

SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for **February 2013** with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

**Mary L. Schapiro served as SEC Chairman
January 27, 2009 until December 14, 2012**

**Elisse B. Walter served as SEC Commissioner
July 9, 2008 until December 14, 2012**

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 M. GALLAGHER, COMMISSIONER

(6 Documents)

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UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 68811/ February 1, 2013

Admin. Proc. File No. 3-15110

In the Matter of

ENCORE CLEAN ENERGY, INC., *et al.*

ORDER DISMISSING WITH RESPECT TO EXTENSIONS, INC.

On November 29, 2012, administrative proceedings were instituted against Extensions, Inc. and six other issuers under § 12(j) of the Securities Exchange Act of 1934.¹ The Order Instituting Proceedings alleged that Extensions violated periodic reporting requirements; it ordered a hearing to determine whether these allegations were true and, if so, whether suspension or revocation of the registration of Extensions's securities was necessary and appropriate for the protection of investors.

Subsequent to the issuance of the OIP, however, the Division of Enforcement learned that, on July 13, 2007, Extensions had filed a Form 15, pursuant to Exchange Act Rule 12g-4(a),² to voluntarily terminate the registration of its securities under Exchange Act § 12(g).³ Under Rule 12g-4(a), an issuer's registration is terminated ninety days after filing Form 15, which in this case was October 11, 2007. The Division filed a motion to dismiss the proceeding against Extensions, based on the deregistration of its securities. Extensions has not responded to the Division's motion.

¹ 15 U.S.C. § 78l(j). The registrations of the securities of the other six respondents in this proceeding were revoked in an order issued by the law judge finding those respondents in default. *See Encore Clean Energy, Inc.*, Exchange Act Release No. 68567, 2013 SEC LEXIS 14 (Jan. 3, 2013).

² 17 C.F.R. § 240.12g-4(a) (certification of termination of registration under § 12(g)).

³ 15 U.S.C. § 78l(g).

It is appropriate to grant the Division's motion because the respondent does not now have a class of registered securities and because revocation or suspension of registration is the only remedy available in a proceeding instituted under Exchange Act § 12(j).⁴

Accordingly, IT IS ORDERED that this proceeding be dismissed with respect to Extensions, Inc.

By the Commission.

Elizabeth M. Murphy
Secretary

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

⁴ See, e.g., *Aegis Assessments, Inc.*, Exchange Act Release No. 68379, 2012 SEC LEXIS 3762, at *2 (Dec. 6, 2012) (granting motion to dismiss Exchange Act § 12(j) proceeding against respondent where respondent no longer had a class of securities registered with the Commission).

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

*Commissioner Walter
Commissioner Gallagher
not participating
Commissioner Paredes
Disapproved*

INVESTMENT COMPANY ACT OF 1940
Release No. 30380 / February 6, 2013

In the Matter of

J.P. MORGAN SECURITIES LLC
BEAR STEARNS ASSET BACKED SECURITIES I, LLC
STRUCTURED ASSET MORTGAGE INVESTMENTS II, INC.
SACO I INC.
J.P. MORGAN ACCEPTANCE CORPORATION I
383 Madison Avenue
New York, NY 10179

EMC MORTGAGE, LLC
2780 Lake Vista Drive
Lewisville, TX 75067

BEAR STEARNS ASSET MANAGEMENT INC.
BEAR STEARNS HEALTH INNOVENTURES MANAGEMENT, L.L.C.
BSCGP INC.
CONSTELLATION VENTURES MANAGEMENT II, LLC
J.P. MORGAN INSTITUTIONAL INVESTMENTS, INC.
J.P. MORGAN INVESTMENT MANAGEMENT INC.
J.P. MORGAN PARTNERS, LLC
J.P. MORGAN PRIVATE INVESTMENTS INC.
SIXTY WALL STREET GP CORPORATION
SIXTY WALL STREET MANAGEMENT COMPANY, LLC
270 Park Avenue
New York, NY 10017

CONSTELLATION GROWTH CAPITAL LLC
HIGHBRIDGE CAPITAL MANAGEMENT, LLC
40 West 57th Street, 32nd Floor
New York, NY 10019

JF INTERNATIONAL MANAGEMENT INC.
21st Floor, Chater House
8 Connaught Road Central
Hong Kong

JPMORGAN DISTRIBUTION SERVICES, INC.
1111 Polaris Parkway
Columbus, OH 43240

OEP CO-INVESTORS MANAGEMENT II, LTD.
OEP CO-INVESTORS MANAGEMENT III, LTD.
320 Park Avenue, 18th Floor
New York, NY 10022

SECURITY CAPITAL RESEARCH & MANAGEMENT INCORPORATED
10 South Dearborn Street, Suite 1400
Chicago, IL 60603

(812-14094)

ORDER PURSUANT TO SECTION 9(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING A PERMANENT EXEMPTION FROM SECTION 9(a) OF THE ACT AND ERRATA

J.P. Morgan Securities LLC ("JPMS"), EMC Mortgage, LLC ("EMC"), Bear Stearns Asset Backed Securities I, LLC ("BSABS"), Structured Asset Mortgage Investments II, Inc. ("SAMI"), SACO I Inc. ("SACO") and JP. Morgan Acceptance Corporation I ("JPMAC", together with JPMS, EMC, BSABS, SAMI and SACO, the "Defendants"), Bear Stearns Asset Management Inc., Bear Stearns Health Innoventures Management, L.L.C., BSCGP Inc., Constellation Growth Capital LLC, Constellation Ventures Management II, LLC, Highbridge Capital Management, LLC, JF International Management Inc., JPMorgan Distribution Services, Inc., J.P. Morgan Institutional Investments, Inc., J.P. Morgan Investment Management Inc., J.P. Morgan Partners, LLC, J.P. Morgan Private Investments Inc., OEP Co-Investors Management II, Ltd., OEP Co-Investors Management III, Ltd., Security Capital Research & Management Incorporated, Sixty Wall Street GP Corporation, and Sixty Wall Street Management Company, LLC (collectively, "Applicants") filed an application on November 16, 2012, and an amendment to the application on January 9, 2013, requesting temporary and permanent orders under section 9(c) of the Investment Company Act of 1940 ("Act") exempting Applicants and any other company of which any Defendant is or hereafter becomes an affiliated person (together with Applicants, "Covered Persons") from section 9(a) of the Act with respect to an injunction entered by the United States District Court for the District of Columbia on January 8, 2013.

On January 9, 2013, the Commission simultaneously issued a notice of the filing of the application and a temporary conditional order exempting the Covered Persons from section 9(a) of the Act (Investment Company Act Release No. 30347) until the Commission takes final action on the application for a permanent order. The notice incorrectly stated that an amendment to the application was filed on January 8, 2013. The correct date is January 9, 2013. The notice gave interested persons an opportunity to request a hearing and stated that an

order disposing of the application would be issued unless a hearing was ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the conduct of the Applicants has been such as not to make it against the public interest or protection of investors to grant the permanent exemption from the provisions of section 9(a) of the Act.

Accordingly,

IT IS ORDERED, pursuant to section 9(c) of the Act, on the basis of the representations contained in the application, as amended and filed by J.P. Morgan Securities LLC, et al. (File No. 812-14094) that Covered Persons be and hereby are permanently exempted from the provisions of section 9(a) of the Act, operative solely as a result of an injunction, described in the application, as amended, entered by the United States District Court for the District of Columbia on January 8, 2013.

By the Commission.



Elizabeth M. Murphy
Secretary

*Commissioner Aguilar
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3548 / February 6, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15203

In the Matter of

HOWARD B. BERGER,

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 Howard B. Berger ("Berger" or "Respondent").

II.

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

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III.

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

1. Berger was a co-founder and a co-manager of Professional Traders Management, LLC ("PTM") and Professional Offshore Traders Management, LLC ("POTM"), investment advisers not registered with the Commission that managed two hedge funds, Professional Traders Fund, LLC ("PTF") and Professional Offshore Opportunity Fund, Ltd. ("POOF"), respectively. Berger, 40 years old, is a resident of Syosset, New York.

2. On January 15, 2013, a judgment was entered by consent against Berger, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. Howard B. Berger, et al., Civil Action Number 2012 CV 4728, in the United States District Court for the Eastern District of New York.

3. The Commission's complaint alleged that Berger, in his capacity as a manager of PTM and POTM, controlled the trading activity in PTF and POOF and engaged in a fraudulent "cherry picking" scheme where he oftentimes allocated profitable trades for his benefit at the expense of the hedge funds he managed. The complaint alleged that for more than a year, Berger profited from fraudulently allocating profitable trades to an account in his wife's name while oftentimes allocating his unprofitable trades to PTF and POOF accounts.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Berger 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

SECURITIES EXCHANGE ACT OF 1934

Release No. 68903 / February 11, 2013

ADMINISTRATIVE PROCEEDING

File No. 3-15208

In the Matter of

**HDL Capital Corp.,
HMG Worldwide Corp.,
Homegold Financial, Inc.,
Hudson Hotels Corp., and
Hurry, 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 HDL Capital Corp., HMG Worldwide Corp., Homegold Financial, Inc., Hudson Hotels Corp., and Hurry, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. HDL Capital Corp. (CIK No. 1201718) is a revoked Nevada corporation located in Burlington, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). HDL 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, 2005, which reported a net loss of \$8,357 for the prior twelve months.

2. HMG Worldwide Corp. (CIK No. 756680) is a void Delaware corporation located in New York, New York with a class of securities registered with the

Commission pursuant to Exchange Act Section 12(g). HMG 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, 2001, which reported a net loss of over \$6.4 million for the prior six months.

3. Homegold Financial, Inc. (CIK No. 277028) is a dissolved South Carolina corporation located in Columbia, South Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Homegold 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, 2002, which reported a net loss of over \$29 million for the prior nine months. On March 31, 2003, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of South Carolina, which was terminated April 28, 2007. As of October 5, 2012, the company's stock (symbol "HGFNQ") was traded on the over-the-counter markets.

4. Hudson Hotels Corp. (CIK No. 846469) is a New York corporation located in Rochester, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Hudson Hotels 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, 2001, which reported a net loss of over \$1.3 million for the prior nine months. As of February 5, 2013, the company's stock (symbol "HUDS") was traded on the over-the-counter markets.

5. Hurry, Inc. (CIK No. 899755) is a terminated Georgia corporation located in Ellijay, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Hurry is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 2002, which reported a net operating loss of \$134,000 for the prior thirteen weeks.

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

*Commissioner Walter
Commissioner Faredes
not participating*

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934
Release No. 69001 / February 27, 2013**

**ADMINISTRATIVE PROCEEDING
File No. 3-15220**

In the Matter of

DOUGLAS F. VAUGHAN,

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 Douglas F. Vaughan ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, 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. Vaughan, 65 years old, is a resident of Albuquerque, New Mexico. During the time period relevant to the conduct alleged in the complaint, Vaughan was the chairman, chief executive officer, president, and majority owner of The Vaughan Company Realtors, Inc., ("VCR"), and the founder and sole natural person in control of Vaughan Capital, LLC ("Vaughan Capital"). Vaughan used VCR and Vaughan Capital to offer and sell securities to investors in the United States. Vaughan, VCR, and Vaughan Capital are not registered as, and never have been registered as, brokers or dealers with the Commission.

2. On February 14, 2013, a final judgment was entered by consent against Vaughan, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Douglas F. Vaughan, et al., Civil Action Number 10-cv-00263, in the United States District Court for the District of New Mexico.

3. The Commission's complaint alleged that, beginning in approximately 1993 and continuing until at least January 31, 2010, Respondent acted as a broker or dealer, misused and misappropriated investor funds, and engaged in a variety of conduct which operated as a fraud and deceit on investors. Among other allegations, the complaint stated that, beginning sometime in 1993, Vaughan caused VCR to issue promissory notes, which were securities, to hundreds of investors in the United States. The complaint further alleged that, beginning in about June 2008, Respondent caused Vaughan Capital to sell "membership units," which were securities. The complaint alleged that the VCR promissory note program and the Vaughan Capital securities offering were part of a single Ponzi scheme that continued until at least January 31, 2010.

4. On December 21, 2011, pursuant to a written plea agreement, Vaughan pled guilty to one count of mail fraud and one count of wire fraud in violation of Title 18, United States Code, Sections 1341 and 1343, before the United States District Court for the District of New Mexico in United States v. Douglas F. Vaughan, Cr. No. 11-404. On September 5, 2012, a judgment in the criminal case was entered against Vaughan. He was sentenced to a prison term of 144 months followed by six years of supervised release, and ordered to make restitution in the amount of \$43,658,820.91. Pursuant to the plea agreement, Vaughan also forfeited his right, title, and interest in any assets derived from or used in the commission of the criminal offenses.

5. In connection with that plea, Vaughan admitted, *inter alia*, that he obtained money and property from investors in the VCR promissory note program and Vaughan Capital by means of materially false and misleading statements and, in so doing, used the United States mails and interstate communications facilities. Vaughan admitted that he misrepresented to investors the safety of VCR's promissory note program and did not disclose that VCR would have been insolvent without the infusion of capital from new investors in Vaughan Capital and VCR's promissory note program.

IV.

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

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

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

*Commissioner Aquilar
not participating*

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934
Release No. 68990 / February 26, 2013**

**ADMINISTRATIVE PROCEEDING
File No. 3-15219**

In the Matter of

EDWARD TACKABERRY,

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 Edward Tackaberry ("Tackaberry," 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. Tackaberry is 60 years old and a resident of Fairport, New York, and from 1981 through 2006, was a registered representative of various broker-dealers. From in or around 2006 through in or around 2011, Tackaberry worked for several small, related New York Limited Companies (the "LLCs") located in Pittsford, New York, which consist of, inter alia, Charge-On Demand LLC, Innovations Group Enterprises LLC, and Stucco LLC, all of which were registered with the New York Secretary of State in 2008 and purportedly pursued entrepreneurial business ideas.

2. On September 25, 2012, a final judgment was entered by consent against Tackaberry, permanently enjoining him from future violations of Sections 15(a) and 15(b)(6)(B)(i) of the Exchange Act, in the civil action entitled Securities and Exchange Commission v. Edward Tackaberry, Civil Action Number 12 Civ. 6512 T, in the United States District Court for the Western District of New York.

3. The Commission's complaint alleged that on August 30, 2007, in a previously filed civil action entitled SEC v. Pittsford Capital Income Partners, L.L.C., et al., 06 Civ. 6353 T(P), in the United States District Court for the Western District of New York, a final judgment was entered against Tackaberry permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. On September 27, 2007, based on such injunction, the Commission barred Tackaberry from association with any broker or dealer. The complaint further alleged that, from in or around 2007 through 2009, in violation of the Commission's September 27, 2007 order, Tackaberry acted as an unregistered broker-dealer, and associated with an unregistered broker-dealer in connection with the solicitation of investors in securities issued by the LLCs. Tackaberry allegedly did so by serving as several prospective investors' first contact with the LLCs, describing the investments and how they would be documented, negotiating the terms of investment with some of the investors, and documenting investment transactions in several instances.

IV.

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

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

SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for **February 2013**, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Elisse B. Walter, SEC Chairman
December 15, 2012 to Present

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

ELISSE B. WALTER, CHAIRMAN

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

(42 Documents)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

June 29, 2012

IN THE MATTER OF
CHINA MEDICAL
TECHNOLOGIES, INC.

ORDER OF SUSPENSION OF TRADING

File No. 500-1

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Medical Technologies, Inc. ("China Medical") because of questions regarding the accuracy and adequacy of disclosures by China Medical concerning, among other things: (1) the status of the company's officers and directors, (2) the accuracy of the company's financial statements filed with the Commission, and (3) the current financial condition of the company. China Medical's securities are quoted on OTC Link operated by OTC Markets Group Inc. under the ticker symbol "CMEDY."

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-quoted 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-quoted company is suspended for the period from 9:30 a.m. EDT, on June 29, 2012 through 11:59 p.m. EDT, on July 13, 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
Rel. No. 68110 / February 1, 2013

Admin. Proc. File No. 3-14945

In the Matter of
MITCHELL SEGAL, ESQ.

ORDER GRANTING REQUEST TO
WITHDRAW PETITION TO LIFT
TEMPORARY SUSPENSION

On July 11, 2012, we issued an order instituting proceedings against Mitchell Segal, Esq.,¹ an attorney licensed to practice law in New York State, pursuant to Rule of Practice 102(e)(3)(i), that temporarily suspended him from appearing or practicing before the Commission.² On August 27, 2012, Segal filed a petition, pursuant to Rule 102(e)(3)(ii),³ requesting that the Commission lift his temporary suspension. On September 26, 2012, we issued an order denying Segal's petition and setting the matter down for a hearing before an administrative law judge.⁴

On November 29, 2012, Segal filed the instant request, styled "Withdrawal of Petition Pursuant to Administrative Proceeding Order Instituting Public Administrative Proceedings and Imposing Temporary Suspension Pursuant to Rule 102(e)(3) of the Commission's Rules of Practice," seeking to withdraw his August 27, 2012 petition and terminate further proceedings. In a letter attachment, Segal wrote, "After careful consideration of the legal expenses associated with the Petition which I cannot afford in addition to the fact that I do not practice before the Securities and Exchange Commission nor desire to, I hereby request the withdrawal of my Petition in order to move forward with my life." Under the circumstances, we find it appropriate to grant Segal's request.

Accordingly, IT IS ORDERED that Mitchell Segal's request to withdraw his petition to lift the temporary suspension imposed on him be, and hereby is, granted; and it is further

ORDERED that the temporary suspension imposed on Mitchell Segal has become permanent pursuant to Rule of Practice 102(e)(3)(ii).

By the Commission.

Elizabeth M. Murphy
Secretary

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

¹ 17 C.F.R. § 201.102(e)(3)(i).

² *Mitchell Segal, Esq.*, Securities Exchange Act Release No. 67393, 2012 WL 2789437 (July 11, 2012).

³ 17 C.F.R. § 201.102(e)(3)(ii).

⁴ *Mitchell Segal, Esq.*, Exchange Act Release No. 67930, 2012 WL 4458283 (Sept. 26, 2012).

*Commissioner Gallagher
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

February 4, 2013

IN THE MATTER OF
AMERICAS ENERGY COMPANY-AECO

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 Americas Energy Company-AECO

("Americas") because Americas has not filed any periodic reports since the period ended September 30, 2011. Americas is a Nevada corporation based in Knoxville, Tennessee, and its common stock is currently quoted on OTC Link, operated by OTC Markets Group, Inc., under the symbol AENYQ.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Americas.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Americas is suspended for the period from 9:30 a.m. EST on February 4, 2013, through 11:59 p.m. EST on February 15, 2013.

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. 68826 / February 5, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3544 / February 5, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15197

In the Matter of

Kenneth Ira Starr, Esq.,
C.P.A.,

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 Kenneth Ira Starr ("Starr" or "Respondent").

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II.

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

III.

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

1. Until the appointment of a receiver, Starr was the Chief Executive Officer of Starr Investment Advisors, LLC ("SIA"), an investment advisor registered with the Commission. Starr also owned 95% of Starr & Company, LLC, which was the sole owner of SIA. Starr, age 67, is a resident of New York, New York. From December 2007 until March 2010, Starr also was a registered representative associated with Diamond Edge Capital Partners, LLC, a broker-dealer registered with the Commission. Starr is an attorney who was disbarred from the practice of law in New York. Starr is an accountant who surrendered his license for certified public accountancy for New York.

2. On November 16, 2012, a final judgment was entered by consent against Starr, permanently enjoining him from future violations of Sections 206(1) and 206(2) of the Advisers Act in the civil action entitled *Securities and Exchange Commission v. Kenneth Ira Starr, et al.*, 10 Civ. 4270 (S.D.N.Y.) (SHS), in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that Starr misappropriated at least \$8.7 million in investor funds from August 2009 through April 2010.

4. On or about September 10, 2010, Starr pled guilty to one count each of wire fraud (18 U.S.C. § 1343), money laundering (18 U.S.C. § 1956), and fraud by an investment advisor (15 U.S.C. § 80b-6) in the action styled *United States v. Kenneth Starr*, 10 Cr. 520 (S.D.N.Y.). On March 3, 2011, the United States District Court for the Southern District of New York entered a judgment against Starr sentencing him to ninety months in prison. He also was fined \$300 in criminal monetary penalties, ordered to pay more than \$30 million in restitution, and ordered to forfeit more than \$29 million.

5. The counts of the criminal indictment to which Starr pled guilty alleged, inter alia, that Starr defrauded investors and obtained money and property by means of materially false and misleading statements.

IV.

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

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

SECURITIES EXCHANGE ACT OF 1934
Release No. 68827 / February 5, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15198

In the Matter of

Kenneth Ira Starr

Respondent.

**ORDER OF 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 Kenneth Ira Starr ("Starr") pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(2)].¹

II.

The Commission finds that:

1. Starr is an attorney who has been disbarred from the practice of law in New York.
2. Starr is an accountant who surrendered his certified public accountancy license for New York.
3. On March 3, 2011, a judgment of conviction was entered against Starr in *United States v. Kenneth Starr*, 10 Cr. 520 (S.D.N.Y.) (SHS), in the United States District Court for the Southern District of New York, finding him guilty of one count each of wire fraud (18 U.S.C. §

¹ Rule 102(e)(2) provides in pertinent part: Any ... person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission.

1343), money laundering (18 U.S.C. § 1956), and fraud by an investment advisor (15 U.S.C. § 80b-6).

4. As a result of this conviction, Starr was sentenced to ninety months imprisonment in a federal penitentiary and ordered to pay restitution in the amount of \$30,000,000 and a criminal penalty in the amount of \$300.

III.

In view of the foregoing, the Commission finds that Starr has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Kenneth Starr 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

*Commissioner Gallagher
not participating*

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934
Release No. 68828 / February 5, 2013**

**INVESTMENT ADVISERS ACT OF 1940
Release No. 3545 / February 5, 2013**

**ADMINISTRATIVE PROCEEDING
File No. 3-15199**

_____)
In the Matter of)
)
Ardley Advisory Partners,)
)
Respondent)
)
)
_____)

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(e) OF THE INVESTMENT
ADVISERS ACT OF 1940, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Ardley Advisory Partners ("Ardley").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Ardsley, an investment adviser based in Stamford, Connecticut. Rule 105 prohibits short selling of equity securities during a restricted period prior to a public offering and then purchasing the subject securities in the offering. Ardsley violated Rule 105 in connection with certain short sales it effected within the Rule 105 restricted period preceding its purchase of securities in public offerings by Sunpower Corp. ("Sunpower") in April 2009, China Agritech, Inc. ("China Agritech") in April 2010 and Synutra International, Inc. ("Synutra") in June 2010, resulting in unlawful profits of \$506,671.50.

Respondent

2. Ardsley is an investment adviser founded in 1987 and has its principal place of business in Stamford, Connecticut. Ardsley was registered with the Commission as an investment adviser from December 28, 1993 until it withdrew its registration on September 25, 2009 when it qualified for the exemption from registration pursuant to former Section 203(b)(3) of the Advisers Act. Ardsley re-registered with the Commission on March 30, 2012. During the relevant period, April 2009 through April 2010, Ardsley advised six clients, including hedge funds, and the trading described in this Order was conducted by Ardsley on behalf of those clients.

Background

3. As amended in 2007, Rule 105 of Regulation M provides in pertinent part:

In connection with an offering of equity securities for cash pursuant to a registration statement or a notification on Form 1-A . . . or Form 1-E . . . filed under the Securities Act of 1933 ("offered securities"), it shall be unlawful for any person to sell short . . . the security that is the subject of the offering and purchase the offered securities from an underwriter or broker or dealer participating in the offering if such short sale was effected during the period ("Rule 105 restricted period") . . . [b]eginning five business days before the pricing of the offered securities and ending with such pricing.

17 C.F.R. § 242.105(a); Short Selling in Connection with a Public Offering, Exchange Act Release No. 56206, 72 Fed. Reg. 45094, 45107 (Aug. 10, 2007).

4. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics." *Id.* at 45094. Rule 105 prohibits

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

the conduct irrespective of the short seller's intent in effectuating the short sale. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." *Id.* at 45096.

Sunpower

5. Ardsley sold short a total of 45,000 shares of Sunpower at prices ranging from \$25.45 to \$27.37 per share on April 21, 22, and 23, 2009.

6. On Tuesday, April 28, 2009, before the trading markets opened, Sunpower announced a public secondary offering of common stock (the "Sunpower Offering"), which was priced at \$22 per share.

7. On Tuesday, April 28, 2009, Ardsley purchased 55,000 shares of Sunpower common stock in the Sunpower Offering at \$22 per share.

8. Because Ardsley sold short shares of Sunpower during the restricted period and then purchased shares in the Sunpower Offering, Ardsley violated Rule 105. The difference between the proceeds from the short sales of Sunpower's shares during the Rule 105 restricted period and the cost of acquiring the shares in the Sunpower Offering was \$216,095. In addition, the clients advised by Ardsley improperly obtained a benefit of \$6,130 from the remaining 10,000 shares they received in the Sunpower Offering at a market discount from Sunpower's market price. Accordingly, the total profit from purchasing securities in the Sunpower Offering was \$222,225.

China Agritech

9. Ardsley sold short a total of 45,000 shares of China Agritech at prices ranging from \$18.39 to \$19.04 per share on April 22 and 23, 2010.

10. On Thursday, April 29, 2010, before the trading markets opened, China Agritech announced a public secondary offering of common stock (the "China Agritech Offering"), which was priced at \$16.10 per share.

11. On Thursday, April 29, 2010, Ardsley purchased 120,000 shares of China Agritech common stock in the China Agritech Offering at \$16.10 per share.

12. Because Ardsley sold short shares of China Agritech during the restricted period and then purchased shares in the China Agritech Offering, Ardsley violated Rule 105. The difference between the proceeds from the short sales of China Agritech's shares during the Rule 105 restricted period and the cost of acquiring the shares in the China Agritech Offering was \$116,081.50. In addition, the clients advised by Ardsley improperly obtained a benefit of \$92,392.50 from the remaining 75,000 shares they received in the China Agritech Offering at a market discount from China Agritech's market price. Accordingly, the total profit from purchasing securities in the China Agritech Offering was \$208,474.

Synutra

13. Ardsley sold short a total of 25,000 shares of Synutra at a price of \$22.03 per share on June 18, 2010.

14. On Friday, June 25, 2010, before the trading markets opened, Synutra announced a public secondary offering of common stock (the "Synutra Offering"), which was priced at \$19 per share.

15. On Thursday, June 25, 2010, Ardsley purchased 75,000 shares of Synutra common stock in the Synutra Offering at \$16.10 per share.

16. Because Ardsley sold short shares of Synutra during the restricted period and then purchased shares in the Synutra Offering, Ardsley violated Rule 105. The difference between the proceeds from the short sales of Synutra's shares during the Rule 105 restricted period and the cost of acquiring the shares in the Synutra Offering was \$75,972.50. The clients advised by Ardsley did not obtain profits with respect to the remaining 50,000 shares they received in the Synutra Offering. Accordingly, the total profit from purchasing securities in the Synutra Offering was \$75,972.50.

17. As a result of the conduct described above, Ardsley willfully² violated Rule 105 of Regulation M of the Exchange Act.

Ardsley's Remedial Efforts

18. After the Synutra transactions and prior to the Commission staff contacting it, Ardsley developed and implemented policies and procedures relating to Rule 105 compliance and provided employees with Rule 105 compliance training.

19. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

IV.

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

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. 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)).

Accordingly, pursuant to Section 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent Ardsley cease and desist from committing or causing any violation and any future violations of Rule 105 of Regulation M of the Exchange Act;
- B. Respondent Ardsley is censured;
- C. Respondent Ardsley shall, within 14 days of the entry of this Order, pay disgorgement of \$506,671.50 and prejudgment interest of \$55,065.39 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

- 1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- 2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- 3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed via overnight delivery to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Ardsley Advisory Partners as a Respondent in these proceedings and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to John T. Dugan, Associate Regional Director, Division of Enforcement, U.S. Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

- D. Respondent Ardsley shall, within 14 days of the entry of this Order, pay a civil monetary penalty in the amount of \$253,335 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and U.S.C. § 3717. Payments must be made in one of the following ways:

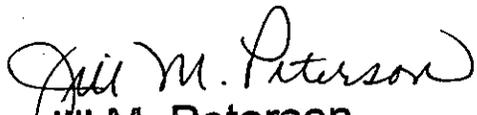
- 1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- 2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- 3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed via overnight delivery to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Ardsley Advisory Partners as a Respondent in these proceedings and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to John T. Dugan, Associate Regional Director, Division of Enforcement, U.S. Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

By the Commission.

Elizabeth M. Murphy
Secretary


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3546 / February 5, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15200

In the Matter of

Juno Mother Earth Asset
Management, LLC,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(e) 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(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Juno Mother Earth Asset Management, LLC ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(e) 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. Juno is a Delaware limited liability company that has been registered as an investment adviser with the Commission since November 2007. During the time period relevant to the Commission's Complaint, Juno's principal place of business was New York, New York. Eugenio Verzili ("Verzili") and Arturo Allan Rodriguez Lopez a/k/a Arturo Rodriguez ("Rodriguez") each own at least 25% of Juno and control the day-to-day operations of Juno.

2. On August 14, 2012, a final judgment was entered by consent against Respondent, permanently enjoining Respondent from violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and Sections 203A, 206(1), 206(2), 206(4) and 207 of the Advisers Act, and Rules 206(4)-2 and 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. Juno Mother Earth Asset Management, LLC, et al., Civil Action Number 11 Civ. 1778 (TPG), in the United States District Court for the Southern District of New York.

3. The Commission's Complaint alleged that Respondent, Rodriguez and Verzili orchestrated a multi-faceted scheme to defraud a hedge fund under their control, as well as the investors in the fund, and failed to comply with their fiduciary obligations to the hedge fund, through: (a) misappropriating approximately \$1.8 million of assets from a Respondent-advised hedge fund; (b) fraudulently concealing their misappropriation from the fund's independent directors; (c) inflating and misrepresenting Respondent's assets under management by approximately \$40 million; (d) filing false Forms ADV with the Commission that, among other things, failed to disclose transactions between Respondent and the hedge fund; (e) concealing Respondent's precarious financial condition; and (f) misrepresenting the amount of capital certain Respondent partners had invested in a Respondent-advised fund.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(e) of the Advisers Act that Respondent's registration as an investment adviser shall 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

INVESTMENT ADVISERS ACT OF 1940
Release No. 3547; February 6, 2013

ORDER CANCELLING REGISTRATIONS OF CERTAIN INVESTMENT ADVISERS
PURSUANT TO SECTION 203(h) OF THE INVESTMENT ADVISERS ACT OF 1940

The investment advisers whose names appear in the attached Appendix, hereinafter referred to as the registrants, being registered as investment advisers pursuant to section 203 of the Investment Advisers Act of 1940 (the "Act").

On October 19, 2012, the Commission issued a notice of intention to cancel registrations of certain investment advisers, including the registrants (Investment Advisers Act Release No. 3490). The notice gave interested persons an opportunity to request a hearing and stated that an order cancelling the registrations would be issued unless a hearing was ordered. No request for a hearing has been filed with respect to the registrants, and the Commission has not ordered a hearing.¹

The Commission having found that the registrants are no longer in existence, are not engaged in business as investment advisers, or are prohibited from registering as investment advisers under section 203A of the Act.

Accordingly, IT IS ORDERED, pursuant to section 203(h) of the Act, that the registration of each of the said registrants be, and hereby is, cancelled.

By the Commission.



Elizabeth M. Murphy
Secretary

APPENDIX:

801-67660	ALDUS CAPITAL, LLC
801-71247	ALDWYCH CAPITAL PARTNERS, LLC
801-39288	ALPHA CAPITAL MANAGEMENT INC
801-69679	ALPHA VISTA ADVISORS LLC
801-67985	AMERICAN PEGASUS LDG, LLC

¹ Hearings were requested for two investment advisers that were listed in the notice, and one of those hearing requests was withdrawn after the adviser withdrew its SEC registration. Those advisers have not been included in this order.

