTC in its briefs on appeal, articulates what relief DTC believes the Commission could provide to an issuer in IPWG's circumstances here.

DTC also states that it was required to act urgently in imposing the suspension because the Commission complaint in the Civil Litigation identified serious concerns that the "fungible bulk" of IPWG securities in DTC custody may have been tainted.³⁵ If DTC believes that circumstances exist that justify imposing a suspension of services with respect to an issuer's securities in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension, it may do so. However, in such circumstances, these processes should

³⁴ As a result, we do not know whether DTC suggested that IPWG withdraw and re-apply for status as an Eligible Security. In any event, as noted above, this process does not give the issuer the opportunity to contest the validity of the suspension and requires the assistance of a DTC Participant. And there is no indication that any DTC Participant sought to assist IPWG in such a manner here.

³⁵ "Fungible bulk" means that there are no specifically identifiable shares directly owned by DTC Participants. Rather, each Participant owns a *pro rata* interest in the aggregate number of shares of a particular issuer held at DTC. Each customer of a DTC Participant owns a *pro rata* interest in the shares in which the DTC Participant has an interest. DTC argues that it is necessary to suspend clearance and settlement services to all of IPWG's shares held in DTC custody, not just the shares held by the Complaint Defendants, because it is impossible for DTC to distinguish which shares are freely tradable and which are not, since the shares are held in DTC's "fungible bulk" of IPWG securities.

balance the identifiable need for emergency action with the issuer's right to fair procedures under the Exchange Act. Under such procedures, DTC would be authorized to act to avert an imminent harm, but it could not maintain such a suspension indefinitely without providing expedited fair process to the affected issuer.³⁶

DTC argues that process beyond that already provided to IPWG would serve no purpose. The reason for DTC's suspension (*i.e.*, the existence of the Commission's 2009 complaint) is uncontroverted and therefore, DTC contends, there are no relevant facts in dispute. Further, DTC claims that IPWG's culpability for the violations that served as the basis for the Commission's complaint was immaterial to the determination to suspend clearance and settlement services with respect to IPWG's securities.

However, several specific issues, which we consider important in making a determination whether DTC's actions were consistent with the purposes of the Exchange Act, remain unaddressed by the record of DTC's action that we currently have before us.³⁷ The lack of a record below makes it impossible for the Commission to assess the merits of these issues. For these reasons, it is necessary to remand the proceeding to DTC for such consideration.

IV.

Based on our review of the record and the applicable authorities discussed above, we conclude that IPWG is entitled to Commission review of DTC's suspension of clearance and settlement services with respect to IPWG's common shares, and that DTC did not provide IPWG with adequate fair procedure in connection with the suspension. In accordance with these determinations, we remand this proceeding to DTC for development of the record in accordance

³⁶ DTC may design such processes in accordance with its own internal needs and circumstances. It may look for guidance to the processes provided: (1) under Federal Rule of Civil Procedure 65(a) and (b), Fed. R. Civ. P. 65(a) and (b), with respect to requests for preliminary injunctions and temporary restraining orders; and (2) under FINRA Rule 9558 with respect to actions authorized by Section 15A(h)(3) of the Exchange Act. These processes include (1) specification of the type of evidence that must be included in an initial notice to justify immediate action; and (2) processes that provide an expedited opportunity for the opposing party to be heard.

³⁷ For example, in support of its argument that the suspension of clearance and settlement services with respect to all IPWG shares, and not only those held by the Complaint Defendants, was unnecessarily draconian, IPWG argues that the remedies available to individuals who purchase securities sold in violation of Section 5 of the Securities Act of 1933 provide adequate protection of the public against the sales of unregistered securities. DTC does not respond to this IPWG argument, other than to reiterate that it is impossible to distinguish between the holders of particular shares in the "fungible bulk." IPWG could also address whether its securities currently are registered or exempt from registration.

with this opinion and for further consideration, pursuant to procedures that accord with the fairness requirements of Section 17A(b)(3)(H) of the Exchange Act, of the determination to suspend all services, except custody services, for the common shares of IPWG. In addition, we believe that DTC should adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly in any future such issuer cases. We do not intend to suggest any view on the outcome of this remand.

An appropriate order will issue.³⁸

By the Commission (Chairman SCHAPIRO and Commissioners WALTER, AGUILAR, PAREDES and GALLAGHER).

Elizabeth M. Murphy
Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

³⁸ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 66611 / March 15, 2012

Admin. Proc. File No. 3-13687

In the Matter of the Application of

INTERNATIONAL POWER GROUP, LTD.
c/o John Benvengo, CEO/President
1420 Celebration Blvd., Suite 313
Celebration, FL 34747

For Review of Action Taken by

DEPOSITORY TRUST COMPANY

ORDER REMANDING PROCEEDING TO REGISTERED CLEARING AGENCY

On the basis of the Commission's opinion issued this day, it is

ORDERED that this proceeding with respect to International Power Group, Ltd. be, and it hereby is, remanded to The Depository Trust Company for further consideration.

By the Commission.

Elizabeth M. Murphy
Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 15, 2012

In the Matter of

Asiamart, 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 Asiamart, Inc. because it has not filed any periodic reports since the period ended March 31, 2009.

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 company. 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 company is suspended for the period from 9:30 a.m. EDT on March 15, 2012, through 11:59 p.m. EDT on March 28, 2012.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66606 / March 15, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14804

In the Matter of

Asiamart, Inc.,

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 the respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Asiamart, Inc. ("AAMA")¹ (CIK No. 1072702) is a void Delaware corporation located in Hunghom, Kowloon, Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AAMA 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 \$587,690 for the prior three months. On July 17, 2009, AAMA filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Delaware, which was still pending as of March 8, 2012. As of March 8, 2012, the common stock of AAMA was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

¹ The short form of the issuer's name is also its ticker symbol.

B. DELINQUENT PERIODIC FILINGS

As discussed in more detail above, the Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic reports, and, through its failure to maintain a valid address on file with the Commission as required by Commission rules, failed to receive the delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

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, 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.

3. As a result of the foregoing, the Respondent 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 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 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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

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 the 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 the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of 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 the 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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 15, 2012

In the Matter of

Eugene Science, 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 Eugene Science, Inc. because it has not filed any periodic reports since the period ended June 30, 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 company. 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 company is suspended for the period from 9:30 a.m. EDT on March 15, 2012, through 11:59 p.m. EDT on March 28, 2012.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66608 / March 15, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14805

In the Matter of

Eugene Science, Inc.,

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 the respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Eugene Science, Inc. ("EUSI")¹ (CIK No. 1107685) is a void Delaware corporation located in Seoul, Korea with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EUSI 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 \$1,121,893 for the prior six months. As of March 8, 2012, the common stock of EUSI was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc., had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

¹ The short form of the issuer's name is also its ticker symbol.

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, the Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic reports, and, through its failure to maintain a valid address on file with the Commission as required by Commission rules, failed to receive the delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

3. 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.

4. As a result of the foregoing, the Respondent 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 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 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, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

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 the 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 the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of 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 the 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

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-48; File No. S7-03-12]

Privacy Act of 1974: Systems of Records.

AGENCY: Securities and Exchange Commission.

ACTION: Notice to revise two existing systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission ("Commission" or "SEC") proposes to revise two existing systems of records. The two existing systems of records are "Administrative Audit System (SEC-14)" last published in the Federal Register Volume 63, Number 47 on Wednesday, March 11, 1992 and "Fitness Center Membership, Payment, and Fitness Records (SEC-48)", last published in the Federal Register Volume 64, Number 77 on Thursday, April, 22, 1999.

DATES: The proposed systems will become effective [insert date that is 40 days after publication in the Federal Register] unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before [insert date that is 30 days after publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-03-12 on the subject line.

Paper Comments:

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. All submissions should refer to File Number S7-03-12. 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/other.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Todd Scharf, Acting Chief Privacy Officer, Office of Information Technology, 202-551-8800.

SUPPLEMENTARY INFORMATION:

The Commission proposes to revise two existing systems of records, "Administrative Audit System (SEC-14)" and "Fitness Center Membership, Payment, and Fitness Records (SEC-48)". As described in the last published notice, the Administrative Audit System (SEC-14) records are used to ensure that all obligations and expenditures other than those in the pay and leave system are in conformance with laws, existing rules and regulations, and good business practice, and to maintain subsidiary records at the proper account and/or organizational level where responsibility for control of costs exists. Minor administrative changes to SEC-14 have been incorporated to reflect the Commission's current address in the following sections: Notification, Access and Contesting Records Procedures. Substantive changes to the notice have been made to the following sections: (1) System Name, reflecting the new title: "SEC Financial

and Acquisition Management System”; (2) System Location reflecting the addition of a new off-site location of the records; (3) Categories of individuals reflecting the types of individuals whose personally identifiable information is contained in the system; (4) Categories of Records, adding new types of individually identifiable information; (5) Routine Uses, adding certain standard routine uses as applicable to this system of records (those numbered 1 through 10); and (6) Record Source, reflecting the sources from which records are received.

As described in the last published notice, the Fitness Center Membership, Payment, and Fitness Records (SEC-48) system is used to enable SEC Fitness Center staff to track fitness center membership, fee payments, and the physical fitness of members and to allow the SEC to provide a variety of health and fitness resources to its employees. Minor administrative changes to SEC-48 have been incorporated to reflect the Commission’s current address in the following sections: System Location; and Notification, Access and Contesting Records Procedures.

Substantive changes to the notice have been made to the following sections: (1) System Name, reflecting the new title: “SEC Employee’s Health and Fitness Program Records”; and (2) Routine Use, adding standard routine uses as applicable to this system.

The Commission has submitted a report of the amended existing systems of records to the appropriate Congressional committees and to the Director of the Office of Management and Budget (“OMB”) as required by 5 U.S.C. 552a(r) (Privacy Act of 1974) and guidelines issued by OMB on December 12, 2000 (65 FR 77677).

Accordingly, the Commission is proposing amendment of two existing systems of records to read as follows:

SEC-14

SYSTEM NAME:

SEC Financial and Acquisition Management System

SYSTEM LOCATION:

1. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. Files may also be maintained in the Commission's Regional Offices.
2. Federal Aviation Administration, Mike Munroney Aeronautical Center, AMZ-740, 6500 S. MacArthur Blvd., Headquarters Bldg. 1, Oklahoma City, OK 73169

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SEC employees, contractors, vendors, interns, customers and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee personnel information: Limited to SEC employees, and includes name, address, Social Security number (SSN); Business-related information: Limited to contractors/vendors and customers, and includes name of the company/agency, point of contact, telephone number, mailing address, email address, contract number, CAGE code, vendor number (system unique identifier), DUNS number, and TIN, which could be a SSN in the case of individuals set up as sole proprietors; and Financial information: Includes financial institution name, lockbox number, routing transit number, deposit account number, account type, debts (e.g., unpaid bills/invoices, overpayments, etc.), and remittance address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3501, et seq. and 31 U.S.C. 7701(c). Where the employee identification number is the social security number, collection of this information is authorized by Executive Order 9397.

PURPOSE(S):

Serves as the core financial system and integrates program, financial and budgetary information. Records are collected to ensure that all obligations and expenditures other than those in the pay

and leave system are in conformance with laws, existing rules and regulations, and good business practice, and to maintain subsidiary records at the proper account and/or organizational level where responsibility for control of costs exists.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.
2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.
3. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.
4. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee;

the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

5. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.
6. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.
7. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.
8. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.
9. To members of Congress, the Government Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

10. To a commercial contractor in connection with benefit programs administered by the contractor on the Commission's behalf, including, but not limited to, supplemental health, dental, disability, life and other benefit programs.
11. To the OMB in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.
12. To the Treasury, Government Accountability Office, or other appropriate agencies to provide appropriate audit documentation.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:
STORAGE:**

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

Records may be retrieved by a name of employee, social security number (SSN) for employees, SSN/Tax Identification Number (TIN) for vendors doing business with the SEC, Name for both employees and vendors, Vendor Number (system unique) for both employees and vendors, DUNS / DUNS + 4.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. The records are kept in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Access is limited to those personnel whose official duties require access. Computerized

records are safeguarded through use of access codes and information technology security.

Contractors and other recipients providing services to the Commission are contractually obligated to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, Office of Financial Management, Securities and Exchange Commission,
100 F Street, NE, Washington, DC 20549-6041.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

The information maintained in Department of Transportation, (DOT)/Enterprise Service Center (ESC): Purchase orders, vouchers, invoices, contracts, and electronic records; Department of

Interior (DOI)/Federal Personnel Payroll System (FPPS): travel applications, disgorgement information; or other paper records submitted by employees, vendors, and other sources, including claims filed by witnesses in SEC actions; Delphi-Prism: FedTraveler, Department of the Interior (DOI) Payroll System, Bureau of Public Debt, and EDGAR Momentum.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

SEC-48

SYSTEM NAME:

Fitness Center Membership, Payment, and Fitness Records SEC Employee's Health and Fitness Program Records.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
Aquila Fitness Consulting Systems, Ltd, 429 Lenox Avenue, Suite 4W21, Miami Beach, FL 33139-6532.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SEC employees who voluntarily sign up for membership benefits for SEC fitness programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain employee name, division, office address, email address, home address, home and cell telephone numbers, date of birth, health pre-screening questions, membership number, fee and payment information (including electronic debit information), and fitness progress charts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, et seq.

PURPOSE(S):

The system enables SEC Fitness Center staff to track Fitness Center membership, fee payments, and the physical fitness of members. The primary use of these records is to allow the SEC to provide a variety of health and fitness resources to its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.
2. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

3. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.
4. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.
5. To members of Congress, the Government Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.
6. To a commercial contractor in connection with benefit programs administered by the contractor on the Commission's behalf, including, but not limited to, supplemental health, dental, disability, life and other benefit programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

Records are retrieved by the individual's name or membership number.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. The records are kept in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission are contractually obligated to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Executive Director, Office of Human Resources, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-1, Alexandria, VA 22312-2413.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5100.

CONTESTING RECORD PROCEDURES:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

All information is provided by Fitness Center members.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Date: March 15, 2012

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 20, 2012

In the Matter of

ProElite, Inc. and
Universal Guardian 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 ProElite, Inc. because it has not filed any periodic reports since the period ended December 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Universal Guardian Holdings, Inc. because it has not filed any periodic reports since the period ended September 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. EDT on March 20, 2012, through 11:59 p.m. EDT on April 2, 2012.

By the Commission.

Elizabeth M. Murphy
Elizabeth M. Murphy
Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66621 / March 20, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14806

In the Matter of

ProElite, Inc. and
Universal Guardian 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 the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. ProElite, Inc. ("PELE")¹ (CIK No. 1015789) is a New Jersey corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PELE is delinquent in its periodic filings with the Commission, having filed some but not all of the required periodic reports. The most recent filings were a Form 10-Q for the period ended September 30, 2008 and a Form 10-K for the period ended December 30, 2008, both filed November 21, 2011. The Form 10-K reported a net loss of \$55,567,437 for the prior twelve months. The last report previously filed was for the period ended June 30, 2008, which was filed on August 19, 2008. As of March 16, 2012, the common stock of PELE was quoted on OTC Link (previously "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link"), had ten market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

¹The short form of each issuer's name is also its stock symbol.