801-63002 FOSTER INVESTMENT CONSULTING LLC
801-61582 FPC SERVICES, INCORPORATED
801-65627 GDG ASSET MANAGEMENT LIMITED
801-72754 GILDED ADVISORS LLC
801-69546 GLANZ, DANIEL
801-69333 GLOBAL PLUS+ INVESTMENT MANAGEMENT, LLC
801-71624 GRANT PARK CAPITAL PARTNERS, LLC
801-67236 GRAYBEARD CAPITAL, LLC
801-66346 GUALARIO & CO., LLC
801-66823 GUNDERSON CAPITAL MANAGEMENT INC.
801-69429 HATTINGH, DIEDERIK JOHANNES
801-53254 HAVELL CAPITAL MANAGEMENT LLC
801-69963 HELIOS INVESTMENTS INC
801-66435 HIGHVIEW POINT PARTNERS, LLC
801-72056 HILL CAPITAL MANAGEMENT LLC
801-67355 HOLTER, WILLIAM LATIMER
801-70767 HORIZON FUNDS MANAGEMENT, LLC
801-67009 HRJ CAPITAL, L.L.C.
801-70807 INSTITUTIONAL BULLION INVESTMENT ADVISORS, LLC
801-67273 INVESTMENT SECURITY GROUP, LLC
801-64391 JADIS INVESTMENTS LLC
801-66648 JENNINGS INVESTMENT ADVISORS, LLC
801-66895 JERMYN CAPITAL (SINGAPORE) PTE. LTD.
801-66643 JOHN R. FIESTA, LLC
801-45453 JUMPER GROUP INC
801-66884 K.K. JERMYN CAPITAL
801-72005 KAJO INVESTMENTS, LLC
801-67024 KENNEDY WEALTH MANAGEMENT GROUP LTD.
801-42331 KOCH ASSET MANAGEMENT LLC
801-70312 LIGHTHOUSE CAPITAL PARTNERS, LLC
801-56394 LITCHFIELD & NELSON, INC
801-56364 LITTLEFIELD ASSET MGMT. INC.
801-37592 M. D. FALK & COMPANY, INC.
801-66388 MACARTHURCOOK INVESTMENT MANAGERS LIMITED
801-71070 MARKS THERIOT WALSTON & COMPANY, INC.
801-60658 MCW ADVISORS
801-63100 MEREDITH PORTFOLIO MANAGEMENT INC.
801-69605 MICOUD INVESTMENTS LIMITED
801-66328 MIRAMAR ASSET MANAGEMENT, LLC
801-57042 MOHAWK ASSET MANAGEMENT INC
801-71711 MONTGOMERY ASSET MANAGEMENT, LLC
801-69301 NEF ADVISORS, LLC

801-42685 VARN INVESTMENT COUNSEL INC
801-63137 WALRUS PARTNERS, LLC
801-67403 WASHINGTON CORNER CAPITAL MANAGEMENT, LP
801-62780 WATERS CAPITAL ADVISERS, LLC
801-63026 WATERVILLE INVESTMENTS, INC.
801-69539 WEALTH LTD
801-54769 WEALTH MANAGEMENT LLC
801-62294 WELLS, CANNING & ASSOCIATES INC.
801-48199 WENDEL ANDREW MARTIN
801-40981 WEST ELLIS INVESTMENT MANAGEMENT INC
801-71961 WEST RIDGE REALTY ADVISORS LLC
801-19899 WESTRIDGE CAPITAL MANAGEMENT INC
801-64673 WFP SECURITIES CORPORATION
801-16393 WILLIAMSON & SNEED INCORPORATED
801-12695 WITTER WILLIAM D INC
801-69064 WORLDWIDE ASSET MANAGEMENT GROUP, LLC
801-70899 WYNNCORR CAPITAL MANAGEMENT, LLC

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 68836 / February 6, 2013

ADMINISTRATIVE PROCEEDING

File No. 3-15201

In the Matter of

**Advance Nanotech, Inc.,
ANTS Software, Inc.,
Beauty Brands Group, Inc.,
Chocolate Candy Creations, Inc.,
Crystallex International Corp.,
Dermaxar, Inc.,
e-SIM, Ltd., and
EcoReady Corp.,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Advance Nanotech, Inc., ANTS Software, Inc., Beauty Brands Group, Inc., Chocolate Candy Creations, Inc., Crystallex International Corp., Dermaxar, Inc., e-SIM, Ltd., and EcoReady Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Advance Nanotech, Inc. (CIK No. 354699) is a void Delaware corporation located in Montebello, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Advance Nanotech 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, 2010, which reported a net loss of over \$565,000 for the prior six months. As of February 1, 2013, the company's stock

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(symbol "AVNA") was quoted on OTC Link (previously, "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).

2. ANTS Software, Inc. (CIK No. 796655) is a Delaware corporation located in Dunwoody, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ANTS Software 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, 2011, which reported a net loss of over \$27 million for the prior three months. As of February 1, 2013, the company's stock (symbol "ANTS") was quoted on OTC Link, had twelve market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Beauty Brands Group, Inc. (CIK No. 1409477) is a Florida corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Beauty Brands Group 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, 2010, which reported a net loss of over \$33,000 for the prior nine months. As of February 1, 2013, the company's stock (symbol "BBGR") 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. Chocolate Candy Creations, Inc. (CIK No. 1431938) is a Delaware corporation located in Port Washington, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Chocolate Candy Creations 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, 2011, which reported a net loss of over \$14,000. As of February 1, 2013, the company's stock (symbol "CCYS") was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Crystallex International Corp. (CIK No. 912500) is a Canadian corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crystallex International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 40-F for the period ended December 31, 2010, which reported a net loss of over \$48 million for the prior year. As of February 1, 2013, the company's stock (symbol "CRYFQ") was quoted on OTC Link, had fourteen market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Dermaxar, Inc. (CIK No. 1125918) is a revoked Nevada corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Dermaxar 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, 2010, which reported a net loss of over \$945,000 for the prior six months. As of February 1, 2013, the company's stock (symbol "DRMX") was

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

7. e-SIM, Ltd. (CIK No. 1050514) is an Israeli company located in Modiin, Israel with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). e-SIM is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended January 31, 2007. As of February 1, 2013, the company's stock (symbol "ESIMF") was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

8. EcoReady Corp. (CIK No. 1073101) is a dissolved Florida corporation located in Orlando, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EcoReady 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, 2010, which reported a net loss of over \$1.8 million for the prior nine months. As of February 1, 2013, the company's stock (symbol "ECRD") was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

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

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

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

III.

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

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

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

IV.

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

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

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

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

February 6, 2013

In the Matter of

Advance Nanotech, Inc.,
Advanced ID Corp.,
Aeon Holdings, Inc. (n/k/a BCM Energy
Partners, Inc.),
ANTS Software, Inc.,
Beauty Brands Group, Inc.,
Beijing Century Health Medical, Inc.,
Chocolate Candy Creations, Inc.,
Crystallex International Corp.,
Dermaxar, Inc.,
Dragon International Group Corp.,
e-SIM, Ltd.,
EcoReady Corp.,
EnDevCo, Inc.,
Electronic Kourseware International, Inc.,
Ensign Services, Inc., and
eTelCharge.com, 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 Nanotech, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advanced ID Corp. 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 Aeon Holdings, Inc. (n/k/a

BCM Energy Partners, Inc.) because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ANTS Software, Inc. because it has not filed any periodic reports since the period ended March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Beauty Brands Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Beijing Century Health Medical, Inc. because it has not filed any periodic reports since the period ended February 28, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Chocolate Candy Creations, Inc. because it has not filed any periodic reports since the period ended March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Crystallex International Corp. because it has not filed any periodic reports since the period ended December 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dermaxar, Inc. because it has not filed any periodic reports since the period ended January 31, 2010.

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

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of e-SIM, Ltd. because it has not filed any periodic reports since the period ended January 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EcoReady Corp. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EnDevCo, Inc. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Electronic Courseware International, Inc. because it has not filed any periodic reports since it filed an amended registration statement on March 23, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ensign Services, Inc. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of eTelCharge.com, 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. EST on February 6, 2013, through 11:59 p.m. EST on February 20, 2013.

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. 68837 / February 6, 2013

ADMINISTRATIVE PROCEEDING

File No. 3-15202

In the Matter of

Advanced ID Corp.,
Aeon Holdings, Inc. (n/k/a BCM Energy
Partners, Inc.),
Beijing Century Health Medical, Inc.,
China Agricornp, Inc.,
Dragon International Group Corp.,
EnDevCo, Inc.,
Electronic Kourseware International, Inc.,
Ensign Services, Inc., and
eTelCharge.com, 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 Advanced ID Corp., Aeon Holdings, Inc. (n/k/a BCM Energy Partners, Inc.), Beijing Century Health Medical, Inc., China Agricornp, Inc., Dragon International Group Corp., EnDevCo, Inc., Electronic Kourseware International, Inc., Ensign Services, Inc., and eTelCharge.com, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Advanced ID Corp. (CIK No. 1005356) is a revoked Nevada corporation located in Calgary, Alberta, Canada with a class of securities registered with the

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Commission pursuant to Exchange Act Section 12(g). Advanced ID 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 over \$372,000 for the prior nine months. As of February 1, 2013, the company's stock (symbol "AIDO") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link"), had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Aeon Holdings, Inc. (n/k/a BCM Energy Partners, Inc.) (CIK No. 1343257) is a Delaware corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Aeon Holdings 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, 2001, which reported a net loss of over \$369,000 for the prior three months. As of February 1, 2013, the company's stock (symbol "BCME") 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. Beijing Century Health Medical, Inc. (CIK No. 1352482) is a Delaware corporation located in Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Beijing Century Health Medical 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 February 28, 2011, which reported a net loss of over \$7,800 for the prior three months. As of February 1, 2013, the company's stock (symbol "BCHM") was quoted on OTC Link, had three market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. China Agricorn, Inc. (CIK No. 799414) is a Nevada corporation located in Henan Province, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Agricorn 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, 2011. As of February 1, 2013, the company's stock (symbol "AMNN") was traded on the over-the-counter markets, but had no market makers, and was not eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Dragon International Group Corp. (CIK No. 1050691) is a revoked Nevada corporation located in Ningbo, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Dragon International Group 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 over \$3.7 million for the prior nine months. As of February 1, 2013, the company's stock (symbol "DRGG") 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. EnDevCo, Inc. (CIK No. 355300) is a Texas corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EnDevCo 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, 2010, which reported a net loss of over \$957,000 for the prior three months. As of February 1, 2013, the company's stock (symbol "EDVC") was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. Electronic Courseware International, Inc. (CIK No. 1434762) is a void Delaware corporation located in Kyle, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Electronic Courseware International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10/A registration statement on March 23, 2009, which reported a net loss of over \$3.8 million for the year ended December 31, 2007. As of February 1, 2013, the company's stock (symbol "EKII") was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

8. Ensign Services, Inc. (CIK No. 1421323) is a revoked Nevada corporation located in Dong Nai Province, Vietnam with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ensign Services is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2010. As of February 1, 2013, the company's stock (symbol "ESVC") was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

9. eTelCharge.com, Inc. (CIK No. 1112682) is a revoked Nevada corporation located in Cedar Hill, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). eTelCharge.com 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 over \$95,000 for the prior nine months. As of February 1, 2013, the company's stock (symbol "ETLC") 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

10. 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.

11. 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.

12. 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 them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

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

*Chairman Watter
not participating*

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934
Release No. 68845 / February 6, 2013**

**ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3444 / February 6, 2013**

**ADMINISTRATIVE PROCEEDING
File No. 3-15206**

In the Matter of

Joseph J. Repko, CPA

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO RULE 102(e)(3) OF THE
COMMISSION'S RULES OF PRACTICE
AND IMPOSING TEMPORARY
SUSPENSION**

I.

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

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

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

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Repko, age 63, has been a certified public accountant ("CPA") licensed to practice in the State of Pennsylvania since August 1981. Repko's CPA license is currently inactive. From no later than April through June 2009, Repko was the chief financial officer of Sure Trace Security Corporation ("Sure Trace") and, during a portion of that time, its president.

B. CIVIL INJUNCTION

2. On November 28, 2012, the U.S. District Court for the Southern District of Florida entered a final judgment by default against Repko that, among other things, permanently enjoins him from future violations, direct or indirect, of Section 17(a)(1) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(a) thereunder. Securities and Exchange Commission v. Joseph J. Repko, et al., Civil Action Number 0:12-cv-61079-KMW.

3. The Commission's complaint alleged that from April through June 2009, Repko and others engaged in a fraudulent scheme involving illicit kickbacks to induce the purchase of Sure Trace's stock. Specifically, according to the complaint, Repko participated in paying illegal kickbacks to a purported trustee of an employee pension fund so the trustee would purchase 133 million restricted shares of the company's stock. Repko and the other defendants attempted to conceal the kickbacks by entering into a sham consulting agreement between Sure Trace and a purported consulting company created to receive the kickbacks.

III.

Based upon the foregoing, the Commission finds that a court of competent jurisdiction has permanently enjoined Repko, a CPA, from violating the Federal securities laws within the meaning of Rule 102(e)(3)(i)(A) of the Commission's Rules of Practice. In view of these findings, the Commission deems it appropriate and in the public interest that Repko be temporarily suspended from appearing or practicing before the Commission.

IT IS HEREBY ORDERED that Repko be, and hereby is, temporarily suspended from appearing or practicing before the Commission. This Order shall be effective upon service on the Respondent.

IT IS FURTHER ORDERED that Repko may within thirty days after service of this Order file a petition with the Commission to lift the temporary suspension. If the Commission within thirty days after service of the Order receives no petition, the suspension shall become permanent pursuant to Rule 102(e)(3)(ii).

If a petition is received within thirty days after service of this Order, the Commission shall, within thirty days after the filing of the petition, either lift the temporary suspension, or set the matter down for hearing at a time and place to be designated by the Commission, or both. If a hearing is ordered, following the hearing, the Commission may lift the suspension, censure the petitioner, or disqualify the petitioner from appearing or practicing before the Commission for a period of time, or permanently, pursuant to Rule 102(e)(3)(iii).

This Order shall be served upon Repko personally or by certified mail at his last known address.

By the Commission.

Elizabeth M. Murphy
Secretary

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3549 / February 6, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15204

In the Matter of

Arturo Allan Rodriguez Lopez
a/k/a Arturo Rodriguez,

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 Arturo Allan Rodriguez Lopez a/k/a Arturo Rodriguez ("Respondent").

II.

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

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III.

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

1. Respondent owns at least 25% of Juno Mother Earth Asset Management LLC ("Juno"), a registered investment adviser, and, along with Eugenio Verzili ("Verzili"), controls the day-to-day operations of Juno. Respondent has been the Chief Investment Officer of Juno since approximately 2006. Respondent, age 49, resides in Costa Rica.

2. On August 14, 2012, a final judgment was entered by consent against Respondent, permanently enjoining Respondent from violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and Sections 203A, 206(1), 206(2), 206(4) and 207 of the Advisers Act, and Rules 206(4)-2 and 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. Juno Mother Earth Asset Management, LLC, et al., Civil Action Number 11 Civ. 1778 (TPG), in the United States District Court for the Southern District of New York.

3. The Commission's Complaint alleged that Respondent, Verzili and Juno orchestrated a multi-faceted scheme to defraud a hedge fund under their control, as well as the investors in the fund, and failed to comply with their fiduciary obligations to the hedge fund, through: (a) misappropriating approximately \$1.8 million of assets from a Juno-advised hedge fund; (b) fraudulently concealing their misappropriation from the fund's independent directors; (c) inflating and misrepresenting Juno's assets under management by approximately \$40 million; (d) filing false Forms ADV with the Commission that, among other things, failed to disclose transactions between Juno and the hedge fund; (e) concealing Juno's precarious financial condition; and (f) misrepresenting the amount of capital certain Juno partners had invested in a Juno-advised fund.

IV.

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

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


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3550 / February 6, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15205

In the Matter of

JORGE GOMEZ,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
203(f) OF THE INVESTMENT ADVISERS
ACT OF 1940 AND NOTICE OF HEARING**

I.

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

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Gomez, who is 42 years of age, has a last known residence in Mexico. From 2006 through 2010, Gomez operated an unregistered investment advisory business located in Dallas, Texas and Mexico under the name Atlantic International Capital LLC ("Atlantic") and Capital International Atlantic Consultores, respectively. Gomez also served as a "finder" for the unregistered investment advisory and securities brokerage business, Aleph Consulting Group LLC ("Aleph"), located in Miami, Florida. From his role in the two companies, Gomez, among other things, advised an investment advisory client (the "Client") in investment decisions and traded securities on the Client's behalf.

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B. ENTRY OF THE INJUNCTION

2. On January 18, 2013, a final judgment was entered against Gomez by default, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, and aiding and abetting violations of Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Jorge Gomez, et al., Civil Action Number 12-CV-21962, in the United States District Court for the Southern District of Florida.

3. The Commission's Complaint alleged that, from 2007 through 2010, Gomez misappropriated more than \$4.3 million from the Client, who had entrusted Gomez with approximately \$10.9 million to invest on his behalf. Gomez misappropriated these funds while serving as a "finder" for Aleph, which was owned by his co-defendant Roberto Aleph Espinosa. Gomez concealed his misappropriation by providing the Client with fraudulent account statements, which overstated the Client's account value and misstated his securities transactions and holdings. Gomez also provided fraudulent certificates for fictitious securities purportedly held by the Client, and created a fake customer service hotline to field calls from the Client.

III.

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

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

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

IV.

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

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

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as

provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

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

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

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

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary

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

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68864; File No. S7-27-11)

February 7, 2013

Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in
Connection with the Revision of the Definition of "Security" to Encompass Security-Based
Swaps, and Request for Comment

I. Introduction

On July 1, 2011, the Securities and Exchange Commission ("Commission") issued an order granting temporary exemptive relief from compliance with certain provisions of the Securities Exchange Act of 1934 ("Exchange Act") in connection with the revision of the Exchange Act definition of "security" to encompass security-based swaps ("Exchange Act Exemptive Order").¹ Certain temporary exemptions contained in the Exchange Act Exemptive Order are set to expire upon the compliance date for final rules further defining the terms "security-based swap" and "eligible contract participant," which is scheduled to occur on February 11, 2013 ("Expiring Temporary Exemptions").² The Commission is extending the expiration date for these Expiring Temporary Exemptions until February 11, 2014³ and

¹ See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of "Security" to Encompass Security-Based Swaps, Exchange Act Release No. 64795 (Jul. 1, 2011), 76 FR 39927 (Jul. 7, 2011).

² Id. See also Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (Jul. 18, 2012), 77 FR 48207 (Aug. 13, 2012) (Joint Final Rule with the CFTC) ("Product Definitions Adopting Release"), which postpones the Expiring Temporary Exemptions expiration date to February 11, 2013. The Financial Industry Regulatory Authority ("FINRA") filed a proposed rule change, which was effective upon receipt by the Commission, extending the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), which temporarily limits the application of certain FINRA rules with respect to security-based swaps, to July 17, 2013. See Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), Exchange Act Release No. 68471 (Dec. 19, 2012).

³ The Exchange Act Exemptive Order also provided a temporary exemption from Sections 5 and 6 of the Exchange Act until the earliest compliance date set forth in any of the final rules regarding registration of security-based swap execution facilities. The Exchange Act Exemptive Order also provided a temporary exemption that no security-based swap contract entered into on or after July 16, 2011 shall be void or considered voidable by reason of Section 29(b) of the Exchange Act because any person that is a party to the contract violated a provision of the

requesting comment on any exemption contained in the Exchange Act Exemptive Order and any additional relief that should be granted upon the expiration of the extension.

II. Discussion

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the Exchange Act definition of “security” to expressly encompass security-based swaps.⁴ The expansion of the definition of the term “security” results in the expansion of the scope of the regulatory provisions of the Exchange Act to security-based swaps. This expansion has raised certain complex questions that require further consideration by the staff.

On July 1, 2011, the Commission granted temporary relief from compliance with certain provisions of the Exchange Act by providing for the Expiring Temporary Exemptions.⁵ Specifically, the Expiring Temporary Exemptions, which are set to expire on the compliance date for final rules further defining the terms “security-based swap” and “eligible contract participant,” provide for the following exemptions from Exchange Act: (a) temporary exemptions in connection with security-based swap activity by certain “eligible contract participants”; and (b) temporary exemptions specific to security-based swap activities by

Exchange Act for which the Commission has provided exemptive relief in the Exchange Act Exemptive Order, until such time as the underlying exemptive relief expires. This Order does not affect the timing of the expiration of either of these exemptions.

⁴ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124, Stat. 1376 (2010); Exchange Act Section 3(a)(10), 15 U.S.C. 78c(a)(10), as revised by Section 761(a)(2) of the Dodd-Frank Act.

Title VII established a new regulatory framework for swaps and security-based swaps. Under the comprehensive framework established in Title VII, the Commission is given authority over security-based swaps, the CFTC is given regulatory authority over swaps, and the CFTC and SEC are provided with joint regulatory authority over mixed swaps. See Section 3(a)(68) of the Exchange Act, 15 U.S.C. 78c(a)(68) (as added by Section 761(a)(6) of the Dodd-Frank Act) and Section 1a(47) of the CEA, 7 U.S.C. 1a(47) (as added by Section 721(a) of the Dodd-Frank Act) for the definitions of security-based swap and swap, respectively. See also Product Definitions Adopting Release.

⁵ See Exchange Act Exemptive Order.

registered brokers and dealers.⁶ As previously noted, these Expiring Temporary Exemptions are currently scheduled to expire on February 11, 2013 for purposes of the Exchange Act Exemptive Order.⁷

The Commission recently received a request to extend the Expiring Temporary Exemptions until July 17, 2013, citing concerns that key issues and questions regarding the application of the federal securities laws to security-based swaps remain unresolved and that the expiration of these exemptions on February 11, 2013 would be premature.⁸ The request also noted concerns about the potential for unnecessary disruption to the security-based swap market.⁹

To date, the Commission has proposed substantially all of the rules related to the new regulatory regime for derivatives under Title VII and has recently begun the process of adopting these rules.¹⁰ In furtherance of the Dodd-Frank Act's stated objective of promoting financial stability in the U.S. financial system, the Commission has expressed its intent to move forward

⁶ See Exchange Act Exemptive Order at 39-44.

⁷ See Product Definitions Adopting Release.

⁸ See SIFMA Request for Extension of the Expiration Date of the SEC's Exchange Act Exemptive Order and SBS Interim final Rules (Dec. 20, 2012), which is available at <http://www.sec.gov/comments/s7-27-11/s72711-12.pdf>. The Commission has also received a request for certain permanent exemptions upon the expiration of the exemptions contained in the Exchange Act Exemptive Order. See SIFMA SBS Exemptive Relief Request (Dec. 5, 2011), which is available at <http://www.sec.gov/comments/s7-27-11/s72711-10.pdf>.

⁹ See SIFMA Request for Extension of the Expiration Date of the SEC's Exchange Act Exemptive Order and SBS Interim final Rules (Dec. 20, 2012).

¹⁰ See Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Exchange Act Release No. 67177 (Jun. 11, 2012). See also Product Definitions Adopting Release; Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) ("Entity Definitions Adopting Release"); 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, Exchange Act Release No. 67286 (Jun. 28, 2012), 88 FR 41602 (Jul. 13, 2012); Clearing Agency Standards, Exchange Act Release No. 68080, (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

deliberatively in implementing the requirements of the Dodd-Frank Act, while minimizing unnecessary disruption and costs to the markets.¹¹

The Commission believes it is necessary or appropriate in the public interest and consistent with the protection of investors to extend the Expiring Temporary Exemptions until February 11, 2014 in order to both avoid a potential unnecessary disruption to the security-based swap market that may result without an extension,¹² and provide the Commission with additional time to consider the potential impact of the revision of the Exchange Act definition of “security” in light of recent Commission rulemaking efforts under Title VII of the Dodd-Frank Act. Extending the Expiring Temporary Exemptions also would facilitate a coordinated consideration of these issues with related relief provided by FINRA under its rulebook.¹³ While the comment letter recommended extending the temporary relief to July 17, 2013, we have determined to extend the relief to February 11, 2014. Accordingly, pursuant to the Commission’s authority under Section 36 of the Exchange Act,¹⁴ the Commission is extending the expiration date for the Expiring Temporary Exemptions contained in the Exchange Act Exemptive Order until February 11, 2014.¹⁵

¹¹ See Exchange Act Exemptive Order.

¹² See *supra* note 8 and 9.

¹³ See *supra* note 2.

¹⁴ 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt, by rule, regulation, or order any person, security or transaction (or any class or classes of persons, securities, or transactions) from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

¹⁵ The expiration date coincides with the Commission’s recent amendment to the expiration dates in interim final rules that provide exemptions under the Securities Act of 1933, the Exchange Act, and the Trust Indenture Act of 1939 for those security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as “securities” under the Securities Act and the Exchange Act as of July 16, 2011 due solely to the provisions of Title VII of the Dodd-Frank Act. See Extension of Exemptions for Security-Based Swaps, Release No. 33-9383 (Jan. 29, 2013), 78 FR 7654 (Feb. 4, 2013).

III. Request for Comment

The Commission believes that it would be useful to continue to provide interested parties opportunity to comment on any exemption contained in the Exchange Act Exemptive Order and any additional relief that should be granted upon the expiration of the extension for the Expiring Temporary Exemptions. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/exorders.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-27-11 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-27-11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/exorders.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F St. NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly.

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act, that, the Expiring Temporary Exemptions contained in the Exchange Act Exemptive Order in connection with the revision of the Exchange Act definition of "security" to encompass security-based swaps are extended until February 11, 2014.

By the Commission.



Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 68902 / February 11, 2013

ADMINISTRATIVE PROCEEDING

File No. 3-15207

In the Matter of

**Artfest International, Inc.,
China Advanced Meditech, Inc.,
Cynet, Inc.,
Durham Marketing Corp.,
Emissary Capital Group, Inc. (n/k/a
Cavalier Holdings, Inc.), and
ESP Enterprises, Inc. (n/k/a
ESP Enterprises of LA, 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 Artfest International, Inc., China Advanced Meditech, Inc., Cynet, Inc., Durham Marketing Corp., Emissary Capital Group, Inc. (n/k/a Cavalier Holdings, Inc.), and ESP Enterprises, Inc. (n/k/a ESP Enterprises of LA, Inc.)

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Artfest International, Inc. (CIK No. 1168738) is a revoked Nevada corporation located in Dallas, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Artfest International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K/A for the period ended December 31, 2010, which reported a net loss of over

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\$3.6 million for the prior year. As of February 5, 2013, the company's stock (symbol "ARTS") was traded on the over-the-counter markets.

2. China Advanced Meditech, Inc. (CIK No. 1445193) is a void Delaware corporation located in Kowloon, Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Advanced Meditech 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 October 31, 2010, which reported a net loss of \$500 for the prior three months.

3. Cynet, Inc. (CIK No. 1027878) is a Texas corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cynet 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, 2002, which reported a net loss of over \$3.3 million for the prior nine months. On December 9, 2001, Cynet filed a Chapter 11 petition in the United States Bankruptcy Court for the District of Texas, and the case was terminated on August 15, 2005.

4. Durham Marketing Corp. (CIK No. 831659) is a revoked Nevada corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Durham Marketing is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended March 31, 2002, which reported a net loss of over \$2.4 million for the prior year.

5. Emissary Capital Group, Inc. (n/k/a Cavalier Holdings, Inc.) (CIK No. 1394489) is a void Delaware corporation located in Greenville, South Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Emissary Capital Group 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 over \$295,000 for the prior nine months.

6. ESP Enterprises, Inc. (n/k/a ESP Enterprises of LA, Inc.) (CIK No. 1176187) is a Colorado corporation located in Lafayette, Louisiana with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ESP Enterprises 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 over \$1.1 million for the prior six months.

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 them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68920 / February 13, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-14980

In the Matter of

STEPHEN M. STRAUSS,

Respondent.

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

I.

On August 13, 2012, the Securities and Exchange Commission ("Commission") initiated proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Stephen M. Strauss ("Strauss" or "Respondent").

II.

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 Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) 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:

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1. Strauss, 59, and a resident of Southaven, Mississippi, was chairman and CEO of Chilmark Entertainment Group, Inc. ("Chilmark") from 2002 until early 2007. Strauss has been a "direct/indirect" owner of Malory Investments, LLC, a broker-dealer, from January 2001 until at least August 2008. While Strauss was affiliated with the company, Chilmark had no employees, only one independent contractor and never generated any income. In 2006, Strauss and his family members owned 9% of the total shares of Chilmark outstanding. Strauss participated in an offering of Chilmark stock, which is a penny stock.

2. On February 13, 2012, a final judgment was entered against Strauss, 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. Stephen M. Strauss, Civil Action Number 2:08-CV-206, in the United States District Court for the Northern District of Mississippi.

3. The Commission's complaint alleged the following: (i) in November and December 2006, Strauss, the CEO of Chilmark, issued a series of press releases in rapid succession that misrepresented that Chilmark or its successor company, Integrated Bio-Energy Resources, Inc. ("Integrated"), was on the verge of manufacturing biofuel from palm oil; (ii) in truth, when Strauss issued these press releases, neither Chilmark nor Integrated had secured any funding, purchased the land to build a refinery, or begun building the refinery to manufacture the biofuel; (iii) the six press releases dramatically inflated the trading volume and the price for Chilmark shares; (v) in the three months prior to these press releases, the trading volume for Chilmark's shares averaged approximately 13,600 per day and the price never closed above \$0.01 per share; and (vi) in November and December 2006, the average daily trading volume jumped almost 20-fold, to 267,000 shares and the price closed as high as \$0.22 per share. The complaint further alleged that Strauss was responsible for drafting and distributing the press releases.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 15(b)(6) of the Exchange Act, Strauss shall be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer or transfer agent; and

B. Strauss shall 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 Act of 1933
Release No. 9384 / February 13, 2013

Securities Exchange Act of 1934
Release No. 68921 / February 13, 2013

**ORDER APPROVING PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD
BUDGET AND ANNUAL ACCOUNTING SUPPORT FEE FOR CALENDAR YEAR
2013**

The Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"),¹ established the Public Company Accounting Oversight Board ("PCAOB") to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. The PCAOB is subject to the comprehensive oversight of the Securities and Exchange Commission (the "Commission").

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate "recoverable budget expenses," which may include operating, capital and accrued items. The PCAOB's annual budget and accounting support fee is subject to approval by the Commission.

¹ 15 U.S.C. 7201 et seq.

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)² amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Commission. In addition, the PCAOB must allocate the annual accounting support fee among issuers and among brokers and dealers.

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB’s internal procedures, subject to approval by the Commission. Rule 190 of Regulation P facilitates the Commission’s review and approval of PCAOB budgets and annual accounting support fees.³ This budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB’s ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2012 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2013 budget year. In response, the Commission provided the PCAOB with economic assumptions and budgetary guidance for the 2013 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission’s Offices of the Chief

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

³ 17 CFR 202.190.

Accountant and Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects and budget estimates; reviewed the PCAOB's estimates of 2012 actual spending; and attended several meetings with management and staff of the PCAOB to further develop an understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a "pass back" letter to the PCAOB. On November 28, 2012, the PCAOB approved its 2013 budget during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2013 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2013 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2013. The Commission also acknowledges the PCAOB's updated strategic plan and is supportive of the Board's plans to begin work on its six new near-term priority projects. The Commission encourages the PCAOB to keep the Commission and its staff apprised of developments throughout the implementation of these near-term projects and looks forward to providing views to the PCAOB as future updates are made to the plan.

The Commission understands that over the past year, the PCAOB has taken significant and productive steps to improve its information technology ("IT") program. These steps include IT staffing changes, implementing stronger IT governance structures, and strengthening Board oversight over its IT program. Based upon updates provided by the PCAOB, the Commission also understands that these efforts are ongoing; and directs the Board to continue to provide in its quarterly reports to the Commission detailed information about the state of the PCAOB's IT

program, including planned, estimated, and actual costs for IT projects, and the level of involvement of consultants. These reports also should continue to include: (a) a discussion of the Board's assessment of the progress and implementation of the Board actions mentioned above; and (b) the quarterly IT report that will be prepared by PCAOB staff and submitted to the Board.

The Commission also directs the PCAOB during the 2013 budget cycle to continue to include in its quarterly reports to the Commission information about the PCAOB's inspections program. Such information is to include: (a) statistics relative to the numbers and types of firms budgeted and expected to be inspected in 2013, including by location and by year the inspections that are required to be conducted in accordance with the Sarbanes-Oxley Act and PCAOB rules; (b) information about the timing of the issuance of inspections reports for domestic and non-U.S. inspections; and (c) updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries.

The Commission understands that the Office of Management and Budget ("OMB") has determined the 2013 budget of the PCAOB to be sequestrable under the Budget Control Act of 2011.⁴ Unless legislation occurs that avoids sequestration, the PCAOB's 2013 spending level could be reduced by an amount that would be determined by OMB. In the event that sequestration is not avoided and OMB does not alter its determination that the PCAOB's 2013 budget is sequestrable, we expect the PCAOB to work with the Commission and Commission staff as appropriate regarding implementation of sequestration. In that event, the Commission also directs the PCAOB to provide the Commission with reports detailing the PCAOB's plans for implementation of sequestration, including how it will impact the PCAOB's 2013 spending for each of the PCAOB's program areas and cost categories.

⁴ See "OMB Report Pursuant to the Sequestration Transparency Act of 2012" (P.L. 112-155), page 218 of 224 at: http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf.

The Commission has determined that the PCAOB's 2013 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

IT IS ORDERED, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2013 are approved.

By the Commission.

A handwritten signature in cursive script that reads "Elizabeth M. Murphy".

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68935; File No. SR-OCC-2012-801)

February 14, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Filing, as Modified by Amendment No. 1 thereto, to Enter into an Unsecured, Committed Credit Agreement

I. Introduction

On December 18, 2012, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR-OCC-2012-801 pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),¹ entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Title VIII” or “Clearing Supervision Act”). On December 21, 2012, OCC filed Amendment No. 1 to advance notice SR-OCC-2012-801.² The advance notice, as amended by Amendment No. 1, was published in the Federal Register on January 16, 2013.³ The Commission did not receive comments on the advance notice publication. This publication serves as a notice of no objection to the advance notice.

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

² Amendment No. 1 clarifies the date the proposed change was approved by the OCC Board of Directors.

³ Notice of Filing of Advance Notice, as Modified by Amendment No. 1 Thereto, in Connection with a Proposed Change to Enter into an Unsecured, Committed Credit Agreement, Securities Exchange Act Release No. 34-68618 (January 10, 2013), 78 FR 3483 (January 16, 2013) (“Notice of Filing of Advance Notice”).

II. Description of Proposed Rule Change

OCC filed this advance notice to permit it to enter into an unsecured, committed credit agreement (“Facility”) in an aggregate principal amount not to exceed \$25 million. The Facility is designed to satisfy the Commodity Futures Trading Commission’s (“CFTC”) liquidity requirement contained in Regulation 39.11(e)(2) and also to provide OCC with access to additional liquidity for working capital needs and general corporate purposes.

Among other things, CFTC Regulation 39.11(a)(2) requires a derivatives clearing organization (“DCO”) to hold an amount of financial resources that, at a minimum, exceeds the total amount that would enable the DCO to cover its operating costs for a period of at least one year, calculated on a rolling basis.⁴ In turn, CFTC Regulation 39.11(e)(2) provides that these financial resources must include unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities), equal to at least six months’ operating costs and that if any portion of such financial resources is not sufficiently liquid, the DCO may take into account a committed line of credit or similar facility for the purpose of meeting this requirement.⁵ Accordingly, OCC would enter into a credit agreement for the Facility with BMO Harris Bank N.A. (“Lender”) having a maximum aggregate principal loan amount not to exceed \$25 million.

A condition of OCC’s access to the Facility is the execution of credit agreement documents between OCC and the Lender. OCC anticipates that the parties will finalize the forms of the credit agreement documents in early 2013. Ongoing conditions governing OCC’s ability to access the Facility include that no default or event of default by OCC may exist before or during an extension of credit by the Lender to OCC through the Facility and that certain

⁴ 17 CFR 39.11(a)(2).

⁵ 17 CFR 39.11(e)(2).

representations of OCC must remain true and correct. Events of default would include, but not be limited to, failure to pay any interest, principal, fees or other amounts when due, default under any covenant or agreement in any loan document, materially inaccurate or false representations or warranties, cross default with other material debt agreements, insolvency, bankruptcy, dissolution or termination of the existence of OCC, and unsatisfied judgments.

OCC anticipates that the Facility would be available to OCC on a revolving basis for a 364-day term. According to OCC, upon notice by OCC to the Lender of a request for funds, whether in writing or by telephone, the Lender would disburse loaned funds to OCC in U.S. dollars. The date of any loan would be required to be a business day, and the loans would be unsecured and made and evidenced by a promissory note provided by OCC. Any loan proceeds would be required to be used by OCC to finance its working capital needs or for OCC's general corporate purposes. According to OCC, its ability to draw against the Facility, even though no such draw is actually made, would contribute to OCC's compliance with the liquidity requirements prescribed by CFTC Regulation 39.11(e)(2).

OCC stipulates that it would have the ability to terminate the Facility at any time.⁶ Termination within the first six months of the Facility would trigger a termination fee; termination after six months from the date of entering into the Facility does not trigger a termination fee. Upon five days written notice during the term of the Facility, OCC would also be permitted to reduce the overall size of the Facility at any time. Any such reductions would be required to be made in an initial amount of at least \$2.5 million. Thereafter, reductions would be able to be made in multiples of \$1 million. In no event, however, would OCC be permitted to

⁶ In the event that OCC seeks to terminate or reduce the overall size of the Facility, OCC will first file an advance notice with the Commission pursuant to Dodd-Frank Act Section 806(e). See Notice of Filing of Advance Notice.

reduce the size of the Facility to an amount that is less than the greater of either its aggregate principal amount of indebtedness outstanding with respect to loans from the Facility or \$15 million.

The outstanding principal balance of all loans made to OCC through the Facility will accrue interest equal to a base rate (generally equal to a Prime Rate, a Federal Funds Rate, or a LIBOR rate), as in effect from time to time, plus a certain applicable margin. Regardless of which method applies to a particular portion of OCC's total outstanding loan balance, in an event of a default the calculation of the amount of interest would be subject to a 2.00% increase above the otherwise applicable rate.

The Facility would involve a variety of customary fees payable by OCC to the Lender, including, but not limited to: (1) a one-time upfront fee payable at closing to the Lender calculated as a percentage of the total commitment amount of the Facility; (2) commitment fees payable quarterly in arrears on the average daily unused amount of the Facility; (3) reasonable out-of-pocket costs and expenses of the Lender in connection with the negotiation, preparation, execution, and delivery of the Facility and loan documentation, and costs and expenses in connection with any default, event of default, or enforcement of the Facility; and (4) termination fees if OCC elects to terminate the Facility prior to six months from the date of the credit agreement underlying the Facility.

OCC believes that any impact of the Facility on the risks presented by OCC would be to reduce such risks by providing an additional source of liquidity for the protection of OCC, its clearing members, and the options market in general. OCC also believes the Facility would provide OCC with additional liquidity for working capital needs and general corporate purposes

and thereby assist OCC in satisfying the CFTC's requirements with respect to liquidity under CFTC Regulation 39.11.

Like any lending arrangement, OCC notes there is a risk that the Lender would fail to fund when OCC requests a loan, because of the Lender's insolvency, operational deficiencies, or otherwise. Even if OCC were to draw on the Facility for liquidity purposes, which it does not anticipate, OCC believes that the potential funding risk associated with the Facility is mitigated in several ways. OCC notes that the Lender is a national banking association that is subject to oversight by prudential banking regulators with respect to its safety and soundness and its ability to meet its lending obligations. Furthermore, OCC notes that the \$25 million size of the Facility is relatively small when compared to the total resources available to OCC. Therefore, if the Facility proved unavailable to OCC for any reason, OCC believes that it readily would be able to access, or arrange for access, to other sources of liquidity if necessary.

According to OCC, a second risk associated with the Facility is the risk that OCC would default on its obligation to make timely payment of principal or interest. OCC believes the benefits of the Facility outweigh this risk. Finally, because the Facility would be an unsecured lending arrangement, OCC believes that it would not be at risk in an event of default of the Lender potentially liquidating OCC assets that are used to secure loaned funds.

III. Analysis of Advance Notice

Although Title VIII does not specify a standard of review for an Advance Notice, Commission staff believes that the stated purpose of Title VIII is instructive.⁷ The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial

⁷ 12 U.S.C. 5461(b).

stability by, among other things, promoting uniform risk management standards for systemically-important financial market utilities (“FMU”) and providing an enhanced role for the Federal Reserve Board in the supervision of risk management standards for systemically-important FMUs.⁸

Section 805(a)(2) of the Clearing Supervision Act⁹ authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act¹⁰ states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act on October 22, 2012 (“Clearing Agency Standards”).¹¹ The Clearing Agency Standards became effective on January 2, 2013 and require clearing agencies that perform central counterparty services to establish, implement, maintain, and enforce written

⁸ Id.

⁹ 12 U.S.C. 5464(a)(2).

¹⁰ 12 U.S.C. 5464(b).

¹¹ Clearing Agency Standards, Securities Exchange Act Release No. 34-68080 (October 22, 2012), 77 FR 66219 (November 2, 2012).

policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.¹² As such, the Commission believes it is appropriate to review Advance Notices against these risk management standards that the Commission promulgated under Section 805(a) and the objectives and principles of these risk management standards as described in Section 805(b).

OCC states that its principal reason for entering into the Facility is to help ensure that OCC is in compliance with a CFTC requirement to hold an amount of financial resources that, at a minimum, exceeds the total amount that would enable OCC to cover its operating costs for a period of at least one year, calculated on a rolling basis, and to provide OCC with additional flexibility in managing its liquid assets while ensuring continued compliance with this requirement.¹³ The size of the Facility (\$25 million) is unlikely to raise risk concerns commonly associated with additional leverage. The Facility allows OCC to manage its general business risks and help ensure that it has sufficient liquid assets to cover operational costs that may arise. Consistent with Section 805(a), this added liquidity should promote the safety and soundness of OCC, reduce systemic risks to OCC members, and, as a result, support the stability of the broader financial system.

¹² The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors governing the operations of designated FMUs that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. See Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012).

¹³ See Notice of Filing of Advance Notice.

Furthermore, Rule 17Ad-22(d)(4),¹⁴ adopted as part of the Clearing Agency Standards, requires clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secured, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations. The Facility should help ensure that OCC holds an amount of financial resources that, at a minimum, exceeds the total amount that would enable OCC to cover its operating costs for a period of at least one year and, as a result, should contribute to minimizing operational risk. For these reasons, the Commission does not object to the advance notice.

IV. Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,¹⁵ that, the Commission DOES NOT OBJECT to the advance notice (File No. SR-OCC-2012-801).

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 240.17Ad-22(d)(4).

¹⁵ 12 U.S.C. 5465(e)(1)(I).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9385 / February 15, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 68943 / February 15, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15211

In the Matter of

GREGG C. LORENZO, FRANCIS V.
LORENZO, and CHARLES VISTA,
LLC,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, AND
SECTIONS 15(b), 21B AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission" or "SEC") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), and Sections 15(b), 21B and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Gregg C. Lorenzo ("Gregg Lorenzo"), Francis V. Lorenzo ("Frank Lorenzo"), and Charles Vista, LLC ("Charles Vista") (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

1. Beginning in or about September 2009, Gregg Lorenzo, Frank Lorenzo, and Charles Vista, a broker-dealer controlled by Gregg Lorenzo, made fraudulent misrepresentations to several customers of Charles Vista to induce them to invest in convertible debentures issued by a start-up waste management company called Waste2Energy Holdings, Inc. ("W2E").

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2. In telephone conversations with at least three Charles Vista customers, Gregg Lorenzo attempted to convince them to purchase the highly risky W2E debentures by (a) making false, misleading, and unfounded statements designed to create the impression that the debentures were less risky than they actually were, and (b) making unfounded positive predictions about the upside of the investment, including the future price of W2E stock and the likelihood of it trading on the NASDAQ.
3. Frank Lorenzo also engaged in fraudulent efforts to sell the W2E debentures to Charles Vista customers, by sending at least two Charles Vista customers emails containing false and/or misleading statements concerning W2E's assets and alleged contracts.
4. Charles Vista committed fraud through the actions of Gregg Lorenzo and Frank Lorenzo, described above.

A. RESPONDENTS

Gregg Lorenzo

5. Gregg Lorenzo, age 30, is the president and indirect owner of Charles Vista, a registered broker-dealer doing business in Staten Island, New York. Lorenzo's indirect ownership stems from his status as the sole shareholder and managing member of GJL Holdings, LLC ("GJL"), a New York limited liability company that wholly owns Charles Vista. From April 2002 to the present, Gregg Lorenzo has been a registered representative associated with various broker-dealers registered with the Commission, and is currently associated with Charles Vista. Lorenzo holds the Series 7, Series 24, and Series 63 licenses. He resides in Staten Island, New York.

6. In September 2005, Gregg Lorenzo joined Mercer Capital ("Mercer"), a now defunct New York broker-dealer. Shortly afterward, Gregg Lorenzo settled civil fraud and other charges with the State of Montana arising from his prior employment at a different brokerage firm. He also agreed to withdraw his securities license in Montana for two years and pay a \$35,000 fine. In a separate matter, in February 2007, the National Association of Securities Dealers found that Mercer and Gregg Lorenzo had violated agreements with the New Jersey and Indiana securities authorities, which had imposed strict supervision requirements on Gregg Lorenzo at Mercer.

7. In January 2008, Gregg Lorenzo left Mercer and joined John Thomas Financial, a New York-based registered broker-dealer. In February 2008, Gregg Lorenzo and John Thomas Financial entered into a consent order with the Iowa Securities and Regulated Industries Bureau requiring heightened supervision of Gregg Lorenzo and precluding him from performing supervisory responsibilities for two years.

8. In February 2009, through an entity that he owned, Gregg Lorenzo purchased a registered broker-dealer shell company called DC Evans and Company LLC

("DC Evans") and renamed it Charles Vista, LLC. Gregg Lorenzo continues to operate Charles Vista as a broker-dealer in Staten Island, N.Y. Although the indirect owner of the firm, Gregg Lorenzo officially has no managerial title and is listed only as a registered representative at Charles Vista. Despite his lack of a managerial title, however, Gregg Lorenzo in fact controlled Charles Vista.

9. In a July 16, 2009 Agreement and Order with the Idaho Department of Finance, *Idaho v. John Thomas Financial et al.*, Docket No. 2008-7-11, the Idaho Securities Division sanctioned John Thomas Financial and Gregg Lorenzo, among others, for negligently failing to disclose the Iowa consent order in his form U-4. The order directed Gregg Lorenzo to withdraw his application for registration as an investment adviser representative and to pay a civil penalty of \$1,250.

10. On December 16, 2009, the Financial Industry Regulatory Authority ("FINRA") denied Charles Vista's application to transfer membership from DC Evans to Charles Vista. On August 10, 2010, FINRA upheld its earlier decision, citing Lorenzo's regulatory history.

Frank Lorenzo

11. Frank Lorenzo, age 51, resides in Westwood, New Jersey and is currently registered with Hunter Wise Securities, LLC, a registered broker-dealer based in Irvine, California. Frank Lorenzo works at the firm's New York City office. Frank Lorenzo holds Series 7 and 63 licenses. He began working at Mercer Capital in February 2007 and then followed Gregg Lorenzo to John Thomas Financial and Charles Vista. Frank Lorenzo acted as an investment banker at Mercer Capital, John Thomas Financial and Charles Vista.

Charles Vista

12. Charles Vista is a registered broker-dealer controlled by Gregg Lorenzo. Frank Lorenzo was the head of investment banking from the opening of the firm until his departure in January 2010.

B. OTHER RELEVANT ENTITIES

13. According to W2E's SEC filings, W2E is a Delaware corporation formed in 2008 as Maven Media Holdings, Inc. ("Maven Media"). In May 2009, Maven Media's wholly-owned subsidiary, Waste2Energy Acquisition Co., acquired Waste2Energy, Inc., a privately held Delaware corporation that held 95% of the issued and outstanding shares of EnerWaste International Corporation ("EWI"), a company that manufactured a so-called "Batch Oxidation System" for converting waste into energy. EWI owned 50% of EnerWaste Europe, Ltd. ("EWE"), a company based in Iceland that operated a waste processing facility in that country. In April 2008, Waste2Energy, Inc. formed a wholly owned subsidiary, EnerWaste, Inc. to acquire the other 50% of the stock of EWE. In July 2009, Maven Media (which prior to the acquisition of Waste2Energy, Inc. had been a shell

corporation with publicly registered stock) changed its name to Waste2Energy Holdings, Inc. Shortly thereafter, W2E's stock began to be quoted on the Over-The-Counter Bulletin Board ("OTCBB").

C. W2E's OPERATIONS AND FINANCIAL CONDITION

14. According to W2E's SEC filings, Waste2Energy, Inc. was incorporated in Delaware on April 10, 2007. On August 27, 2007, Waste2Energy, Inc. filed a Form D notice that it was engaged in a \$6 million private offering of securities pursuant to Rule 506 of Regulation D, 17 C.F.R. § 230.506. According to its September 4, 2007 private placement memorandum, Waste2Energy, Inc. was formed to acquire 95% of the "issued and outstanding shares of capital stock" of EWI.

15. According to W2E's SEC filings, Waste2Energy, Inc. completed the EWI acquisition in or about November 2007, thereby acquiring 50% of EWE. Through EnerWaste, Inc., Waste2Energy acquired the remaining 50% of the stock of EWE. Waste2Energy, Inc.'s total purchase price for EWE was \$8 million, which it paid in roughly equal parts in cash, W2E stock and a W2E promissory note.

16. According to W2E's SEC filings, when Waste2Energy, Inc. acquired EWE, EWE had a contract with Ascot Environmental Ltd. ("Ascot") to develop a waste-to-energy facility in the Dargaval area of Dumfries, Scotland. In 2008, W2E took over this contract through its Isle of Man subsidiary, Waste2 Energy Limited.

17. On June 30, 2009, W2E filed a Form 8-K with the SEC that contained its first "unaudited" public post-merger financial statements. The financial statements stated, among other things, that, as of December 31, 2008, W2E had total assets of \$13,987,764, total liabilities of \$9,563,673, and that W2E "had been operating at a substantial operating loss each year since inception." Of the nearly \$14 million in assets as of December 31, 2008, W2E attributed \$10 million to "intangibles" (including a \$1.9 million deferred tax liability), \$0.5 million to goodwill, and \$3 million to "cost and estimated earnings of billings on uncompleted contracts." The Form 8-K also disclosed that EWE had been placed in involuntary receivership in February 2009. The filing listed \$28,171 in cash as of December 31, 2008 and further disclosed that W2E's current business operations were dependent on generating substantial revenues from one customer, Ascot, which subjected W2E to "significant financial and other risks in the operation of our business." The anticipated revenue from the contract with Ascot, at the time it was entered into, was less than \$15 million, and by the time the Form 8-K was filed in June 2009, the contract was operating at a net loss for W2E. Furthermore, by September 2009, W2E had received all, or virtually all, of the payments it was entitled to under its contract with Ascot.

18. On October 1, 2009, W2E filed an amended Form 8-K ("Form 8K/A") and its Form 10-Q for the period ended June 30, 2009. The financial statements contained in the October 1 filings included "unaudited" numbers for the period ended June 30, 2009 and, apparently, audited numbers for the period ended March 31, 2009. For the period ended March 31, 2009, W2E reported total assets of \$367,581 (including \$27,360 in cash),

total liabilities of \$6,676,163, and an operating loss of \$1,972,637. For the period ended June 30, 2009, W2E reported total assets of \$660,408 (including \$54,543 in cash), total liabilities of \$3,942,356, and an operating loss of \$1.5 million. The alleged \$11 million in intangible assets and goodwill that W2E had reported in the Form 8-K that it filed June 30, 2009 were no longer included on the balance sheet that appeared in its October 1, 2009 Form 10-Q and Form 8-K/A filings.

19. W2E's October 1, 2009 Form 8-K/A explained the complete write-off of \$11 million in intangibles and goodwill as follows:

In January 2009, the Company engaged a consultant to assist in the evaluation of the Dargavel project [for Ascot] due to continued delays and concerns over the design and plans for the facility, as well as the progress and ability to complete the project in accordance with the contract. The initial plans, designs, and knowhow that were the foundation of the project plan also served as the basis of the Technology assets we acquired with the purchase of [EWE]. The conclusion reached was that the Company needed to completely change the project plans, technology and controls that would enable the company to deliver the project according to the contract specifications. As a result, management made a determination that the value of the assets acquired were of no value and the Company's IP platform would be built on a new set of plans, design specifications and technology that was developed starting in January through the expected conclusion of the project in late 2009. As a result, an impairment charge in the amount of \$10,538,029 was recorded to write-off the value of the Technology.

Additionally, when the Company acquired [EWE], Goodwill was assigned based on the value of the workforce. At the time of the Iceland economic collapse and subsequent termination of the contract between EWE and the company, and the signing of the new contract with another Company subsidiary, the majority of the workforce where the value was placed did not continue on with the Dargavel project or any other efforts supporting the continued development of the Technology and knowhow of the business. As a result of the above, management determined that Goodwill was impaired and an impairment in the amount of \$496,594 was recorded to write-off the value of the Goodwill.

20. On November 16, 2009, W2E filed a Form 10-Q for the period ending September 30, 2009. In this filing, W2E reported that as of September 30, 2009, the value of all of W2E's assets was \$905,582, its total liabilities were \$6,510,247, and it had an accumulated deficit of \$23,675,381. The value of contracts receivable was listed as zero and unbilled amounts due on uncompleted contracts was \$499,857.

D. W2E's \$15 MILLION DEBENTURE OFFERING

21. From in or about September 2009 through May 2010, Gregg Lorenzo's firm, Charles Vista, was the exclusive placement agent for an issuance of 12% W2E debentures, with a maximum issuance amount of \$15 million (the "Debentures"). The Debentures were convertible to W2E stock.

22. Charles Vista's financial interest in the Debentures offering was considerable. According to documents attached to some of W2E's SEC filings, Charles Vista was to receive (1) a 10% "commission" on the gross proceeds of all Debentures sales; (2) a 3% "expense allowance" on the same proceeds; (3) a consulting fee of \$10,000 per month for twelve months starting "at the initial closing" of the Debentures offering; (4) an "investment banking fee equal to \$125,000 for each \$2,500,000 of Debentures sold, up to a total of \$750,000"; (5) another 13% commission/expense allowance "upon the exercise of the Warrants issued to the purchasers of the Debentures"; and (6) a "warrant to purchase up to 4.5%" of W2E's outstanding shares "proportionate to [the] amount of Debentures sold" (at a \$.01 exercise price).

23. Charles Vista sent potential investors written materials concerning W2E and the Debentures, including a lengthy private offering memorandum ("POM") prepared by W2E, Charles Vista, and their respective attorneys. The POM stated that the Debentures "are highly speculative in nature, involve a high degree of risk and should be purchased only by persons who can afford to lose their entire investment." The POM also listed a number of individual risks concerning investment in the Debentures.

24. In addition to the POM, investors received, and were required to sign, a subscription agreement that contained risk disclosures similar to the POM.

E. GREGG LORENZO'S FALSE STATEMENTS TO INVESTORS

25. Gregg Lorenzo personally attempted to sell the Debentures to numerous potential investors. In his oral sales pitches to at least three potential investors, Lorenzo made false and misleading statements designed to (i) ameliorate concerns about the investment's downside risk by misrepresenting W2E's financial condition and business prospects; and (ii) make the Debentures' stock conversion feature appear valuable by making baseless predictions about the future price of the company's stock and its future listing on a major exchange.

INVESTOR A

26. Gregg Lorenzo spoke to Investor A several times, including in a recorded telephone conversation on September 23, 2009. During that telephone conversation, Gregg Lorenzo knowingly or recklessly made the following materially false and/or misleading statements to induce Investor A to purchase the Debentures:

- (a) Discussing W2E, Gregg Lorenzo falsely told Investor A that "right

now they have a contract. They have a contract that's totaling \$100 to \$200 million, but I don't know how fast they're going to get that money, so I can't really say what type of cash roll they're going to generate."

(b) Gregg Lorenzo made the following statements to assure Investor A that investment in the Debentures was not as risky as the written risk disclosures had made it seem, and that Investor A will "get [his] money back" because W2E allegedly would have "\$7 million" in cash to repay debenture holders regardless of its future revenue:

But I got to tell you this. If this is a private placement, and there weren't protective features in the transaction, and it wasn't somewhat of an insurance policy, I would tell you, you're right, don't do it. But the fact that there is and you get the benefit of having a debenture and it being senior and being in front of everything else that this company has, accrued salary, shareholders, you name it, and it's the only debt the company will have on their book, I mean, I-- it's hard really -- it's hard to really put this into a very, very risky category despite what those documents read because at the end of the day, . . . this company is still going to have close to \$7 million in the bank, and I'm talking no revenue at all.

So I understand where you're coming from, but there is nothing in this market, there is nothing in this industry in my opinion with you being a client of my firm that can do what this deal can do for you because I'm telling you now, with our reputation on the line, me saying this to you, if you don't want to convert because you feel that the market is not there, the company hasn't executed, you are getting your money back.

They're going to be left with these -- close to or exactly the amount of cash that they were given. Now again, I, I'm going to hold them accountable to pay this money back out of revenue.

* * *

But I look at it like this. I'll be honest with you. Based on their burn rate, and what they're going to get left with, they're still going to have close to \$7 million in cash. If I have to raise a measly 8 million bucks to help them at worst case scenario, I'm not worried about that. These are the -- this is the worst case scenario that I can possibly think of. I just -- I just don't see that happening. I, you know, I, I'm sorry. And if they do, I am prepared as the chairman of Charles Vista to make sure that the investors get paid back.

* * *

You know, the odds of you being successful are, are highly likely.

* * *

I also want you to know that this is a very, very strong transaction.

* * *

I will make sure that you get paid back your money in this transaction. I don't believe that you will even take back your money. I have full confidence you will convert this note into stock at a dollar because the stock will be trading at a significant premium with liquidity because the company has executed their business plan.

* * *

And you're going to have a year to watch it for yourself. I don't have to say anything. The proof will be in the pudding, and you'll be able to decide what you want to do. It's like, it's like being able to place a bet and making a decision if you want to keep that bet a year from now.

* * *

But you are getting your money back, and you're going to get your final interest payment, and you are getting your warrants up front, and you'll be able to decide if you want to keep going. That [other] stock cannot offer you that. No public stock can offer you that. It's just not out there.

(c) During the September 23, 2009 telephone call with investor A, Gregg Lorenzo also made the following baseless prediction regarding W2E's alleged future listing on NASDAQ: "I believe [W2E] will be a NASDAQ trading stock within 12 months. I believe they will meet the listing requirements."

(d) On the same call, Gregg Lorenzo also made equally baseless statements concerning the future price of W2E's stock, into which the Debentures could be converted. He told Investor A that "I have full confidence you will convert this note into stock at a dollar because the stock will be trading at a significant premium with liquidity because [W2E] has executed their business plan." Later in the call, while trying to convince Investor A to invest \$75,000 more than he already had decided to invest in the Debentures, Gregg Lorenzo stated that an additional \$75,000 means "150,000 more shares in a company that could potentially be \$5 to \$10 a share within 12 months. And that's

what I'm looking at. You're giving up on that, and I just don't want you to do that. 150,000 shares at \$5 is almost a million dollars to you. It's 700, it's close to \$750,000."

(e) Gregg Lorenzo also told Investor A on September 23, 2009 that he was in possession of favorable non-public information concerning W2E, stating: "I can tell you things that are not even public yet that I shouldn't tell you, but it's not going to make a difference. You're going to want to see these things happen."

(f) Finally, Lorenzo falsely told Investor A on September 23, 2009 that the "debenture [was] senior and being in front of everything else that [W2E] has, accrued salary, shareholders, you name it, and it's the only debt the company will have on their book."

27. Gregg Lorenzo had no reasonable basis for making the statements set forth in paragraph 26 above because, as he knew or recklessly disregarded:

(a) W2E never had a contract for "\$100 to \$200 million"; its only substantial contract, with Ascot, was worth less than \$15 million at the outset, and as of September 23, 2009, when Lorenzo had the call with Investor A, W2E already had received all, or virtually all, payments due under that contract.

(b) W2E's last public filing prior to September 23, 2009 — its May 28, 2009 Form 8-K — reported, not that the company had "\$7 million in the bank" as Lorenzo told Investor A, but that (i) as of December 31, 2008, W2E had only \$28,171 in cash; and (ii) as of May 28, 2009, the company had only \$194,369 in cash. Furthermore, W2E's Form 10-Q for the period that ended June 30, 2009 (filed October 1, 2009) reported that the company had only \$54,543 in cash and less than \$700,000 in total assets; and W2E's Form 10-Q for the period ended September 30, 2009 (filed November 16, 2009) reported total assets of \$905,582, total liabilities of \$6,510,247, an accumulated deficit of \$23,675,381, contracts receivable valued at zero, and unbilled amounts due on uncompleted contracts at \$499,857.

(c) and (d) W2E was an extremely speculative stock — it was a start-up company at an early stage of development, and its financial condition was extremely precarious. Furthermore, on September 23, 2009 — the day that Gregg Lorenzo made his stock price and NASDAQ listing predictions to Investor A — W2E filed a Form 8-K reporting that on August 20, 2009, FINRA had notified the company that if it did not file a delinquent Form 10-Q by September 21, its stock could be de-listed from the OTCBB, a trading venue with much less demanding listing requirements than the NASDAQ. In addition, the POM reported that (1) the "sole member of our board of directors was a defendant in prior litigation arising [sic] alleging violation of the Federal Securities laws, which may prevent or make more difficult listing on a national exchange and/or NASDAQ"; and, after further describing the litigation, (2) "[t]here can be no assurance that [the Director's] actions and/or involvement in the prior litigation will not negatively impact and/or prevent [W2E's] ability to be listed on an exchange and/or NASDAQ, even if [W2E] were to meet such listing qualifications, which it will not for the foreseeable future."

(e) No "non-public information concerning W2E" existed, and none of W2E's public statements after September 23, 2009 indicate that any such undisclosed favorable information about the company existed on or around September 23, 2009.

(f) As Gregg Lorenzo knew, as of September 23, 2009, W2E had millions of dollars in debt on its books that was senior to the debt W2E was issuing through the Debentures offering.

28. On September 25, 2009 and October 1, 2009, Investor A invested a total of \$225,000 in the Debentures.

INVESTOR B

29. In or about September, 2009, Gregg Lorenzo spoke to Investor B concerning the Debentures. During his conversations with Investor B, Lorenzo knowingly or recklessly falsely told investor B that he would make several times his money if he invested in the Debentures.

30. After speaking to Gregg Lorenzo, Investor B invested \$150,000 in the Debentures.

31. Even after Investor B invested \$150,000 in the Debentures, Gregg Lorenzo continued to solicit additional money. When Investor B asked Gregg Lorenzo to send him more information, he received an e-mail dated October 2, 2009 that purported to "summarize several key points of the Waste2Energy Holdings, Inc. Debenture Offering." After he received this e-mail, which contained several misrepresentations about W2 (as described in paragraphs 34 through 39 below), Investor B made another \$200,000 investment in the Debentures.

INVESTOR C

32. In or about April and May 2010, Gregg Lorenzo made the following false or misleading statements to Investor C, for which there was no reasonable basis. He told Investor C that:

(a) If he invested in the Debentures, Investor C was guaranteed to get the principal invested in the Debentures back plus interest after one year; and

(b) W2E would be doing very well in a year, at which point Investor C would have the option to convert the Debentures into W2E stock.

33. After speaking to Gregg Lorenzo, Investor C invested a total of \$125,000 in the Debentures: \$25,000 on April 1, 2010 and \$100,000 on May 12, 2010.

F. THE FRAUDULENT E-MAILS TO INVESTORS

34. As stated in paragraphs 18-19 above, on October 1, 2009, W2E filed an amended Form 8-K and its Form 10-Q for the period ended June 30, 2009. Those filings stated that W2E had written off almost all of its previously-reported assets (totaling approximately \$14 million) as of June 30, 2009, consisting primarily of \$11 million in "intangibles" and "goodwill."

35. On October 1 and the morning of October 2, Frank Lorenzo notified Charles Vista's brokers (including Gregg Lorenzo) by email of W2E's October 1, 2009 filings and included links in his email to the W2E filings on the SEC's website.

36. On October 2, 2009, Frank Lorenzo's assistant, acting on behalf of, and at the direction of, either Frank Lorenzo or Gregg Lorenzo, or both, sent emails to Investor B and another Charles Vista client with the subject-heading "W2E Debenture Deal Points." The emails, designed to solicit those clients' investments in the Debentures, purported to "summarize several key points of the Waste2Energy Holdings, Inc. Debenture Offering," and contained the following false and/or misleading statements concerning W2E:

There are 3 layers of protection:

- (I) The Company has over \$10 mm in confirmed assets
- (II) The Company has purchase orders and LOI's [letters of intent] for over \$43 mm in orders
- (III) Charles Vista has agreed to raise additional monies to repay these Debenture holders (if necessary)

37. The first statement was false because, by October 1, 2009, W2E had written off nearly all of its assets, and had no "\$10 mm in confirmed assets."

38. The second statement was misleading because, as of October 1, 2009, W2E had only a single, non-binding, letter of intent for \$43 million and negligible "purchase orders."

39. The third statement was misleading because, when it was made, it was far from certain that W2E could sell the full \$15 million in Debentures it was offering, much less "raise additional monies to repay [those] Debenture holders."

40. At the time that Frank and/or Gregg Lorenzo caused Charles Vista to send the October 2, 2009 emails to potential W2E investors, they each knew, or recklessly disregarded, that the statements excerpted in paragraph 36 above were false and/or misleading statements about W2E.