2. Universal Guardian Holdings, Inc. ("UGHO") (CIK No. 859916) is a Delaware corporation located in Newport Beach, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). UGHO 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 \$12,102,808 for the prior six months. As of March 16, 2012, the common stock of UGHO was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

3. As discussed in more detail above, both 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.

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.

5. 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)].

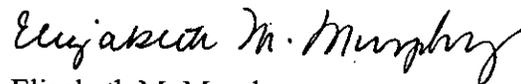
If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against 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's 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

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66626 / March 20, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14807

In the Matter of

MICHAEL A. KIMELMAN,

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 A. Kimelman ("Kimelman" 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 Sections III.2 and III.4 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.

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III.

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

1. Kimelman, age 40, resides in Larchmont, New York. During the relevant time period, Kimelman was a trader at Lighthouse Financial Group, LLC, a registered broker-dealer.

2. On March 16, 2012, a judgment was entered by consent against Kimelman, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Arthur J. Cutillo, et al., Civil Action Number 09-CV-9208, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged, *inter alia*, that, while working as a trader at Lighthouse Financial Group in 2007, Kimelman was tipped material, nonpublic information concerning the acquisition of 3Com Corp., which had been misappropriated in violation of a duty. The complaint further alleged that Kimelman traded in these securities based on that material, nonpublic information and that he knew, or should have known, that the information was obtained in breach of a fiduciary or other duty of trust and confidence owed to the source of the information.

4. On June 13, 2011, Kimelman was found guilty of one count of conspiracy to commit securities fraud and two counts of securities fraud in violation of Title 18 United States Code, Sections 2 and 371, and Title 15 United States Code, Sections 78j(b) and 78ff, in the U.S. District Court for the Southern District of New York, in United States v. Michael Kimelman, 10-CR-56.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, Respondent Kimelman be, and hereby is barred from association with any broker or 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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 66638 / March 21, 2012

ADMINISTRATIVE PROCEEDING

File No. 3-14705

In the Matter of

DEREK LOPEZ,

Respondent.

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

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to accept the Offer of Settlement submitted by Derek Lopez ("Lopez" or "Respondent") pursuant to Rule 240(a) of the Rules of Practice of the Commission, 17 C.F.R. § 201.240(a), for the purpose of settlement of these proceedings initiated against Respondent on January 19, 2012, pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act").

II.

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 Making Findings, and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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III.

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

1. Lopez, age 43, is a resident of Torrance, California. Beginning in at least 2006 and through at least 2010, Lopez was a registered representative associated with broker-dealers registered with the Commission and held Series 6, 7, 63, and 65 licenses.

2. On June 3, 2011, a judgment was entered by consent against Lopez, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Blake G. Williams, et al., Civil Action Number 3:10-CV-1068-O, in the United States District Court for the Northern District of Texas.

3. The Commission's complaint alleged that Lopez and others, using numerous entities that they controlled, committed securities fraud by manipulating the markets of numerous microcap stocks from 2006 to 2008. The complaint also alleged that Lopez sold stock in unregistered offerings and that the subsequent manipulation of those stocks led to artificially high prices and volume, which allowed Lopez to sell his holdings for substantial gains.

IV.

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

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

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66640 / March 21, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14809

In the Matter of

Jetborne International, Inc.,
Jotan, Inc.,
Kamp-Rite Holdings, Inc.,
Key Command International Corp.,
Liege Holding, Inc.,
Lloyds Shopping Centers, Inc.,
Long Island Physician Holdings Corp., and
Mikron Infrared, 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 Jetborne International, Inc., Jotan, Inc., Kamp-Rite Holdings, Inc., Key Command International Corp., Liege Holding, Inc., Lloyds Shopping Centers, Inc., Long Island Physician Holdings Corp., and Mikron Infrared, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Jetborne International, Inc. (CIK No. 811786) is a void Delaware corporation located in Miami, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Jetborne 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 April 30, 1996, which reported a net loss of \$225,456 for the prior twelve months.

2. Jotan, Inc. (CIK No. 921381) is a dissolved Florida corporation located in Jacksonville, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Jotan 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, 1998, which reported a net loss of over \$3.15 million for the prior six months.

3. Kamp-Rite Holdings, Inc. (CIK No. 1440823) is a Florida corporation located in Quitman, Mississippi with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Kamp-Rite is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q/A for the period ended March 31, 2009, which reported a net loss of \$7,033 from the company's May 22, 2008 inception to March 31, 2008.

4. Key Command International Corp. (CIK No. 1077278) is a forfeited Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Key Command 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, 2005, which reported a net loss of \$39,370 for the prior nine months.

5. Liege Holding, Inc. (CIK No. 1105657) is a Florida corporation located in Huntington, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Liege Holding 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 May 31, 2003.

6. Lloyds Shopping Centers, Inc. (CIK No. 59956) is a dissolved New York corporation located in Middletown, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Lloyds 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 January 1, 1994, which reported a loss of \$333,337 for the prior twelve months. As of March 9, 2012, the company's stock (symbol "LLYSB") was traded on the over-the-counter markets.

7. Long Island Physician Holdings Corp. (CIK No. 1006868) is a dissolved New York corporation located in Melville, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Long Island Physician 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, 2006, which reported a net loss of over \$7.55 million for the prior nine months.

8. Mikron Infrared, Inc. (CIK No. 787809) is a New Jersey corporation located in Oakland, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Mikron Infrared 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 January 31, 2007.

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

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. 66634 / March 21, 2012**

**INVESTMENT ADVISERS ACT OF 1940
Release No. 3384 / March 21, 2012**

**ADMINISTRATIVE PROCEEDING
File No. 3-14808**

In the Matter of

BRENDA A. ESCHBACH,

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 Brenda A. Eschbach ("Eschbach" 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

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jurisdiction over her 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. Eschbach, age 55, is a resident of Tustin, California. From May 2000 to August 2007, Eschbach was a registered representative associated with a broker-dealer and investment adviser registered with the Commission ("Adviser"). From September 2007 through August 2009, Eschbach was a registered representative associated with another broker-dealer. In addition, from September 2007 through November 2009, Eschbach was president and chief executive officer of Aventine Investment Services, Inc. ("Aventine"), an investment adviser registered with the Commission from September 13, 2007 through January 22, 2008.

2. On September 30, 2011, Eschbach pleaded guilty to Counts 1 and II of an Information alleging mail fraud in connection with a scheme to defraud investors in violation of Section 1341, Title 18, United States Code, and money laundering in violation of Section 1957, Title 18, United States Code, before the United States District Court for the Central District of California, in United States v. Brenda A. Eschbach, No. 8:10-cr-00017-JVS-1.

3. The counts of the criminal information to which Eschbach pleaded guilty alleged, inter alia, that she, knowingly and with the intent to defraud, devised, participated in, and executed a scheme to defraud investors as to material matters, and representations, and promises, and the non-disclosure and concealment of material facts; that she used the United States mail to carry out or attempt to carry out an essential part of her scheme; that she engaged in a monetary transaction that involved criminally derived property that had a value greater than \$10,000, and the property, in fact, derived from mail fraud; and that the transaction occurred in the United States.

4. On March 9, 2012, a final judgment was entered by consent against Eschbach enjoining her from future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act, Exchange Act Rule 10b-5, and Sections 206(1) and 206(2) of the Advisers Act in the civil action entitled U.S. Securities and Exchange Commission v. Brenda A. Eschbach, No. SACV-12-0244-AG (JPRx)(C.D.Cal.), in the United States District Court for the Central District of California.

5. The Complaint alleged that Eschbach, through Adviser and Aventine, breached the trust of her brokerage customers and investment advisory clients and engaged in fraud when she misappropriated over \$3 million from several of her customers at Adviser and from certain clients at Aventine, and concealed her misappropriation by, among other things, issuing and mailing false and misleading account statements to those clients. The Complaint also alleged that Eschbach effected transactions in securities without the knowledge of the broker-dealers with whom she was associated and outside their supervision or control.

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) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Eschbach 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 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 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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66647 / March 22, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14811

In the Matter of

Roger Greer,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 17A 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 17A of the Securities Exchange Act of 1934 ("Exchange Act") against Roger Greer ("Greer" 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 17A of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

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

1. Greer, age 56, is a resident of Salt Lake City, Utah. Greer was the owner of National Stock Transfer, Inc. ("National"), a suspended Utah corporation with its principal place of business in Salt Lake City, Utah. As the owner, Greer operated and was familiar with National's business. His sister Kay Berensen-Galster replaced him in 2007, after Greer was convicted of a third degree felony for possession of child pornography. National became registered with the Commission as a transfer agent on March 29, 1983.

2. On January 31, 2012, a default and final judgment was entered against Greer, permanently enjoining him from aiding and abetting future violations of Sections 17(a)(3) and 17A(d) of the Exchange Act and Rules 17Ad-2, 17f-1, 17f-2(a), 17Ac2-1(c), 17Ac-2-2, 17Ad-6, 17Ad-7, 17Ad-10, 17Ad-13, 17Ad-15(c), 17Ad-17 and 17Ad-19 thereunder, in the civil action entitled Securities and Exchange Commission v. National Stock Transfer, et al., Civil Action Number 2:11-cv-798, in the United States District Court for the District of Utah.

3. The Commission's Complaint alleged that, for at least five years, National violated many of the transfer agent provisions of the federal securities laws, including, among other things, that National, as aided and abetted by Greer, failed to report lost or stolen securities in a timely manner, failed to maintain certain records, failed to maintain control books for all of its issuers and failed to file its annual report with the Commission. During the time period covered by the Complaint, National acted as the transfer agent for at least 58 issues of common and preferred stock.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 17A(c)(4)(C) of the Exchange Act that Respondent Greer 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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 66653 / March 26, 2012

ADMINISTRATIVE PROCEEDING

File No. 3-14812

In the Matter of

Channell Commercial Corporation,

Respondent.

**ORDER INSTITUTING PROCEEDINGS,
MAKING FINDINGS, AND REVOKING
REGISTRATION OF SECURITIES
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 proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Channell Commercial Corporation ("CHNL" or "Respondent").

II.

In anticipation of the institution of these proceedings, CHNL 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, CHNL consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), and to the findings as set forth below.

III.

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

1. CHNL (CIK No. 1013696) is a Delaware corporation located in Temecula, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). As of January 18, 2012, the common

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stock of CHNL was quoted on OTC Link, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. CHNL has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder because it has not filed any periodic reports with the Commission since the period ended September 30, 2008.

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission deems it necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of CHNL's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

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. 66655 / March 26, 2012

ADMINISTRATIVE PROCEEDING

File No. 3-14813

In the Matter of

**Jove Corp.,
Keiretsu, Inc.,
Luminart, Inc.,
Macten, Inc., and
Netlake, 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 Jove Corp., Keiretsu, Inc., Luminart, Inc., Macten, Inc., and Netlake, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Jove Corp. (CIK No. 718500) is a Michigan corporation located in Berkley, Michigan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Jove 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 \$101,314 for the prior three months. As of March 21, 2012, the company's stock (symbol "JVCP") was traded on the over-the-counter markets.

2. Keiretsu, Inc. (CIK No. 1124856) is a dissolved Colorado corporation located in Colorado Springs, Colorado with a class of securities registered with the Commission

pursuant to Exchange Act Section 12(g). Keiretsu is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on September 29, 2000, which provided no audited financial statements.

3. Luminart, Inc. (CIK No. 1000380) is an Ontario corporation located in Mississauga, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Luminart is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-FR registration statement on September 11, 1995, which reported a net loss of over \$2.73 million (Canadian) for the fifteen months ended March 31, 1995.

4. Macten, Inc. (CIK No. 1124857) is a dissolved Colorado corporation located in Colorado Springs, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Macten is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on October 2, 2000.

5. Netlake, Inc. (CIK No. 1124858) is a dissolved Colorado corporation located in Colorado Springs, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Netlake is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on September 29, 2000.

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.

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

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33-9303; 34-66654; 39-2483; IC-30008]

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 upgrade to the 2012 US GAAP and 2012 Mutual Fund Risk/Return Summary Taxonomies; to support period field validation updates for the submission of Form N-PX; to remove the OMB expiration date from Form D, 3, 4, and 5; and to include additional filer support fax numbers on various EDGAR Filer Management Website screens. The EDGAR system is scheduled to be upgraded to support this functionality on March 26, 2012.

The filer manual is also being revised to support the retirement of the DOS based Form N-SAR application and the introduction of the new online Form N-SAR application. The EDGAR system is scheduled to be upgraded to support this functionality on July 9, 2012.

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 Forms D, 3, 4, and 5 contact Heather Mackintosh, Office of Information Technology, at (202) 551-3600; in the Division of Investment Management for questions regarding Form N-PX contact Ruth Armfield Sanders, Senior Special Counsel, Office of Legal and Disclosure, at (202)

551-6989, and for questions concerning the modernized on-line Form N-SAR application, contact Heather Fernandez or Gregg Jaffray, Office of Financial Analysis, at (202)551-6703; in the Division of Risk, Strategy, and Financial Innovation for questions concerning XBRL Taxonomies update contact Walter Hamscher, at (202) 551-5397; in the Division of Trading and Markets for questions regarding new filer support fax numbers contact Catherine Moore, Special Counsel, Office of Clearance and Settlement, at (202) 551-5718; 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 12 (March 2012) and Volume II entitled EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 19 (March 2012). 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

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 Nov. 29, 2011. See Release No. 33-9281 (Nov. 22, 2011) [76 FR 73506].

² See Rule 301 of Regulation S-T (17 CFR 232.301).

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 12.0 on March 26, 2012 and will introduce the following changes: EDGAR will be updated to support the US GAAP 2012 Taxonomy and Mutual Fund Risk/Return Summary 2012 Taxonomy. Please see <http://sec.gov/info/edgar/edgartaxonomies.shtml> for a complete listing of supported standard taxonomies.

The Period field validations will be updated for the submission types N-PX-NT, N-PX-VR, N-PX-CR, and their amendments. Currently, these submission types only allow June 30 or September 30 of the current or prior years as valid period date. The Period field on these submission form types can be any valid date other than a future date.

The OMB expiration date will no longer be displayed on the Forms 3, 4, 5, and D. These forms will continue to display other OMB Approval information.

The Confirmation and Acknowledgement screens on the EDGAR Filer Management Website, which currently display the filer support fax numbers, will be updated to include Division of Investment Management and Division of Trading and Markets filer support fax numbers along with existing Division of Corporation Finance fax numbers.

On July 9, 2012, EDGAR Release 12.1.1 will be deployed to convert the DOS based Form N-SAR application to an online application. The DOS based application to create Form N-SAR documents will be retired as of 5:30, July 6, 2012, and EDGAR will no longer accept filings created by that application. Beginning Monday, July 9, 2012, Form N-SAR may only be filed using the online version of the form available on the EDGAR Filing Website or constructed by

³ See Release No. 33-9281 (Nov. 22, 2011) [76 FR 73506] in which we implemented EDGAR Release 11.3. For additional history of Filer Manual rules, please see the cites therein.

filers according to the new EDGAR N-SAR XML Technical Specification, available on the Commission's public website's "Information for EDGAR Filers" webpage (<http://www.sec.gov/info/edgar.shtml>). Submission form types NSAR-A, NSAR-A/A, NSAR-AT, NSAR-AT/A, NSAR-B, NSAR-BT, NSAR-BT/A, NSAR-U, and NSAR-U/A can be accessed by selecting the 'File Form N-SAR' link on the EDGAR Filing Website. Filers submitting submission type NSAR-U should continue to prepare the text document with the applicable answers and attach it to the NSAR-U submission type accessible from the 'File Form N-SAR' link on the EDGAR Filing Website.