41. On October 5, 2009, Frank Lorenzo and Gregg Lorenzo received an email authored by the Chief Financial Officer of W2E, Craig Brown, which expressly informed them of the "write-off of all of [W2E's] intangible assets . . . of about \$11 million."

42. On October 14, 2009, Frank Lorenzo sent two additional emails to Charles Vista customers that contained the very same false and misleading statements that were in the October 2, 2009 emails. Frank Lorenzo sent the October 14 emails to solicit investments in the Debentures.

43. At the time Frank Lorenzo sent the October 14 emails, he knew, or recklessly disregarded, that the statements contained in those emails about W2E were false and/or misleading.

44. At least one of the recipients of Frank Lorenzo's October 14, 2009 emails invested in the Debentures after receiving the email.

VIOLATIONS

1. As a result of the conduct described above, Gregg Lorenzo, Frank Lorenzo, and Charles Vista willfully violated Section 17(a) of the Securities Act, which makes it unlawful for any person in the offer or sale of any securities, directly or indirectly, to employ any device, scheme, or artifice to defraud, or 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 circumstances under which they were made, not misleading, or to engage in any transaction, practice, or course of business which operators or would operate as a fraud or deceit upon the purchaser.

2. As a result of the conduct described above, Gregg Lorenzo, Frank Lorenzo, and Charles Vista willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful for any person, directly or indirectly, to employ any device, scheme, or artifice to defraud, 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 the light of the circumstances under which they were made, not misleading, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

3. As a result of the conduct described above, Charles Vista violated Section 15(c)(1) of the Exchange Act, which prohibits a broker or dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance, defined in Rule 15c1-2 to include any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, and Rule 10b-3(a), which makes it unlawful for any broker or dealer, directly or indirectly, to use or employ, in connection with the purchase or sale of any security, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive, or other fraudulent device or contrivance," as such term is used in Section 15(c) of the Exchange Act.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 8A of the Securities Act and Sections 21B and 21C of the Exchange Act;

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondents Gregg Lorenzo, Frank Lorenzo and Charles Vista should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; whether, pursuant to Section 21C of the Exchange Act, Respondent Charles Vista should be ordered to cease and desist from committing or causing violations of and any future violations of Section 15(c) of the Securities Exchange Act and Rule 10b-3 thereunder; whether Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act; and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

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

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 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. IC-30383; 812-14105]

UBS AG, et al.; Notice of Application and Temporary Order

February 15, 2013

Agency: Securities and Exchange Commission ("Commission").

Action: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to a guilty plea entered on December 19, 2012, by UBS Securities Japan Co., Ltd. (the "Settling Firm") in the U.S. District Court for the District of Connecticut ("District Court") in connection with a plea agreement between the Settling Firm and the U.S. Department of Justice ("DOJ"), until the Commission takes final action on an application for a permanent order. Applicants have requested a permanent order.

Applicants: UBS AG; UBS IB Co-Investment 2001 GP Limited ("ESC GP"); UBS Financial Services Inc. ("UBSFS"); UBS Alternative and Quantitative Investments LLC ("UBS Alternative"); UBS Willow Management, L.L.C. ("UBS Willow"), UBS Eucalyptus Management, L.L.C. ("UBS Eucalyptus") and UBS Juniper Management, L.L.C. ("UBS Juniper") (UBS Willow, UBS Eucalyptus, and UBS Juniper are referred to collectively as "UBS Alternative Managers"); UBS Global Asset Management (Americas) Inc. ("UBS Global AM Americas"); UBS Global Asset Management (US) Inc. ("UBS Global AM US"); and the Settling Firm (each an "Applicant" and collectively, the "Applicants").¹

¹ Applicants request that any relief granted pursuant to the application also apply to any existing or future company of which the Settling Firm is or may become an affiliated person within the meaning of section 2(a)(3) of the Act (together with the Applicants, the "Covered Persons").

Filing Date: The application was filed on December 19, 2012, and amended on January 31, 2013.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 12, 2013, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants: UBS AG, ESC-GP, and the Settling Firm, c/o UBS Investment Bank, 677 Washington Boulevard, Stamford, CT 06901; UBSFS, 1200 Harbor Boulevard, Weehawken, NJ 07086; UBS Alternative, 677 Washington Boulevard, Stamford, CT 06901; UBS Willow, UBS Eucalyptus, and UBS Juniper, 299 Park Avenue, 29th Floor, New York, NY 10171; UBS Global AM Americas, One North Wacker Drive, Chicago, IL 60606 and UBS Global AM US, 1285 Avenue of the Americas, 12th Floor, New York, NY 10019.

For Further Information Contact: Steven I. Amchan, Senior Counsel, at (202) 551-6826 or Jennifer L. Sawin, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's website by

searching for the file number, or an applicant using the Company name box, at

<http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations:

1. UBS AG, a company organized under the laws of Switzerland, is a Swiss-based global financial services firm. UBS AG and its subsidiaries provide global wealth management, securities and retail and commercial banking services. Each of the other Applicants is either a direct or indirect majority-owned or wholly-owned subsidiary of UBS AG. UBSFS is a corporation organized under the laws of Delaware and provides a wide range of wealth management services, including financial planning and wealth management consulting, asset-based and advisory services and transaction-based services, to clients in the United States and throughout the world. UBSFS, UBS Alternative, UBS Alternative Managers,² and UBS Global AM Americas are investment advisers registered under the Investment Advisers Act of 1940, and all but UBSFS currently serve as investment advisers to registered management investment companies ("Funds"). UBSFS and UBS Global AM US are registered as broker-dealers under the Securities and Exchange Act of 1934 ("Exchange Act"). UBSFS is the co-principal underwriter to various registered unit investment trusts. UBS Global AM US serves as principal underwriter to various open-end Funds. UBS AG and ESC GP provide investment advisory services to employees' securities companies ("ESCs"), as defined in section 2(a)(13) of the Act, which provide investment opportunities for highly compensated key employees, officer, directors and current consultants of UBS AG and its affiliates. Applicants (other than the Settling Firm) collectively serve as investment adviser to Funds and ESCs, principal underwriter to open-end

² UBS Alternative is also managing member of the UBS Alternative Managers.

Funds, and co-principal underwriter to registered unit investment trusts (such activities, collectively, "Fund Service Activities").

2. On December 19, 2012, the Fraud Section of the Criminal Division of the DOJ filed a one-count criminal information (the "Information") in the District Court charging wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2. The Information charges that between approximately 2006 and at least 2009, the Settling Firm engaged in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf by secretly manipulating benchmark interest rates to which the profitability of those trades was tied. The Information charges that, in furtherance of this scheme, on or about February 25, 2009, the Settling Firm committed wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 by transmitting, or causing the transmission of: (i) an electronic chat between a derivatives trader employed by the Settling Firm and a broker employed at an interdealer brokerage firm; (ii) a subsequent submission for the London InterBank Offered Rate for Japanese Yen ("Yen LIBOR") to Thomson Reuters; and (iii) a subsequent publication of a Yen LIBOR rate through international and interstate wires.

3. Pursuant to a plea agreement (the "Plea Agreement"), the Settling Firm entered a plea of guilty (the "Guilty Plea") on December 19, 2012, in the District Court. In the Plea Agreement, the Settling Firm agreed to a fine of \$100 million and other remedies. Applicants expect that the District Court will enter a judgment against the Settling Firm (the "Judgment") that will require remedies that are materially the same as set forth in the Plea Agreement. In addition, UBS AG has entered into a non-prosecution agreement with DOJ, dated December 18, 2012 (the "Non-Prosecution Agreement"), relating to submissions of the Yen LIBOR and other benchmark interest rates. In the Non-Prosecution Agreement, UBS AG has agreed to, among other things: (i) provide full cooperation with DOJ and any other law enforcement or

government agency designated by DOJ until the conclusion of all investigations and prosecutions arising out of the conduct described in the Non-Prosecution Agreement; (ii) strengthen its internal controls as required by certain other U.S. and non-U.S. regulatory agencies that have addressed the misconduct described in the Non-Prosecution Agreement; and (iii) the payment of \$500 million, which includes amounts incurred by the Settling Firm for criminal penalties arising from the Judgment. The individuals at the Settling Firm and any other Covered Person who were identified by the Settling Firm, UBS AG or any U.S. or non-U.S. regulatory or enforcement agencies as being responsible for the conduct underlying the Plea Agreement (including the conduct described in any of the Exhibits thereto) (the "Conduct") have either resigned or have been terminated.

Applicants' Legal Analysis:

1. Section 9(a)(1) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company or registered unit investment trust, if such person within ten years has been convicted of any felony or misdemeanor arising out of such person's conduct, as, among other things, a broker or dealer. Section 2(a)(10) of the Act defines the term "convicted" to include a plea of guilty. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(1) to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(1). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Settling Firm is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that the guilty plea would result in a disqualification of each Applicant for ten years under

section 9(a) of the Act because the Settling Fund would become the subject of a conviction described in 9(a)(1).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are undue or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a) of the Act. On December 19, 2012, Applicants received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Guilty Plea from December 19, 2012, until the Commission takes final action on an application for a permanent order or, if earlier, February 15, 2013.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be undue and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants assert that the Conduct did not involve any of the Applicants' Fund Service Activities, and that the Settling Firm does not serve in any of the capacities described in section 9(a) of the Act. Additionally, Applicants assert that the Conduct did not involve any Fund or ESC with respect to which the Applicants provided Fund Service Activities, or the assets of any such Fund or ESC. Applicants further assert that (i) none of the current or former directors, officers or employees of the Applicants (other than certain personnel of the Settling Firm and UBS AG who were not involved in any of the Applicants' Fund Service Activities) had

any knowledge of, or had any involvement in, the Conduct; (ii) no former employee of the Settling Firm or any other Covered Person who previously has been or who subsequently may be identified by the Settling Firm, UBS AG or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Applicant or any other Covered Person; (iii) those identified employees have had no, and will not have any future, involvement in the Covered Persons' activities in any capacity described in section 9(a) of the Act; and (iv) because the personnel of the Applicants (other than certain personnel of the Settling Firm and UBS AG who were not involved in any of the Applicants' Fund Service Activities) did not have any involvement in the Conduct, shareholders of those RICs and ESCs were not affected any differently than if those RICs and ESCs had received services from any other non-affiliated investment adviser or principal underwriter.

Applicants have agreed that neither they nor any of the other Covered Persons will employ any of the former employees of the Settling Firm or any other Covered Person who previously have been or who subsequently may be identified by the Settling Firm, UBS AG or any U.S. or non-U.S. regulatory or enforcement agency as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

5. Applicants further represent that the inability of the Applicants (other than the Settling Firm) to continue providing Fund Service Activities would result in potential hardships for both the Funds and their shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors of each Fund, including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Fund, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Guilty Plea, any impact on the Funds, and the application. The Applicants will provide the Funds with all information concerning the Plea Agreement and

the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they (other than the Settling Firm) were barred from providing Fund Service Activities to Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial capital and resources to establishing expertise in advising and sub-advising Funds and in support of their principal underwriting business.

7. Applicants state that several Applicants and certain of their affiliates have previously received orders under section 9(c), as described in greater detail in the application.

Applicants' Conditions:

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. Neither the Applicants nor any of the other Covered Persons will employ any of the former employees of the Settling Firm or any other Covered Person who previously have been or who subsequently may be identified by the Settling Firm, UBS AG or any U.S. or non-U.S. regulatory or enforcement agency as having been responsible

for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that the Applicants and the other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Guilty Plea, subject to the conditions in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.



Elizabeth M. Murphy
Secretary

*Commissioner Gallagher
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3553 / February 15, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30384 / February 15, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-14899

In the Matter of

OXFORD INVESTMENT
PARTNERS, LLC AND
WALTER J. CLARKE,

Respondents.

ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY
ACT OF 1940 AS TO OXFORD
INVESTMENT PARTNERS, LLC

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Oxford Investment Partners, LLC ("Respondent" or "Oxford").¹

II.

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

¹ On May 30, 2012, the Commission instituted proceedings pursuant to Sections 203(e) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act against Oxford.

is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 as to Respondent ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that

SUMMARY

A. SUMMARY

1. This matter concerns fraud and repeated breaches of fiduciary duty by Oxford Investment Partners, LLC ("Oxford"), a Phoenix based registered investment adviser, and Walter J. Clarke ("Clarke"), Oxford's owner and principal. In late 2007, Clarke faced severe financial problems and decided to obtain money to address his difficulties by exploiting an Oxford client. Specifically, in March 2008, Clarke sold 7.5% of his ownership interest in Oxford to a client at a fraudulently inflated price (\$750,000). Indeed, in connection with this transaction, Clarke employed several devices to artificially inflate the value of Oxford by at least \$1.5 million, thereby causing the client to overpay for the 7.5% interest in the firm by at least \$112,000.

2. Moreover, on two occasions, Oxford and Clarke recommended and placed several clients in investments in which Clarke and/or Oxford had personal and pecuniary interests without first disclosing facts giving rise to plain conflicts of interest relating to these investments.

3. First, in September 2007, Clarke convinced a client to fund a \$116,000 loan originated by Cornerstone Lending Group ("Cornerstone"). Similarly, in March 2008, Clarke convinced two additional clients to invest \$200,000 to fund another Cornerstone loan origination. However, in each instance, Respondents failed to disclose that Clarke: (1) co-founded and was an owner of Cornerstone; and (2) would profit from Cornerstone loan originations. Within a few months of the loans being funded, the borrowers defaulted and the Oxford clients lost their entire investments.

² 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.

4. Second, in November 2008, Clarke convinced four clients to invest approximately \$10,000 each in a privately-held company called HotStix, without first disclosing that the owners of HotStix: (1) had ownership interests in Oxford; and (2) were paid consultants to Oxford. Subsequently, HotStix failed and sought bankruptcy protection, which resulted in the clients' investment in the firm being marked down to zero.

B. RESPONDENTS

5. **Oxford** is an investment adviser located in Phoenix, Arizona, which registered with the Commission on March 4, 2003. Oxford provides discretionary advisory services to 364 client accounts, and non-discretionary advisory services to 25 accounts, totaling approximately \$224 million in assets under management.

6. **Clarke**, age 49, currently resides in Phoenix, Arizona and is Oxford's founder, president, and sole control person. At all relevant times, Clarke was responsible for the management of Oxford's business and solely responsible for identifying, recommending and assessing potential investment opportunities on behalf of Oxford's clients. Clarke holds a Series 65 license, after having passed the Uniform Investment Adviser Law examination administered by FINRA.

C. OTHER RELEVANT ENTITIES

7. **Oxford Stix** is a pooled investment vehicle that Oxford and Clarke created in 2006 to invest assets of Oxford's clients in HotStix, which was a privately-held company in Arizona that provided golf club fittings. Oxford served as the investment adviser to Oxford Stix, and four Oxford clients were members of Oxford Stix. In 2006, Oxford Stix invested a total of \$900,000 in HotStix. In November 2008, Oxford Stix invested an additional \$40,000 in HotStix.

8. **Cornerstone** was a lending firm in Phoenix, Arizona that Clarke co-created in 2007. Cornerstone focused exclusively on "hard money" lending, which is generally considered to be sub-prime. At Cornerstone's inception, Clarke held a 30% ownership interest in the firm, and thus would personally benefit from any profits realized. Cornerstone only originated two loans, which were funded almost exclusively by Oxford's clients. Cornerstone received points in connection with its loan originations.

9. **The Center for Wealth Management ("CWM")** is an entity that Clarke co-founded in 1999 that offers financial planning courses through colleges and universities in California and Arizona.

D. CLARKE FRAUDULENTLY INFLATED THE PRICE OF OXFORD WHEN SELLING AN INTEREST IN THE FIRM TO A CLIENT

1. **In Late 2007, Clarke's Acute Financial Problems Drove Him to Sell a Portion of His Interest in Oxford**

10. In late 2007, Clarke decided to sell a portion of his ownership interest in Oxford to raise money to address his deteriorating financial condition. As of the first quarter of 2008, Clarke was heavily in debt and was struggling to meet his financial obligations. Indeed, Clarke was facing numerous financial difficulties in late 2007, which persisted and worsened in early 2008.

11. First, Clarke was paying mortgages on two homes – a new home he had purchased in 2007 for \$3.5 million, as well as his previous home, which he was unable to sell. In the summer of 2007, Clarke's mortgage payments ballooned as his interest rate increased from 5.75% to 7%.

12. Second, a number of "lifestyle" expenses (e.g., private schools, professional tennis lessons and interior designers) also aggravated his personal financial situation. In a January 2008 email, Clarke complained bitterly about being under pressure to find a solution to his financial problems.

13. Third, Clarke's finances were strained by a legal settlement with Wachovia Securities, LLC ("Wachovia"), his former employer. Pursuant to the terms of this \$400,000 settlement, as of January 1, 2008, Clarke was obligated to: (1) make quarterly payments of \$10,000 to Wachovia; and (2) pay an additional \$130,000 by January 15, 2009.

14. Fourth, Clarke's purchase of an advisory firm was also a financial burden that contributed to his inclination to sell a portion of his interest in Oxford. In connection with this \$600,000 purchase, Clarke executed an agreement whereby he agreed to pay \$30,000 per quarter in satisfaction of the purchase price.

15. Fifth, when Gary Cluff (a co-owner of Oxford) became severely ill in late 2007, he approached Clarke about buying out his interest, which in turn caused Clarke to look for sources of liquidity.

2. In March 2008, Clarke Convinced an Oxford Client to Purchase an Interest in Oxford on the Basis of False and Misleading Information

16. In December 2007, Clarke asked Client A to consider purchasing an interest in Oxford. During his conversations with Client A, Clarke asserted that Oxford had grown dramatically, and that he expected such growth to continue, thereby increasing the firm's value. Clarke said that he was selling interests in Oxford to "expand his business" – e.g., by hiring employees and building out office space. Clarke also said that he was selling interests in Oxford because he needed capital to add infrastructure to the firm in anticipation of landing a large Indian gaming client. Additionally, Clarke told Client A that the firm was so profitable that: (1) he had received \$1.5 million in distributions in 2007; and that (2) revenues in excess of \$1.5 million would be distributed to Oxford's other owners in proportion to their ownership interest in the firm.

17. In March 2008, Clarke sold Client A 7.5% of his ownership interest in Oxford for \$750,000. Neither Client A, nor any lawyer or accountant acting on her behalf, performed any diligence relating to Oxford prior to the sale. To consummate the sale, Client A and Clarke executed a document entitled Membership Interest Purchase Agreement ("Purchase Agreement"), and Client A then authorized the transfer of \$750,000 from her account to an account in the name of "Oxford Investment Partners LLC."

18. Within days of the transfer, rather than make the capital investments in Oxford that he had mentioned to Client A, Clarke withdrew the money and used it to alleviate his personal financial problems.

3. Clarke Deliberately Inflated the Value of Oxford in Connection with the March 2008 Sale of a Portion of His Interest in Oxford to Client A

19. Clarke valued Oxford at \$10 million in connection with the sale to Client A. However, Clarke has failed to offer any documentation or plausible explanation to support this valuation. To the contrary, Clarke deliberately employed three devices to fraudulently inflate his valuation of Oxford. First, Clarke performed the valuation by applying an excessive and baseless multiple to Oxford's 2007 annual revenue. Second, Clarke calculated Oxford's 2007 revenue by quadrupling Oxford's fourth quarter 2007 revenue – the highest of 2007 – and ignoring Oxford's lower revenue numbers from the previous three quarters. Third, Clarke added an additional and baseless \$1 million "premium" to Oxford's valuation, which he claimed accounted for Oxford's "amazing" growth trajectory.

20. Clarke claimed that his \$10 million valuation was based upon listings for the sale of advisory firms published by a firm called "FP Transitions", which performs valuations of advisory firms and provides listings for – and other services related to – the sale of advisory firms. These listings include the firm's annual revenues, number of clients and the owner's asking price.

21. According to Clarke, the listings prompted him to value Oxford at 3x the firm's 2007 revenues. Clarke claimed that, based upon the listings published by FP Transitions during the 2007 timeframe, advisory firms were selling at between 2.5x and 3.5x annual revenue, and thus he was confident that he was "right down the middle" in valuing Oxford at 3x its 2007 annual revenue.

22. However, according to FP Transitions, in 2007 advisory firms sold at an average multiple of 2.49, while the high multiple was 2.98 and the low multiple was 1.63. Similarly, in 2008, advisory firms sold at an average multiple of 2.33, with a high multiple of 2.74 and a low multiple of 2.33. Nevertheless, Clarke maintained that his review of the FP Transitions listings gave him confidence that he was "right down the middle" in valuing Oxford at 3x its 2007 annual revenue.

23. Next, Clarke proceeded to calculate Oxford's "2007 revenue." However, Clarke did so by quadrupling Oxford's fourth quarter 2007 revenue (\$745,109), rather than

adding up the revenues from the first quarter through the fourth quarter (\$637,622; \$700,798; \$734,457; \$745,109, respectively). Using this approach, Clarke calculated Oxford's 2007 revenue at \$2,980,436 – as opposed to Oxford's actual 2007 revenue, which was \$2,817,986 (a difference of \$162,450).

24. Clarke then multiplied his inflated 2007 annual revenue figure (\$2,980,436) by 3 to get \$8,941,308 (a figure containing \$487,350 of inflation due to Clarke's questionable calculation of Oxford's 2007 revenue).

25. Finally, Clarke added a \$1 million "premium" to his valuation of Oxford, which he felt was warranted due to the "amazing trajectory" of Oxford's growth. Clarke attributed some portion of the premium to Oxford's relationship with CWM, even though CWM had operated at a loss since inception.

E. RESPONDENTS FAILED TO DISCLOSE FACTS CONSTITUTING CONFLICTS OF INTEREST TO CLIENTS

1. Respondents Failed to Disclose Clarke's Ownership Interest in Cornerstone Prior to Advising Clients to Fund Loans Originated by that Firm

a. The Petra Luh Loan

26. In September 2007, Clarke advised an Oxford client ("Client B") to fund a \$116,000 loan to Petra Luh (the "Petra Luh Loan"), who intended to use the proceeds to help fund a project in Arizona. Client B informed Clarke that she was uncomfortable with the loan due to the questionable collateral offered, as well as the generally poor level of documentation. Clarke responded to her concerns by stressing that any changes would "kill" the deal and offering to "guarantee" her against any losses. In reliance upon Clarke's representations, Client B funded the \$116,000 loan to Petra Luh. Cornerstone received points in connection with its origination of the Petra Luh Loan. Additionally, Oxford charged Client B advisory fees on the Petra Luh Loan, as it constituted an asset under management.

27. Prior to advising Client B to fund the Cornerstone loan to Petra Luh, neither Clarke nor Oxford informed her of the material fact that Clarke had an ownership interest in Cornerstone, and thus stood to profit from Cornerstone loans. Shortly after Client B funded the Petra Luh Loan, Luh stopped making interest payments, and subsequently defaulted. As a result of Luh's default, Client B was forced to hire an attorney and incur fees to foreclose on the collateral. To date, Client B has essentially lost the full \$116,000 that she invested in the Petra Luh Loan. Additionally, despite his supposed "guarantee," Clarke has not reimbursed Client B for the losses she incurred as a result of following Clarke's advice to fund the Cornerstone-originated loan to Petra Luh.

b. The Dannenbaum Loan

28. Similarly, in or around March 2008, Clarke convinced two additional Oxford clients ("Client C" and "Client D") to fund a loan originated by Cornerstone to Ken Dannenbaum (the "Dannenbaum Loan"). Specifically, on Clarke's recommendation, Client C and Client D each invested \$100,000 to fund the Dannenbaum Loan. However, prior to advising these clients to fund the Dannenbaum Loan, Clarke failed to disclose the material fact of his ownership interest in Cornerstone, which received points in connection with the origination of the loan.

29. In June 2008, over two months after Client C and Client D funded the Dannenbaum Loan, Oxford's compliance officer revealed Clarke's ownership interest in Cornerstone to Client C, who then demanded a full explanation and stated that he was now "uncomfortable" with the Dannenbaum Loan.

30. Internally at Oxford, the investments that Client C and Client D made in the Dannenbaum Loan were characterized as assets under Oxford's management, and were included in Oxford's fee calculation. In or around December 2008, Client C and Client D stopped receiving interest payments. Subsequently, in the first quarter of 2009, Dannenbaum defaulted and the underlying property went into foreclosure, essentially wiping out the investments made by Client C and Client D.

2. Prior to Recommending an Investment in a Private Company, Respondents Failed to Disclose that the Company's Owners Had Ownership Interests in Oxford

31. In November 2008, Clarke solicited several clients to invest through a pooled investment vehicle in HotStix, a privately-held company, without first disclosing Oxford's relationship with the company's owners – a fact giving rise to conflicts of interest.

32. Oxford Stix is a pooled investment vehicle that Clarke created in 2006 for the sole purpose of pooling the assets of Oxford's clients to invest in HotStix. In 2006, four Oxford clients invested a total of \$900,000 in Oxford Stix.

33. After the Oxford Stix 2006 investment in HotStix, material transactions occurred between Clarke and the owners of HotStix – Tim and Eric Crown. First, in May 2008, the Crowns purchased a portion of Clarke's interest in Oxford, thereby becoming co-owners of the firm. Additionally, in connection with their acquisition of an ownership interest in Oxford, the Crowns executed a "Consulting Agreement" with Oxford, whereby Oxford agreed to pay the Crowns at least \$45,000 per year, purportedly in exchange for the Crowns' consulting services.

34. Subsequently, in November 2008, HotStix asked its investors – including the members of Oxford Stix – to provide additional capital to the firm. Clarke advised the members of Oxford Stix to make an additional investment of \$40,000. However, when

making this recommendation, Clarke failed to disclose the material facts that the owners of HotStix: (1) were co-owners of Oxford; and (2) paid consultants to Oxford.

35. Shortly after seeking additional funds in November 2008, HotStix failed, sought bankruptcy protection, and the value of the Oxford Stix investment in HotStix was marked down to zero.

F. VIOLATIONS

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

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

IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Oxford cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

B. Respondent Oxford is censured.

C. Respondent shall pay disgorgement of \$112,000.00, prejudgment interest of \$22,295.00, and civil penalties of \$140,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$10,000.00 within 10 days of the entry of this Order; \$10,000.00 within 90 days of entry of this Order; \$10,000.00 within 180 days of entry of this Order; \$10,000.00 within 270 days of entry of this Order; and \$234,295.00 within 365 days of entry of this Order. Clarke and Oxford shall be jointly and severally liable for these amounts. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to Commission Rule of Practice 600 or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Oxford as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Bruce Karpati, Chief, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY 10281-1022.

D. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it 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, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary

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

*Commissioner Gallagher
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3554 / February 15, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30385 / February 15, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-14899

In the Matter of

OXFORD INVESTMENT
PARTNERS, LLC AND
WALTER J. CLARKE,

Respondents.

ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER
PURSUANT TO SECTIONS 203(f) AND
203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY
ACT OF 1940 AS TO WALTER J.
CLARKE

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Walter J. Clarke ("Respondent" or "Clarke").¹

II.

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

¹ On May 30, 2012, the Commission instituted proceedings pursuant to Sections 203(f) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act of 1940 against Oxford.

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, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 as to Respondent ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that

SUMMARY

A. SUMMARY

1. This matter concerns fraud and repeated breaches of fiduciary duty by Oxford Investment Partners, LLC ("Oxford"), a Phoenix based registered investment adviser, and Clarke, Oxford's owner and principal. In late 2007, Clarke faced severe financial problems and decided to obtain money to address his difficulties by exploiting an Oxford client. Specifically, in March 2008, Clarke sold 7.5% of his ownership interest in Oxford to a client at a fraudulently inflated price (\$750,000). Indeed, in connection with this transaction, Clarke employed several devices to artificially inflate the value of Oxford by at least \$1.5 million, thereby causing the client to overpay for the 7.5% interest in the firm by at least \$112,000.

2. Moreover, on two occasions, Oxford and Clarke recommended and placed several clients in investments in which Clarke and/or Oxford had personal and pecuniary interests without first disclosing facts giving rise to plain conflicts of interest relating to these investments.

3. First, in September 2007, Clarke convinced a client to fund a \$116,000 loan originated by Cornerstone Lending Group ("Cornerstone"). Similarly, in March 2008, Clarke convinced two additional clients to invest \$200,000 to fund another Cornerstone loan origination. However, in each instance, Respondents failed to disclose that Clarke: (1) co-founded and was an owner of Cornerstone; and (2) would profit from Cornerstone loan originations. Within a few months of the loans being funded, the borrowers defaulted and the Oxford clients lost their entire investments.

² 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.

4. Second, in November 2008, Clarke convinced four clients to invest approximately \$10,000 each in a privately-held company called HotStix, without first disclosing that the owners of HotStix: (1) had ownership interests in Oxford; and (2) were paid consultants to Oxford. Subsequently, HotStix failed and sought bankruptcy protection, which resulted in the clients' investment in the firm being marked down to zero.

B. RESPONDENTS

5. **Oxford** is an investment adviser located in Phoenix, Arizona, which registered with the Commission on March 4, 2003. Oxford provides discretionary advisory services to 364 client accounts, and non-discretionary advisory services to 25 accounts, totaling approximately \$224 million in assets under management.

6. **Clarke**, age 49, currently resides in Phoenix, Arizona and is Oxford's founder, president, and sole control person. At all relevant times, Clarke was responsible for the management of Oxford's business and solely responsible for identifying, recommending and assessing potential investment opportunities on behalf of Oxford's clients. Clarke holds a Series 65 license, after having passed the Uniform Investment Adviser Law examination administered by FINRA.

C. OTHER RELEVANT ENTITIES

7. **Oxford Stix** is a pooled investment vehicle that Oxford and Clarke created in 2006 to invest assets of Oxford's clients in HotStix, which was a privately-held company in Arizona that provided golf club fittings. Oxford served as the investment adviser to Oxford Stix, and four Oxford clients were members of Oxford Stix. In 2006, Oxford Stix invested a total of \$900,000 in HotStix. In November 2008, Oxford Stix invested an additional \$40,000 in HotStix.

8. **Cornerstone** was a lending firm in Phoenix, Arizona that Clarke co-created in 2007. Cornerstone focused exclusively on "hard money" lending, which is generally considered to be sub-prime. At Cornerstone's inception, Clarke held a 30% ownership interest in the firm, and thus would personally benefit from any profits realized. Cornerstone only originated two loans, which were funded almost exclusively by Oxford's clients. Cornerstone received points in connection with its loan originations.

9. **The Center for Wealth Management ("CWM")** is an entity that Clarke co-founded in 1999 that offers financial planning courses through colleges and universities in California and Arizona.

D. CLARKE FRAUDULENTLY INFLATED THE PRICE OF OXFORD WHEN SELLING AN INTEREST IN THE FIRM TO A CLIENT

1. **In Late 2007, Clarke's Acute Financial Problems Drove Him to Sell a Portion of His Interest in Oxford**

10. In late 2007, Clarke decided to sell a portion of his ownership interest in Oxford to raise money to address his deteriorating financial condition. As of the first quarter of 2008, Clarke was heavily in debt and was struggling to meet his financial obligations. Indeed, Clarke was facing numerous financial difficulties in late 2007, which persisted and worsened in early 2008.

11. First, Clarke was paying mortgages on two homes – a new home he had purchased in 2007 for \$3.5 million, as well as his previous home, which he was unable to sell. In the summer of 2007, Clarke's mortgage payments ballooned as his interest rate increased from 5.75% to 7%.

12. Second, a number of "lifestyle" expenses (*e.g.*, private schools, professional tennis lessons and interior designers) also aggravated his personal financial situation. In a January 2008 email, Clarke complained bitterly about being under pressure to find a solution to his financial problems.

13. Third, Clarke's finances were strained by a legal settlement with Wachovia Securities, LLC ("Wachovia"), his former employer. Pursuant to the terms of this \$400,000 settlement, as of January 1, 2008, Clarke was obligated to: (1) make quarterly payments of \$10,000 to Wachovia; and (2) pay an additional \$130,000 by January 15, 2009.

14. Fourth, Clarke's purchase of an advisory firm was also a financial burden that contributed to his inclination to sell a portion of his interest in Oxford. In connection with this \$600,000 purchase, Clarke executed an agreement whereby he agreed to pay \$30,000 per quarter in satisfaction of the purchase price.

15. Fifth, when Gary Cluff (a co-owner of Oxford) became severely ill in late 2007, he approached Clarke about buying out his interest, which in turn caused Clarke to look for sources of liquidity.

2. In March 2008, Clarke Convinced an Oxford Client to Purchase an Interest in Oxford on the Basis of False and Misleading Information

16. In December 2007, Clarke asked Client A to consider purchasing an interest in Oxford. During his conversations with Client A, Clarke asserted that Oxford had grown dramatically, and that he expected such growth to continue, thereby increasing the firm's value. Clarke said that he was selling interests in Oxford to "expand his business" – *e.g.*, by hiring employees and building out office space. Clarke also said that he was selling interests in Oxford because he needed capital to add infrastructure to the firm in anticipation of landing a large Indian gaming client. Additionally, Clarke told Client A that the firm was so profitable that: (1) he had received \$1.5 million in distributions in 2007; and that (2) revenues in excess of \$1.5 million would be distributed to Oxford's other owners in proportion to their ownership interest in the firm.

17. In March 2008, Clarke sold Client A 7.5% of his ownership interest in Oxford for \$750,000. Neither Client A, nor any lawyer or accountant acting on her behalf, performed any diligence relating to Oxford prior to the sale. To consummate the sale, Client A and Clarke executed a document entitled Membership Interest Purchase Agreement ("Purchase Agreement"), and Client A then authorized the transfer of \$750,000 from her account to an account in the name of "Oxford Investment Partners LLC."

18. Within days of the transfer, rather than make the capital investments in Oxford that he had mentioned to Client A, Clarke withdrew the money and used it to alleviate his personal financial problems.

3. Clarke Deliberately Inflated the Value of Oxford in Connection with the March 2008 Sale of a Portion of His Interest in Oxford to Client A

19. Clarke valued Oxford at \$10 million in connection with the sale to Client A. However, Clarke has failed to offer any documentation or plausible explanation to support this valuation. To the contrary, Clarke deliberately employed three devices to fraudulently inflate his valuation of Oxford. First, Clarke performed the valuation by applying an excessive and baseless multiple to Oxford's 2007 annual revenue. Second, Clarke calculated Oxford's 2007 revenue by quadrupling Oxford's fourth quarter 2007 revenue – the highest of 2007 – and ignoring Oxford's lower revenue numbers from the previous three quarters. Third, Clarke added an additional and baseless \$1 million "premium" to Oxford's valuation, which he claimed accounted for Oxford's "amazing" growth trajectory.

20. Clarke claimed that his \$10 million valuation was based upon listings for the sale of advisory firms published by a firm called "FP Transitions", which performs valuations of advisory firms and provides listings for – and other services related to – the sale of advisory firms. These listings include the firm's annual revenues, number of clients and the owner's asking price.

21. According to Clarke, the listings prompted him to value Oxford at 3x the firm's 2007 revenues. Clarke claimed that, based upon the listings published by FP Transitions during the 2007 timeframe, advisory firms were selling at between 2.5x and 3.5x annual revenue, and thus he was confident that he was "right down the middle" in valuing Oxford at 3x its 2007 annual revenue.

22. However, according to FP Transitions, in 2007 advisory firms sold at an average multiple of 2.49, while the high multiple was 2.98 and the low multiple was 1.63. Similarly, in 2008, advisory firms sold at an average multiple of 2.33, with a high multiple of 2.74 and a low multiple of 2.33. Nevertheless, Clarke maintained that his review of the FP Transitions listings gave him confidence that he was "right down the middle" in valuing Oxford at 3x its 2007 annual revenue.

23. Next, Clarke proceeded to calculate Oxford's "2007 revenue." However, Clarke did so by quadrupling Oxford's fourth quarter 2007 revenue (\$745,109), rather than

adding up the revenues from the first quarter through the fourth quarter (\$637,622; \$700,798; \$734,457; \$745,109, respectively). Using this approach, Clarke calculated Oxford's 2007 revenue at \$2,980,436 – as opposed to Oxford's actual 2007 revenue, which was \$2,817,986 (a difference of \$162,450).

24. Clarke then multiplied his inflated 2007 annual revenue figure (\$2,980,436) by 3 to get \$8,941,308 (a figure containing \$487,350 of inflation due to Clarke's questionable calculation of Oxford's 2007 revenue).

25. Finally, Clarke added a \$1 million "premium" to his valuation of Oxford, which he felt was warranted due to the "amazing trajectory" of Oxford's growth. Clarke attributed some portion of the premium to Oxford's relationship with CWM, even though CWM had operated at a loss since inception.

E. RESPONDENTS FAILED TO DISCLOSE FACTS CONSTITUTING CONFLICTS OF INTEREST TO CLIENTS

1. Respondents Failed to Disclose Clarke's Ownership Interest in Cornerstone Prior to Advising Clients to Fund Loans Originated by that Firm

a. The Petra Luh Loan

26. In September 2007, Clarke advised an Oxford client ("Client B") to fund a \$116,000 loan to Petra Luh (the "Petra Luh Loan"), who intended to use the proceeds to help fund a project in Arizona. Client B informed Clarke that she was uncomfortable with the loan due to the questionable collateral offered, as well as the generally poor level of documentation. Clarke responded to her concerns by stressing that any changes would "kill" the deal and offering to "guarantee" her against any losses. In reliance upon Clarke's representations, Client B funded the \$116,000 loan to Petra Luh. Cornerstone received points in connection with its origination of the Petra Luh Loan. Additionally, Oxford charged Client B advisory fees on the Petra Luh Loan, as it constituted an asset under management.

27. Prior to advising Client B to fund the Cornerstone loan to Petra Luh, neither Clarke nor Oxford informed her of the material fact that Clarke had an ownership interest in Cornerstone, and thus stood to profit from Cornerstone loans. Shortly after Client B funded the Petra Luh Loan, Luh stopped making interest payments, and subsequently defaulted. As a result of Luh's default, Client B was forced to hire an attorney and incur fees to foreclose on the collateral. To date, Client B has essentially lost the full \$116,000 that she invested in the Petra Luh Loan. Additionally, despite his supposed "guarantee," Clarke has not reimbursed Client B for the losses she incurred as a result of following Clarke's advice to fund the Cornerstone-originated loan to Petra Luh.

b. The Dannenbaum Loan

28. Similarly, in or around March 2008, Clarke convinced two additional Oxford clients ("Client C" and "Client D") to fund a loan originated by Cornerstone to Ken Dannenbaum (the "Dannenbaum Loan"). Specifically, on Clarke's recommendation, Client C and Client D each invested \$100,000 to fund the Dannenbaum Loan. However, prior to advising these clients to fund the Dannenbaum Loan, Clarke failed to disclose the material fact of his ownership interest in Cornerstone, which received points in connection with the origination of the loan.

29. In June 2008, over two months after Client C and Client D funded the Dannenbaum Loan, Oxford's compliance officer revealed Clarke's ownership interest in Cornerstone to Client C, who then demanded a full explanation and stated that he was now "uncomfortable" with the Dannenbaum Loan.

30. Internally at Oxford, the investments that Client C and Client D made in the Dannenbaum Loan were characterized as assets under Oxford's management, and were included in Oxford's fee calculation. In or around December 2008, Client C and Client D stopped receiving interest payments. Subsequently, in the first quarter of 2009, Dannenbaum defaulted and the underlying property went into foreclosure, essentially wiping out the investments made by Client C and Client D.

2. Prior to Recommending an Investment in a Private Company, Respondents Failed to Disclose that the Company's Owners Had Ownership Interests in Oxford

31. In November 2008, Clarke solicited several clients to invest through a pooled investment vehicle in HotStix, a privately-held company, without first disclosing Oxford's relationship with the company's owners – a fact giving rise to conflicts of interest.

32. Oxford Stix is a pooled investment vehicle that Clarke created in 2006 for the sole purpose of pooling the assets of Oxford's clients to invest in HotStix. In 2006, four Oxford clients invested a total of \$900,000 in Oxford Stix.

33. After the Oxford Stix 2006 investment in HotStix, material transactions occurred between Clarke and the owners of HotStix – Tim and Eric Crown. First, in May 2008, the Crowns purchased a portion of Clarke's interest in Oxford, thereby becoming co-owners of the firm. Additionally, in connection with their acquisition of an ownership interest in Oxford, the Crowns executed a "Consulting Agreement" with Oxford, whereby Oxford agreed to pay the Crowns at least \$45,000 per year, purportedly in exchange for the Crowns' consulting services.

34. Subsequently, in November 2008, HotStix asked its investors – including the members of Oxford Stix – to provide additional capital to the firm. Clarke advised the members of Oxford Stix to make an additional investment of \$40,000. However, when

making this recommendation, Clarke failed to disclose the material facts that the owners of HotStix: (1) were co-owners of Oxford; and (2) paid consultants to Oxford.

35. Shortly after seeking additional funds in November 2008, HotStix failed, sought bankruptcy protection, and the value of the Oxford Stix investment in HotStix was marked down to zero.

F. VIOLATIONS

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

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

IV.

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

Accordingly, pursuant to Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Clarke cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

B. Respondent Clarke be, and hereby is:

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

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

with the right to apply for reentry after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. 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.

D. Respondent shall pay disgorgement of \$112,000.00, prejudgment interest of \$22,295.00, and civil penalties of \$140,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$10,000.00 within 10 days of the entry of this Order; \$10,000.00 within 90 days of entry of this Order; \$10,000.00 within 180 days of entry of this Order; \$10,000.00 within 270 days of entry of this Order; and \$234,295.00 within 365 days of entry of this Order. Clarke and Oxford shall be jointly and severally liable for these amounts. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to Commission Rule of Practice 600 or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Clarke as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Bruce Karpati, Chief, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY 10281-1022.

E. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of

whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he 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, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes

of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68952 / February 19, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15212

In the Matter of

Virginia K. Sourlis, Esq.

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS AND
IMPOSING TEMPORARY SUSPENSION
PURSUANT TO RULE 102(e)(3)(i)(B) OF
THE COMMISSION'S RULES OF
PRACTICE**

I.

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

II.

The Commission finds that:

1. Virginia K. Sourlis, Esq. is and has been an attorney licensed to practice law in the State of New Jersey and is a partner in The Sourlis Law Firm, a law firm with offices in Red Bank, New Jersey.
2. On May 5, 2011, the Commission filed an amended complaint against Sourlis and others in the U.S. District Court for the Southern District of New York ("the Court") that alleged, among other claims, that, on January 11, 2006, Sourlis issued a false legal opinion letter that

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

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney . . . who has been by name: (B)[f]ound by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party . . . to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

facilitated the illegal public offering of millions of shares of Greenstone Holdings, Inc. stock. The amended complaint further alleged that Sourlis thus aided and abetted violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 8j(b), ("Section 10(b)") and Rule 10b-5 promulgated thereunder, 17 C.F.R. 240.10b-5 ("Rule 10b-5").

3. On November 20, 2012, the Court found that Sourlis aided and abetted violations of Section 10(b) and Rule 10b-5 by issuing her false opinion letter. On that date, the Court issued an order that granted the Commission summary judgment on liability on the Commission's claim that Sourlis aided and abetted violations of Section 10(b) and Rule 10b-5. *United States Securities and Exchange Commission v. Greenstone Holdings, Inc., et al.*, 10 civ. 1302 (MGC) (S.D.N.Y. November 20, 2012).

III.

Based upon the foregoing, the Commission finds that a court of competent jurisdiction has found that Sourlis, an attorney, aided and abetted violations of the federal securities laws within the meaning of Rule 102(e)(3)(i)(B) of the Commission's Rules of Practice. In view of these findings, the Commission deems it appropriate and in the public interest that Sourlis be temporarily suspended from appearing or practicing before the Commission.

IV.

IT IS HEREBY ORDERED that Virginia K. Sourlis be, and hereby is, temporarily suspended from appearing or practicing before the Commission as an attorney. This Order shall be effective upon service on the Respondent.

IT IS FURTHER ORDERED that Virginia K. Sourlis may within thirty days after service of this Order file a petition with the Commission to lift the temporary suspension. If the Commission within thirty days after service of the Order receives no petition, the suspension shall become permanent pursuant to Rule 102(e)(3)(ii).

If a petition is received within thirty days after service of this Order, the Commission shall, within thirty days after the filing of the petition, either lift the temporary suspension, or set the matter down for hearing at a time and place to be designated by the Commission, or both. If a hearing is ordered, following the hearing, the Commission may lift the suspension, censure the petitioner, or disqualify the petitioner from appearing or practicing before the Commission for a period of time, or permanently, pursuant to Rule 102(e)(3)(iii).

This Order shall be served upon Virginia K. Sourlis personally or by certified mail at his last known address.

By the Commission.

Elizabeth M. Murphy
Secretary

Lynn M. Powalski
By: Lynn M. Powalski
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 68961 / February 20, 2013

ADMINISTRATIVE PROCEEDING

File No. 3-15214

In the Matter of

**Hesed Technology Co., Ltd.,
Hibernia Foods PLC,
Highlander Acquisitions Corp.,
Hornblower Investments, Inc.,
Hot Products, Inc.com (n/k/a
B-Teller, Inc.), and
Hymex Diamond Corp.,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Hesed Technology Co., Ltd., Hibernia Foods PLC, Highlander Acquisitions Corp., Hornblower Investments, Inc., Hot Products, Inc.com (n/k/a B-Teller, Inc.), and Hymex Diamond Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Hesed Technology Co., Ltd. (CIK No. 1164281) is a Korean corporation located in Taejun City, Korea with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Hesed is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-FR12G registration statement on December 31, 2001, which reported a net deficit of \$153,344 for the prior twelve months.

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2. Hibernia Foods PLC (CIK No. 879529) is an Irish corporation located in Dublin, Ireland with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Hibernia Foods is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the fiscal year ended March 31, 2002, which reported a net loss of over \$12.8 million for the prior twelve months.

3. Highlander Acquisition Corp. (CIK No. 1372906) is a forfeited Delaware corporation located in Kamloops, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Highlander is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2007, which reported a net loss of \$139 from the company's July 20, 2006 inception to June 30, 2007.

4. Hornblower Investments, Inc. (CIK No. 1136464) is a delinquent Colorado corporation located in West Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Hornblower is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2002, which reported an accumulated deficit of \$1,665 during the developmental stage, and also failed to file a Form 10-QSB for the period ended December 31, 2001.

5. Hot Products, Inc.com (n/k/a B-Teller, Inc.) (CIK No. 1000079) is a Washington corporation located in London, England with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Hot Products 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 April 30, 2005.

6. Hymex Diamond Corp. (CIK No. 1059021) 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). Hymex 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 March 30, 1998, which reported a net loss of \$1.02 million for the prior six months.

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 68956 / February 20, 2013

ADMINISTRATIVE PROCEEDING

File No. 3-15213

In the Matter of

**Lynx Acquisition, Inc.,
Narek Pharmaceuticals, Inc.,
North Shore Capital Advisors Corp.,
NPS Technologies Group, Inc.,
NX Networks, Inc.,
Nycal Corp.,
Scout Acquisition, Inc., and
Strategic Defense Alliance Corp.,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Lynx Acquisition, Inc., Narek Pharmaceuticals, Inc., North Shore Capital Advisors Corp., NPS Technologies Group, Inc., NX Networks, Inc., Nycal Corp., Scout Acquisition, Inc., and Strategic Defense Alliance Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Lynx Acquisition, Inc. (CIK No. 1367922) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Lynx Acquisition is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it

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filed a Form 10-Q for the period ended June 30, 2010, which reported a net loss of over \$\$23,000 for the prior six months.

2. Narek Pharmaceuticals, Inc. (CIK No. 1363584) is a void Delaware corporation located in Mamaroneck, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Narek Pharmaceuticals is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB/A for the period ended September 30, 2007, which reported a net loss of over \$24,000 for the prior nine months.

3. North Shore Capital Advisors Corp. (CIK No. 1319647) is a void Delaware corporation located in Port Washington, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). North Shore Capital Advisors 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 over \$7,500 for the prior nine months.

4. NPS Technologies Group, Inc. (CIK No. 732779) is a void Delaware corporation located in Elmwood Park, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NPS Technologies Group 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, 1996, which reported a net loss of \$5,000 for the prior nine months. NPS Technologies is also in violation of a permanent injunction entered against it on June 17, 1991 in the U.S. District Court for the District of Columbia, enjoining it from further violations of its Exchange Act Section 13(a) reporting requirements.

5. NX Networks, Inc. (CIK No. 889237) is a void Delaware corporation located in Chantilly, Virginia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NX Networks 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, 2001, which reported a net loss of over \$27 million for the prior six months. As of February 12, 2013, the company's stock (symbol "NXWXQ") was traded on the over-the-counter markets.

6. Nycal Corp. (CIK No. 706066) is a void Delaware corporation located in Middleburg, Virginia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Nycal 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, 1994, which reported a net loss of over \$2.9 million for the prior nine months. Nycal is also in violation of a permanent injunction entered against it on June 23, 1997 in the U.S. District Court for the District of Columbia, ordering it to file its delinquent reports for the fiscal periods ended June 30, 1994 through December 31, 1997. On November 13, 1997, Nycal filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Eastern District of Virginia, and the case was closed on March 23, 2006.

7. Scout Acquisition, Inc. (CIK No. 1358342) is a void Delaware corporation located in New York, New York with a class of securities registered with the

Commission pursuant to Exchange Act Section 12(g). Scout Acquisition 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, 2010, which reported a net loss of over \$23,000 for the prior six months.

8. Strategic Defense Alliance Corp. (CIK No. 1328791) is a void Delaware corporation located in Reston, Virginia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Strategic Defense Alliance 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, 2005, which reported a net loss of over \$39,000 from its February 10, 2005 inception to December 31, 2005.

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 them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, 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. 34-68953; File No. 4-631)

February 20, 2013

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Second Amendment to the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder², notice is hereby given that, on January 23, 2013, NYSE Euronext, on behalf of New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC ("NYSE MKT"), and NYSE Arca, Inc. ("NYSE Arca"), and the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the "Participants"), filed with the Securities and Exchange Commission (the "Commission") a proposal to amend the Plan to Address Extraordinary Market Volatility ("Plan").³ The proposal represents the second amendment to the Plan ("Second Amendment"), and reflects changes unanimously adopted by the Participants. A copy of the Plan, as amended,

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ See Letter from Janet M. McGinness, Executive Vice Present & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated January 17, 2013 ("Transmittal Letter").

is attached as Exhibit A hereto. Pursuant to Rule 608(b)(3)(iii) under Regulation NMS,⁴ the Participants designate the amendment as involving solely technical or ministerial matters. As a result, the amendment becomes effective upon filing with the Commission. The Commission is publishing this notice to solicit comments from interested persons on the Second Amendment to the Plan.

I. Rule 608(a) of Regulation NMS

A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in “NMS Stocks,” as defined in Rule 600(b)(47) of Regulation NMS under the Act.⁵ The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.⁶ These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.⁷ The price bands would be calculated by the Securities Information Processors (“SIPs” or “Processors”) responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.⁸

⁴ 17 CFR 242.608(b)(3)(iii).

⁵ 17 CFR 242.600(b)(47). See also Section I(H) of the Plan.

⁶ See Section V of the Plan.

⁷ Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan. See Exhibit A, *infra*.

⁸ 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

Those price bands would be based on a Reference Price⁹ for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock would be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter¹⁰ below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the price bands would be calculated by applying double the Percentage Parameters.

The Processors would also calculate a Pro-Forma Reference Price for each NMS Stock on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price did not move by one percent or more from the Reference Price in effect, no new price bands would be disseminated, and the current Reference Price would remain the effective Reference Price. If the Pro-Forma Reference Price moved by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price would become the Reference Price, and the Processors would

⁹ See Section I(T) of the Plan.

¹⁰ As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (i.e., stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of \$1.00 or more would be five percent and less than \$1.00 would be the lesser of (a) \$0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (i.e., all NMS Stocks other than those in Tier 1) with a Reference Price of \$1.00 or more would be 10 percent and less than \$1.00 would be the lesser of (a) \$0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of \$0.75 or more and up to and including \$3.00. The Percentage Parameter for stocks with a Reference Price below \$0.75 would be the lesser of (a) \$0.15 or (b) 75 percent. See Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012 ("First Amendment").

disseminate new price bands based on the new Reference Price. Each new Reference Price would remain in effect for at least 30 seconds.

When one side of the market for an individual security is outside the applicable price band, the Processors would be required to disseminate such National Best Bid¹¹ or National Best Offer¹² with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security would enter a Limit State,¹³ and the Processors would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.¹⁴ All trading would immediately enter a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer. Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market did not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause, which would be applicable to all markets trading the security.

These limit up-limit down requirements would be coupled with trading pauses¹⁵ to accommodate more fundamental price moves (as opposed to erroneous trades or momentary

¹¹ 17 CFR 242.600(b)(42). See also Section I(G) of the Plan.

¹² Id.

¹³ A stock enters the Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer. See Section VI(B) of the Plan.

¹⁴ See Section I(D) of the Plan.

¹⁵ The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. See Section VII(A) of the Plan.

gaps in liquidity). As set forth in more detail in the Plan, all trading centers¹⁶ in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

Under the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

As stated by the Participants in the Plan, the limit up-limit down mechanism is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks,¹⁷ thereby protecting investors and promoting a fair and orderly market.¹⁸ In particular, the Plan is

¹⁶ As defined in Section I(X) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Act.

¹⁷ 17 CFR 242.600(b)(47).

¹⁸ See Transmittal Letter, supra note 3.

designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.¹⁹

The Participants propose to adopt certain ministerial or technical changes to the Plan on an immediately effective basis. The following summarizes the Second Amendment to the Plan and the rationale behind those changes:

- Amending Section II.D.2.A of the Plan to include a broker-dealer that primarily engages in trading for its own account as a member of the Advisory Committee. This change is designed to ensure the diversity of representation from the industry by including a broker-dealer that primarily engages in trading for their own account on the Advisory Committee to the Plan.
- Amending Section VI.B.5 of the Plan to clarify that a Limit State terminates either when a Primary Listing Market declares a Trading Pause or the end of Regular Trading Hours. This clarification is designed to reduce confusion that may be caused by a Processor disseminating a Limit State Quotation during times when trading is paused or outside Regular Trading Hours when the Plan is not applicable.
- Amending Sections VIII.A of the Plan to establish a new implementation schedule for Phase I. Specifically, Phase I will be amended to provide that on the initial date of Plan operations of April 8, 2013, Phase I of Plan implementation shall begin in select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan. In addition, three months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply to all Tier 1 NMS

¹⁹ The limit up-limit down mechanism set forth in the Plan would replace the existing single-stock circuit breaker pilot. See e.g., Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR-FINRA-2010-025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033).

Stocks identified in Appendix A of the Plan. These modifications are in response to requests by the securities industry for additional time for systems testing by Participants and the securities industry.

- Amending Section VIII.B of the Plan to delete the last clause because the Processor does not disseminate a closing trade for a Primary Listing Exchange earlier than the end or Regular Trading Hours or, in the case of an early scheduled close, earlier than the scheduled close.
- Clarify the manner by which to report the data in Appendix B, Section II.G. The Participants believe that the additional detail regarding the data fields will be helpful for Participants to understand the specific data to be reported under the Plan.

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor's obligations will change, as set forth in detail in the Plan. In particular, as set forth in Section V of the Plan, the Processor will be responsible for calculating and disseminating Price Bands during Regular Trading Hours, as defined in Section I(R) of the Plan. Each Participant would take such actions as are necessary and appropriate as a party to the Market Data Plans, as defined in Section I(F) of the Plan, to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in the Plan.

C. Implementation of Plan

The initial date of the Plan operations will be April 8, 2013.

D. Development and Implementation Phases

The Plan will be implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation will begin on the initial date of Plan operations, in select symbols, with full Phase I of the Plan implementation completed three months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice; Phase II of Plan will commence six months after the initial date of the Plan or such earlier date as may be announced by the Processor with at least 30 days notice. The Participants proposed that Phase II of the Plan will begin on the first Monday after the six months after the initial date of the Plan, or if an earlier date is determined, Phase II will begin on a Monday.

At the beginning of Phase I, the Plan shall apply to select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan. During full Phase I implementation, the Plan shall apply to all Tier 1 NMS Stocks, as defined in Appendix A of the Plan, and the first price bands shall be calculated and disseminated, as specified in Section V(A) of the Plan. In Phase II, the Plan shall fully apply to all NMS Stocks.

Phase I and Phase II of the Plan may each be rolled out to applicable NMS Stocks over a period not to exceed two weeks. Any such roll-out period will be made available in advance of the implementation dates for Phases I and II of the Plan via the Participants' websites and trader updates, as applicable.

E. Analysis of Impact on Competition

The Participants do not believe that the Plan imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants also do

not believe that the Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.²⁰

F. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

The Participants state that they have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

Each of the Plan's Participants has executed a written amended Plan.

H. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

The Plan does not include specific provisions regarding resolution of disputes between or among Participants. Section III(C) of the Plan provides for each Participant to designate an

²⁰ 15 U.S.C. 78k-1(c)(1)(D).

individual to represent the Participant as a member of an Operating Committee.²¹ No later than the initial date of the Plan, the Operating Committee would be required to designate one member of the Operating Committee to act as the Chair of the Operating Committee. The Operating Committee shall monitor the procedures established pursuant to the Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS under the Act.²²

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Second Amendment to the Plan is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-631 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-631. This file number should be included on the

²¹ See Section I(J) of the Plan.

²² 17 CFR 242.608.

subject line if e-mail is used. To help the Commission 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/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Second Amendment to the Plan that are filed with the Commission, and all written communications relating to the Second Amendment to the Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Participants' principal offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-631 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.



Kevin M. O'Neill
Deputy Secretary

EXHIBIT A

Proposed new language is italicized; proposed deletions are in [brackets].

PLAN TO ADDRESS EXTRAORDINARY MARKET VOLATILITY

SUBMITTED TO

THE SECURITIES AND EXCHANGE COMMISSION

PURSUANT TO RULE 608 OF REGULATION NMS

UNDER THE

SECURITIES EXCHANGE ACT OF 1934

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Preamble

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

I. Definitions

(A) "Eligible Reported Transactions" shall have the meaning prescribed by the Operating Committee and shall generally mean transactions that are eligible to update the last sale price of an NMS Stock.

(B) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(C) "Limit State" shall have the meaning provided in Section VI of the Plan.

(D) "Limit State Quotation" shall have the meaning provided in Section VI of the Plan.

(E) "Lower Price Band" shall have the meaning provided in Section V of the Plan.

(F) "Market Data Plans" shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) "National Best Bid" and "National Best Offer" shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) "NMS Stock" shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) "Opening Price" shall mean the price of a transaction that opens trading on the Primary Listing Exchange, or, if the Primary Listing Exchange opens with quotations, the midpoint of those quotations.

(J) "Operating Committee" shall have the meaning provided in Section III(C) of the Plan.

(K) "Participant" means a party to the Plan.

(L) "Plan" means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(M) "Percentage Parameter" shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) "Price Bands" shall have the meaning provided in Section V of the Plan.

(O) "Primary Listing Exchange" shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) "Processor" shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Q) "Pro-Forma Reference Price" shall have the meaning provided in Section V(A)(2) of the Plan.

(R) "Regular Trading Hours" shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(S) "Regulatory Halt" shall have the meaning specified in the Market Data Plans.

(T) "Reference Price" shall have the meaning provided in Section V of the Plan.

(U) "Reopening Price" shall mean the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) "SEC" shall mean the United States Securities and Exchange Commission.

(W) "Straddle State" shall have the meaning provided in Section VII(A)(2) of the Plan.

(X) "Trading center" shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(Y) "Trading Pause" shall have the meaning provided in Section VII of the Plan.

(Z) "Upper Price Band" shall have the meaning provided in Section V of the Plan.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

- (1) BATS Exchange, Inc.
8050 Marshall Drive
Lenexa, Kansas 66214
- (2) BATS Y-Exchange, Inc.
8050 Marshall Drive
Lenexa, Kansas 66214
- (3) Chicago Board Options Exchange, Incorporated
400 South LaSalle Street
Chicago, Illinois 60605
- (4) Chicago Stock Exchange, Inc.
440 South LaSalle Street
Chicago, Illinois 60605
- (5) EDGA Exchange, Inc.
545 Washington Boulevard
Sixth Floor
Jersey City, NJ 07310
- (6) EDGX Exchange, Inc.
545 Washington Boulevard
Sixth Floor
Jersey City, NJ 07310
- (7) Financial Industry Regulatory Authority, Inc.
1735 K Street, NW

Washington, DC 20006

- (8) NASDAQ OMX BX, Inc.
One Liberty Plaza
New York, New York 10006
- (9) NASDAQ OMX PHLX LLC
1900 Market Street
Philadelphia, Pennsylvania 19103
- (10) The Nasdaq Stock Market LLC
1 Liberty Plaza
165 Broadway
New York, NY 10006
- (11) National Stock Exchange, Inc.
101 Hudson, Suite 1200
Jersey City, NJ 07302
- (12) New York Stock Exchange LLC
11 Wall Street
New York, New York 10005
- (13) NYSE MKT LLC
20 Broad Street
New York, New York 10005
- (14) NYSE Arca, Inc.
100 South Wacker Drive
Suite 1800
Chicago, IL 60606
- (B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a

participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

(D) Advisory Committee

(1) Formation. Notwithstanding other provisions of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(2) Composition. Members of the Advisory Committee shall be selected for two-year terms as follows:

(A) Advisory Committee Selections. By affirmative vote of a majority of the Participants, the Participants shall select at least one representatives from each of the following categories to be members of the Advisory Committee: (1) a broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an alternative trading system; (4) a broker-dealer that primarily engages in trading for its own account; and [(4)](5) an investor.

(3) Function. Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating

Committee on such matters. Such matters shall include, but not be limited to, proposed material amendments to the Plan.

(4) Meetings and Information. Members of the Advisory Committee shall have the right to attend meetings of the Operating Committee and to receive any information concerning Plan matters; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants, the Operating Committee determines that an item of Plan business requires confidential treatment.

III. Amendments to Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) Operating Committee

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. Trading Center Policies and Procedures

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up - limit down

requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

V. Price Bands

(A) Calculation and Dissemination of Price Bands

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated during Regular Trading Hours. Between 9:30 a.m. and 9:45 a.m. ET, and 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A. If a Reopening Price does not occur within ten minutes after the beginning of a Trading Pause, the Price Band, for the first 30 seconds following the reopening after that Trading Pause, shall be calculated by applying triple the Percentage Parameters set forth in Appendix A.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma

Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

(B) Openings

(1) Except when a Regulatory Halt is in effect at the start of Regular Trading Hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(C) Reopenings

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange if such Reopening Price occurs within ten minutes after the beginning of the Trading Pause, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Reopening Price does not occur within ten minutes after the beginning of the Trading Pause, the first Reference Price following the Trading Pause shall be equal to the last effective Reference Price before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

VI. Limit Up-Limit Down Requirements

(A) Limitations on Trades and Quotations Outside of Price Bands

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written

policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both (i) does not update the last sale price (except if solely because the transaction was reported late), and (ii) is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Price Band or a National Best Offer is above the Upper Price Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Price Band or a National Best Bid is equal to the Upper Price Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a "Limit State Quotation".

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided, however, that any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

(B) Entering and Exiting a Limit State

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (i.e., a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan or at the end of Regular Trading Hours. [If trading for an NMS Stock is in a Limit State at the end of Regular Trading Hours, the Limit State will terminate when the Primary Listing Exchange executes a closing transaction in the NMS Stock or five minutes after the end of Regular Trading Hours, whichever is earlier.]

VII. Trading Pauses

(A) Declaration of Trading Pauses

(1) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor.

(2) The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State, which is when National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility. The Primary Listing Exchange shall develop policies and procedures for determining when it would declare a Trading Pause in such circumstances. If a Trading Pause is declared for an NMS Stock under this provision, the Primary Listing Exchange shall notify the Processor.

(3) The Processor shall disseminate Trading Pause information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

(B) Reopening of Trading During Regular Trading Hours

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock for any reason other than a significant order imbalance and if it has not

declared a Regulatory Halt. The Processor shall disseminate this information to the public, and all trading centers may begin trading the NMS Stock at this time.

(3) If the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause in an NMS Stock, and has not declared a Regulatory Halt, all trading centers may begin trading the NMS Stock.

(4) When trading begins after a Trading Pause, the Processor shall update the Price Bands as set forth in Section V(C)(1) of the Plan.

(C) Trading Pauses Within Five Minutes of the End of Regular Trading Hours

(1) If a Trading Pause for an NMS Stock is declared less than five minutes before the end of Regular Trading Hours, the Primary Listing Exchange shall attempt to execute a closing transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

VIII. Implementation

The initial date of Plan operations shall be April 8, 2013.

(A) Phase I

(1) On the initial date of Plan operations, Phase I of Plan implementation shall begin in select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan.[apply immediately following the initial date of Plan operations.]

(2) Three months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice,[During Phase I,] the Plan shall fully apply [only] to [the]all Tier 1 NMS Stocks identified in Appendix A of the Plan.