Instructions to file Form N-SAR will be included in two new sections of Chapter 9 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: EDGAR Filing, Section 9.2.5 (File Form N-SAR) and Section 9.2.6 (Completing a Form N-SAR Submission). As of July 9, 2012, the EDGAR Filer Manual, Volume III: N-SAR Supplement will be retired.

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).⁴ It follows that the requirements of the Regulatory Flexibility Act⁵ 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,⁶ 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 12.0 is scheduled to become available on March 26, 2012. The EDGAR system upgrade to Release 12.1.1 is scheduled to become available on July 9, 2012. 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 1933,⁷ Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,⁸ Section 319 of the Trust Indenture Act of 1939,⁹ and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.¹⁰

⁴ 5 U.S.C. 553(b).

⁵ 5 U.S.C. 601- 612.

⁶ 5 U.S.C. 553(d)(3).

⁷ 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

⁸ 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

⁹ 15 U.S.C. 77sss.

¹⁰ 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

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.

2. Section 232.301 is revised to read as follows:

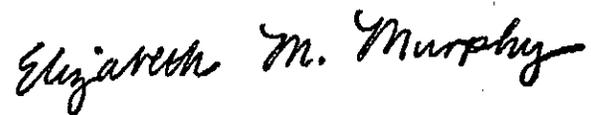
§232.301 EDGAR Filer Manual.

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," Version 12 (March 2012). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 19 (March 2012). 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
Secretary

March 26, 2012

*Commissioner Paredes
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66666 / March 27, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3385 / March 27, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14814

In the Matter of

Rafael Sanchez,

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 Rafael Sanchez ("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 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

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

1. Sanchez, 54 years old, is a resident of Altadena, California. From September 2007 to February 2011, Sanchez was a registered representative with MAM Wealth Management, LLC (dba MAM Securities, LLC) ("MAM"), a California limited liability company formed in 2003, with its principal place of business in Sherman Oaks, California. From January 28, 2003 to August 16, 2011, MAM was a Commission registered broker-dealer and a California registered investment adviser.

2. On February 1, 2012, a judgment was entered by consent against Sanchez, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. MAM Wealth Management, LLC, et al., Civil Action Number CV 11-2934 SJO (JCx), in the United States District Court for the Central District of California, Western Division.

3. The Commission's complaint alleged that from July 2007 through March 2009, Sanchez and his codefendant, Alex Martinez, invested approximately \$10.3 million of their advisory clients' funds in MAM Wealth Management Real Estate Fund, LLC ("Fund"), a speculative and risky investment suitable only for sophisticated investors. Despite his knowledge of these risks, Sanchez knowingly and recklessly misrepresented to clients that the Fund was a safe and relatively liquid investment. In addition, Sanchez and Martinez used their discretionary authority over the funds of MAM clients to invest substantial client assets into the Fund, in breach of their fiduciary duty because the Fund was an unsuitable investment for their clients who were unaccredited investors, retirees with limited means, or the Fund was contrary to the clients' stated conservative investment goals.

IV.

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

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66667; March 28, 2012

In the Matter of

The NASDAQ Stock Market
LLC

Order Granting Petition for Review and
Scheduling Filing of Statements

Pursuant to Rule 431 of the Rules of Practice,¹ it is ORDERED that the petition of The NASDAQ Stock Market LLC for review of the order disapproving by delegated authority File No. SR-NASDAQ-2011-010² is granted.

It is ORDERED, pursuant to Rule 431 that any party or other person may file a statement in support of or in opposition to the action made by delegated authority on or before April 18, 2012.

By the Commission.



Elizabeth M. Murphy
Secretary

¹ 17 CFR 201.431.

² See Securities Exchange Act Release No. 65362 (September 20, 2011), 76 FR 59466 (September 26, 2011).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 29, 2012

In the Matter of

**Angstrom Microsystems Corp.,
Bedminster National Corp.,
Brake Headquarters U.S.A., Inc., and
BrandPartners Group, 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 Angstrom Microsystems Corp. 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 Bedminster National Corp. 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 Brake Headquarters U.S.A., Inc. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BrandPartners Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

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. EDT on March 29, 2012, and terminating at 11:59 p.m. EDT on April 12, 2012.

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. 66675 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14817

In the Matter of

Angstrom Microsystems Corp.,
Bedminster National Corp.,
Brake Headquarters U.S.A., Inc., and
BrandPartners Group, 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 the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Angstrom Microsystems Corp. ("AGMS")¹ (CIK No. 1378214) is a revoked Nevada corporation located in Boston, Massachusetts with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AGMS 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 \$1,641,641 for the prior nine months. As of March 26, 2012, the common shares of AGMS were quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link"), had eight market makers, and were eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

¹The short form of each issuer's name is also its stock symbol.

2. Bedminster National Corp. ("BMSTA") (CIK No. 1334314) is a revoked Nevada corporation located in Bedminster, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BMSTA 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 \$1,289,920 for the prior nine months. As of March 26, 2012, the common stock of BMSTA 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. Brake Headquarters U.S.A., Inc. ("BHQU") (CIK No. 854551) is a void Delaware corporation located in Perth Amboy, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BHQU 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, 1998, which reported a net loss of \$966,992 for the prior nine months. As of March 26, 2012, the common stock of BHQU was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. BrandPartners Group, Inc. ("BPTR") (CIK No. 798600) is a void Delaware corporation located in Rochester, New Hampshire with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BPTR 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, 2009, which reported a net loss of \$1,297,649 for the prior nine months. As of March 26, 2012, the common stock of BPTR was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

5. 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.

6. 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.

7. 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

SECURITIES EXCHANGE ACT OF 1934
Release No. 66672 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14815

In the Matter of

Advanced BioPhotonics, Inc.,
Advanced Viral Research Corp.,
Brantley Capital Corp.,
Brilliant Technologies Corporation,
4C Controls, Inc., and
2-Track Global, 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 the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Advanced BioPhotonics, Inc. ("ABPH")¹ (CIK No. 1096182) is a void Delaware corporation located in Bohemia, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ABPH 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 \$7,068,032 for the prior nine months. As of March 26, 2012, the common stock of ABPH was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link"), had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

¹The short form of each issuer's name is also its stock symbol.

2. Advanced Viral Research Corp. ("ADVR") (CIK No. 786623) is a void Delaware corporation located in Yonkers, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ADVR 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 \$2,972,382 for the prior nine months. On January 24, 1990, a final judgment of permanent injunction was entered enjoining ADVR against future violations of Sections 5(b)(2) and 17(a) of the Securities Act of 1933, and Sections 10(b), 13(a) and 15(d) of the Securities Exchange Act of 1934 and Rules 12b-20, 13a-1, 13a-13, 15d-1, and 15d-13 thereunder. *SEC v. Advanced Viral Research Corp., et al.*, 89-2785 (S.D. Fla. Jan. 24, 1990). As of March 26, 2012, the common stock of ADVR was quoted on OTC Link, had ten market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Brantley Capital Corp. ("BBDC") (CIK No. 1021009) is a forfeited Maryland corporation located in Purchase, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BBDC 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, 2004. As of March 26, 2012, the common stock of BBDC 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. Brilliant Technologies Corporation ("BLLN") (CIK No. 1054825) is a delinquent Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BLLN 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, 2007, which reported a net loss of \$1,255,936 for the prior three months. As of March 26, 2012, the common stock of BLLN was quoted on OTC Link, had twelve market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. 4C Controls, Inc. ("FOUR") (CIK No. 1318820) is a revoked Nevada corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). FOUR 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, 2009, which reported a net loss of \$5,518,534 for the prior nine months. As of March 26, 2012, the common stock of FOUR was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. 2-Track Global, Inc. ("TOTG") (CIK No. 1174290) is a Nevada corporation located in Lincroft, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TOTG 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, 2009, which reported a net loss of \$710,544 for the prior nine months. As of March 26, 2012, the common stock of TOTG 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

7. 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.

8. 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.

9. 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

*Commissioner Watter
Commissioner Gallagher
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66673 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14816

In the Matter of

SATYAM COMPUTER
SERVICES LIMITED d/b/a
MAHINDRA SATYAM,

Respondent.

ORDER INSTITUTING PROCEEDINGS
PURSUANT TO SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND REVOKING REGISTRATION OF
SECURITIES

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Satyam Computer Services Limited d/b/a Mahindra Satyam ("Satyam" 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, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 12(j) of the Securities Exchange Act of 1934, Making Findings, and Revoking Registration of Securities ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. Satyam is a large information technology service company incorporated in the Republic of India with its principal executive offices in Hyderabad. Respondent conducts business in the United States as Satyam, is registered as a corporation doing business in the State of New York and as a foreign issuer with the Commission under the name Satyam.

B. From May 2001 until October 2010, Satyam's equity shares were registered pursuant to Section 12(b) of the Exchange Act and Respondent's American Depositary Shares ("ADSs"), each representing two equity shares, were listed on the New York Stock Exchange. On October 4, 2010, Satyam filed a Form 25 with the Commission voluntarily removing its securities from listing on the NYSE and from registration under Section 12(b) of the Exchange Act. Satyam's equity shares underlying the ADSs are currently deemed registered pursuant to Section 12(g) of the Exchange Act and Satyam's ADSs are currently quoted on the OTC Market under the symbol SAYCY.PK.

C. On April 5, 2011, the Commission filed a settled civil injunctive action against Satyam and accepted its offer of settlement in which Respondent: (1) consented to an injunction prohibiting violations of Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1 and 13a-16 promulgated thereunder; (2) paid a civil penalty of \$10 million; and (3) agreed to comply with specified undertakings, including the hiring of an independent qualified consultant. The Complaint in that action set forth that, from at least 2003 through September 2008, Satyam deceived investors by falsifying its revenue, income, earnings per share and interest bearing deposits. Satyam acknowledged that it falsely reported, among other items, over \$1 billion in revenue in its publicly filed financial statements.

D. Satyam is delinquent in its periodic filings and reports furnished with the Commission. In particular, Satyam's former management filed materially deficient Forms 20-F for the fiscal years ended March 31, 2004, 2005, 2006, 2007, and 2008 and has furnished materially deficient quarterly statements in its Forms 6-K throughout those periods and for the first two quarters of fiscal year 2009. In addition, Satyam has failed to file Forms 20-F for the fiscal years ended March 31, 2009, 2010, and 2011 and has failed to furnish quarterly statements that conform to United States Generally Accepted Accounting Principles ("GAAP") for those periods and for the first three quarters of fiscal year 2012.

E. Satyam furnished audited financial statements that reflect they were prepared in accordance with Indian GAAP for the years ended March 31, 2009 and March 31, 2010 on September 29, 2010. Satyam furnished those financial results and subsequent financial results that reflect they were prepared in accordance with Indian GAAP under cover of Forms 6-K submitted

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.

to the Commission. Satyam did not restate its prior financial statements but instead reflected errors, omissions, irregularities, and misstatements identified for periods prior to the year ended March 31, 2009 as prior period adjustments, in accordance with an order from the Company Law Board, Principal Bench, New Delhi, India.

F. In August 2011, Satyam determined that it would not be able to restate its financials in compliance with Commission reporting obligations and in accordance with U.S. GAAP and, as a result, would be unable to become current in its Commission reporting obligations. On August 9, 2011, Satyam issued a press release announcing its plans to wind-down its ADS program in March 2012.

G. Based on the foregoing, Satyam has not filed or furnished the requisite reports and therefore has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-16 thereunder, while its equity shares have been registered with the Commission.

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means of instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

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

March 29, 2012

In the Matter of

Advanced BioPhotonics, Inc.,
Advanced Viral Research Corp.,
Brantley Capital Corp.,
Brilliant Technologies Corporation,
4C Controls, Inc., and
2-Track Global, 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 Advanced BioPhotonics, 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 Advanced Viral Research Corp. 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 Brantley Capital Corp. because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Brilliant Technologies Corporation because it has not filed any periodic reports since the period ended March 31, 2007.

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It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 4C Controls, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 2-Track Global, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

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. EDT on March 29, 2012, and terminating at 11:59 p.m. EDT on April 12, 2012.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Commissioner Peredes
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 30021 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14828

In the Matter of

SUPERIOR COMMUNITY
CAPITAL CORPORATION

Respondent

ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
54(c) OF THE INVESTMENT COMPANY
ACT OF 1940, AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted pursuant to Section 54(c) of the Investment Company Act of 1940 ("Investment Company Act") against Superior Community Capital Corporation ("SCCC" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

Respondent

1. SCCC (CIK No. 1376724) is a Mississippi corporation located in Clarksdale, Mississippi. According to the Mississippi Secretary of State, SCCC was created on March 2, 2005 and was dissolved on December 5, 2008. On September 28, 2006, SCCC elected to be regulated as a business development company ("BDC").

BDC Status

2. Section 54(c) of the Investment Company Act provides that whenever the Commission finds, on its own motion, or upon application, that a BDC which has filed a notice of election pursuant to Section 54(a) has ceased to engage in business, the Commission shall so declare by order revoking such company's election.

3. As of the date of this Order, SCCC's corporate registration is not active in the State of Mississippi and SCCC has ceased to engage in business.

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III.

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

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

B. Whether, pursuant to Section 54(c) of the Investment Company Act, SCCC's election as a business development company should be revoked.

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 the 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 the 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.

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 Paredes
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66687 / March 29, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30019 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14826

In the Matter of

INTERIM CAPITAL CORP.

Respondent

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 12(j) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, AND SECTIONS 9(f) AND 54(c) OF THE
INVESTMENT COMPANY ACT OF 1940,
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and for the protection of investors that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 12(j) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 9(f) and 54(c) of the Investment Company Act of 1940 ("Investment Company Act") against Interim Capital Corp. ("ICC" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

Respondent

A. RESPONDENT

1. ICC (CIK No. 1317683) is a Nevada corporation located in Las Vegas, Nevada. According to the Nevada Secretary of State, ICC's corporate registration has been revoked, its officers resigned on November 11, 2007, and its registered agent resigned on February 2, 2011. On February 14, 2006, ICC elected to be regulated as a business development company ("BDC"). Prior to its BDC election, ICC Capital was an operating company that was in the business of

helping issuers file the necessary documents to become publicly traded. Its securities are registered under Section 12(g) of the Exchange Act.

Fidelity Bond

2. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 of the Investment Company Act makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC.

3. From the date of its BDC election to the present, ICC did not provide and maintain a fidelity bond.

4. As a result of the foregoing, ICC violated Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder.

Delinquent Periodic Filings

5. Section 13(a) of the Exchange Act requires all issuers with a security registered pursuant to Section 12 of the Exchange Act to, among other things, file with the Commission annual and quarterly reports. Exchange Act Rule 13a-1 requires such issuers to file annual reports on Form 10-K, and Exchange Act Rule 13a-13 requires such issuers to file quarterly reports on Form 10-Q.