(3) During Phase I, the first Price Bands for a trading day shall be calculated and disseminated 15 minutes after the start of Regular Trading Hours as specified in Section (V)(A) of the Plan. No Price Bands shall be calculated and disseminated less than 30 minutes before the end of Regular Trading Hours, and trading shall not enter a Limit State less than 25 minutes before the end of Regular Trading Hours.

(B) Phase II – Full Implementation

Six months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close [or if the Processor disseminates a closing trade for the Primary Listing Exchange].

(C) Pilot

The Plan shall be implemented on a one-year pilot basis.

IX. Withdrawal from Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

X. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the ___ day of _____ 2013 by each of the parties hereto.

BATS EXCHANGE, INC.

BY: _____

CHICAGO BOARD OPTIONS
EXCHANGE, INCORPORATED

BY: _____

EDGA EXCHANGE, INC.

BY: _____

FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.

BY: _____

NASDAQ OMX PHLX LLC

BY: _____

NATIONAL STOCK EXCHANGE, INC.

BY: _____

NYSE MKT LLC

BY: _____

BATS Y-EXCHANGE, INC.

BY: _____

CHICAGO STOCK EXCHANGE, INC.

BY: _____

EDGX EXCHANGE, INC.

BY: _____

NASDAQ OMX BX, INC.

BY: _____

THE NASDAQ STOCK MARKET LLC

BY: _____

NEW YORK STOCK EXCHANGE LLC

BY: _____

NYSE ARCA, INC.

BY: _____

Appendix A – Percentage Parameters

I. Tier 1 NMS Stocks

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index, the Russell 1000 Index, and the exchange-traded products (“ETP”) listed on Schedule 1 to this Appendix. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume (“CADV”). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over \$2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. To ensure that ETPs that track similar benchmarks but that do not meet this volume criterion do not become subject to pricing volatility when a component security is the subject of a trading pause, non-leveraged ETPs that have traded below this volume criterion, but that track the same benchmark as an ETP that does meet the volume criterion, will be deemed eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective websites.

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price more than \$3.00 shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price equal to \$0.75 and up to and including \$3.00 shall be 20%.

(4) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than \$0.75 shall be the lesser of (a) \$0.15 or (b) 75%.

(5) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

II. Tier 2 NMS Stocks

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1, provided, however, that all rights and warrants are excluded from the Plan.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price more than \$3.00 shall be 10%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price equal to \$0.75 and up to and including \$3.00 shall be 20%.

(4) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than \$0.75 shall be the lesser of (a) \$0.15 or (b) 75%.

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

(6) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

Appendix A – Schedule 1

Symbol	Name
AAVX	ETRACS Daily Short 1-Month S&P 500 VIX Futures ETN
AAXJ	iShares MSCI All Country Asia ex Japan Index Fund
ACWI	iShares MSCI ACWI Index Fund
ACWX	iShares MSCI ACWI ex US Index Fund
AGG	iShares Barclays Aggregate Bond Fund
AGZ	iShares Barclays Agency Bond Fund
ALD	WisdomTree Asia Local Debt Fund
AMJ	JPMorgan Alerian MLP Index ETN
AMLP	Alerian MLP ETF
BAB	PowerShares Build America Bond Portfolio
BDG	PowerShares DB Base Metals Long ETN
BIK	SPDR S&P BRIC 40 ETF
BIL	SPDR Barclays Capital 1-3 Month T-Bill ETF
BIV	Vanguard Intermediate-Term Bond ETF
BKF	iShares MSCI BRIC Index Fund
BKLN	PowerShares Senior Loan Portfolio
BLV	Vanguard Long-Term Bond ETF
BND	Vanguard Total Bond Market ETF
BNO	United States Brent Oil Fund LP
BOND	Pimco Total Return ETF
BOS	PowerShares DB Base Metals Short ETN
BRF	Market Vectors Brazil Small-Cap ETF
BSV	Vanguard Short-Term Bond ETF
BWX	SPDR Barclays Capital International Treasury Bond ETF
BXDB	Barclays ETN+short B Leveraged ETN Linked to S&P 500
CEW	WisdomTree Dreyfus Emerging Currency Fund
CFT	iShares Barclays Credit Bond Fund
CIU	iShares Barclays Intermediate Credit Bond Fund
CLY	iShares 10+ Year Credit Bond Fund
CORN	Teucrium Corn Fund
CSJ	iShares Barclays 1-3 Year Credit Bond Fund
CVY	Guggenheim Multi-Asset Income ETF
CWB	SPDR Barclays Capital Convertible Securities ETF
CWI	SPDR MSCI ACWI ex-US ETF
CYB	WisdomTree Dreyfus Chinese Yuan Fund
DBA	PowerShares DB Agriculture Fund
DBB	PowerShares DB Base Metals Fund
DBC	PowerShares DB Commodity Index Tracking Fund

Symbol	Name
DBE	PowerShares DB Energy Fund
DBO	PowerShares DB Oil Fund
DBP	PowerShares DB Precious Metals Fund
DBV	PowerShares DB G10 Currency Harvest Fund
DEM	WisdomTree Emerging Markets Equity Income Fund
DGL	PowerShares DB Gold Fund
DGS	WisdomTree Emerging Markets SmallCap Dividend Fund
DGZ	PowerShares DB Gold Short ETN
DHS	WisdomTree Equity Income Fund
DIA	SPDR Dow Jones Industrial Average ETF Trust
DJCI	E-TRACS UBS AG Dow Jones-UBS Commodity Index Total Return ETN
DJP	iPath Dow Jones-UBS Commodity Index Total Return ETN
DLN	WisdomTree LargeCap Dividend Fund
DOG	ProShares Short Dow30
DON	WisdomTree MidCap Dividend Fund
DOO	WisdomTree International Dividend Ex-Financials Fund
DTN	WisdomTree Dividend Ex-Financials Fund
DVY	iShares Dow Jones Select Dividend Index Fund
DWM	WisdomTree DEFA Fund
DWX	SPDR S&P International Dividend ETF
DXJ	WisdomTree Japan Hedged Equity Fund
ECH	iShares MSCI Chile Investable Market Index Fund
ECON	EGShares Emerging Markets Consumer ETF
EDIV	SPDR S&P Emerging Markets Dividend ETF
EDV	Vanguard Extended Duration Treasury ETF
EEB	Guggenheim BRIC ETF
EEM	iShares MSCI Emerging Markets Index Fund
EFA	iShares MSCI EAFE Index Fund
EFG	iShares MSCI EAFE Growth Index
EFV	iShares MSCI EAFE Value Index
EFZ	ProShares Short MSCI EAFE
EIDO	iSHARES MSCI Indonesia Investable Market Index Fund
ELD	WisdomTree Emerging Markets Local Debt Fund
ELR	SPDR Dow Jones Large Cap ETF
EMB	iShares JPMorgan USD Emerging Markets Bond Fund
EMLC	Market Vectors Emerging Markets Local Currency Bond ETF
EMM	SPDR Dow Jones Mid Cap ETF
EPHE	iShares MSCI Philippines Investable Market Index Fund
EPI	WisdomTree India Earnings Fund

Symbol	Name
EPP	iShares MSCI Pacific ex-Japan Index Fund
EPU	iShares MSCI All Peru Capped Index Fund
ERUS	iShares MSCI Russia Capped Index Fund
EUM	ProShares Short MSCI Emerging Markets
EWA	iShares MSCI Australia Index Fund
EWC	iShares MSCI Canada Index Fund
EWD	iShares MSCI Sweden Index Fund
EWG	iShares MSCI Germany Index Fund
EWH	iShares MSCI Hong Kong Index Fund
EWI	iShares MSCI Italy Index Fund
EWJ	iShares MSCI Japan Index Fund
EWL	iShares MSCI Switzerland Index Fund
EWM	iShares MSCI Malaysia Index Fund
EWP	iShares MSCI Spain Index Fund
EWQ	iShares MSCI France Index Fund
EWS	iShares MSCI Singapore Index Fund
EWT	iShares MSCI Taiwan Index Fund
EWU	iShares MSCI United Kingdom Index Fund
EWV	iShares MSCI Mexico Investable Market Index Fund
EWX	SPDR S&P Emerging Markets SmallCap ETF
EWY	iShares MSCI South Korea Index Fund
EWZ	iShares MSCI Brazil Index Fund
EZA	iShares MSCI South Africa Index Fund
EZU	iShares MSCI EMU Index Fund
FBT	First Trust NYSE Arca Biotechnology Index Fund
FCG	First Trust ISE-Revere Natural Gas Index Fund
FDL	First Trust Morningstar Dividend Leaders Index
FDN	First Trust Dow Jones Internet Index Fund
FEX	First Trust Large Cap Core AlphaDEX Fund
FEZ	SPDR EURO STOXX 50 ETF
FGD	First Trust DJ Global Select Dividend Index Fund
FLAT	iPath US Treasury Flatteners ETN
FNX	First Trust Mid Cap Core AlphaDEX Fund
FRI	First Trust S&P REIT Index Fund
FVD	First Trust Value Line Dividend Index Fund
FXA	CurrencyShares Australian Dollar Trust
FXB	CurrencyShares British Pound Sterling Trust
FXC	CurrencyShares Canadian Dollar Trust
FXD	First Trust Consumer Discretionary AlphaDEX Fund

Symbol	Name
FXE	CurrencyShares Euro Trust
FXF	CurrencyShares Swiss Franc Trust
FXG	First Trust Consumer Staples AlphaDEX Fund
FXH	First Trust Health Care AlphaDEX Fund
FXI	iShares FTSE China 25 Index Fund
FXL	First Trust Technology AlphaDEX Fund
FXU	First Trust Utilities AlphaDEX Fund
FXY	CurrencyShares Japanese Yen Trust
FXZ	First Trust Materials AlphaDEX Fund
GAZ	iPath Dow Jones-UBS Natural Gas Subindex Total Return ETN
GCC	GreenHaven Continuous Commodity Index Fund
GDX	Market Vectors Gold Miners ETF
GDXJ	Market Vectors Junior Gold Miners ETF
GIY	Guggenheim Enhanced Core Bond ETF
GLD	SPDR Gold Shares
GMF	SPDR S&P Emerging Asia Pacific ETF
GNR	SPDR S&P Global Natural Resources ETF
GOVT	iShares Barclays U.S. Treasury Bond Fund
GSG	iShares S&P GSCI Commodity Indexed Trust
GSP	iPath GSCI Total Return Index ETN
GSY	Guggenheim Enhanced Short Duration Bond ETF
GVI	iShares Barclays Intermediate Government/Credit Bond Fund
GWX	SPDR S&P International Small Cap ETF
GXC	SPDR S&P China ETF
GXG	Global X FTSE Colombia 20 ETF
HAO	Guggenheim China Small Cap ETF
HDGE	Active Bear ETF/The
HDV	iShares High Dividend Equity Fund
HYD	Market Vectors High Yield Municipal Index ETF
HYG	iShares iBoxx \$ High Yield Corporate Bond Fund
HYS	PIMCO 0-5 Year High Yield Corporate Bond Index Fund
IAU	iShares Gold Trust
IBB	iShares Nasdaq Biotechnology Index Fund
ICF	iShares Cohen & Steers Realty Majors Index Fund
ICI	iPath Optimized Currency Carry ETN
IDU	iShares Dow Jones US Utilities Sector Index Fund
IDV	iShares Dow Jones International Select Dividend Index Fund
IDX	Market Vectors Indonesia Index ETF
IEF	iShares Barclays 7-10 Year Treasury Bond Fund

Symbol	Name
IEI	iShares Barclays 3-7 Year Treasury Bond Fund
IEO	iShares Dow Jones US Oil & Gas Exploration & Production Index Fund
IEV	iShares S&P Europe 350 Index Fund
IEZ	iShares Dow Jones US Oil Equipment & Services Index Fund
IGE	iShares S&P North American Natural Resources Sector Index Fund
IGF	iShares S&P Global Infrastructure Index Fund
IGOV	iShares S&P/Citigroup International Treasury Bond Fund
IGS	ProShares Short Investment Grade Corporate
IGV	iShares S&P North American Technology-Software Index Fund
IHE	iShares Dow Jones US Pharmaceuticals Index Fund
IHF	iShares Dow Jones US Healthcare Providers Index Fund
IHI	iShares Dow Jones US Medical Devices Index Fund
IJH	iShares S&P MidCap 400 Index Fund
IJJ	iShares S&P MidCap 400/BARRA Value Index Fund
IJK	iShares S&P MidCap 400 Growth Index Fund
IJR	iShares S&P SmallCap 600 Index Fund
IJS	iShares S&P SmallCap 600 Value Index Fund
IJT	iShares S&P SmallCap 600/BARRA Growth Index Fund
ILF	iShares S&P Latin America 40 Index Fund
INDA	iShares MSCI India Index Fund
INDY	iShares S&P India Nifty 50 Index Fund
INP	iPath MSCI India Index ETN
IOO	iShares S&P Global 100 Index Fund
IPE	SPDR Barclays Capital TIPS ETF
ITB	iShares Dow Jones US Home Construction Index Fund
ITM	Market Vectors Intermediate Municipal ETF
IVE	iShares S&P 500 Value Index Fund
IVOO	Vanguard S&P Mid-Cap 400 ETF
IVOP	iPath Inverse S&P 500 VIX Short-Term Futures™ ETN II
IVV	iShares S&P 500 Index Fund/US
IWW	iShares S&P 500 Growth Index Fund
IWB	iShares Russell 1000 Index Fund
IWC	iShares Russell Microcap Index Fund
IWD	iShares Russell 1000 Value Index Fund
IWF	iShares Russell 1000 Growth Index Fund
IWM	iShares Russell 2000 Index Fund
IWN	iShares Russell 2000 Value Index Fund
IWO	iShares Russell 2000 Growth Index Fund
IWP	iShares Russell Midcap Growth Index Fund

Symbol	Name
IWR	iShares Russell Midcap Index Fund
IWS	iShares Russell Midcap Value Index Fund
IWV	iShares Russell 3000 Index Fund
IWW	iShares Russell 3000 Value Index Fund
IWY	iShares Russell Top 200 Growth Index Fund
IWZ	iShares Russell 3000 Growth Index Fund
IXC	iShares S&P Global Energy Sector Index Fund
IXG	iShares S&P Global Financials Sector Index Fund
IXJ	iShares S&P Global Healthcare Sector Index Fund
IXN	iShares S&P Global Technology Sector Index Fund
IXP	iShares S&P Global Telecommunications Sector Index Fund
IYC	iShares Dow Jones US Consumer Services Sector Index Fund
IYE	iShares Dow Jones US Energy Sector Index Fund
IYF	iShares Dow Jones US Financial Sector Index Fund
IYG	iShares Dow Jones US Financial Services Index Fund
IYH	iShares Dow Jones US Healthcare Sector Index Fund
IYJ	iShares Dow Jones US Industrial Sector Index Fund
IYK	iShares Dow Jones US Consumer Goods Sector Index Fund
IYM	iShares Dow Jones US Basic Materials Sector Index Fund
IYR	iShares Dow Jones US Real Estate Index Fund
IYT	iShares Dow Jones Transportation Average Index Fund
IYW	iShares Dow Jones US Technology Sector Index Fund
IYY	iShares Dow Jones US Index Fund
IYZ	iShares Dow Jones US Telecommunications Sector Index Fund
JJC	iPath Dow Jones-UBS Copper Subindex Total Return ETN
JJG	iPath Dow Jones-UBS Grains Subindex Total Return ETN
JNK	SPDR Barclays Capital High Yield Bond ETF
JXI	iShares S&P Global Utilities Sector Index Fund
JYN	iPath JPY/USD Exchange Rate ETN
KBE	SPDR S&P Bank ETF
KBWB	PowerShares KBW Bank Portfolio
KIE	SPDR S&P Insurance ETF
KOL	Market Vectors Coal ETF
KRE	SPDR S&P Regional Banking ETF
KXI	iShares S&P Global Consumer Staples Sector Index Fund
LAG	SPDR Barclays Capital Aggregate Bond ETF
LQD	iShares iBoxx Investment Grade Corporate Bond Fund
LTPZ	PIMCO 15+ Year US TIPS Index Fund
LWC	SPDR Barclays Capital Long Term Corporate BondETF

Symbol	Name
MBB	iShares Barclays MBS Bond Fund
MBG	SPDR Barclays Capital Mortgage Backed Bond ETF
MCHI	iShares MSCI China Index Fund
MDY	SPDR S&P MidCap 400 ETF Trust
MGC	Vanguard Mega Cap 300 ETF
MGK	Vanguard Mega Cap 300 Growth ETF
MINT	PIMCO Enhanced Short Maturity Strategy Fund
MLPI	UBS E-TRACS Alerian MLP Infrastructure ETN
MLPN	Credit Suisse Cushing 30 MLP Index ETN
MOO	Market Vectors Agribusiness ETF
MUB	iShares S&P National Municipal Bond Fund
MXI	iShares S&P Global Materials Sector Index Fund
MYY	ProShares Short MidCap 400
NKY	MAXIS Nikkei 225 Index Fund ETF
OEF	iShares S&P 100 Index Fund
OIH	Market Vectors Oil Service ETF
OIL	iPath Goldman Sachs Crude Oil Total Return Index ETN
PALL	ETFS Physical Palladium Shares
PBJ	Powershares Dynamic Food & Beverage Portfolio
PCEF	PowerShares CEF Income Composite Portfolio
PCY	PowerShares Emerging Markets Sovereign Debt Portfolio
PDP	Powershares DWA Technical Leaders Portfolio
PEY	PowerShares High Yield Equity Dividend Achievers Portfolio
PFF	iShares S&P US Preferred Stock Index Fund
PFM	PowerShares Dividend Achievers Portfolio
PGF	PowerShares Financial Preferred Portfolio
PGX	PowerShares Preferred Portfolio
PHB	PowerShares Fundamental High Yield Corporate Bond Portfolio
PHO	PowerShares Water Resources Portfolio
PHYS	Sprott Physical Gold Trust
PID	PowerShares International Dividend Achievers Portfolio
PIE	PowerShares DWA Emerging Markets Technical Leaders Portfolio
PIN	PowerShares India Portfolio
PJP	Powershares Dynamic Pharmaceuticals Portfolio
PLW	PowerShares 1-30 Laddered Treasury Portfolio
PPH	Market Vectors Pharmaceutical ETF
PPLT	ETFS Platinum Trust
PRF	Powershares FTSE RAFI US 1000 Portfolio
PRFZ	PowerShares FTSE RAFI US 1500 Small-Mid Portfolio

Symbol	Name
PSLV	Sprott Physical Silver Trust
PSP	PowerShares Global Listed Private Equity Portfolio
PSQ	ProShares Short QQQ
PVI	PowerShares VRDO Tax Free Weekly Portfolio
PXH	PowerShares FTSE RAFI Emerging Markets Portfolio
PZA	PowerShares Insured National Municipal Bond Portfolio
QQQ	Powershares QQQ Trust Series 1
REM	iShares FTSE NAREIT Mortgage Plus Capped Index Fund
REMX	Market Vectors Rare Earth/Strategic Metals ETF
REZ	iShares FTSE NAREIT Residential Plus Capped Index Fund
RFG	Guggenheim S&P Midcap 400 Pure Growth ETF
RJA	ELEMENTS Linked to the Rogers International Commodity Index - Agri Tot Return
RJI	ELEMENTS Linked to the Rogers International Commodity Index - Total Return
RJN	ELEMENTS Linked to the Rogers International Commodity Index - Energy To Return
RJZ	ELEMENTS Linked to the Rogers International Commodity Index - Metals Tot Return
RPG	Guggenheim S&P 500 Pure Growth ETF
RSP	Guggenheim S&P 500 Equal Weight ETF
RSX	Market Vectors Russia ETF
RTH	Market Vectors Retail ETF
RWM	ProShares Short Russell2000
RWO	SPDR Dow Jones Global Real Estate ETF
RWR	SPDR Dow Jones REIT ETF
RWX	SPDR Dow Jones International Real Estate ETF
RYH	Guggenheim S&P 500 Equal Weight Healthcare ETF
SAGG	Direxion Daily Total Bond Market Bear 1x Shares
SCHA	Schwab US Small-Cap ETF
SCHB	Schwab US Broad Market ETF
SCHD	Schwab US Dividend Equity ETF
SCHE	Schwab Emerging Markets Equity ETF
SCHF	Schwab International Equity ETF
SCHG	Schwab U.S. Large-Cap Growth ETF
SCHH	Schwab U.S. REIT ETF
SCHM	Schwab U.S. Mid-Cap ETF
SCHO	Schwab Short-Term U.S. Treasury ETF
SCHP	Schwab U.S. TIPs ETF
SCHR	Schwab Intermediate-Term U.S. Treasury ETF
SCHV	Schwab U.S. Large-Cap Value ETF

Symbol	Name
SCHX	Schwab US Large-Cap ETF
SCHZ	Schwab U.S. Aggregate Bond ETF
SCPB	SPDR Barclays Capital Short Term Corporate Bond ETF
SCZ	iShares MSCI EAFE Small Cap Index Fund
SDY	SPDR S&P Dividend ETF
SEF	ProShares Short Financials
SGG	iPath Dow Jones-UBS Sugar Subindex Total Return ETN
SGOL	ETFS Gold Trust
SH	ProShares Short S&P500
SHM	SPDR Nuveen Barclays Capital Short Term Municipal Bond ETF
SHV	iShares Barclays Short Treasury Bond Fund
SHY	iShares Barclays 1-3 Year Treasury Bond Fund
SIL	Global X Silver Miners ETF
SIVR	ETFS Physical Silver Shares
SJB	ProShares Short High Yield
SJNK	SPDR Barclays Capital Short Term High Yield Bond ETF
SLV	iShares Silver Trust
SLX	Market Vectors Steel Index Fund
SMH	Market Vectors Semiconductor ETF
SOXX	iShares PHLX SOX Semiconductor Sector Index Fund
SPLV	PowerShares S&P 500 Low Volatility Portfolio
SPY	SPDR S&P 500 ETF Trust
SPYG	SPDR S&P 500 Growth ETF
SPYV	SPDR S&P 500 Value ETF
STIP	iShares Barclays 0-5 Year TIPS Bond Fund
STPP	iPath US Treasury Steepener ETN
STPZ	PIMCO 1-5 Year US TIPS Index Fund
SUB	iShares S&P Short Term National AMT-Free Municipal Bond Fund
SVXY	ProShares Short VIX Short-Term Futures ETF
TAN	Guggenheim Solar ETF
TBF	ProShares Short 20+ Year Treasury
TBX	ProShares Short 7-10 Treasury
TFI	SPDR Nuveen Barclays Capital Municipal Bond ETF
THD	iShares MSCI Thailand Index Fund
TIP	iShares Barclays TIPS Bond Fund
TLH	iShares Barclays 10-20 Year Treasury Bond Fund
TLT	iShares Barclays 20+ Year Treasury Bond Fund
TUR	iShares MSCI Turkey Index Fund
UDN	PowerShares DB US Dollar Index Bearish Fund

Symbol	Name
UGA	United States Gasoline Fund LP
UNG	United States Natural Gas Fund LP
URA	Global X Uranium ETF
USCI	United States Commodity Index Fund
USL	United States 12 Month Oil Fund LP
USO	United States Oil Fund LP
UUP	PowerShares DB US Dollar Index Bullish Fund
VAW	Vanguard Materials ETF
VB	Vanguard Small-Cap ETF
VBK	Vanguard Small-Cap Growth ETF
VBR	Vanguard Small-Cap Value ETF
VCIT	Vanguard Intermediate-Term Corporate Bond ETF
VCLT	Vanguard Long-Term Corporate Bond ETF
VCR	Vanguard Consumer Discretionary ETF
VCSH	Vanguard Short-Term Corporate Bond ETF
VDC	Vanguard Consumer Staples ETF
VDE	Vanguard Energy ETF
VEA	Vanguard MSCI EAFE ETF
VEU	Vanguard FTSE All-World ex-US ETF
VFH	Vanguard Financials ETF
VGK	Vanguard MSCI European ETF
VGT	Vanguard Information Technology ETF
VHT	Vanguard Health Care ETF
VIG	Vanguard Dividend Appreciation ETF
VIIX	VelocityShares VIX Short Term ETN
VIOO	Vanguard S&P Small-Cap 600 ETF
VIS	Vanguard Industrials ETF
VIXM	ProShares VIX Mid-Term Futures ETF
VIXY	ProShares VIX Short-Term Futures ETF
VMBS	Vanguard Mortgage-Backed Securities ETF
VNM	Market Vectors Vietnam ETF
VNQ	Vanguard REIT ETF
VO	Vanguard Mid-Cap ETF
VOE	Vanguard Mid-Cap Value Index Fund/Closed-end
VONE	Vanguard Russell 1000
VONG	Vanguard Russell 1000 Growth ETF
VONV	Vanguard Russell 1000 Value
VOO	Vanguard S&P 500 ETF
VOOG	Vanguard S&P 500 Growth ETF

Symbol	Name
VOOV	Vanguard S&P 500 Value ETF
VOT	Vanguard Mid-Cap Growth Index Fund/Closed-end
VOX	Vanguard Telecommunication Services ETF
VPL	Vanguard MSCI Pacific ETF
VPU	Vanguard Utilities ETF
VQT	Barclays ETN+ ETNs Linked to the S&P 500 Dynamic VEQTORTM Total Return Index
VSS	Vanguard FTSE All World ex-US Small-Cap ETF
VT	Vanguard Total World Stock Index Fund ETF
VTHR	Vanguard Russell 3000
VTI	Vanguard Total Stock Market ETF
VTV	Vanguard Value ETF
VTWG	Vanguard Russell 2000 Growth
VTWO	Vanguard Russell 2000
VTWV	Vanguard Russell 2000 Value
VUG	Vanguard Growth ETF
VV	Vanguard Large-Cap ETF
VWO	Vanguard MSCI Emerging Markets ETF
VXAA	ETRACS 1-Month S&P 500 VIX Futures ETN
VXEE	ETRACS 5-Month S&P 500 VIX Futures ETN
VXF	Vanguard Extended Market ETF
VXUS	Vanguard Total International Stock ETF
VXX	iPATH S&P 500 VIX Short-Term Futures ETN
VXZ	iPATH S&P 500 VIX Mid-Term Futures ETN
VYM	Vanguard High Dividend Yield ETF
VZZB	iPath Long Enhanced S&P 500 VIX Mid-Term Futures TM ETN II
WDTI	WisdomTree Managed Futures Strategy Fund
WIP	SPDR DB International Government Inflation-Protected Bond ETF
XBI	SPDR S&P Biotech ETF
XES	SPDR S&P Oil & Gas Equipment & Services ETF
XHB	SPDR S&P Homebuilders ETF
XIV	VelocityShares Daily Inverse VIX Short Term ETN
XLB	Materials Select Sector SPDR Fund
XLE	Energy Select Sector SPDR Fund
XLF	Financial Select Sector SPDR Fund
XLG	Guggenheim Russell Top 50 ETF
XLI	Industrial Select Sector SPDR Fund
XLK	Technology Select Sector SPDR Fund
XLP	Consumer Staples Select Sector SPDR Fund
XLU	Utilities Select Sector SPDR Fund

Symbol	Name
XLV	Health Care Select Sector SPDR Fund
XLY	Consumer Discretionary Select Sector SPDR Fund
XME	SPDR S&P Metals & Mining ETF
XOP	SPDR S&P Oil & Gas Exploration & Production ETF
XPH	SPDR S&P Pharmaceuticals ETF
XRT	SPDR S&P Retail ETF
XSD	SPDR S&P Semiconductor ETF
XXV	iPath Inverse S&P 500 VIX Short-Term Futures ETN
ZROZ	PIMCO 25+ Year Zero Coupon US Treasury Index Fund

Appendix B – Data

Unless otherwise specified, the following data shall be collected and transmitted to the SEC in an agreed-upon format on a monthly basis, to be provided 30 calendar days following month end. Unless otherwise specified, the Primary Listing Exchanges shall be responsible for collecting and transmitting the data to the SEC. Data collected in connection with Sections II(E) – (G) below shall be transmitted to the SEC with a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552, and the SEC's rules and regulations thereunder.

I. Summary Statistics

A. Frequency with which NMS Stocks enter a Limit State. Such summary data shall be broken down as follows:

1. Partition stocks by category

- a. Tier 1 non-ETP issues $> \$3.00$
- b. Tier 1 non-ETP issues $\geq \$0.75$ and $\leq \$3.00$
- c. Tier 1 non-ETP issues $< \$0.75$
- d. Tier 1 non-leveraged ETPs in each of above categories
- e. Tier 1 leveraged ETPs in each of above categories
- f. Tier 2 non-ETPs in each of above categories
- g. Tier 2 non-leveraged ETPs in each of above categories
- h. Tier 2 leveraged ETPs in each of above categories

2. Partition by time of day

- a. Opening (prior to 9:45 am ET)
- b. Regular (between 9:45 am ET and 3:35 pm ET)
- c. Closing (after 3:35 pm ET)
- d. Within five minutes of a Trading Pause re-open or IPO open

3.Track reasons for entering a Limit State, such as:

- a. Liquidity gap –price reverts from a Limit State Quotation and returns to trading within the Price Bands
- b. Broken trades
- c. Primary Listing Exchange manually declares a Trading Pause pursuant to Section (VII)(2) of the Plan
- d. Other

B. Determine (1), (2) and (3) for when a Trading Pause has been declared for an NMS Stock pursuant to the Plan.

II. **Raw Data** (*all Participants, except A-E, which are for the Primary Listing Exchanges only*)

A. Record of every Straddle State.

1.Ticker, date, time entered, time exited, flag for ending with Limit State, flag for ending with manual override.

2.Pipe delimited with field names as first record.

B. Record of every Price Band

1.Ticker, date, time at beginning of Price Band, Upper Price Band, Lower Price Band

2.Pipe delimited with field names as first record

C. Record of every Limit State

1.Ticker, date, time entered, time exited, flag for halt

2.Pipe delimited with field names as first record

D. Record of every Trading Pause or halt

1.Ticker, date, time entered, time exited, type of halt (i.e., regulatory halt, non-regulatory halt, Trading Pause pursuant to the Plan, other)

2.Pipe delimited with field names as first record

E. Data set or orders entered into reopening auctions during halts or Trading Pauses

1.Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side

2.Pipe delimited with field name as first record

F. Data set of order events received during Limit States

G. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.

1. Market/marketable sell orders arrivals and executions

- a. Count
- b. Shares
- c. Shares executed

2. Market/marketable buy orders arrivals and executions

- a. Count
- b. Shares
- c. Shares executed

3. Count arriving, volume arriving and shares executing in limit sell orders above NBBO mid-point

4. Count arriving, volume arriving and shares executing in limit sell orders at or below [\leq] NBBO mid-point (non-marketable)

5. Count arriving, volume arriving and shares executing in limit buy orders at or above NBBO mid-point (non-marketable)

6. Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point

7. Count and volume arriving of limit sell orders priced at or above NBBO mid-point plus [$+$] $\$0.05$

8. Count and volume arriving of limit buy orders priced at or below NBBO mid-point minus [$-$] $\$0.05$

9. Count and volume of ([iii]3-[viii]8) for cancels

10. Include: ticker, date, time at start, time of Limit S[s]tate, all data item fields in 1, last sale prior to [1-minute] 15-second period (null if no trades today), range during 15-second period, last trade during 15-second period

III. At least two months prior to the end of the Pilot Period, all Participants shall provide to the SEC assessments relating to the impact of the Plan and calibration of the Percentage Parameters as follows:

- A. Assess the statistical and economic impact on liquidity[limit order book] of approaching Price Bands.
- B. Assess the statistical and economic impact of the Price Bands on erroneous trades.
- C. Assess the statistical and economic impact of the appropriateness of the Percentage Parameters used for the Price Bands.
- D. Assess whether the Limit State is the appropriate length to allow for liquidity replenishment when a Limit State is reached because of a temporary liquidity gap.
- E. Evaluate concerns from the options markets regarding the statistical and economic impact of Limit States on liquidity and market quality in the options markets. (Participants that operate options exchange should also prepare such assessment reports.)
- F. Assess whether the process for entering a Limit State should be adjusted and whether Straddle States are problematic.
- G. Assess whether the process for exiting a Limit State should be adjusted.
- H. Assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68966 / February 21, 2013

Admin. Proc. File No. 3-14794

In the Matter of

ANDOVER HOLDINGS, INC.
(a/k/a ANDOVER ENERGY HOLDINGS, INC.)

ORDER SUMMARILY AFFIRMING INITIAL DECISION

~~Andover Holdings, Inc., a/k/a Andover Energy Holdings, Inc., a Florida corporation with~~ stock registered with the Commission pursuant to § 12(g) of the Securities Exchange Act of 1934,¹ appeals from the initial decision of an administrative law judge.² The law judge revoked the company's registration based on his finding that it had violated § 13(a) of the Exchange Act,³ and Rules 13a-1 and 13a-13 promulgated thereunder,⁴ in that it had failed to file its required periodic reports, as charged in the Order Instituting Proceedings,⁵ and that the periodic reports it filed after the date of the OIP contained material deficiencies.

The company filed a timely appeal of the initial decision, and the parties filed briefs in accordance with the briefing schedule that was issued. We have reviewed the hearing transcript and the record of action before the law judge *de novo*, as well as the briefs filed by the parties on appeal and the Division of Enforcement's Motion for Leave to Adduce Additional Evidence. We also take official notice that the company has failed to make any of its required filings since the date of the initial decision, including its annual report for fiscal year 2011 and its quarterly reports for the first three fiscal quarters of 2012, all of which are delinquent.⁶

¹ 15 U.S.C. § 78l(g).

² *Advanced Growing Sys., Inc.*, Initial Decision Release No. 461, 2012 SEC LEXIS 1885 (June 19, 2012).

³ Exchange Act § 13(a), 15 U.S.C. § 78m(a), requires issuers of securities registered pursuant to Exchange Act § 12 to file periodic reports in accordance with Commission rules.

⁴ Rule 13a-1, 17 C.F.R. § 240.13a-1, requires registrants to file annual reports, and Rule 13a-13, 17 C.F.R. § 240.13a-13, requires registrants to file quarterly reports.

⁵ *Advanced Growing Sys., Inc.*, Exchange Act Release No. 66546, 2012 SEC LEXIS 763 (Mar. 9, 2012).

⁶ Our Rules of Practice permit us to take official notice of information (or the lack thereof) in the Commission's EDGAR database. 17 C.F.R. § 201.323. We further note that Andover Holdings has filed no amendments to correct the
(continued...)

Based on our review, we have determined that the factual and legal findings of the law judge are correct. We find that no issue raised in the initial decision warrants consideration by the Commission, that no prejudicial error was committed in the conduct of the proceeding, and that the decision embodies no exercise of discretion or decision of law or policy that is important and that the Commission should review.⁷ These determinations lead us to conclude that this matter is an appropriate one for resolution, on our own initiative, by summary affirmance.⁸ We accordingly adopt the factual and legal findings of the law judge.⁹

Although we are summarily affirming this matter, the parties' briefs on the merits were filed before we reached this determination. In its brief on appeal, Andover Holdings raises two arguments interpreting the initial decision. These arguments, as a result, were not considered by the law judge. First, the company contends that the law judge "determined that Andover's failure to file periodic reports . . . represented deliberate misrepresentations in the sales of securities."¹⁰ The company cites no language from the initial decision in support of this claim, and we find that the law judge made no such finding.

The company also argues that the law judge "found that Andover did not attempt to return to compliance until this proceeding was commenced," which it claims was an inaccurate finding because the company "had commenced work on its filings before this proceeding was

(...continued)

material deficiencies in the filings it made after the OIP, which were identified by the law judge in the initial decision. The company also filed no Forms 12b-25 notifying the Commission that it would be unable to make, on a timely basis, the filings charged in the OIP. *See* Exchange Act Rule 12b-25, 17 C.F.R. § 201.12b-25(a) (requiring issuers to give the Commission notice of their inability to file a periodic report, together with an explanation, by filing a Form 12b-25 "no later than one business day after the due date" for such report); Form 12b-25, 17 C.F.R. § 249.322. *See also Cobalis Corp.*, Exchange Act Release No. 64813, 2011 SEC LEXIS 2313, at *24 n.31 (July 6, 2011) (considering, in assessing the sanction, the issuer's failure to file Forms 12b-25 in connection with delays in its periodic reports).

⁷ *See id.*, § 201.411(e)(2).

⁸ *See* 17 C.F.R. § 201.411(e)(2) (permitting the Commission, on its own initiative, to summarily affirm an initial decision). *See also Eric S. Butler*, Exchange Act Release No. 65204, 2011 SEC LEXIS 3002, at *1 n.2 (Aug. 26, 2011) (stating that, "[a]lthough we generally have limited application of [summary affirmance] in conducting our reviews, we may apply it in the future where . . . the relevant facts are undisputed and the initial decision does not embody an important question of law or policy warranting further review by the Commission").

⁹ The OIP in this matter alleged violations by six respondents. On April 13, 2012, the law judge issued an order revoking the registrations of four of the respondents by default. *Advanced Growing Sys., Inc.*, Exchange Act Release No. 66803, 2012 SEC LEXIS 1198, at *6 (Apr. 13, 2012). The initial decision pertained only to respondents Andover Holdings and Amazon Biotech, Inc. Amazon Biotech did not petition for Commission review of the initial decision, and the Commission issued a Notice that Initial Decision Has Become Final with respect to Amazon Biotech on August 10, 2012. *Amazon Biotech, Inc.*, Exchange Act Release No. 67636, 2012 SEC LEXIS 2519, at *1 (Aug. 10, 2012). This order pertains only to the initial decision with respect to Andover Holdings, the lone remaining respondent from the OIP.

¹⁰ Company's Br. in Support of Pet. for Review at 2.

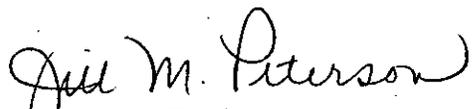
commenced."¹¹ To support its argument, the company cites the filing of its annual report for fiscal year 2008 on December 27, 2011, prior to the date of the OIP. The OIP, however, charged that the company had "not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2008."¹² Further, the law judge expressly noted the company's 2008 Form 10-K, and the material deficiencies therein, in the initial decision.¹³ Thus, the company's claim that the law judge did not consider the company's filing of its 2008 annual report is without merit.

Based on the above, on our own initiative, we have determined that it is appropriate to summarily affirm the initial decision.¹⁴

Accordingly, it is ORDERED that the law judge's decision below is summarily affirmed.

By the Commission.

Elizabeth M. Murphy
Secretary


By: Jill M. Peterson
Assistant Secretary

¹¹ *Id.*

¹² *Advanced Growing Sys., Inc.*, 2012 SEC LEXIS 763, at *3.

¹³ *Advanced Growing Sys., Inc.*, 2012 SEC LEXIS 1885, at *10.

¹⁴ In light of our determination to summarily affirm the initial decision, the Division's Motion for Leave to Adduce Additional Evidence is moot and is therefore denied.

*Commissioner Gallagher
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68963 / February 21, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3555 / February 21, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30402 / February 21, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15215

In the Matter of

JAMES S.
TAGLIAFERRI,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b)(6) OF THE SECURITIES EXCHANGE
ACT OF 1934, SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940 AND NOTICE OF
HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Respondent James S. Tagliaferri ("Tagliaferri" or "Respondent").

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II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. These proceedings arise out of Tagliaferri's fraud on advisory clients. Among other misconduct, Tagliaferri failed to disclose to advisory clients material information about conflicts of interest he had with respect to investments he made for them and operated a Ponzi-like scheme in which he used client assets to repay other clients on those conflicted investments.

2. From at least 2007 until at least 2010 (the "Relevant Period"), Tagliaferri, acting through TAG Virgin Islands, Inc., an investment adviser then registered with the Commission, and later, its successor by merger, TAG Virgin Islands, LLC (collectively, "TAG"), routinely used his discretionary authority over client accounts to cause clients to purchase promissory notes issued by various private companies controlled by, or otherwise affiliated with, an individual ("Individual A"). Tagliaferri failed to disclose to TAG clients, whose money he invested in those notes, that TAG received kickbacks and other compensation from Individual A in exchange for providing the companies with financing.

3. Moreover, when the promissory notes of the Individual A-related entities neared or passed maturity and clients demanded payment, Tagliaferri raised money to pay the interest and/or principal due on the notes by misusing assets of other advisory clients. Specifically, using his discretion over their advisory accounts, Tagliaferri caused other TAG clients to purchase stock of Fund.com, Inc. ("Fund.com"), a publicly-traded microcap company, as well as other public companies that were thinly-traded, from Individual A and/or his brother and used the proceeds Individual A derived in those transactions to make payments due to clients on the notes issued by the Individual A-related entities.

4. In addition to failing to disclose to clients the compensation that TAG received from Individual A, Tagliaferri failed to disclose to clients that TAG received kickbacks from another issuer, International Equine Acquisitions Holdings, Inc. ("IEAH"), in exchange for causing TAG clients to invest in the issuer. Furthermore, Tagliaferri misappropriated approximately \$5 million in client funds and transferred the funds to a private equity fund, UMS Partners Fund II, L.P. ("UMS"), for the purported purchase of UMS promissory notes, when no such notes existed. Tagliaferri then caused UMS to transfer at least half of the funds it received from TAG clients to Conversion Services International, Inc. ("Conversion Services"), a microcap issuer in whose common stock and promissory notes TAG clients were invested, thus enabling Conversion Services to make principal and/or interest payments on notes held by TAG clients.

RESPONDENT

5. **James S. Tagliaferri**, age 73, is and was at all relevant times, the president, chief compliance officer, and one of two owners of TAG. He is a resident of Connecticut and/or the U.S. Virgin Islands. During the Relevant Period, Tagliaferri participated in an offering of at least one penny stock, Fund.com.

OTHER RELEVANT ENTITIES AND INDIVIDUALS

6. **TAG Virgin Islands, Inc.**, which previously was known as Taurus Advisory Group, Inc., was a corporation with its principal place of business in St. Thomas, U.S. Virgin Islands. TAG was registered with the Commission as an investment adviser until June 30, 2011, when it filed a Form ADV-W. According to its Forms ADV, as of March 25, 2010, TAG had \$261 million in assets under management; as of March 31, 2011, it had \$9 million in assets under management. During the Relevant Period, TAG was co-owned by Tagliaferri and Patricia Cornell, who, at one time, were married.

7. **TAG Virgin Islands, LLC** is a limited liability company that, upon information and belief, is the successor by merger to TAG as of March 2011. On or about March 21, 2012, TAG Virgin Islands, LLC filed a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of the Virgin Islands, Case 3:12- bk-30004-MFW.

8. **Fund.com** is a publicly-traded microcap issuer in which Tagliaferri invested TAG clients. Fund.com's shares are quoted on the electronic interdealer quotation system operated by OTC Markets Group, Inc. (also known as the Pink Sheets) under ticker symbol FNDM. During the Relevant Period, Fund.com was a penny stock. Fund.com purports to be a provider of fund management products in the wealth management sector. The controlling shareholder of Fund.com is Equities Media Acquisition Corp. Inc., a company whose president is Individual A.

9. **UMS** is a Delaware limited partnership with its principal place of business in Philadelphia, Pennsylvania. UMS is a private investment fund and is not registered with the Commission.

10. **IEAH** is a privately-held corporation with its principal place of business in Garden City, New York. IEAH principally owns thoroughbred racehorses.

FACTS

The TAG-Managed Accounts

11. During the Relevant Period, TAG managed approximately 250 client accounts, over which it had discretionary authority. On behalf of TAG, Tagliaferri selected client investments and provided advice to clients concerning the investments. Tagliaferri directed all of the investments by, and transfers among, the TAG clients discussed below. The investments were reflected in

account statements prepared by the independent custodians for the TAG-managed accounts and sent by the custodians to TAG clients.

12. TAG received compensation in the form of advisory fees in exchange for providing advice to clients concerning investments in securities. As the president and at least 50% owner of TAG, Tagliaferri directly benefited from all compensation that TAG received.

13. During the Relevant Period, TAG was not registered with the Commission as a broker-dealer and Tagliaferri was not associated with a registered broker-dealer.

Tagliaferri's Fraud on Advisory Clients

14. Before 2007, TAG clients were primarily invested in conservative and liquid investments such as municipal bonds and blue-chip stocks. During the Relevant Period, however, Tagliaferri used his discretionary authority to invest clients in highly illiquid securities, including promissory notes issued by various closely-held companies that are nothing more than holding companies through which Individual A and his family effected personal and business transactions (the "Individual A-Related Entities"). The Individual A-Related Entities include, among others: Basileus Holdings, LLC; Emerging Markets Global Hedge Ltd.; IP Global Investors, Ltd., Geomas, Inc.; Hettinger Media Ltd.; Devermont Communications, Ltd.; Equities Media Acquisition Corp. Inc.; Stanwich Absolute Return Ltd.; Mulsanne Enterprises Ltd.; Jamsfield Investments, Inc.; Pacific Rim Assurance Co.; 1920 Bel Air LLC; Drexel Holdings; and Life Investment Company, LLC.

15. During the Relevant Period, Tagliaferri caused approximately three-quarters of TAG's clients to purchase, at a total cost of at least \$80 million, securities issued by the Individual A-Related Entities and public companies with which Individual A or his companies were affiliated, including but not limited to Fund.com, Gerova Financial Group Ltd., Rineon Group, Inc., and Recovery Energy, Inc. For example, Tagliaferri caused at least eighteen clients to invest a total of at least \$3.4 million in notes issued by "1920 Bel Air LLC" – a holding company that owned Individual A's primary residence in Bel Air, California.

16. In exchange for causing investments to be made by certain TAG clients in the Individual A-Related Entities, TAG received at least \$1.75 million in cash, as well as approximately 500,000 shares of Fund.com stock, from the Individual A-Related Entities.

17. During the Relevant Period, Tagliaferri caused at least a third of TAG's clients to invest a total of at least \$40 million in promissory notes and other securities of IEAH. In exchange for causing investments to be made by certain TAG clients in IEAH, TAG received at least \$1.6 million in cash from IEAH.

18. The compensation that TAG received from the Individual A-Related Entities and IEAH for the investments Tagliaferri made on clients' behalf in the Individual A-Related Entities notes and IEAH securities was transaction-based. Such compensation also created a conflict of interest between Tagliaferri and the clients he invested in those securities.

19. Prior to causing them to invest in the Individual A-Related Entities, Tagliaferri knowingly or recklessly failed to disclose to clients that TAG would be compensated for those investments by the Individual A-Related Entities and failed to obtain those clients' consent prior to the transactions. And prior to causing clients to invest in IEAH, Tagliaferri knowingly or recklessly failed to disclose to those clients that TAG would be compensated by IEAH for those clients' investments and failed to obtain those clients' consent prior to the transactions. Such information would have been material to an investor in deciding whether to purchase securities issued by the Individual A-Related Entities or IEAH.

20. Tagliaferri also defrauded advisory clients by causing them to invest in microcap and other thinly-traded public companies in order to raise money to pay the interest and/or principal due to other advisory clients on the notes issued by the Individual A-Related Entities. As notes issued by the Individual A-Related Entities neared or passed maturity and clients complained about not having received payments due under the notes, Tagliaferri caused other clients to purchase Fund.com stock, as well as the stock of Recovery Energy, Rineon and Muscato Group, Inc., from TAG-managed accounts controlled by Individual A and his brother. Tagliaferri then used the proceeds of those transactions to make principal and/or interest payments on notes issued by the Individual A-Related Entities, or to purchase the notes.

21. Tagliaferri knew, or was reckless in not knowing, that TAG clients were unaware that they were purchasing certain securities, including stock issued by Fund.com, Muscato, Recovery Energy, and Rineon – investments that were contrary to the stated investment objectives of many of these TAG clients – to provide financing for the Individual A-Related Entities and/or to repay other TAG clients on their investments in the Individual A-Related Entities.

22. Indeed, in emails he sent to Individual A on April 4 and 5, 2010, Tagliaferri explained that his real motivation for causing TAG clients to purchase Fund.com stock was to pay off other clients on their investments in the Individual A-Related Entities:

You and [Individual A's brother] gave me assurances TAG [], upon the Weston closing, would receive \$125MM. We even provided money in December to effect that closing. I've been waiting patiently ever since. Well, you've closed. Where is the \$125MM. As you are aware, this money was earmarked to clear all of the notes and other issues facing us both. Some was to go to IEAH (you were to receive 10% fee). So, some of the FNDM shares were diverted to IEAH until the Weston money arrived. By the way, I was given the green light to distribute these shares as I saw fit. *Moreover, many of the FNDM shares were sold for your account with the proceeds used to purchase Geomas, or Drexel, or Stanwich, etc.* [Individual A-Related Entities] notes. I ask again. Where's the \$125MM. As I mentioned previously, if I got \$5MM-\$10MM now and the balance in pieces over a 3 month timeframe, I can probably stave off disaster. Can you give me the \$5MM-\$10MM immediately? (Emphasis added). . . .

Besides [TAG clients], I've received six calls or letters from lawyers [representing TAG clients] demanding repayment of the notes. In many cases, they would have accepted interest. Bu[t] you made no attempt to find a way out. On my own, I'm trying to help you. *The FNDM shares you transferred are being sold to clients. With those proceeds, you're buying back your own notes.* (Emphasis added).

23. Finally, beginning in February 2009, Tagliaferri defrauded TAG clients by transferring funds of at least thirty clients totaling at least \$5 million to UMS, a Philadelphia-based private equity firm, for the purported purchase of notes issued by UMS.

24. UMS never issued notes to TAG or TAG clients. Tagliaferri knew, or was reckless in not knowing, that UMS had not issued notes to TAG or its clients yet he reported to the clients' custodian, and thus to the clients, that they had purchased notes issued by UMS. Moreover, Tagliaferri directed UMS to transfer at least half of the funds it received from TAG clients to a microcap issuer, Conversion Services, in whose debt and equity securities TAG clients were invested. The investment thus enabled Conversion Services to make principal and/or interest payments on the debt securities held by other TAG clients.

VIOLATIONS

25. As a result of the conduct described above, Tagliaferri willfully violated Sections 17(a)(1) and (3) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

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

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

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

III.

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

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

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

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

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

IV.

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

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 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. 68970 / February 22, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15216

In the Matter of

Digital Video Systems, Inc.,
Electroglas, Inc.,
Real Data, Inc.
(a/k/a Galtech Semiconductor
Materials Corporation),
Geocom Resources, Inc., and
GoldMountain Exploration Corp.,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Digital Video Systems, Inc. ("DVID")¹ (CIK No. 1009395) is a delinquent Delaware corporation located in Mountain View, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). DVID 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, 2005, which reported a net loss of \$7,584,000 for the prior nine months. As of February 19, 2013, the common stock of DVID was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link"), had seven

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

market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Electroglas, Inc. ("EGLS") (CIK No. 902281) is a delinquent Delaware corporation located in San Jose, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EGLS 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 February 28, 2009, which reported a net loss of \$13,727,000 for the prior nine months. On July 9, 2009, EGLS filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was closed on October 2, 2012. As of February 19, 2013, the common stock of EGLS was not publicly quoted or traded.

3. Geocom Resources, Inc. ("GOCM") (CIK No. 1141787) is a Nevada corporation located in Bellingham, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GOCM 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 30, 2009. GOCM's last periodic report omitted financial statements based on Exchange Act Rule 13a-13(c)(2). As of February 19, 2013, the common shares of GOCM were quoted on OTC Link, had five market makers, and were eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. GoldMountain Exploration Corp. ("GMEX") (CIK No. 1326780) is a revoked Nevada corporation located in Blaine, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GMEX 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 December 31, 2007, which reported a net loss of \$2,476,346 for the prior nine months. As of February 19, 2013, the common stock of GMEX was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Real Data, Inc. (a/k/a Galtech Semiconductor Materials Corporation) ("GTSM") (CIK No. 1093432) is a Utah corporation located in Miamisburg, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GTSM 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, 2004, which reported a net loss of \$135,865 for the prior year. As of February 19, 2013, the common stock of GTSM 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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

February 22, 2013

In the Matter of

Digital Video Systems, Inc.,
Geocom Resources, Inc., and
GoldMountain Exploration Corp., and
Real Data, Inc.
(a/k/a Galtech Semiconductor
Materials Corporation),

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 Digital Video Systems, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geocom Resources, Inc. because it has not filed any periodic reports since the period ended March 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GoldMountain Exploration Corp. 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 Real Data, Inc. (a/k/a Galtech Semiconductor Materials Corporation), because it has not filed any periodic reports since the period ended December 31, 2004.

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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 February 22, 2013, through 11:59 p.m. EST on March 7, 2013.

By the Commission.

Elizabeth M. Murphy
Secretary

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3556 / February 22, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15159

In the Matter of

**SENTINEL INVESTMENT
MANAGEMENT
CORPORATION**

Respondent.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
PURSUANT TO SECTION 203(e) OF THE
INVESTMENT ADVISERS ACT OF 1940**

I.

On December 27, 2012, the Securities and Exchange Commission ("Commission") instituted public administrative proceedings pursuant to Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Sentinel Investment Management Corporation ("Respondent" or "Sentinel").

II.

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

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III.

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

A. RESPONDENT

1. Sentinel is a New York corporation formed in 1986 with its principal place of business in New York, New York. Sentinel is an investment adviser affiliated with, among other entities, West End Financial Advisors, LLC ("West End") and has been registered with the Commission since 1986. During the relevant time period, William Landberg served as Sentinel's president and chief compliance officer. Sentinel advised as many as 70 separately managed accounts at various times, some of which were invested in unregistered, private limited partnerships offered by West End.

B. ENTRY OF THE INJUNCTION

2. On November 28, 2011, a final judgment was entered by consent against Sentinel, permanently enjoining Sentinel from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. William Landberg, et al., Civil Action Number 11-CV-0404 (PKC), in the United States District Court for the Southern District of New York.

3. The Commission's amended complaint alleged that Sentinel made material misrepresentations to investors and engaged in a scheme to misappropriate investor assets. Sentinel, through Landberg and others at West End, misrepresented to investors that their money was invested in safe, stable investments and that the investments were growing and performing well. However, West End and Sentinel knew, or should have known, that West End was not achieving the positive returns represented to investors. Sentinel, through Landberg and others at West End, also failed to disclose, among other things, that Landberg and West End:

- (i) commingled investor assets among various investment funds advised by West End;
- (ii) looted funds from a reserve account that West End was required to maintain for the benefit of a bank that provided loans to a West End fund and used the proceeds for improper purposes; and
- (iii) misappropriated investor funds.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 203(e) of the Advisers Act that the investment adviser registration of Respondent Sentinel 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. 34-68973; File No. SR-NYSEArca-2012-66)

February 22, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendments No. 1 and No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendments No. 1 and No. 2 to List and Trade Shares of the iShares Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

I. Introduction

On June 19, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the iShares Copper Trust ("Trust" or "iShares Trust") pursuant to NYSE Arca Equities Rule 8.201. BlackRock Asset Management International Inc. is the sponsor of the Trust ("Sponsor"). The proposed rule change was published for comment in the Federal Register on June 27, 2012.³

The Commission initially received one comment letter, which opposed the proposed rule change.⁴ On August 8, 2012, the Commission instituted proceedings to determine whether to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 67237 (June 22, 2012), 77 FR 38351 ("Notice").

⁴ See letter from Robert B. Bernstein, Vandenberg & Feliu, LLP ("V&F"), to Elizabeth M. Murphy, Secretary, Commission, dated July 18, 2012 ("V&F July 18 Letter"). Comment letters are available at <http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266.shtml>. This commenter states that he represents RK Capital LLC, an international copper merchant, and four end-users of copper: Southwire Company, Encore Wire Corporation, Luvata, and AmRod Corp (collectively, the "Copper Fabricators"). The commenter states that these companies collectively comprise about 50% of the copper fabricating capacity in the United States. See V&F July 18 Letter, *supra*, at 1.

approve or disapprove the proposed rule change.⁵ Subsequently, the Commission received additional comments on the proposed rule change.⁶

⁵ See Securities Exchange Act Release No. 67616, 77 FR 48181 (August 13, 2012) (“Order Instituting Proceedings”).

⁶ See letters from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012 (“V&F September 12 Letter”); Ira P. Shapiro, Managing Director, and Deepa A. Damre, Director, Legal and Compliance, BlackRock, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012 (“BlackRock Letter”); Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated September 14, 2012 (“Arca September 14 Letter”); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 27, 2012 (“V&F September 27 Letter”); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated November 16, 2012 (“V&F November 16 Letter”); Robert B. Bernstein, Partner, Eaton & Van Winkle LLP (“EVW”), to Elizabeth M. Murphy, Secretary, Commission, dated December 7, 2012 (“EVW December 7 Letter”); and e-mail from Janet Klein dated January 7, 2013 (“Klein E-mail”).

In the V&F September 27 Letter, the commenter incorporated by reference all of his prior comments in opposition to NYSE Arca’s proposal to list and trade shares of the JPM XF Physical Copper Trust (“JPM Copper Trust”) (File No. SR-NYSEArca-2012-28). See V&F September 27 Letter, *supra*, at 6. Responding to that proposed rule change, the commenter submitted the following: letters from V&F, received May 9, 2012 (“V&F May 9 Letter”); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated July 13, 2012 (“V&F July 13 Letter”); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated August 24, 2012 (“V&F August 24 Letter”); and Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 10, 2012 (“V&F September 10 Letter”). The comment letters the commenter incorporated by reference are available at <http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266.shtml>.

Additionally, the commenter stated that he agrees with the arguments against that proposal set forth in a letter from U.S. Senator Carl Levin, to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2012 (“Levin Letter”), and attached the Levin Letter to the V&F July 18 Letter. See V&F July 18 Letter, *supra*, at 5. The Commission approved NYSE Arca’s proposal to list and trade shares of the JPM Copper Trust on December 14, 2012, in an order that addressed these and other comments. See Securities Exchange Act Release No. 68440 (December 14, 2012), 77 FR 75468, 75473–86 (December 20, 2012) (SR-NYSEArca-2012-28) (“JPM Order”).

In the V&F September 12 Letter, the commenter requested to make an oral presentation in the proceeding. The Commission denied the commenter’s request. See letter from Kevin M. O’Neill, Deputy Secretary, Commission, to Robert B. Bernstein, EVW, dated December 5, 2012, available at <http://www.sec.gov/comments/sr-nysearca-2012->

On December 12, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.⁷ On December 21, 2012, the Commission designated February 22, 2013, as the date by which the Commission should either approve or disapprove the proposed rule change.⁸ On December 27, 2012, the Exchange filed Amendment No. 2 to the proposed rule change.⁹

[66/nysearca201266.shtml](#). By letter dated November 29, 2012, Mr. Bernstein informed the Commission that he had left V&F and would continue to represent the Copper Fabricators and RK Capital LLC in this proceeding.

⁷ In Amendment No. 1, the Exchange represented that it: (1) has obtained representations from the Sponsor that the Sponsor is affiliated with one or more broker-dealers and other entities, that the Sponsor will implement a fire wall with respect to such affiliate(s) prohibiting access to material non-public information of the Trust concerning the Trust and the Shares, and that the Sponsor and such affiliate(s) will be subject to procedures designed to prevent the use and dissemination of material non-public information of the Trust regarding the Trust and the Shares; and (2) can obtain information regarding the activities of the Sponsor and its affiliates under the Exchange's listing rules. Additionally, the Exchange supplemented its description of surveillance applicable to the Shares contained in the proposed rule change as originally filed. Specifically, the Exchange represented that trading in the Shares would be subject to the existing trading surveillances, administered by Financial Industry Regulatory Authority, Inc. ("FINRA") on behalf of the Exchange, and that, in addition, FINRA would augment those existing surveillances with a review specific to the Shares that is designed to identify potential manipulative trading activity through use of the creation and redemption process. The Exchange represented that all those procedures would be operational at the commencement of trading in the Shares on the Exchange and that, on an ongoing basis, NYSE Regulation, Inc. (on behalf of the Exchange) and FINRA would regularly monitor the continued operation of those procedures. In addition, the Exchange has represented that it will communicate as needed regarding trading in the Shares with other markets that are members of Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. On December 13, 2012, the Exchange submitted a comment letter attaching Amendment No. 1. See letter from Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated December 13, 2012.

⁸ See Securities Exchange Act Release No. 68511, 77 FR 77151 (December 31, 2012).

⁹ In Amendment No. 2, the Exchange supplemented the representations in the proposed rule change regarding website disclosure and made clear that the Trust's website will provide detailed information, updated on a daily basis, regarding the copper lot holdings of the Trust, including warehouse locations, warehouse identification numbers, lot numbers, weights, and brands. Additionally, in Amendment No. 2, the Exchange represented that the Trust's website will list the copper lots in the order in which they will

The Commission is publishing this notice to solicit comments from interested persons, including whether Amendments No. 1 and No. 2 to the proposed rule change are consistent with the Act, and is approving the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares.¹⁰ The Trust's investment objective is for the value of the Shares to reflect, at any given time, the value of the copper owned by the Trust at that time, less the Trust's expenses and liabilities at that time. The Trust will create Shares only in exchange for copper that: (1) meets the requirements to be delivered in settlement of copper futures contracts traded on the LME; and (2) is eligible to be placed on London Metal Exchange ("LME") warrant at the time it is delivered to the Trust.¹¹ The Trust will not be actively managed and will not engage in any activities designed to obtain a profit from, or to prevent losses caused by, changes in the price of copper.¹²

A. Description of the Copper Market¹³

The following is a summary of the description of the copper market that the Exchange included in its filing. Copper is traded in the over-the-counter ("OTC") market and on commodities exchanges. There are spot sales in the physical market, as well as forward

be delivered in a redemption pursuant to the applicable algorithm. See infra text accompanying note 27.

¹⁰ Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided interest in and ownership of the net assets of the trust.

¹¹ See Notice, supra note 3, 77 FR at 38356.

¹² See id. at 38352.

¹³ See Notice, supra note 3, for a more detailed description of the copper market.

contracts, options contracts, and other derivative transactions. A major portion of annual copper production and use is covered through physical transactions, often through renewable annual supply contracts.

Participants in the copper market include primary and secondary producers; fabricators; manufacturers and end-use consumers; physical traders and merchants; the banking sector; and the investment community. Physical traders and merchants generally facilitate the domestic and international trade of copper supplies along the value chain and support the distribution of supplies to consumers. Banking institutions may provide market participants an assortment of services to assist copper market transactions. This investment community is composed of non-commercial market participants engaged in investment in copper or speculation about copper prices. This may range from large-scale institutional investors to hedge funds to small-scale retail investors. In addition, the investment community includes sovereign wealth funds as well as other governmental bodies that stockpile metal for strategic purposes.

1. OTC Copper Market

Physical traders, merchants, and banks participate in OTC spot, forward, option, and other derivative transactions for copper. OTC contracts are principal-to-principal agreements traded and negotiated privately between two principal parties, without going through an exchange or other intermediary. As such, both participants in OTC transactions are subject to counter-party risk, including credit and contractual obligations to perform. The OTC derivative market remains largely unregulated with respect to public disclosure of information by the parties, thus providing confidentiality among principals.

The terms of OTC contracts are not standardized and market participants have the flexibility to negotiate all terms of the transaction, including delivery specifications and

settlement terms. The OTC market facilitates long-term transactions, such as life-of-mine off-take agreements,¹⁴ which otherwise could be constrained by contract terms on a futures exchange.

2. Copper Exchanges

According to the registration statement for the Trust (“Registration Statement”),¹⁵ the LME is the longest standing exchange trading copper futures, with the greatest number of open copper futures and options contracts (open interest). The Commodity Exchange, Inc. (“COMEX”) (a division of CME Group, Inc.), the Shanghai Futures Exchange (“SHFE”), and the recently launched Multi Commodity Exchange of India (“MCX”) also trade copper futures. At the end of March 2012, the LME held roughly 64% of copper open interest across the four futures exchanges with copper contracts (adjusted for lot size).

The LME falls under the jurisdiction of the United Kingdom Financial Services Authority (“FSA”). The FSA is responsible for ensuring the financial stability of the exchange member businesses, whereas the LME is largely responsible for the oversight of day-to-day exchange activities, including conducting arbitration proceedings under the LME arbitration regulations.

The SHFE is a self-regulatory body under the supervision and governance of the China Securities Regulatory Commission (“CSRC”). The SHFE is the day-to-day overseer of exchange activities, and is expected to carry out regulation as per the laws established by the CSRC. The CSRC serves as the final authority on exchange regulation and policy development

¹⁴ A life-of-mine off-take agreement is an agreement between a producer and a buyer to purchase/sell portions of the producer’s future production over the life of the operation. Off-take agreements are commonly negotiated prior to the construction of a project as they can assist in obtaining financing by showing future revenue streams.

¹⁵ The Registration Statement was most recently amended on September 2, 2011 (No. 333-170131).

and ultimately determines the effectiveness of the SHFE as a regulatory entity. It has the right to overturn or revoke the SHFE's regulatory privileges at any time.

Commodity futures and options traded on the COMEX are subject to regulation by CME Group's Market Regulation Oversight Committee ("MROCC"), under rules of the Commodity Futures Trading Commission ("CFTC").¹⁶ The MROCC is a self-regulatory body created in 2004 to actively ensure competitive and financially sound trading activity on the CME and its subsidiary exchanges.