6. ICC filed a Form 10-K with the Commission on February 28, 2007 for the period ended December 31, 2006, and has failed to file any subsequent annual reports. ICC filed Form 10-Q with the Commission on May 11, 2007 for the period ended March 31, 2007, and has failed to file any subsequent quarterly reports.

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

BDC Status

8. Section 54(c) of the Investment Company Act provides that whenever the Commission finds, on its own motion, or upon application, that a BDC which has filed a notice of election pursuant to Section 54(a) has ceased to engage in business, the Commission shall so declare by order revoking such company's election.

9. As of the date of this Order, ICC's corporate registration in the State of Nevada has been revoked, its officers and its registered agent have resigned, and ICC has ceased to engage in business.

III.

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

- A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford ICC an opportunity to establish any defenses to such allegations;
- B. Whether pursuant to Section 9(f) of the Investment Company Act and 21C of the Exchange Act, ICC should be ordered to cease and desist from committing or causing violations of and any future violation of Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder;
- C. 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 ICC's securities pursuant to Section 12(j) of the Exchange Act; and
- D. Whether, pursuant to Section 54(c) of the Investment Company Act, ICC's election as a business development company should be revoked.

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 the 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 the 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.

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

SECURITIES EXCHANGE ACT OF 1934
Release No. 66682 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14819

In the Matter of

GARY J. YOCOM,

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 Gary J. Yocom ("Yocom" 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.

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III.

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

1. Yocom was a registered representative at Thomas Anthony & Associates, Inc. ("Thomas Anthony"), a broker-dealer registered with the Commission and located in Winter Park, Florida. Yocom, 45 years old, is a resident of Altamonte Springs, Florida.

2. On January 19, 2012, a final judgment was entered by consent against Yocom, permanently enjoining him from future violations of Sections 5(a) and 5(c) of the Securities Act of 1933 in the civil action titled *Securities and Exchange Commission v. Daniel E. Ruettiger, et al.*, Case Number 2:11-cv-02011-GMN-VCF, in the United States District Court for the District of Nevada – Las Vegas.

3. The Commission's complaint alleged that, in connection with a scheme to distribute unregistered securities of Rudy Nutrition ("RUNU") in 2008:

- a) Yocom facilitated the deposit of shares of RUNU common stock into brokerage accounts at Thomas Anthony;
- b) These shares were unregistered and not subject to a valid exemption from registration; and
- c) Yocom sold these shares on behalf of clients of Thomas Anthony; and
- d) Yocom failed to conduct a reasonable inquiry into the registration status of the shares before selling 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 Yocom's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Yocom 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 with the right to apply for reentry after 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

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. 66683 / March 29, 2012

ADMINISTRATIVE PROCEEDING

File No. 3-14820

In the Matter of

JOSEPH A. PADILLA,

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 Joseph A. Padilla ("Padilla" 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.

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III.

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

1. Padilla is a registered representative at Scottsdale Capital Advisors LLC ("SCA"), a broker-dealer registered with the Commission and located in Carlsbad, California and Scottsdale, Arizona. Padilla, 42 years old, is a resident of San Marcos, California.
2. On January 19, 2012, a final judgment was entered by consent against Padilla, permanently enjoining him from future violations of Sections 5(a) and 5(c) of the Securities Act of 1933 in the civil action titled *Securities and Exchange Commission v. Daniel E. Ruettiger, et al.*, Case Number 2:11-cv-02011-GMN-VCF, in the United States District Court for the District of Nevada – Las Vegas.
3. The Commission's complaint alleged that, in connection with a scheme to distribute unregistered securities of Rudy Nutrition ("RUNU") in 2008:
 - a) Padilla facilitated the deposit of shares of RUNU common stock into a brokerage account that he controlled;
 - b) These shares were unregistered and not subject to a valid exemption from registration; and
 - c) Padilla sold these shares into the public market.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Padilla 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 with the right to apply for reentry after 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

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. 66684 / March 29, 2012

ADMINISTRATIVE PROCEEDING

File No. 3-14821

In the Matter of

ANDREA M. RITCHIE,

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 Andrea M. Ritchie ("Ritchie" 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 her 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.

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III.

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

1. For the period May 2007 to August 2011, Ritchie was a registered representative at Scottsdale Capital Advisors LLC ("SCA"), a broker-dealer registered with the Commission and located in Carlsbad, California and Scottsdale, Arizona. Ritchie, 35 years old, is a resident of San Marcos, California.

2. On January 19, 2012, a final judgment was entered by consent against Ritchie, permanently enjoining her from future violations of Sections 5(a) and 5(c) of the Securities Act of 1933 in the civil action titled *Securities and Exchange Commission v. Daniel E. Ruettiger, et al.*, Case Number 2:11-cv-02011-GMN-VCF, in the United States District Court for the District of Nevada – Las Vegas.

3. The Commission's complaint alleged that, in connection with a scheme to distribute unregistered securities of Rudy Nutrition ("RUNU"):

- a) Ritchie facilitated the deposit of millions of shares of RUNU common stock into brokerage accounts at SCA;
- b) These shares were unregistered and not subject to a valid exemption from registration;
- c) Ritchie sold these shares on behalf of clients of SCA; and
- d) Ritchie failed to conduct a reasonable inquiry into the registration status of the shares before selling 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 Ritchie's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Ritchie 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 with the right to apply for reentry after 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

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Commissioner Paredes
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9305 / March 29, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 66686 / March 29, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30017 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14824

In the Matter of

ENTERTAINMENT
CAPITAL CORP.

Respondent

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 12(j) AND 21C OF
THE SECURITIES EXCHANGE ACT OF 1934,
SECTIONS 9(f) AND 54(c) OF THE
INVESTMENT COMPANY ACT OF 1940 AND
RULE 610(c) OF REGULATION E, AND
NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and for the protection of investors that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 12(j) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 9(f) and 54(c) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 610(c) of Regulation E against Entertainment Capital Corp. ("ECC" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

Respondent

1. ECC (CIK No. 1104673) is a Nevada corporation located in Temecula, California. According to the Nevada Secretary of State, ECC's registration has been revoked. On January 25, 2005, ECC elected to be business development company ("BDC"). Prior to its BDC election, ECC was an operating company formed to identify and acquire favorable businesses. Its securities are registered under Section 12(g) of the Exchange Act.

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Fidelity Bond

2. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 of the Investment Company Act makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC.

3. From the date of its BDC election to the present, ECC did not provide and maintain a fidelity bond.

4. As a result of the foregoing, ECC violated Section 17(g) of the Investment Company Act, and Rule 17g-1 thereunder.

Delinquent Periodic Filings

5. Section 13(a) of the Exchange Act requires all issuers with a security registered pursuant to Section 12 of the Exchange Act to, among other things, file with the Commission annual and quarterly reports. Exchange Act Rule 13a-1 requires such issuers to file annual reports on Form 10-K, and Exchange Act Rule 13a-13 requires such issuers to file quarterly reports on Form 10-Q.

6. On April 17, 2006, ECC filed a Form 10-K with the Commission for the period ended December 31, 2005, and has failed to make any subsequent annual filings. ECC filed a Form 10-Q with the Commission on August 11, 2006 for the period ended June 30, 2006, and has failed to make any subsequent quarterly filings.

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

Failure to Comply with Regulation E

8. Regulation E allows a BDC to raise up to \$5 million per year in public securities transactions exempt from the registration provisions of the Securities Act. Securities offered pursuant to the exemption are not restricted in the hands of investors who are not affiliates of the BDC. Before such an offering, the BDC must file with the Commission a notification statement on Form 1-E and an offering circular containing certain financial statements and other disclosures. Rule 609 of Regulation E requires that within 30 days after the end of each six-month period throughout the offering, and also at the offering's end, the BDC must file with the Commission a Form 2-E, which requires a statement of the amount raised in the offering to date, among other things.

9. ECC filed a Form 1-E on November 3, 2005, and amended Forms 1-E on November 14, 2005 and March 2, 2006. ECC filed Forms 2-E for the November 3, 2005 offering on June 28, 2006 and November 16, 2006. The Form 1-E filings included a required offering

circular, which provided certain disclosures regarding the offering. ECC did not, however, file a Form 2-E within thirty days of the six months following the date of the November 3, 2005 Form 1-E.

10. As a result of the foregoing, ECC failed to comply with Rule 609 of Regulation E.

BDC Status

11. Section 54(c) of the Investment Company Act provides that whenever the Commission finds, on its own motion or upon application, that a BDC that has filed a notice of election pursuant to Section 54(a) has ceased to engage in business, the Commission shall so declare by order revoking such company's election.

12. As of the date of this Order, ECC's corporate registration is not active in the state of Nevada, and ECC has ceased to engage in business.

III.

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

- A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford ECC an opportunity to establish any defenses to such allegations;
- B. Whether pursuant to Section 9(f) of the Investment Company Act and 21C of the Exchange Act, ECC should be ordered to cease and desist from committing or causing violations of and any future violation of Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder;
- C. 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 ECC's securities pursuant to Section 12(j) of the Exchange Act;
- D. Whether it is necessary and appropriate to issue an order that permanently suspends ECC's Regulation E exemption pursuant to Rule 610(c) of Regulation E; and
- E. Whether, pursuant to Section 54(c) of the Investment Company Act, ECC's election as a business development company should be revoked.

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 the 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 the 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.

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 Paredes
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 30015 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14822

In the Matter of

AMERICAN CAPITAL
PARTNERS LIMITED, INC.

Respondent

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 9(f) AND 54(c)
OF THE INVESTMENT COMPANY ACT
OF 1940 AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 9(f) and 54(c) of the Investment Company Act of 1940 ("Investment Company Act") against American Capital Partners Limited, Inc. ("ACPL" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

Respondent

1. ACPL (CIK No. 1114098) is a Nevada corporation located in West Palm Beach, Florida. According to the Nevada Secretary of State, ACPL's corporate registration is currently in default. On December 6, 2004, ACPL elected to be regulated as a business development company ("BDC"). Prior to its BDC election, ACPL was an operating company engaged in the business of designing and marketing consumer electronics that utilize infrared technology. Its securities were registered under Section 12(g) of the Exchange Act, but the registration was revoked on November 8, 2011.¹

¹ See *American Capital Partners Limited, Inc., et al.*, Admin Proc. File No. 3-14534, Exchange Act Release No. 65701 (November 8, 2011).

Fidelity Bond

2. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 of the Investment Company Act makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC.

3. From the date of its BDC election to the present, ACPL did not provide and maintain a fidelity bond.

BDC Status

4. Section 54(c) of the Investment Company Act provides that whenever the Commission finds, on its own motion or upon application, that a BDC that has filed a notice of election pursuant to Section 54(a) has ceased to engage in business, the Commission shall so declare by order revoking such company's election.

5. As of the date of this Order, ACPL's corporate registration in the State of Nevada is in default, and ACPL has ceased to engage in business.

III.

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

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

B. Whether it is necessary and appropriate to issue a cease-and-desist order pursuant to Section 9(f) of the Investment Company Act against ACPL from committing or causing any violations and any future violations of Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder; and

C. Whether, pursuant to Section 54(c) of the Investment Company Act, ACPL's election as a business development company should be revoked.

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 the 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 the 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.

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 Paredes
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 30022 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14829

In the Matter of

PRINCIPAL MORTGAGE
FUND, INC.

Respondent

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 9(f) AND 54(c)
OF THE INVESTMENT COMPANY ACT OF
1940, AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 9(b) and 54(c) of the Investment Company Act of 1940 ("Investment Company Act") against Principal Mortgage Fund, Inc. ("PMF" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

Respondent

1. PMF (CIK No. 1410646) is a Nevada corporation located in Carson City, Nevada. According to the Nevada Secretary of State, PMF's corporate registration has been revoked. On August 24, 2007, PMF filed a notice of intent to elect to be regulated as a business development company ("BDC"), and then on August 27, 2007, PMF elected to be regulated as a BDC.

Fidelity Bond

2. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 of the Investment Company Act makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC.

3. PMF has not provided and maintained a fidelity bond since October 2008.

4. As a result of the foregoing, PMF violated Section 17(g) of the Investment Company Act, and Rule 17g-1 thereunder.

BDC Status

5. Section 54(c) of the Investment Company Act provides that whenever the Commission finds, on its own motion, or upon application, that a BDC which has filed a notice of election pursuant to Section 54(a) has ceased to engage in business, the Commission shall so declare by order revoking such company's election.

6. As of the date of this Order, PMF is not active in the State of Nevada and has ceased to engage in business.

III.

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

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

B. Whether pursuant to Section 9(f) of the Investment Company Act, PMF should be ordered to cease and desist from committing or causing violations of and any future violation of Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder; and

C. Whether, pursuant to Section 54(c) of the Investment Company Act, PMF's election as a business development company should be revoked.

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 the 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 the 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.

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 Paredes
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66685 / March 29, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30016 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14823

In the Matter of

CENTRAL CAPITAL
VENTURE CORPORATION

Respondent

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 12(j) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934 AND SECTIONS 9(f) AND 54(c) OF THE
INVESTMENT COMPANY ACT OF 1940
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and for the protection of investors that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 12(j) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 9(f) and 54(c) of the Investment Company Act of 1940 ("Investment Company Act") against Central Capital Venture Corporation ("CCVC" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

Respondent

1. CCVC (CIK No. 318304) is a Nevada corporation located in Dallas, Texas. According to the Nevada Secretary of State, CCVC's registration has been revoked. On June 20, 2000, CCVC elected to be regulated as a business development company ("BDC"). Prior to its BDC election, CCVC was an operating company engaged in the business of developing websites. Its securities are registered under Section 12(g) of the Exchange Act.

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Fidelity Bond

2. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 of the Investment Company Act makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC.

3. From the date of its BDC election to the present, CCVC did not provide and maintain a fidelity bond.

4. As a result of the foregoing, CCVC violated Section 17(g) of the Investment Company Act, and Rule 17g-1 thereunder.

Preferred Stock

5. Section 18(i) of the Investment Company Act, made applicable to BDCs pursuant to Section 61(a) of the Investment Company Act to the same extent as if they were registered closed-end investment companies, generally provides that every share of stock issued by a BDC shall be voting stock and have equal voting rights with every other outstanding class of voting stock except as provided in Section 18(a). In relevant part, Section 18(a) authorizes a registered closed-end investment company to issue a class of senior security that is a stock if certain conditions are met, including that "such class of stock shall have complete priority over any other class as to distribution of assets and payment of dividends"

6. Section 61(b) of the Investment Company Act provides that a BDC shall comply with the provisions of this section at the time it becomes subject to Sections 55 through 65 as if were issuing a security of each class which it has outstanding at such time.

7. On January 19, 2000, CCVC issued 100,000 shares of stock (with a par value of \$100 and a stated value of \$2,500,000) designated as Class A preferred stock with no voting powers or preferences or priorities over any other class as to distribution of assets or payment of dividends (the "So-Called Preferred Stock"). The So-Called Preferred Stock was convertible into shares of a subsidiary within twelve months or upon receipt of one million dollars in subsidiary funding or if the subsidiary filed a registration statement with the Commission.

8. Because the So-Called Preferred Stock was outstanding on June 20, 2000 (the date of the company's BDC election), pursuant to Section 61(b) the stock is considered issued on June 20, 2000.

9. Because the So-Called Preferred Stock had no priorities over any other class as to distribution of assets or payment of dividends, it was not a "senior security" as defined in Section 18(g) and therefore Section 18(a) did not apply to the stock. Because the So-Called Preferred Stock did not have voting rights equal to those of other classes of CCVC stock, CCVC violated Section 18(i) of the Investment Company Act.

Compliance Policies and Procedures

10. Rule 38a-1 under the Investment Company Act, made applicable to BDCs pursuant to Section 59 of the Investment Company Act, requires each BDC to adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws. These policies and procedures must be approved by the BDC's board of directors (including a majority of persons who are not interested persons) and reviewed annually. Furthermore, each BDC must appoint a chief compliance officer to administer the policies and procedures, and the compliance officer has certain reporting duties to the board.

11. During the relevant period, CCVC failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws and did not appoint a chief compliance officer.

12. As a result of the forgoing, CCVC violated Sections 17(g) and 18(i) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

Delinquent Periodic Filings

13. Section 13(a) of the Exchange Act requires all issuers with a security registered pursuant to Section 12 of the Exchange Act to, among other things, file with the Commission annual and quarterly reports. Exchange Act Rule 13a-1 requires such issuers to file annual reports on Form 10-K, and Exchange Act Rule 13a-13 requires such issuers to file quarterly reports on Form 10-Q.

14. On November 13, 2000, CCVC filed a Form 10-KSB for the period ended June 30, 2000 and an amendment thereto on December 13, 2000. CCVC filed Forms 10-QSB for the period ended September 30, 2000 on December 14, 2000, for the period ended December 31, 2000 on February 21, 2001, and for the period ended March 31, 2001 on July 9, 2001. CCVC has failed to file with the Commission any annual reports since June 2000 and any quarterly reports since July 2001.

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

BDC Status

16. Section 54(c) of the Investment Company Act provides that whenever the Commission finds, on its own motion or upon application, that a BDC that has filed a notice of election pursuant to Section 54(a) has ceased to engage in business, the Commission shall so declare by order revoking such company's election.

17. As of the date of this Order, CCVC's corporate registration in the State of Nevada has been revoked, and CCVC ceased to engage in business.

III.

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

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

B. Whether pursuant to Section 9(f) of the Investment Company Act and 21C of the Exchange Act, CCVC should be ordered to cease and desist from committing or causing violations of and any future violation of Sections 17(g) and 18(i) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder, and Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder;

C. 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 CCVC's securities pursuant to Section 12(j) of the Exchange Act; and

D. Whether, pursuant to Section 54(c) of the Investment Company Act, CCVC's election as a business development company should be revoked.

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 the 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 the 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.

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 Paredes
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 30018 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14825

In the Matter of

INTERNATIONAL ASSET
GROUP, INC.

Respondent

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 9(f) AND 54(c)
OF THE INVESTMENT COMPANY ACT
OF 1940, AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 9(f) and 54(c) of the Investment Company Act of 1940 ("Investment Company Act") against International Asset Group, Inc. ("IAG" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

Respondent

1. IAG (CIK No. 1199923) is a Nevada corporation located in Atlanta, Georgia. According to the Nevada Secretary of State, IAG's corporate registration has been revoked. On October 24, 2002, IAG elected to be regulated as a business development company ("BDC"). Also on October 24, 2002, IAG filed a notification of registration pursuant to Section 8(a) of the Investment Company Act.

Fidelity Bond

2. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 of the Investment Company Act makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC.

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3. From the date of its BDC election to the present, IAG did not provide and maintain a fidelity bond.

4. As a result of the foregoing, IAG violated Section 17(g) of the Investment Company Act, and Rule 17g-1 thereunder.

Delinquent Periodic Filings

5. Sections 30(a) and 30(b) of the Investment Company Act require investment companies registered with the Commission to make certain annual and semi-annual filings. Rule 30b1-1 requires registered management investment companies to file a semi-annual report on Form N-SAR no more than sixty days after the close of each fiscal year and fiscal second quarter.

6. IAG's notification of registration as an investment company was effective upon filing with the Commission on October 24, 2002. As a result, IAG was required to make annual and semi-annual filings pursuant to Sections 30(a) and (b) of the Investment Company Act and Rule 30b1-1 thereunder. However, IAG never filed with the Commission any such annual or semi-annual reports.

7. As a result of the foregoing, IAG violated Sections 30(a) and 30(b) of the Investment Company Act and Rule 30b1-1 thereunder.

BDC Status

8. Section 54(c) of the Investment Company Act provides that whenever the Commission finds, on its own motion, or upon application, that a BDC which has filed a notice of election pursuant to Section 54(a) has ceased to engage in business, the Commission shall so declare by order revoking such company's election.

9. As of the date of this Order, IAG is not active in the state of Nevada and has ceased to engage in business.

III.

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

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

B. Whether pursuant to Section 9(f) of the Investment Company Act IAG should be ordered to cease and desist from committing or causing any violations and any future violations of Sections 17(g), 30(a), and 30(b) of the Investment Company Act and Rules 17g-1 and 30b1-1 thereunder; and

C. Whether, pursuant to Section 54(c) of the Investment Company Act, IAG's election as a business development company should be revoked.

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 the 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 the 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.

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 Paredes
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9306 / March 29, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 66688 / March 29, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30020 / March 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14827

In the Matter of

OLM VENTURES, INC.

Respondent

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 12(j) AND 21C OF
THE SECURITIES EXCHANGE ACT OF 1934,
SECTIONS 9(f) AND 54(c) OF THE
INVESTMENT COMPANY ACT OF 1940, AND
RULE 610(c) OF REGULATION E, AND
NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and for the protection of investors that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 12(j) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 9(f) and 54(c) of the Investment Company Act of 1940 ("Investment Company Act"), and Rule 610(c) of Regulation E against OLM Ventures, Inc. ("OLM" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

Respondent

1. OLM (CIK No. 1065468) is a Colorado corporation located in Calgary, British Columbia. According to the Colorado Secretary of State, OLM's corporate status is "delinquent." On April 29, 2005, OLM elected to be regulated as a business development company ("BDC").

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Prior to its BDC election, OLM was a development-stage company that had conducted no business. Its securities are registered under Section 12(g) of the Exchange Act.

Fidelity Bond

2. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 of the Investment Company Act makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC.

3. From the date of its BDC election to the present, OLM did not provide and maintain a fidelity bond.

4. As a result of the foregoing, OLM violated Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder.

Delinquent Periodic Filings

5. Section 13(a) of the Exchange Act requires all issuers with a security registered pursuant to Section 12 of the Exchange Act to, among other things, file with the Commission annual and quarterly reports. Exchange Act Rule 13a-1 requires such issuers to file annual reports on Form 10-K, and Exchange Act Rule 13a-13 requires such issuers to file quarterly reports on Form 10-Q.

6. OLM filed a form 10-QSB on June 1, 2005, but has failed to make any filings since that date.

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

Regulation E

8. Regulation E allows a BDC to raise up to \$5 million per year in public securities transactions exempt from the registration provisions of the Securities Act. Securities offered pursuant to the exemption are not restricted in the hands of investors who are not affiliates of the BDC. Before such an offering, the BDC must file with the Commission a notification statement on Form 1-E and an offering circular containing certain financial statements and other disclosures. Rule 609 of Regulation E requires that within 30 days after the end of each six-month period throughout the offering, and also at the offering's end, the BDC must file with the Commission a Form 2-E, which requires a statement of the amount raised in the offering to date, among other things.

9. On May 2, 2005, OLM filed a Form 1-E with the Commission. OLM did not file a Form 2-E within thirty days of the six months following the date of the Form 1-E.

10. As a result of the foregoing, ECC failed to comply with Rule 609 of Regulation E.

BDC Status

11. Section 54(c) of the Investment Company Act provides that whenever the Commission finds, on its own motion, or upon application, that a BDC that has filed a notice of election pursuant to Section 54(a) has ceased to engage in business, the Commission shall so declare by order revoking such company's election.

12. As of the date of this Order, OLM's corporate status in the State of Colorado is listed as "delinquent," and OLM has ceased to engage in business.

III.

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

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

B. Whether pursuant to Section 9(f) of the Investment Company Act and 21C of the Exchange Act, OLM should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder;

C. 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 OLM's securities pursuant to Section 12(j) of the Exchange Act;

D. Whether it is necessary and appropriate to issue an order that permanently suspends OLM's Regulation E exemption pursuant to Rule 610(c) of Regulation E; and

E. Whether, pursuant to Section 54(c) of the Investment Company Act, OLM's election as a business development company should be revoked.

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 the 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 the 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.

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 Shapiro
Commissioner Gallagher
not participating*

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Rel. No. 9307 / March 30, 2012

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 66695 / March 30, 2012

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3387 / March 30, 2012

INVESTMENT COMPANY ACT OF 1940
Rel. No. 30023 / March 30, 2012

Admin. Proc. File No. 14081

In the Matter of

JOHN P. FLANNERY
and
JAMES D. HOPKINS

ORDER DENYING MOTIONS FOR
SUMMARY AFFIRMANCE,
GRANTING PETITION FOR
REVIEW, AND
SCHEDULING BRIEFS

On October 28, 2011, an administrative law judge issued an initial decision dismissing administrative proceedings against John P. Flannery, formerly Fixed Income Chief Investment Officer for the Americas at State Street Global Advisors (a division of State Street Bank and Trust Company ("State Street")), and James D. Hopkins, formerly Vice President and head of North American Product Engineering of State Street (collectively, "Respondents"). On November 21, 2011, the Commission's Division of Enforcement filed a petition for review of the law judge's decision. On December 9, 2011, and December 12, 2011, Flannery and Hopkins respectively moved for summary affirmance by the Commission of the law judge's decision. The Division opposes the Respondents' motions. We have determined to deny Respondents' motions, grant the Division's petition for review, and establish a briefing schedule for this review proceeding.

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After eleven days of hearings, accompanied by the submission of approximately 500 exhibits, the law judge issued a fifty-eight page decision finding that the Respondents did not violate the antifraud provisions of the securities laws¹ because they did not make misleading or inadequate disclosure regarding the portfolio holdings of an unregistered collective trust fund, the Limited Duration Bond Fund ("Fund"), in certain letters to, and other communications with, Fund investors. In reaching her determination, the law judge concluded, in a case of first impression in administrative proceedings, that the construction of the words "to make" in Securities Exchange Act Rule 10b-5(b)² by the U.S. Supreme Court in *Janus Capital Group, Inc. v. First Derivative Traders* – i.e., that to be liable for an untrue statement or misleading omission, a defendant must have "ultimate authority over the statement, including its content and whether and how to communicate it"³ – also applies to fraud claims brought by the Division pursuant to Securities Act Section 17(a) and Rule 10b-5(a) and (c). According to the law judge, "the *Janus* test [is] the appropriate standard to apply in evaluating the extent of Respondents' conduct." Therefore, with respect to allegations involving documentary evidence, the Division must establish that Respondent[s] had ultimate authority and control over such documents." The law judge further concluded that Fund investors were sophisticated institutional investors and she considered that factor when evaluating the materiality element of the Division's allegations of fraud.

Flannery urges us to summarily affirm the law judge's decision because she found that the letters at issue contained no materially misleading misstatements or omissions, and Flannery did not act intentionally, recklessly, or negligently. Flannery further notes that the law judge found him to be credible and honest. Although Flannery contends that the law judge also correctly determined that, under *Janus*, he did not "make" the statements at issue in two letters, and that the law judge properly considered the sophistication of Fund investors, Flannery argues that the Commission need not consider these issues because of the other, independent grounds that support dismissal of the proceedings against him.

¹ The Order Instituting Proceedings issued by the Commission on September 30, 2010, alleged that the Respondents violated Section 17(a) of the Securities Act of 1933 (15 U.S.C. § 77q(a)), Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)), and Exchange Act Rule 10b-5 (17 C.F.R. § 240.10b-5).

² Rule 10b-5(b) states that it shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."

³ 131 S. Ct. 2296, 2302 (2011).

Hopkins urges us to summarily affirm the law judge's decision because: the law judge's application of *Janus* is moot in light of her determination that none of the statements and omissions attributed to Hopkins were materially untrue or misleading; the law judge considered other factors in addition to investor sophistication and therefore investor sophistication was not solely dispositive of any issue; and the Division failed to prove that Hopkins had a culpable state of mind. Hopkins argues that, even if the law judge erred in applying *Janus* and considering the sophistication of Fund investors, summary affirmance is appropriate because the law judge rejected the Division's evidence on essential elements of the Division's case.

The Division opposes summary affirmance on the grounds that the law judge erred in applying *Janus* to this proceeding and failed to properly consider the Division's "scheme" and "course of conduct" claims against both Respondents. The Division also contends that the law judge improperly considered the sophistication of Fund investors in determining whether the alleged misrepresentations or omissions were material. The Division further claims that the law judge erred by making factual findings contrary to the record.

Commission Rule of Practice 411(e) governs our review of motions for summary affirmance.⁴ In pertinent part, that rule provides that "[t]he Commission may grant summary affirmance if it finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument." The rule further provides that we "will decline to grant summary affirmance upon a reasonable showing that . . . the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review." We have previously noted that "[s]ummary affirmance is rare, given that generally we have an interest in articulating our views on important matters of public interest and the parties have a right to full consideration of those matters."⁵ Summary affirmance is appropriate when it is clear that "submission of briefs by the parties will not benefit us in reaching a decision."⁶

Based on our own preliminary review of the record, and given the important matters of public interest this case presents, summary affirmance does not appear appropriate here. The proceeding raises important legal and policy issues by presenting us with a case of first impression regarding the applicability of the Supreme Court's holding in *Janus* to claims other than those brought pursuant to Exchange Act Rule 10b-5(b). The proceeding also raises the

⁴ 17 C.F.R. § 201.411(e).

⁵ *Theodore W. Urban*, Order Denying Motion for Summary Affirmance, Securities Exchange Act Rel. No. 63456 (Dec. 7, 2010), 99 SEC Docket 35517, 35519 (citing *Richard Cannistraro*, 53 S.E.C. 388, 389 n.3 (1998)); *Salvatore F. Sodano*, Order Denying Motion for Summary Affirmance, Exchange Act Rel. No. 56961 (Dec. 13, 2007), 92 SEC Docket 469, 471; see also *Terry T. Steen*, 52 S.E.C. 1337, 1338 (1997) (denying summary affirmance and noting that such action is appropriate only where there are "compelling reasons").

⁶ *Cannistraro*, 53 S.E.C. at 389 n.3.

issue of whether investor sophistication is relevant to an analysis of liability under the antifraud provisions of the federal securities laws in a Commission enforcement proceeding. Additionally, we note that, as a general matter, Commission review of the findings and conclusions of an initial decision is conducted *de novo*,⁷ and that an extensive record was developed below, encompassing eleven days of hearings, the submission of approximately 500 exhibits, and resulting in a lengthy decision by the law judge.

Under the circumstances, it appears appropriate to consider the record and the parties' arguments as part of the normal appellate process rather than the abbreviated process involved with a summary affirmance. We will therefore deny the Respondents' motions, though our denial should not be construed as suggesting any view as to the outcome of this case.

Pursuant to Commission Rule of Practice 411, the Division's petition for review of the administrative law judge's initial decision is granted. Pursuant to Rule of Practice 411(d), the Commission has determined on its own initiative to review what sanctions, if any, are appropriate in this matter.

* * * *

⁷ *Gary M. Kornman*, Exchange Act Rel. No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14260 n.44, *petition denied*, 592 F.3d 173 (D.C. Cir. 2010); *see also* Rule of Practice 411(a), 17 C.F.R. § 201.411(a) ("The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record.").

We note further that, although the Commission grants "considerable weight and deference" to credibility determinations of the law judges, we judge those determinations against the weight of the evidence. *Leslie A. Arouh*, Exchange Act Rel. No. 50889 (Dec. 20, 2004), 84 SEC Docket 1880, 1893 n.40; *see also Anthony Tricarico*, 51 S.E.C. 457, 460 (1993). "While we have held that a fact finder's 'explicit credibility' findings are to be accorded 'considerable weight,' we do not accept such findings 'blindly.' Rather, there are circumstances where, in the exercise of our review function, we must disregard explicit determinations of credibility." *Kenneth R. Ward*, 56 S.E.C. 236, 260 (2003) (finding testimonial and documentary evidence contradicted witness's testimony) (internal citations omitted), *aff'd*, 75 F. App'x. 320 (5th Cir. 2003).

Accordingly, IT IS ORDERED that the motions for summary affirmance by Flannery and Hopkins each be and it hereby is, denied; and it is further

ORDERED, pursuant to Rule of Practice 450(a)⁸ that a brief in support of the petition for review shall be filed by April 30, 2012. A brief in opposition shall be filed by May 30, 2012, and any reply brief shall be filed by June 13, 2012. Pursuant to rule of Practice 180(c),⁹ failure to file a brief in support of the petition may result in dismissal of this review proceeding as to that petitioner.

By the Commission.

Elizabeth M. Murphy
Elizabeth M. Murphy
Secretary

⁸ 17 C.F.R. § 201.450(a).

⁹ 17 C.F.R. § 201.180(c).

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 230, 240 and 260

[Release Nos. 33-9308; 34-66703; 39-2484; File No. S7-22-11]

RIN 3235-AL16

EXEMPTIONS FOR SECURITY-BASED SWAPS ISSUED BY CERTAIN CLEARING AGENCIES

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for security-based swaps issued by certain clearing agencies satisfying certain conditions. The final rules exempt transactions by clearing agencies in these security-based swaps from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as exempt these security-based swaps from Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided certain conditions are met.

EFFECTIVE DATE: The final rules are effective April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551-3860, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are adopting Rule 239 under the Securities Act of 1933 ("Securities Act").¹ We are also adopting Rule 12a-10 and an amendment to Rule 12h-1

¹ 15 U.S.C. 77a et seq.

one that the Commission has determined is required to be cleared, unless an exception from mandatory clearing applies;⁶ (2) transactions in security-based swaps must be reported to a registered security-based swap data repository (“SDR”) or the Commission;⁷ and (3) if a security-based swap is subject to mandatory clearing, transactions in security-based swaps must be executed on an exchange or a registered or exempt security-based swap execution facility (“security-based SEF”), unless no exchange or security-based SEF makes such security-based swap available for trading or the security-based swap transaction is subject to the clearing exception in Exchange Act Section 3C(g).⁸

Title VII seeks to ensure that, wherever possible and appropriate, security-based swaps are cleared.⁹ Paragraph (a)(1) of new Exchange Act Section 3C establishes a mandatory clearing requirement for certain security-based swaps.¹⁰ Exchange Act Section 3C(b) sets forth a process by which we would determine whether a security-based swap or any group, category, type or

⁶ See Pub. L. No. 111-203, § 763(a) (adding Exchange Act Section 3C [15 U.S.C. 78c-3]).

⁷ See Pub. L. No. 111-203, §§ 763(i) and 766(a) (adding Exchange Act Sections 13(m)(1)(G) and 13A(a)(1) [15 U.S.C. 78m(m)(1)(G) and 78m-1(a)(1)], respectively).

⁸ See Pub. L. No. 111-203, § 763(a) (adding Exchange Act Section 3C [15 U.S.C. 78c-3]). See also Pub. L. No. 111-203, § 761 (adding Exchange Act Section 3(a)(77) [15 U.S.C. 78c(a)(77)] (defining the term “security-based swap execution facility”)), and Registration and Regulation of Security-Based Swap Execution Facilities, Release No. 34-63825 (Feb. 2, 2011) 76 FR 10948 (Feb. 28, 2011) (“Security-Based SEF Proposing Release”). See footnote 12 below for a discussion of the clearing exception in Exchange Act Section 3C(g) [15 U.S.C. 78c-3(g)].

⁹ See, e.g., Report of the Senate Committee on Banking, Housing, and Urban Affairs regarding The Restoring American Financial Stability Act of 2010, S. Rep. No. 111-176 at 34 (stating that “[s]ome parts of the OTC market may not be suitable for clearing and exchange trading due to individual business needs of certain users. Those users should retain the ability to engage in customized, uncleared contracts while bringing in as much of the OTC market under the centrally cleared and exchange-traded framework as possible.”).

¹⁰ Section 763(a) of the Dodd-Frank Act added Section 3C to the Exchange Act. See 15 U.S.C. 78c-3. See also Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, Release No. 34-63557 (Dec. 15, 2010), 75 FR 82490 (Dec. 30, 2010) (“Mandatory Clearing Proposing Release”).

example, when a security-based swap between two counterparties that are members of a CCP is executed and submitted for clearing, the original contract is extinguished and is replaced by two new contracts where the CCP is the buyer to the seller and the seller to the buyer. This process is known as “novation.”¹⁷ At that point, the original counterparties are no longer counterparties to each other. As a result, the creditworthiness and liquidity of the CCP is substituted for the creditworthiness and liquidity of the original counterparties.¹⁸

Under the rules we proposed regarding mandatory clearing, to meet the clearing requirement in Exchange Act Section 3C, the parties would be required to submit security-based swaps required to be cleared to a clearing agency that functions as a CCP for central clearing.¹⁹ Those proposed rules also would establish procedures for a clearing agency to submit to us for a review each security-based swap, or group, category, type or class of security-based swap that the clearing agency plans to accept for clearing. We would review the submission and make a determination about whether the security-based swap, or group, category, type or class of security-based swap, is required to be cleared.²⁰ Under the statute and the proposed rules, the

Agency Standards for Operation and Governance, Release No. 34-64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (“Clearing Agency Standards Proposing Release”).

¹⁷ “Novation” is a “process through which the original obligation between a buyer and seller is discharged through the substitution of the CCP as seller to buyer and buyer to seller, creating two new contracts.” Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissioners, Recommendations for Central Counterparties (November 2004) at 66.

¹⁸ See Cecchetti, Gyntelberg and Hollanders, Central counterparties for over-the-counter derivatives, BIS Quarterly Review, September 2009, available at http://www.bis.org/publ/qtrpdf/r_qt0909f.pdf.

¹⁹ See Mandatory Clearing Proposing Release and proposed Rule 3Ca-2.

²⁰ See Mandatory Clearing Proposing Release and Pub. L. No. 111-203, § 763(a) (adding Exchange Act Section 3C [15 U.S.C. 78c-3]).

registration of classes of securities and the indenture qualification provisions of the Trust Indenture Act also potentially will apply to security-based swaps. The provisions of Section 12 of the Exchange Act could, without an exemption, require that security-based swaps be registered before a transaction could be effected on a national securities exchange.²⁶ In addition, registration of a class of security-based swaps under Section 12(g) of the Exchange Act will be required if the security-based swap is considered an equity security and there are more than 500 record holders of a particular class of security-based swaps at the end of a fiscal year. Further, without an exemption, the Trust Indenture Act requires qualification of an indenture for security-based swaps considered to be debt.²⁷

The provisions of Title VII do not contain an exemption from Securities Act or Exchange Act registration, or from Trust Indenture Act qualification, for security-based swaps. However, we believe that compliance by the clearing agency with the registration and qualification provisions of these Acts likely will be impracticable and frustrate the purposes of Title VII. We have taken action in the past to facilitate clearing of certain credit default swaps by clearing agencies functioning as CCPs. For example, prior to enactment of the Dodd-Frank Act, we permitted five clearing agencies to clear certain credit default swaps (“eligible CDS”) on a temporary conditional basis.²⁸ To facilitate the operation of clearing agencies as CCPs for

²⁶ We note that a registered security-based SEF would not be a national securities exchange for purposes of the Exchange Act. Therefore, Exchange Act Sections 12(a) and (b) would not be applicable to transactions effected through such facilities.

²⁷ See 15 U.S.C. § 77aaa *et seq.*

²⁸ See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with Request on Behalf of ICE Clear Europe Limited Related to Central Clearing of Credit Default Swaps, and Request for Comments, Release No. 34-60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009); Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with Request on Behalf of Eurex Clearing AG Related to Central Clearing of Credit Default Swaps, and Request for Comments, Release No. 34-60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009); Order Granting Temporary Exemptions Under the Securities Exchange

those actions with respect to eligible CDS, as discussed further below, we adopted exemptions under the Securities Act and the Exchange Act for certain standardized options.³¹

On June 9, 2011, we proposed exemptions from the registration requirements of the Securities Act and the Exchange Act, and from the qualification requirements of the Trust Indenture Act, for security-based swaps issued by certain clearing agencies satisfying certain conditions to facilitate the intent of Dodd-Frank Act with respect to mandatory clearing of security-based swaps.³² The proposed rules would exempt certain transactions by clearing agencies in these security-based swaps from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as exempt these security-based swaps from the Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided certain conditions are met.³³

ICE Clear Europe, Ltd., and Chicago Mercantile Exchange Inc. As a result of the deemed registered provision, we had to grant a temporary exemptive order to these clearing agencies only relating to Sections 5 and 6 of the Exchange Act. This temporary exemptive order will expire upon the earliest compliance date set forth in any of the final Title VII rules regarding registration of security-based SEFs. See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of "Security" to Encompass Security-Based Swaps, and Request for Comment, Release No. 34-64795 (Jul. 1, 2011). The new temporary exemptive order contains conditions similar to those set forth in the temporary exemptive orders in effect prior to the deemed registered provisions pursuant to which certain clearing agencies were permitted to clear eligible CDS. See footnote 28 above.

³¹ See Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934, Release No. 33-8171 (Dec. 23, 2002), 68 FR 1 (Jan. 2, 2003) ("Standardized Options Release"). See also Securities Act Rule 238 [17 CFR 230.238] and Exchange Act Rule 12h-1(d) [17 CFR 240.12h-1(d)].

³² See Exemptions For Security-Based Swaps Issued By Certain Clearing Agencies, Release No. 33-9222 (June 9, 2011), 76 FR 34920 (June 15, 2011) ("Proposing Release").

³³ In July 2011, the Commission adopted interim exemptions under the Securities Act, the Exchange Act and the Trust Indenture Act for uncleared security-based swaps that prior to July 16, 2011 were "security-based swap agreements" and not securities but became securities due to the provisions of Title VII. See Exemptions for Security-Based Swaps, Release No. 33-9231 (Jul. 1, 2011), 76 FR 40605 (Jul. 11, 2011) ("Interim SBS Exemptions Release"). These interim exemptions will expire upon the compliance date for the final rules the Commission may adopt further defining both the terms "security-based swap" and "eligible contract participant." Further,

As described in detail below, we are adopting the rules as proposed without modification. The exemptions we are adopting in this release cover all security-based swaps that may be cleared, including eligible CDS that currently are being issued in reliance on the temporary exemptions for eligible CDS that expire on April 16, 2012.

II. DISCUSSION OF THE FINAL RULES AND AMENDMENTS

A. Exemption from Securities Act Registration – Securities Act Rule 239

1. Proposed Rule

We proposed Securities Act Rule 239 to exempt the offer and sale of security-based swaps that are or will be issued to eligible contract participants by, and in a transaction involving, a clearing agency that is registered under Section 17A of the Exchange Act or exempt from such registration by rule, regulation or order of the Commission in its function as a CCP, from all provisions of the Securities Act, except the anti-fraud provisions of Section 17(a), subject to certain conditions.

2. Comments

Commentators generally supported proposed Securities Act Rule 239.³⁶ We received only one specific comment on the proposed rule.³⁷ This commentator suggested that the Commission provide an exemption under the Securities Act similar to the proposed rule for transactions in uncleared security-based swaps entered into between eligible contract participants and effected through any trading platform.³⁸ This commentator did not provide any explanation as to why such exemption was needed, including how security-based swap trading platforms

³⁶ See FSR/ISDA/SIFMA Letter; Gibson Dunn Letter; GFI Letter; and CIR Letter.

³⁷ See GFI Letter.

³⁸ Id.

Section 17A of the Exchange Act⁴² or exempt from such registration⁴³ by rule, regulation or order of the Commission (“registered or exempt clearing agency”) in its function as a CCP, from all provisions of the Securities Act, except the anti-fraud provisions of Section 17(a), subject to the conditions described below.⁴⁴ Thus, Securities Act Rule 239 as adopted permits the offer and sale of security-based swaps to eligible contract participants that are or will be issued by, and in a transaction involving, a registered or exempt clearing agency in its function as a CCP without requiring compliance with Section 5 of the Securities Act.⁴⁵

⁴² See footnote 30 above for a discussion of the clearing agencies that are deemed registered for purposes of clearing security-based swaps. As noted above, three clearing agencies that had temporary exemptive orders relating to the clearing of eligible CDS were deemed registered under this provision and currently are performing the functions of a CCP for eligible CDS.

⁴³ The Dodd-Frank Act contains provisions permitting the Commission to provide exemptions from clearing agency registration with respect to security-based swaps in limited instances. See footnote 49 below. The final rules cover security-based swaps, including mixed swaps, issued by clearing agencies that the Commission specifically exempts from registration as a clearing agency by rule, regulation, or order.

⁴⁴ 15 U.S.C. §77q. This exemption is similar to the Securities Act exemptions for standardized options and security futures products. See Securities Act Rule 238 [17 CFR 230.238] and Securities Act Section 3(a)(14) [15 U.S.C. §77c(a)(14)].

⁴⁵ The exemption for the security-based swap transaction from Securities Act registration will not apply to any securities that may be delivered in settlement or payment of any obligations under the security-based swap (e.g. a physically settled credit default swap). With respect to such securities transactions, the parties to the security-based swap must either be able to rely on another exemption from the registration requirements of the Securities Act or must register such transaction. In evaluating the availability of an exemption from the Securities Act registration requirements, if such a security-based swap may be settled or paid through the delivery of a security, then the transaction in the underlying or referenced security will be considered to occur at the same time as the transaction in the related security-based swap. In this connection, we note that the Dodd-Frank Act amended Securities Act Section 2(a)(3) to provide that security-based swaps could not be used by an issuer, its affiliates, or underwriters to circumvent the registration requirements of Securities Act Section 5 with respect to the issuer’s securities underlying the security-based swap. See 15 U.S.C. 77b(a)(3). As amended, Section 2(a)(3) provides that “[a]ny offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.” As a result, such issuer, affiliate, or underwriter would have to comply with the registration requirements of the Securities Act with respect to such underlying or referenced security, unless another exemption from registration was available.

- For each security-based swap that is offered or sold in reliance upon this exemption, the following information is included in an agreement covering the security-based swap the registered or exempt clearing agency provides to, or makes available to, its counterparty or is posted on a publicly available website maintained by the registered or exempt clearing agency:
 - A statement identifying any security, issuer, loan, or narrow-based security index underlying the security-based swap;
 - A statement indicating the security or loan to be delivered (or class of securities or loans), or if cash settled, the security, loan or narrow-based security index (or class of securities or loans) whose value is to be used to determine the amount of the settlement obligation under the security-based swap; and
 - A statement of whether the issuer of any security or loan, each issuer of a security in a narrow-based security index, or each referenced issuer underlying the security-based swap is subject to the reporting requirements of Exchange Act Section 13 or Section 15(d) and, if not subject to such reporting requirements, whether public information, including financial information, about any such issuer is available and where the information is available.

We believe this exemption will further the goal in the Dodd-Frank Act of central clearing of security-based swaps. Without exempting the offers and sales of such security-based swaps by a registered or exempt clearing agency in its function as a CCP from the Securities Act (other than Section 17(a)), we believe that a registered or exempt clearing agency may not be able to clear security-based swaps in the manner contemplated by the Dodd-Frank Act and our proposed

exemption available to security-based swaps issued by exempt clearing agencies because in granting an exemption the Commission could impose appropriate conditions to the availability of the exemption that would provide protection to investors.

The Securities Act exemption applies to the extent the clearing agency will issue or is issuing the security-based swap in its function as a CCP and applies to transactions involving such clearing agency.⁵⁰ We note that a clearing agency's role as a CCP and an issuer of security-based swaps is similar to a clearing agency's role with respect to standardized options.⁵¹ We believe that a clearing agency's role as a CCP for security-based swaps, similar to a clearing agency's role with respect to standardized options, is fundamentally different from a conventional issuer that registers transactions in its securities under the Securities Act.⁵² For example, the purchaser of a security-based swap does not, except in the most formal sense, make an investment decision regarding the clearing agency.⁵³ Rather, the security-based swap investment decision is based on the referenced security, loan, narrow-based security index, or issuer. In this circumstance, coupled with the other conditions to the Securities Act exemption,

⁵⁰ As we noted above, when functioning as a CCP, a clearing agency's creditworthiness and liquidity are substituted for the creditworthiness and liquidity of the original counterparties. See footnote 18 above and accompanying text.

⁵¹ See Standardized Options Release.

⁵² Because the novation generally occurs after the counterparties have agreed to enter into the bilateral security-based swap being novated, the investment decision by the counterparties already has occurred.

⁵³ We note, however, that a member or other user of a clearing agency may have an interest in the financial condition of the clearinghouse because the member or user will be relying on the ability of the clearinghouse to meet its obligations with respect to cleared transactions. We have proposed that registered clearing agencies be required to make their audited financial statements and other information about themselves publicly available. See Clearing Agency Standards Proposing Release.

pursuant to the clearing agency's rules. The Securities Act exemption is not available for security-based swaps issued by a registered or exempt clearing agency in its function as a CCP that are not required to be cleared or permitted by its rules to be cleared.

The Dodd-Frank Act also provides that if a security-based swap is subject to the mandatory clearing requirement, it must be traded on an exchange or a registered or exempt security-based SEF, unless no security-based SEF makes such security-based swap available to trade.⁵⁶ Thus, it is possible that a security-based swap could be subject to mandatory clearing without being traded on an exchange or security-based SEF. The Securities Act exemption is available for security-based swaps that are subject to the mandatory clearing requirement or are permitted to be cleared pursuant to the clearing agency's rules,⁵⁷ regardless of whether such security-based swaps also are traded on a national securities exchange or through a security-based SEF.⁵⁸ We believe that if the conditions to the Securities Act exemption are satisfied, then the protections provided for in the analogous exemptions for standardized options and security

⁵⁶ Exchange Act Section 3C(h) specifies that transactions in security-based swaps that are subject to the clearing requirement of Exchange Act Section 3C(a)(1) must be executed on an exchange or on a security-based SEF registered with us (or a security-based SEF exempt from registration), unless no exchange or security-based SEF makes the security-based swap available to trade or the security-based swap transaction is subject to the clearing exception in Exchange Act Section 3C(g). See Pub. L. No. 111-203, § 763 (adding Exchange Act Section 3C(h) [15 U.S.C. 78c-3(h)]). Exchange Act Section 3D(e) allows the Commission to exempt a security-based SEF from registration if the Commission finds that the security-based SEF is subject to comparable comprehensive supervision and regulation on a consolidated basis by the CFTC. See 15 U.S.C. 78c-4(e). The Commission proposed (but has not yet adopted) Regulation SB SEF under the Exchange Act that is designed to create a registration framework for security-based SEFs, establish rules with respect to Title VII's requirement that a security-based SEF must comply with the fourteen enumerated core principles and enforce compliance with those principles, and implement a process for a security-based SEF to submit to the Commission proposed changes to its rules. See footnote 8 above.

⁵⁷ The exemption would be limited to security-based swaps issued by and in a transaction involving a registered or exempt clearing agency in its function as a CCP.

⁵⁸ See Security-Based SEF Proposing Release.

iii. Sales Only to Eligible Contract Participants

Under the Dodd-Frank Act, only an eligible contract participant may enter into security-based swaps other than on a national securities exchange.⁶² In addition, security-based swaps that are not registered pursuant to the Securities Act can only be sold to eligible contract participants.⁶³ New Securities Act Section 5(d) specifically provides that it is unlawful to offer to buy, purchase, or sell a security-based swap to any person that is not an eligible contract participant, unless the transaction is registered under the Securities Act.⁶⁴ Given that Congress determined it is appropriate to limit the availability of registration exemptions under the Securities Act to eligible contract participants, consistent with the proposal, we believe it is appropriate to limit the Securities Act exemption to security-based swaps entered into with eligible contract participants.

iv. Disclosures Relating to the Security-Based Swaps

The Securities Act exemption requires the registered or exempt clearing agency to disclose, either in its agreement regarding the security-based swap or on its publicly available website, certain information with respect to the security-based swap. Consistent with the proposal, this information includes the following:

- A statement identifying any security, issuer, loan, or narrow-based security index underlying the security-based swap;

⁶² See also Pub. L. No. 111-203, § 763(e) (adding Exchange Act Section 6(l) [15 U.S.C. 78f(l)]).

⁶³ See Pub. L. No. 111-203, § 768(b) (adding Securities Act Section 5(d) [15 U.S.C. 77e(d)]).

⁶⁴ See Section 768(b) of the Dodd-Frank Act (adding new Securities Act Section 5(d) [15 U.S.C. 77e(d)]) (“Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)].”).

contract participant. The Dodd-Frank Act did not restrict eligible contract participants' ability to enter into security-based swaps based on whether or not there is publicly-available information about the issuer of the referenced security or loan or the referenced issuer.⁶⁶ As a result, and in light of the nature of the other regulatory safeguards,⁶⁷ we are not conditioning the Securities Act exemption on the actual availability or delivery of such information.

While the Dodd-Frank Act does not condition clearing of security-based swaps on the availability of such information, we believe it is important for eligible contract participants to understand whether such information is publicly available. The availability (or absence) of public information is generally important to eligible contract participants and the registered or exempt clearing agency in evaluating and pricing the security-based swap. Therefore, the Securities Act exemption requires disclosure about whether such information is available.

⁶⁶ We note that eligible contract participants may enter into security-based swaps on a bilateral basis in reliance on an available exemption from the registration requirements of the Securities Act. The exemptions we are adopting in this release to facilitate clearing of security-based swaps do not apply to these bilateral transactions, even if they subsequently are novated or otherwise cleared in transactions to which the exemptions we are adopting in this release apply.

⁶⁷ As part of the process for submitting security-based swaps to us for a determination of whether such security-based swaps are subject to mandatory clearing, the Dodd-Frank Act requires us to take into account several factors, such as the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data, when reviewing a submission to clear security-based swaps by a clearing agency. Much of the information that the registered or exempt clearing agency will be required to include in its agreement or on its website, as a condition to the exemption, likely will already be included in the description of the security-based swaps that the clearing agency identifies publicly that it is going to clear. In addition to the security-based swap submission provisions, the Dodd-Frank Act and the rules proposed under the Act relating to reporting requirements, trade acknowledgments and verification, and business conduct would require certain disclosures relating to security-based swaps, some of which may potentially overlap with the information requirement we are adopting in this release. See, e.g., Mandatory Clearing Proposing Release, Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, Release No. 63346 (Nov. 19, 2010), 75 FR 75207 (Dec. 2, 2010) (“SBSR Proposing Release”), Trade Acknowledgment and Verification of Security-Based Swap Transactions, Release No. 34-63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011) (“Trade Acknowledgment and Verification Proposing Release”), and Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34-64766 (Jun. 29, 2011), 76 FR 42396 (Jul. 18, 2011).

We proposed Exchange Act Rule 12a-10 to exempt security-based swaps that are or have been issued by a registered or exempt clearing agency in reliance on the proposed exemption under the Securities Act from the registration requirements of Section 12(a) of the Exchange Act under certain conditions. We also proposed an amendment to Exchange Act Rule 12h-1 to exempt security-based swaps that are or have been issued by a registered or exempt clearing agency from the registration requirements of Section 12(g) of the Exchange Act under certain conditions.

2. Comments

Commentators generally supported the proposed rule and amendment.⁶⁹ We received only two specific comments on the proposed rule and amendment.⁷⁰ One commentator suggested that the Commission provide exemptions under the Exchange Act similar to the proposed rule and amendment for transactions in uncleared security-based swaps entered into between eligible contract participants and effected through any trading platform.⁷¹ This commentator did not provide any explanation as to why such exemptions were needed, including how security-based swap trading platforms operate, that would enable us to evaluate whether other exemptions under the Exchange Act are necessary or appropriate. Another commentator suggested that the Commission provide an exemption under Section 12(g) of the Exchange Act similar to the proposed amendment for uncleared security-based swaps transactions entered into solely between eligible contract participants.⁷²

⁶⁹ See FSR/ISDA/SIFMA Letter; Gibson Dunn Letter; GFI Letter; and CIR Letter.

⁷⁰ See GFI Letter; and FSR/ISDA/SIFMA Letter.

⁷¹ See GFI Letter.

⁷² See FSR/ISDA/SIFMA Letter. This commentator stated its view that investors in security-based swaps are primarily concerned with the referenced security or loan, issuer or narrow-based

12(g)(1) of the Exchange Act, as modified by rule, requires any issuer with more than \$10,000,000 in total assets and a class of equity securities held by 500 or more persons to register such security with us.⁷⁶

Rule 12b-1 under the Exchange Act prescribes the procedures for registration under both Section 12(b) and Section 12(g) of the Exchange Act. Absent an exemption, security-based swaps that will be traded on national securities exchanges would be required to be registered under Section 12(b) of the Exchange Act. A registered or exempt clearing agency issuing a security-based swap would be required, without an available exemption, to register the security-based swaps under Section 12(b) of the Exchange Act before such security-based swaps could be traded on a national securities exchange. In addition, if the security-based swaps were considered equity securities of the registered or exempt clearing agency, the registration provisions of Section 12(g) of the Exchange Act could apply.

As noted above, just as a registered or exempt clearing agency is different from a conventional issuer that registers transactions in its securities under the Securities Act, it is also different with respect to registering a class of its securities, in this case the security-based swap issued by the registered or exempt clearing agency, under the Exchange Act. Therefore, we are adopting two rules relating to Exchange Act registration of security-based swaps that are or have been issued by a registered or exempt clearing agency in its function as a CCP.

We are adopting new Rule 12a-10 under the Exchange Act without any changes from the proposal to exempt security-based swaps that are or have been issued by a registered or exempt clearing agency in reliance on Securities Act Rule 239 from Section 12(a) of the Exchange Act

⁷⁶ 15 U.S.C. 78l(g) and Exchange Act Rule 12g-1 [17 CFR 240.12g-1].

As we noted in the discussion of Securities Act Rule 239, we believe the interest of investors in the security-based swap is primarily with respect to the referenced security or loan, referenced issuer or referenced narrow-based security index, and not with respect to the registered or exempt clearing agency functioning as the CCP.⁸⁰ Therefore, we believe that requiring registration of security-based swaps under the Exchange Act would not provide additional useful information or meaningful protection to investors with respect to the security-based swap. In addition, the other consequences of Exchange Act registration, such as requirements for ongoing periodic reporting and application of the proxy rules to the clearing agency, would not be meaningful in the context of security-based swaps. At the same time, requiring such registration likely would impose burdens on clearing agencies issuing security-based swaps.⁸¹ Therefore, based on the discussion above, we believe that exempting the registered or exempt clearing agency from the requirements of the Exchange Act arising from Section 12(a) or 12(g) is necessary or appropriate in the public interest and is not inconsistent with the public interest or the protection of investors.

In addition, we note that similar Exchange Act exemptions exist for standardized options issued by a registered options clearing agency and security futures products issued by a registered or exempt clearing agency.⁸² We believe that it is appropriate to establish comparable regulatory treatment for security-based swaps issued by a registered or exempt clearing agency with respect to the applicability of Section 12 of the Exchange Act to security-based swaps

⁸⁰ As noted above, a member or other user of the clearing agency may have an interest in the financial condition of the clearinghouse.

⁸¹ See Pub. L. No. 111-203 § 763(b).

⁸² See Exchange Act Section 12(a) [15 U.S.C. 78l(a)]; Exchange Act Rule 12a-9 [17 CFR 240.12a-9]; and Exchange Act Rules 12h-1(d) and (e) [17 CFR 240.12h-1(d) and (e)].

commentators suggested that the Commission provide an exemption under the Trust Indenture Act similar to the proposed rule for certain uncleared security-based swap transactions involving eligible contract participants.⁸⁶ As noted above, these commentators' suggestions related to exemptions affecting transactions that do not involve registered or exempt clearing agencies and appear responsive to the request for whether additional exemptions should be considered. Thus, we believe that these commentators' suggestions relating to uncleared security-based swaps are more appropriate to be considered in connection with the Interim SBS Exemptions Release and, therefore, we are not adopting rules at this time providing exemptions that would apply to uncleared security-based swaps, including those that may be effected on or through trading platforms.⁸⁷

3. Final Rule

We are adopting Rule 4d-11 under Section 304(d) of the Trust Indenture Act without any changes from the proposal. Final Rule 4d-11 exempts any security-based swap offered and sold in reliance on Securities Act Rule 239 from having to comply with the provisions of the Trust Indenture Act.⁸⁸ We adopted a similar exemption on a temporary basis for eligible CDS.⁸⁹

⁸⁵ See GFI Letter; and FSR/ISDA/SIFMA Letter.

⁸⁶ *Id.* One of these commentators stated its view that because a security-based swap is a contract between two persons, security-based swap counterparties would not meaningfully benefit from the substantive and procedural protections of the Trust Indenture Act. This commentator also stated its view that eligible contract participants are capable of enforcing obligations under security-based swaps without the protections of the Trust Indenture Act and, therefore, that imposing the requirements of the Trust Indenture Act on security-based swaps would not further the goals of the Trust Indenture Act and would introduce unnecessary costs and burdens to these transactions. See FSR/ISDA/SIFMA Letter.

⁸⁷ See footnote 41 above for a discussion of comments received on the Interim SBS Exemptions Release.

⁸⁸ The Trust Indenture Act applies to debt securities sold through the use of the mails or interstate commerce. Section 304 of the Trust Indenture Act exempts from the Trust Indenture Act a number of securities and transactions. Section 304(a) of the Trust Indenture Act exempts

Therefore, we believe the exemption is necessary or appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the Trust Indenture Act.

D. Implications of Security-Based Swaps as Securities

The exemptions we are adopting in this release are not available for security-based swaps that are not cleared (“uncleared security-based swaps”), including, for example, uncleared security-based swaps entered into on organized markets, such as a security-based SEF or a national securities exchange. It is our understanding that transactions involving uncleared security-based swaps entered into between eligible contract participants may occur today on organized platforms that would likely register as security-based SEFs, and we understand that this activity will likely continue after the full implementation of Title VII.⁹² As noted above, security-based swaps are included in the definition of security under the Securities Act and the Exchange Act and are subject to the full panoply of the federal securities laws, including the registration requirements of Section 5 of the Securities Act and Section 12 of the Exchange Act. Because the exemptions we are adopting in this release are not available with respect to uncleared security-based swaps, counterparties that are eligible contract participants and engaging in an uncleared security-based swap would have to either rely on other available exemptions from the registration requirements of the Securities Act, the Exchange Act, and, if applicable, the Trust Indenture Act, or consider whether to register such transaction and/or class of security.⁹³

⁹² See Security-Based SEF Proposing Release (proposed rules relating to security-based SEFs would allow for transactions in uncleared security-based swaps to occur on registered security-based SEFs).

⁹³ Counterparties engaging in an uncleared security-based swap may rely upon the relief discussed in footnote 33 above, which is not affected by this rulemaking. However, such relief will expire upon the compliance date for the final rules the Commission may adopt further defining both the terms “security-based swap” and “eligible contract participant.”

before it becomes effective.⁹⁶ This requirement, however, does not apply if a substantive rule grants or recognizes an exemption or relieves a restriction or if the Commission finds good cause not to delay the effective date.⁹⁷ The Commission finds that the final rules meet both criteria.

The final rules provide exemptions under the Securities Act, the Exchange Act and the Trust Indenture Act for security-based swaps issued by a registered or exempt clearing agency in its function as a CCP. In addition, as discussed above, we adopted the temporary exemptions for eligible CDS to facilitate the operation of clearing agencies as CCPs for eligible CDS. The exemptions we are adopting in this release cover all security-based swaps that may be cleared, including eligible CDS that currently are being issued in reliance on the temporary exemptions for eligible CDS. Given that the temporary exemptions for eligible CDS will expire on April 16, 2012, the final rules are needed to be effective by that date in order to continue facilitating the operation of CCPs in clearing eligible CDS.

Although the final rules condition the exemptions on the registered or exempt clearing agency disclosing certain information with respect to the security-based swaps it clears, we believe that providing this information will not pose significant transition burdens for the three clearing agencies that have been actively engaged as CCPs in clearing eligible CDS in reliance on the temporary exemptions for eligible CDS, which expire on April 16, 2012.⁹⁸ As noted above, these three clearing agencies are deemed registered as clearing agencies for purposes of clearing security-based swaps and are able to engage as CCPs in clearing eligible CDS, in part,

⁹⁶ See 5 U.S.C. 553(d).

⁹⁷ See 5 U.S.C. 553(d)(1) and (3).

⁹⁸ Only the three clearing agencies that have been actively engaged as CCPs in clearing eligible CDS in reliance on the temporary exemptions for eligible CDS will initially be eligible to rely upon the exemptions contained in the final rules because the clearing agency rules currently only cover certain eligible CDS.

We requested comment on the economic analysis included in the Proposing Release, but we did not receive any comments.

The final rules are intended to further the goal of central clearing of security-based swaps by providing exemptions for the issuance of security-based swaps by a registered or exempt clearing agency in its function as a CCP from certain regulatory provisions that might otherwise impair their ability to engage in such clearing activities. Without an exemption, 1) a security-based swap transaction involving a registered or exempt clearing agency functioning as a CCP would have to be registered under the Securities Act; 2) the security-based swaps that are or have been issued in a transaction involving a registered or exempt clearing agency functioning as a CCP would have to be registered as a class of securities under the Exchange Act; and 3) the provisions of the Trust Indenture Act would apply. We believe that requiring compliance with these provisions likely would unnecessarily impede central clearing of security-based swaps and that the exemptions are necessary to facilitate the intent of the Dodd-Frank Act with respect to mandatory clearing of security-based swaps. Absent these exemptions, we believe that registered or exempt clearing agencies would incur additional costs due to compliance with the registration requirements of the Securities Act and the Exchange Act solely because of their clearing functions.¹⁰¹

The final rules should facilitate clearing of security-based swaps by clearing agencies functioning as CCPs at minimal cost to the CCP. Because reliance on the exemptions will not require any filing with or submission to us, other than costs incurred to comply with the information condition of Securities Act Rule 239, the costs of being able to rely on such exemptions, we believe, are minimal.

¹⁰¹ See, e.g., the discussion in the Mandatory Clearing Proposing Release and the Clearing Agencies Proposing Release.

securities, such as costs associated with preparing documents describing security-based swaps, preparing indentures, or arranging for the services of a trustee.

The final rules we are adopting exempt offers and sales of security-based swaps that are or will be issued to eligible contract participants by, and in a transaction involving, a registered or exempt clearing agency in its function as a CCP from all provisions of the Securities Act, other than the Section 17(a) antifraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and the provisions of the Trust Indenture Act.¹⁰³ Because these exemptions are available to any registered or exempt clearing agency offering and selling security-based swaps to an eligible contract participant, in its function as a CCP, we do not believe that the exemptions impose a burden on competition. In contrast, we believe the exemptions as adopted will facilitate moving security-based swaps into centralized clearing, furthering the goal of the Dodd-Frank Act to reduce systemic risk while improving market access to hedging instruments that can contribute to lower costs of raising capital. In addition, we believe the exemptions will promote efficiency by treating security-based swaps issued by clearing agencies in a manner similar to standardized options and security futures issued by clearing agencies. Harmonizing the regulatory treatment of these securities under the Securities Act, Exchange Act, and the Trust Indenture Act should reduce the potential for regulatory arbitrage between such products.

¹⁰³ Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. 15 U.S.C. 78w(a)(2). Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 77b(b) and 15 U.S.C. 78c(f).

information about themselves publicly available.¹⁰⁴ While an investor would be able to pursue an antifraud action in connection with the purchase and sale of security-based swaps under Exchange Act Section 10(b),¹⁰⁵ it would not be able to pursue civil remedies under Securities Act Sections 11 or 12.¹⁰⁶ We could still pursue an antifraud action in the offer and sale of security-based swaps issued by a clearing agency.¹⁰⁷

Securities Act Rule 239(b)(3) requires a clearing agency availing itself of the Securities Act exemption to include in an agreement covering the security-based swap the clearing agency provides or makes available to its counterparty or include on a publicly available website maintained by the clearing agency:

- A statement identifying any security, issuer, loan, or narrow-based security index underlying the security-based swap;
- A statement indicating the securities or loans to be delivered (or class of securities or loans), or if cash settled, the securities, loans or narrow-based security index (or class of securities or loans) whose value will determine the settlement obligation under the security-based swap; and
- A statement of whether the issuer of any security or loan, each issuer of a security in a narrow-based security index, or each referenced issuer underlying the security-based swap is subject to the reporting requirements of Exchange Act Section 13 or Section 15(d) and, if not subject to such reporting requirements, whether public information,

¹⁰⁴ See Regulation of Clearing Agencies, Release No. 34-16900 (Jun. 17, 1980), 45 FR 41920 (Jun. 23, 1980); and Exchange Act Rule 19b-4(l) and (m) [17 CFR 240.19b-4(l) and (m)].

¹⁰⁵ 15 U.S.C. 78j(b).

¹⁰⁶ 15 U.S.C. 77k and 77l.

¹⁰⁷ See 15 U.S.C. 77q and 15 U.S.C. 78j(b).

- “Rule 239” (new collection of information).

Rule 239 is a new collection of information under the Securities Act. This new collection of information relates to the information requirements for clearing agencies seeking to rely on the final rules. There is no mandatory retention period for the information disclosed, and the information disclosed will be made publicly available on the clearing agency’s website or in an agreement the clearing agency provides or makes available to its counterparty to the security-based swap transaction. The collection of information is mandatory and it will not be kept confidential.

B. Summary of Collection of Information

As discussed above, one condition to the availability of the exemption provided in Securities Act Rule 239 for offers and sales of security-based swaps issued by, and in a transaction involving, a registered or exempt clearing agency in its function as a CCP is that such registered or exempt clearing agency has an agreement covering the security-based swap that is provided or made available to its counterparty or a publicly available website maintained by the registered or exempt clearing agency that contains the following:

- A statement identifying any security, issuer, loan, or narrow-based security index underlying the security-based swap;
- A statement indicating the security or loan to be delivered (or class of securities or loans), or if cash settled, the security, loan or narrow-based security index (or class of securities or loans) whose value is to be used to determine the amount of the settlement obligation under the security-based swap; and
- A statement of whether the issuer of any security or loan, each issuer of a security in a narrow-based security index, or each referenced issuer underlying the security-based

clearing agencies may plan to centrally clear security-based swaps and seek to rely on the exemptions we are adopting in this release, and therefore, would be subject to the collection of information.¹¹² For purposes of the PRA, we estimate six clearing agencies would seek to rely on the exemptions we are adopting in this release. This estimate is consistent with the estimate in the Proposing Release and we received no comments on this estimate.

We believe that a registered or exempt clearing agency issuing security-based swaps in its function as a CCP could incur some costs associated with disclosing, or providing or making available, certain information in accordance with Securities Act Rule 239, either in its agreement regarding the security-based swap or on its publicly available website, with respect to the security-based swap. A clearing agency also could incur costs associated with updating the information on its website or in its agreements, if necessary. The purpose of the requirement is to inform investors about whether there is publicly available information about the issuer of the referenced security or referenced issuer and we believe that a clearing agency likely already would be collecting and making public the type of information required by the final rule.¹¹³

¹¹² In the Proposing Release, we estimated that four to six clearing agencies may plan to centrally clear security-based swaps and seek to rely on the exemptions because at that time four clearing agencies were authorized to clear eligible CDS pursuant to certain temporary exemptive orders. See footnote 28 above. However, subsequent to the Proposing Release, three of these clearing agencies were deemed registered under Exchange Act Section 17A and currently are performing the functions of a CCP for eligible CDS. The fourth clearing agency was not deemed registered under Exchange Act Section 17A and because its temporary exemptive order has expired it is not currently performing the functions of a CCP for eligible CDS. See footnote 30 above.

¹¹³ As noted above, three clearing agencies are deemed registered as clearing agencies for purposes of clearing security-based swaps and are able to engage as CCPs in clearing eligible CDS, in part, pursuant to the temporary exemptive order relating to Sections 5 and 6 of the Exchange Act. The temporary exemptive order contains conditions to such relief relating to, among other things, available information about the eligible CDS and the underlying reference entity of such eligible CDS. See footnote 30 above. We also note that we proposed rules in the Mandatory Clearing Proposing Release and the SBSR Proposing Release that would require some of the same information as the requirements adopted in this release. If we adopt those rules with information collections similar to that adopted in this release, we may adjust our PRA estimates.

Under Section 605(b) of the Regulatory Flexibility Act,¹¹⁶ we certified that, when adopted, Rule 239 under the Securities Act, Rule 12a-10 under the Exchange Act, the amendment to Rule 12h-1 under the Exchange Act, and Rule 4d-11 under the Trust Indenture Act would not have a significant economic impact on a substantial number of small entities. This certification, including our basis for the certification, was included in Part VIII of the Proposing Release. We solicited comments on the potential impact of these rules and amendment on small entities, but received none. The final rules are identical to the proposed rules. Accordingly, there have been no changes to the proposal that would alter the basis upon which the certification was made.

VII. STATUTORY AUTHORITY AND TEXT OF THE RULES AND AMENDMENTS

The rules and amendments described in this release are being adopted under the authority set forth in Sections 19 and 28 of the Securities Act, Sections 3C, 12(h), 23(a) and 36 of the Exchange Act and Section 304(d) of the Trust Indenture Act.

List of Subjects in 17 CFR Parts 230, 240 and 260

Reporting and recordkeeping requirements, Securities.

TEXT OF THE RULES AND AMENDMENTS

For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II, of the Code of Federal Regulations as follows:

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

1. The authority citation for Part 230 continues to read, in part, as follows:

¹¹⁶ 5 U.S.C. 605(b).

(3) The eligible clearing agency posts on its publicly available website at a specified Internet address or includes in its agreement covering the security-based swap that the eligible clearing agency provides or makes available to its counterparty the following:

(i) A statement identifying any security, issuer, loan, or narrow-based security index underlying the security-based swap;

(ii) A statement indicating the security or loan to be delivered (or class of securities or loans), or if cash settled, the security, loan, or narrow-based security index (or class of securities or loans) whose value is to be used to determine the amount of the settlement obligation under the security-based swap; and

(iii) A statement of whether the issuer of any security or loan, each issuer of a security in a narrow-based security index, or each referenced issuer underlying the security-based swap is subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o) and, if not subject to such reporting requirements, whether public information, including financial information, about any such issuer is available and where the information is available.

(c) The exemption provided in paragraph (a) of this section does not apply to the provisions of Section 17(a) of the Act (15 U.S.C. 77q(a)).

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

3. The authority citation for Part 240 continues to read, in part, 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, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11,

under Section 17A of the Act pursuant to a rule, regulation, or order of the Commission in its function as a central counterparty that the Commission has determined must be cleared or that is permitted to be cleared pursuant to the clearing agency's rules, and that was sold to an eligible contract participant (as defined in Section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))) in reliance on Rule 239 under the Securities Act of 1933 (17 CFR 230.239).

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

6. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b-3, 80b-4, and 80b-11.

* * * * *

7. Section 260.4d-11 is added to read as follows:

§ 260.4d-11 Exemption for security-based swaps offered and sold in reliance on Rule 239 under the Securities Act of 1933 (17 CFR 230.239).

Any security-based swap offered and sold in reliance on Rule 239 under the Securities Act of 1933 (17 CFR 230.239), whether or not issued under an indenture, is exempt from the Act.

By the Commission.



Elizabeth M. Murphy
Secretary

March 30, 2012