Regulation of the MCX falls under the responsibility of the Governing Board of the MCX and the Forward Markets Commission of India pursuant to the Forward Contracts (Regulation) Act of 1952 and amendments made thereafter.

B. Description of the Proposed Rule Change and the Trust¹⁷

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares. The Bank of New York Mellon is the trustee of the Trust ("Trustee"). Metro International Trade Services LLC is the custodian of the Trust ("Custodian").

As mentioned above,¹⁸ the Trust will hold only copper that, at the time it was delivered to the trust, (1) met the requirements to be delivered in settlement of copper futures contracts traded on the LME; and (2) was eligible to be placed on LME warrant. The Trust will not be actively

¹⁶ Copper is traded over two CME platforms: CME Globex and Open Outcry. CME Globex, which offers electronic trading, operates Sunday through Friday, 6:00 p.m., Eastern Time ("E.T.") through 5:15 p.m. E.T. with a 45-minute break each day beginning at 5:15 p.m. E.T. The Open Outcry operates Monday through Friday 8:10 a.m. E.T. through 1:00 p.m. E.T.

¹⁷ See Notice, supra note 3, for a more detailed description. Additional details regarding the Trust also are set forth in the Registration Statement, supra note 15.

¹⁸ See supra text accompanying note 11.

managed and will not engage in any activities designed to obtain a profit from, or to prevent losses caused by, changes in the price of copper.¹⁹

The Custodian may keep the Trust's copper at locations within or outside the United States that are agreed from time to time by the Custodian and the Trustee. As of the date of the Registration Statement, the Custodian is authorized to hold copper owned by the Trust at warehouses located in: East Chicago, Indiana; Mobile, Alabama; New Orleans, Louisiana; Saint Louis, Missouri; Hull, England; Liverpool, England; Rotterdam, Netherlands; and Antwerp, Belgium (collectively, "Approved Warehouses"). Unless otherwise agreed in writing by the Trustee, each of the warehouses where the Trust's copper will be stored must be LME-approved at the time copper is delivered to the Custodian for storage in such warehouse. Unless otherwise instructed by the Trustee, no copper held by the Custodian on behalf of the Trust may be on LME warrant.²⁰

The Trustee will calculate the net asset value ("NAV") of the Trust as promptly as practicable after 4:00 p.m. EST on each business day. The Trustee will value the Trust's copper at that day's announced LME Bid Price.²¹ If there is no announced LME Bid Price on a business day, the Trustee will be authorized to use the most recently announced LME Bid Price unless the

¹⁹ See supra text accompanying note 12.

²⁰ See Notice, supra note 3, 77 FR at 38356 n.23.

²¹ The "LME Bid Price" is announced by the LME at 1:20 p.m. London Time and represents the price that a buyer is willing to pay to receive a warrant in any warehouse within the LME system. See id. at 38356 n.25. LME warrants, which are documents representing possession, are used as the means of delivering metal or plastics under LME contracts. See id. at 38355. The ownership of copper represented by warrants is transferred through LMEsword, an electronic transfer system for the purchase and sale of exchange issued warrants that facilitates the reporting of inventories. See id. Each warrant is invoiced at the contract weight, which is permitted to vary +/-2% from the specified 25 tonne lot of copper. Only registered LME copper brands are approved for delivery. See id.

Sponsor determines that such price is inappropriate as a basis for valuation.²² The Exchange will obtain a representation from the Trust prior to the commencement of trading in the Shares that the NAV per Share will be calculated daily and made available to all market participants at the same time.²³

The Trust expects to create and redeem Shares on a continuous basis but only with authorized participants in blocks of five or more baskets of 2,500 Shares each (each basket of 2,500 Shares, a "Basket").²⁴ In connection with the creation of Baskets, only copper that meets the requirements to be delivered in settlement of copper futures contracts traded on the LME and that is eligible to be placed on LME warrant at the time of delivery to the Trust may be delivered to the Trust in exchange for Shares.²⁵ Upon deposit of the corresponding amount of copper with the Custodian and the payment of applicable fees by an authorized participant, the Trustee will deliver the appropriate number of Baskets to the Depository Trust Company ("DTC") account of the authorized participant.²⁶ Conversely, authorized participants may redeem Shares by surrendering five or more Baskets, each in exchange for the Basket Copper Amount announced by the Trustee on the first business day on which the LME Bid Price is announced following the date of receipt of the redemption order. Upon surrender of the Baskets and payment of

²² See id. at 38358.

²³ See id. at 38359.

²⁴ See id. at 38356.

²⁵ See id.

²⁶ In exchange for each Basket purchased, an authorized participant must deposit the Basket Copper Amount announced by the Trustee on the first business day on which the LME Bid Price is announced following the date of receipt of the purchase order. See id. at 38356. The "Basket Copper Amount" is the amount of copper (measured in tonnes and fractions thereof), determined on each business day by the Trustee, which authorized participants must transfer to the Trust in exchange for a Basket, or are entitled to receive in exchange for each Basket surrendered for redemption. See id. at 38356 n.24.

applicable fees, expenses, taxes, and charges, the Custodian will transfer from the Trust's account to the authorized participant's account the aggregate Basket Copper Amount corresponding to the Baskets surrendered for redemption and will send written confirmation thereof to the Trustee, which will then cancel all Shares so redeemed. The specific copper to be transferred to the redeeming authorized participant's account will be selected by the Custodian pursuant to an algorithm that gives priority to the delivery of copper that no longer meets LME requirements (e.g., is of a brand, or held at a location, that is no longer LME approved) or is on LME warrant (in the rare instances where some of the Trust's copper may be on LME warrant).²⁷ Within each category, copper will be selected for transfer to redeeming authorized participants on a last-in-first-out basis. If the copper transferred to the redeeming authorized participant's account meets the requirements of the LME to be placed on warrant, and the Custodian is able to issue LME warrants at such time, promptly after a redemption, the Custodian will issue to the redeeming authorized participant one or more LME warrants representing as much copper transferred to the authorized participant's account as may be placed on LME warrant in compliance with the LME rules and without the Custodian having to break apart any specific parcel of copper so transferred pursuant to the algorithm referred to above.²⁸

²⁷ Generally, authorized participants desiring to create with copper on warrant will be required to take such copper off warrant prior to delivery to the Custodian. See id. at 38357 n.29. See also id. at 38356 n.23 ("Unless otherwise instructed by the Trustee, no copper held by the Custodian on behalf of the Trust may be on Warrant.").

²⁸ In the normal course of the Trust's operations, it is anticipated that authorized participants will receive LME warrants (not warehouse receipts) following a redemption transaction. See id. at 38358. If it is not possible for the Custodian to issue LME warrants in connection with a redemption of Shares, the Custodian will deliver to the redeeming authorized participant one or more negotiable warehouse receipts representing the copper transferred to the authorized participant's account in connection with such redemption. See id. at 38357-58.

To facilitate the issuance of Baskets,²⁹ the Sponsor has arranged for J. Aron & Company (“J. Aron”), an international commodities dealer and subsidiary of The Goldman Sachs Group, Inc. (which owns the Custodian), to stand ready to: (i) make available for sale to eligible authorized participants any fractional amounts of copper needed to meet the obligation to transfer to the Trust the exact Basket Copper Amount in exchange for each Basket purchased from the Trust; and (ii) to the extent the lots of copper an eligible authorized participant intends to use in connection with an issuance of a Basket exceed the corresponding Basket Copper Amount, purchase any amount of such copper from such authorized participant.³⁰

Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association.³¹ The Exchange also will make available via the Consolidated Tape trading volume, closing prices, and the NAV for the Shares from the previous day.³² The intraday indicative value (“IIV”) per Share,³³ updated at least every 15 seconds, as calculated by the

²⁹ The Exchange states that because copper usually trades in lots of 25 tonnes, with plus or minus 2% deviations being accepted in the industry, an authorized participant may not find readily available in the market the exact Basket Copper Amount needed in connection with the issuance of a new Basket. See id. at 38356.

³⁰ The Goldman Sachs Group, Inc. and its affiliates (“GS Entities”) have represented to the Sponsor that they maintain policies that are reasonably designed to prevent misuse or improper dissemination of nonpublic information, including a “need-to-know” standard that states that confidential information may be shared only with persons who have a need to know the information to perform their duties and to carry out the purpose(s) for which the information was provided. See id. at 38357 n.26. In addition, GS Entities have represented to the Sponsor that they maintain specific policies and procedures that are reasonably designed to protect confidential and commercially sensitive information associated with the Custodian’s business from being shared with GS Entity individuals engaged in commodity sales and trading activities. See id.

³¹ See id. at 38358.

³² See id. at 38359.

³³ The IIV will be calculated by multiplying the indicative spot price of copper (the three-month LME copper contract) by the quantity of copper backing each Share as of the last calculation date. See id.

Exchange or a third-party financial data provider, will be widely disseminated by one or more major market data vendors during the Core Trading Session on the Exchange (9:30 a.m. to 4:00 p.m. E.T.).³⁴

The Trust's website will contain the following information, on a per-Share basis, for the Trust: (a) the NAV as of the close of the prior business day and the mid-point of the bid-ask price at the close of trading in relation to such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.³⁵ The Trust's website also will disclose the list of copper held by the Trust, updated on a daily basis, and display the following information: the Basket Copper Amount; the Trust's prospectus; the two most recent reports to stockholders; and the last sale price of the Shares as traded in the U.S. market.³⁶

The Exchange states that investors may obtain, almost on a 24-hour basis, copper pricing information based on the spot price of copper from various financial information service providers, such as Reuters and Bloomberg.³⁷ Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of copper and last-sale prices of copper futures, as well as information and news about developments in the copper market.³⁸

Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides

³⁴ See id.

³⁵ See id.

³⁶ See id. See also Amendment No. 2, supra note 9 (providing more details regarding the information about the Trust's copper holdings that will be available on the Trust's website).

³⁷ See Notice, supra note 3, 77 FR at 38359.

³⁸ See id.

information on copper prices directly from market participants.³⁹ Moreover, there are a variety of public websites providing information on copper, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal.⁴⁰ The Exchange will provide on its website (www.nyx.com) a link to the Trust's website.⁴¹

NYSE Arca will require that a minimum of 100,000 Shares be outstanding at the start of trading,⁴² which represents 1,000 metric tons of copper. The Trust seeks to register 12,120,000 Shares.⁴³

Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the Exchange until such time as the NAV is available to all market participants at the same time. If the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.⁴⁴ Further, the Exchange will consider suspension of trading pursuant to NYSE Arca Rule 8.201(e)(2) if, after the initial 12-month period following commencement of trading:

³⁹ See id.

⁴⁰ See id. For example, the LME publishes LME official price information on its website with a one-day delay; LME official price information also is published on Basemetals.com and Metal-Page.com with a one day delay; COMEX publishes on its website delayed futures and options information on current and past trading sessions and market news free of charge. See id. The Exchange also states that the current day's LME official prices (such as the LME Bid Price used to calculate the NAV of the Shares) are available from major market data vendors for a fee. See id.

⁴¹ See id.

⁴² See id.

⁴³ See Registration Statement, supra note 15.

⁴⁴ See Notice, supra note 3, 77 FR at 38359.

(1) the value of copper is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, or Custodian, or the Exchange stops providing a hyperlink on its website to any such unaffiliated source providing that value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis. More generally, with respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.⁴⁵ Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.⁴⁶ These may include: (1) the extent to which conditions in the underlying copper market have caused disruptions and/or lack of trading; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.⁴⁷ Additionally, trading in the Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rule, NYSE Arca Equities Rule 7.12.⁴⁸

NYSE Arca represents that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of NYSE Arca rules and applicable federal securities laws.⁴⁹ The Exchange states that its existing trading surveillances, which are administered by FINRA, generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative

⁴⁵ See id.

⁴⁶ See id.

⁴⁷ See id.

⁴⁸ See id.

⁴⁹ See id.

activity.⁵⁰ NYSE Arca states that, in addition to those surveillances, FINRA will implement a product-specific review designed to identify potential manipulative trading activity through the use of the creation and redemption process, and that NYSE Regulation, Inc., on behalf of the Exchange, will monitor to ensure that these procedures continue to be operational.⁵¹

The Exchange also states that, pursuant to NYSE Arca Equities Rule 8.201(g), it is able to obtain information regarding trading in the Shares, physical copper, copper futures contracts, options on copper futures, or any other copper derivative from Equity Trading Permit holders (“ETP Holders”) acting as registered market makers, in connection with their proprietary or customer trades.⁵² More generally, NYSE Arca states that it has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business.⁵³

With respect to a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange states that it can obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.⁵⁴ Further, NYSE Arca states that it may obtain trading information via the ISG from other exchanges that are members of the ISG, including CME Group, Inc., which includes COMEX, and that it has entered into a

⁵⁰ See Amendment No. 1, supra note 7.

⁵¹ See id.

⁵² See Notice, supra note 3, 77 FR at 38359.

⁵³ See Amendment No. 1, supra note 7.

⁵⁴ See id.

comprehensive surveillance sharing agreement with the LME that applies with respect to trading in copper and copper derivatives.⁵⁵

Prior to the commencement of trading, the Exchange represents that it will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Baskets (including noting that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) how information regarding the IIV is disseminated; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (e) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of physical copper trading during the Core and Late Trading Sessions after the close of the major world copper markets;⁵⁶ and (f) trading information.⁵⁷

The Notice and the Registration Statement include additional information regarding: the Trust; the Shares; the Trust's investment objectives, strategies, policies, and restrictions; fees and

⁵⁵ See Notice, supra note 3, 77 FR at 38360. The Exchange will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. See Amendment No. 1, supra note 7.

⁵⁶ The Exchange's Core Trading Session is between 9:30 a.m. to 4:00 p.m. E.T. See Notice, supra note 3, 77 FR at 38359. The Exchange's Late Trading Session begins after the end of the Core Trading Session and concludes at 8:00 p.m. E.T. See NYSE Arca Equities Rule 7.34(a)(3).

⁵⁷ See Notice, supra note 3, 77 FR at 38360.

expenses; creation and redemption of Shares; the physical copper market; availability of information; trading rules and halts; and surveillance procedures.⁵⁸

III. Discussion and Commission Findings

After careful review and for the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act, including Section 6 of the Act,⁵⁹ and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶⁰ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,⁶¹ which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission also finds that the proposed rule change is consistent with Section 11A(a)(1)(C)(iii) of the Act,⁶² which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

⁵⁸ See Notice and Registration Statement, supra notes 3 and 15, respectively.

⁵⁹ 15 U.S.C. 78f.

⁶⁰ 15 U.S.C. 78f(b)(5).

⁶¹ 15 U.S.C. 78f(b)(8).

⁶² 15 U.S.C. 78k-1(a)(1)(C)(iii).

Further, pursuant to Section 3(f) of the Act,⁶³ the Commission has considered whether the proposed rule change will promote efficiency, competition, and capital formation.

One commenter submitted five comment letters to explain its opposition to the proposed rule change.⁶⁴ Generally, the opposing commenter asserts that the proposed rule change is inconsistent with Section 6(b)(5) of the Act.⁶⁵ The commenter asserts that the issuance by the Trust of all of the Shares covered by the Registration Statement within a short period of time would result in a substantial reduction in the supply of global copper available for immediate delivery, and that this reduction in short-term supply would increase both the price of copper and volatility in the copper market, which would in turn significantly harm the U.S. economy.⁶⁶ The commenter further states that the predicted decrease in copper available for immediate delivery would make the physical copper market more susceptible to manipulation.⁶⁷

⁶³ 15 U.S.C. 78c(f).

⁶⁴ See V&F July 18 Letter, supra note 4; V&F September 12 Letter, supra note 6; V&F September 27 Letter, supra note 6; V&F November 16 Letter, supra note 6; and EVW December 7 Letter, supra note 6. As discussed above, the commenter also attached to his letters other comment letters, or incorporated other comment letters by reference. See supra note 6 (citing V&F September 27 Letter). This commenter is referred to as “the commenter,” although the Commission also received an e-mail from another commenter who opposes the proposed rule change. Ms. Janet Klein asserted that approval of the proposed rule change: (1) would be “contrary to rational oversight of wise practice,” without explaining the basis for her judgment; (2) would not contribute to the economy; and (3) would promote “speculative swings of a commodity price not related to supply/demand,” again without explaining the basis for her conclusion. See Klein E-mail, supra note 6. The impact of the proposed rule change on the price of copper is discussed below in Section III.B.

⁶⁵ 15 U.S.C. 78f(b)(5).

⁶⁶ See V&F May 9 Letter, supra note 6, at 5–7.

⁶⁷ See id. at 1, 10.

In response, the Sponsor generally states the Trust will provide a more liquid and cost-effective vehicle for investment in the physical copper market.⁶⁸ The Sponsor expects that much of the initial demand for the Shares will represent a reallocation of current investments in physical copper by professional copper market participants rather than new incremental demand.⁶⁹ The Sponsor does not anticipate that creation of the Trust will impact copper prices,⁷⁰ and disagrees with the notion that the Trust will render the copper market more susceptible to manipulation.⁷¹

Given the concerns expressed by the commenter that the Trust would remove a substantial amount of the supply of copper available for immediate delivery over a short period of time, which would render the physical copper market more susceptible to manipulation, and that the Trust therefore would provide market participants an effective means to manipulate the price of copper and thereby the price of the Shares,⁷² the Commission analyzes the comments to examine, among other things, the extent to which the listing and trading of the Shares may (1) impact the supply of copper available for immediate delivery and the ability of market participants to manipulate the price of copper, and (2) be susceptible to manipulation. The sections below summarize and respond to the comments received.

A. The Trust's Impact on the Supply of Copper Available for Immediate Delivery

The commenter believes that the issuance by the Trust of all of the Shares covered by the Registration Statement within a short period of time would result in the withdrawal of substantial

⁶⁸ See BlackRock Letter, supra note 6, at 1.

⁶⁹ See id. at 4.

⁷⁰ See id. at 5.

⁷¹ See id. at 6.

⁷² See V&F May 9 Letter, supra note 6, at 1, 10.

quantities of copper from LME and COMEX warehouses, thus negatively impacting the supply of copper available for immediate delivery.⁷³ As discussed below, this belief assumes that: (1) copper held by the Trust would not be available for immediate delivery; (2) the global supply of copper available for immediate delivery that could be used to create Shares consists almost exclusively of copper already under LME or COMEX warrant, and therefore the Shares would be created primarily using copper already under LME or COMEX warrant; and (3) the Trust would acquire a substantial amount of copper within a short period of time, such that copper suppliers would not be able to adjust production to replace the copper removed from the market by the Trust. The Commission believes the record does not support the commenter's conclusions, which are based on his contentions, and thus, for the reasons discussed below, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery.

1. Availability of the Trust's Copper

The commenter asserts that copper held by the Trust would not be available for immediate delivery, and therefore copper deposited into the Trust would be removed from the market and would be unavailable to end-users.⁷⁴ In response, the Sponsor asserts that the Trust would not remove immediately available copper inventory from the market.⁷⁵ The Sponsor predicts that demand for the Shares is most likely to come from current metals dealers and others who already hold physical copper inventory or investments, and that the creation of Shares by

⁷³ See V&F July 18 Letter, supra note 4, at 1–2.

⁷⁴ See id. at 5.

⁷⁵ See BlackRock Letter, supra note 6, at 3–4. See also V&F September 12 Letter, supra note 6, at 2 (“Copper backed ETFs will also not affect the aggregate inventory of copper. But the ETF will move the inventory that resides within the LME outside of the LME.”).

these entities will not affect available supply.⁷⁶ The Sponsor also notes that Shares can be redeemed as well as created, thus allowing the Trust's copper to be withdrawn by authorized participants.⁷⁷

The Commission agrees with the Sponsor that copper held by the Trust will remain available to consumers and other participants in the physical copper market because: (1) the Trust will not consume copper; (2) Shares are redeemable (in size) for copper on every business day; and (3) provided certain conditions are met, on the third business day after the day on which the LME Bid Price is announced following the placement of a redemption order, the Custodian will transfer from the Trust's account to the redeeming authorized participant's account the parcels of copper identified pursuant to the Trustee's algorithm and corresponding to the number of Baskets surrendered, and promptly thereafter, the Custodian will issue either (a) one or more LME warrants, if the copper transferred can then be placed on LME warrant and the Custodian is able to issue LME warrants, or (b) negotiable warehouse receipts, if the copper transferred cannot be placed on LME warrant or if the Custodian cannot issue LME warrants.⁷⁸

Accordingly, in the normal course of the Trust's operations, redeeming authorized participants will receive copper that the commenter acknowledges is available for immediate delivery (i.e., copper on LME warrant).⁷⁹ Given the structure of the Trust, the Commission believes that the

⁷⁶ See BlackRock Letter, supra note 6, at 4.

⁷⁷ See id. at 3.

⁷⁸ See Registration Statement, supra note 15. The Exchange states that, in the normal course of the Trust's operations, it is anticipated that authorized participants will receive LME warrants following a redemption transaction and that, in the event that its copper is no longer warrantable, the Trust will have operational procedures in place to put such metal on LME warrant when possible. See Notice, supra note 3, 77 FR at 38357-58.

⁷⁹ See, e.g., V&F July 18 Letter, supra note 4, at 1 ("[T]he copper in the LME and [COMEX] warehouses is the only refined copper generally available for immediate

amount of copper accessible to industrial users will not meaningfully change as a result of the listing and trading of the Shares. Accordingly, the Commission believes that the proposed rule change will not burden capital formation for users who acquire copper for industrial and other purposes.

delivery.”). The Commission believes that the wait time discussed above to receive a LME warrant – or in some cases a negotiable warehouse receipt – is not a significant enough delay to consider the copper held by the Trust unavailable for immediate delivery because, as mentioned above, on the third business day after the day on which the LME Bid Price is announced following the placement of a redemption order, the Custodian will transfer from the Trust’s account to the redeeming authorized participant’s account the parcels of copper identified pursuant to the Trustee’s algorithm and corresponding to the number of Baskets surrendered, and promptly thereafter, the Custodian will issue to the authorized participant either one or more LME warrants, which will be delivered whenever possible, or negotiable warehouse receipts.

The commenter expresses further concern in the EVW December 7 Letter about an increasing length of time that it takes to withdraw metal, including copper, from LME warehouses. The commenter argues that this “troubling new development” may, together with the proposed listing and trading of the Shares, jeopardize the ability of United States copper consumers to obtain the physical copper they need in a timely manner. See generally EVW December 7 Letter, supra note 6. The commenter previously acknowledged, however, that taking copper off LME warrant takes time; according to the commenter: (1) the amount of time it takes to take copper off LME warrant depends “on the length of the loading out queue” at the LME warehouse; and (2) queues “are currently ranging from 275 working days (more than one year) in Vlissingen, Netherlands, 91 working days (4.5 months) in New Orleans, 51 working days (2.5 months) in Johor, Malaysia to under one month in Korea and Rotterdam, Netherlands.” V&F August 24 Letter, supra note 6, at 14. By his December 7 letter, the commenter appears to be updating information previously provided about the length of queues, but does not assert any new reason for disapproving the listing and trading of the Shares that is distinct from his original assertion, responded to in the text above, that listing and trading of the Shares will reduce the supply of copper available for immediate delivery. The Commission notes that the LME appears to be attempting to address the unloading queue issue, see London Metal Exchange, Consultation on Changes to LME Policy for Approval of Warehouses in Relation to Delivery Out Rates, Notice 12/296 : A295 : W152 (November 15, 2012), available at http://www.lme.com/downloads/notices/12_296_A295_W152_Consultation_on_Changes_to_LME_Policy_for_Approval_of_Warehouses_in_Relation_to_Delivery_Out_Rates.pdf, which applies to LME warehoused aluminum and zinc, not just copper. See also EVW December 7 Letter, supra note 6, at 3.

The commenter states that end users would not acquire Shares for the purpose of redeeming them to acquire copper because the copper they would receive in exchange for Shares might be in a location far from their plants or might be of brands that are not acceptable to their plants.⁸⁰ Regardless of the preferences of these consumers, authorized participants may redeem Shares for copper and the record does not contain any evidence that these or any other consumers of copper could not use the Shares to obtain copper through an authorized participant. Further, the record supports that the same logistical issues currently exist and are addressed by market participants holding LME warrants. For example, it is the Commission's understanding that when a market participant buys a long-dated copper futures contract on the LME and settles for a warrant, or when an LME member buys a cash futures contract in ring trading,⁸¹ these market participants do not know the location or brand of the underlying copper. Accordingly, LME warrant holders sometimes swap warrants to acquire copper of a preferred brand in a convenient location,⁸² and nothing in the record indicates that redeeming authorized participants would not be able to swap LME warrants received in connection with Share redemptions for other LME warrants for more suitable copper.

The commenter also expresses concern that investors who hold the Shares would not sell them, and therefore Shares would not be readily available for redemption.⁸³ This claim is unsupported. There is no evidence in the record to suggest that investors holding the Shares will

⁸⁰ See V&F September 10 Letter, supra note 6, at 4; V&F July 13 Letter, supra note 6, at 7.

⁸¹ Open outcry trading includes, for each metal traded on the exchange, four five-minute sessions taking place around the ring of the exchange (each such session, a "ring"). See Notice, supra note 3, 77 FR at 38355.

⁸² See V&F September 12 Letter, supra note 6, at 5.

⁸³ See V&F September 10 Letter, supra note 6, at 3. See also V&F September 12 Letter, supra note 6, at 4.

be unwilling to sell them, particularly in response to market movements or changes in investor needs.⁸⁴

The Commission believes that the listing and trading of the Shares, as proposed, could provide another way for market participants and investors to trade copper, and could enhance competition among trading venues. Further, the Commission believes that the listing and trading of the Shares will provide investors another investment alternative, which could enhance a well-diversified portfolio. By broadening the securities investment alternatives available to investors, the Commission believes that trading in the Shares could increase competition among financial products and the efficiency of financial investment.

2. Source of Copper Used to Create Shares

The commenter asserts that the global supply of copper available for immediate delivery, and eligible to be used to create Shares, consists almost exclusively of copper already under LME or COMEX warrant, and therefore the commenter believes that Shares would be created primarily using copper already under LME or COMEX warrant.⁸⁵ The commenter states that the size of the market for copper available for immediate delivery is small relative to the size the commenter expects the Trust to attain, asserting that there are only 240,000 metric tons available

⁸⁴ The commenter provides a chart that it says shows the number of shares outstanding for the SPDR Gold Trust and the iShares Silver Trust, and states that “[i]n spite of price volatility in the market there has been very little volatility in the aggregate number of shares listed.” See V&F September 12 Letter, supra note 6, at 4. The commenter asserts that if the same occurs in relation to the Shares, it would pose “a substantial risk to the unit redemption process.” See id. The Commission does not believe this chart supports the commenter’s claim that Shares would be unavailable for redemption. Rather, the Commission believes the chart reveals that redemptions of shares of those other trusts did occur, as evidenced by the data showing that the number of shares outstanding in those trusts has increased and decreased over time. Accordingly, the Commission believes that this data does not show investors will not redeem their Shares, as the commenter claims.

⁸⁵ See V&F July 18 Letter, supra note 4, at 2; and V&F September 27 Letter, supra note 6, at 2.

on the LME, with an additional 60,000 metric tons available on the COMEX, and projects that the Trust would remove as much as 121,200 metric tons from the market of copper available for immediate delivery.⁸⁶ The commenter also asserts that the Trust would be funded with copper on warrant in the United States, which would result in a shortage of copper in the United States.⁸⁷ The commenter further urges that the Commission consider collectively the supply impacts of the iShares Trust and the JPM Copper Trust.⁸⁸

In contrast, the Sponsor believes that there are very substantial copper inventories available outside of the LME and COMEX that are deliverable on a short-term basis and that could be used to fund the Trust.⁸⁹ The Sponsor states that the Trust will accept creations using

⁸⁶ See V&F July 18 Letter, supra note 4, at 1. How the commenter measures the projected size of the Trust is discussed infra in Section III.A.3.

⁸⁷ See V&F July 18 Letter, supra note 4, at 4.

⁸⁸ The commenter asserts that the collective impact of the iShares Trust and the JPM Copper Trust could result in the removal of 183,000 metric tons of copper from the market, or 63% of the copper available in LME and COMEX warehouses. See id. at 1. For the reasons discussed in Section III.A, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery. The Commission also notes that, in approving the listing and trading of shares of the JPM Copper Trust, the Commission explained why it does not believe that the listing and trading of those shares is likely to disrupt the supply of copper available for immediate delivery. See JPM Order, supra note 6, 77 FR 75468, 75473-77. Similarly, the Commission does not believe that the trusts, considered collectively, are likely to disrupt the supply of copper available for immediate delivery.

⁸⁹ See BlackRock Letter, supra note 6, at 2. The Sponsor asserts that “[d]uring years when the refined copper market is in a deficit copper fabricators and other end users can consume supplies from warehouses [sic] stocks held by producers, consumers, merchants and traders, governments, and exchange warehouses.” See BlackRock Letter, supra note 6, at Exhibit B. But see V&F September 12 Letter, supra note 6, at 3 (“The only other theoretical source of ETF feedstock copper is current off-warrant stock held by investors, assuming such stock even exists. It is possible that hoarding of copper outside of China has been taking place to the possible benefit of such holders upon commencement of physically backed copper ETF unit creation. We are however unaware of any such inventory.”)

both copper already held in, as well as warrantable copper newly delivered to, LME-approved warehouses of the Custodian.⁹⁰

The Commission believes that there is significant uncertainty about the locations from which copper will be purchased to create Shares.⁹¹ Based on the description of the Trust in the proposed rule change, authorized participants and their customers will choose what eligible copper to deposit with the Trust. As discussed further below,⁹² the Commission also believes that the amount of copper that the Trust will hold is uncertain.⁹³

However, even assuming that authorized participants will need to remove copper from LME warrant to deposit the copper into the Trust, as discussed above, the Commission believes

⁹⁰ See BlackRock Letter, supra note 6, at 2. Not all of the approved warehouses are in the United States. See Notice, supra note 3, 77 FR at 38356 n.23.

⁹¹ The Sponsor provided data estimating that total worldwide warrantable copper supply was 2.926 million tons as of July 2012, of which 1.358 million tons were considered to be “liquid”; and of the 1.358 million tons of “liquid” stock, 434,105 tons are held in LME, COMEX, and SHFE warehouses. See BlackRock Letter, supra note 6, at 2 (citing Metal Bulletin Research, “Independent Assessment of Global Copper Stocks,” August 22, 2012). This leaves 923,895 tons of liquid stock that is not held in LME, COMEX, or SHFE warehouses. The data provided by the Sponsor is substantially similar to data referenced in the JPM Order. See JPM Order, supra note 6, 77 FR at 75475. The differences between the sets of data appear to be a function of rounding and the inclusion of copper held in SHFE warehouses as part of the liquid stock held in exchanges in the data provided by the Sponsor of the iShares Trust.

The Sponsor asserts that “[t]he large size of the total copper market as compared to exchange inventories belies the assertion that only exchange inventories will be available for creations into the Trust.” See id. In contrast, the commenter states that “[e]xcept for copper that may be stored in bonded warehouses in China, all such copper is, as far as we know, subject to long-term supply contracts and is ‘liquid,’ only in the sense that it is en route to fabricators around the world.” V&F September 27 Letter, supra note 6, at 2. The Commission believes that it is plausible that some portion of the estimated 923,895 metric tons of liquid copper inventory identified by the Sponsor currently would be available for authorized participants to use to create Shares.

⁹² See infra Section III.A.3.

⁹³ The Commission drew the same conclusion regarding the size of the JPM Copper Trust. See JPM Order, supra note 6, 77 FR 75468, 75476–77.

that the Trust's copper will remain available for immediate delivery to consumers and participants in the physical markets.⁹⁴ Accordingly, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery.

3. Growth of the Trust

The commenter states it is reasonable to expect that the Trust would sell all of the Shares covered by the Registration Statement in the three months after the registration becomes effective because of: (1) what the commenter characterizes as the Sponsor's stated desire to remove enough copper from the market for copper available for immediate delivery to cause an artificial rise in price and cover the monthly costs of storage; (2) the commenter's view that there is a very limited quantity of copper available for immediate delivery to accomplish the Trust's objective; and (3) the increase in copper prices in the three months following October 2010, when the iShares Trust, JPM Copper Trust, and ETFS Physical Copper were announced.⁹⁵ The commenter also asserts that the copper supply is inelastic and that supply, therefore, is unlikely to increase fast enough to account for the increased demand that the commenter believes would be unleashed by the creation and growth of the Trust.⁹⁶ The commenter asserts that the Trust

⁹⁴ See supra Section III.A.1.

⁹⁵ See V&F August 24 Letter, supra note 6, at 20. ETFS Physical Copper is a trust that holds copper under LME warrant; its shares are traded on the London Stock Exchange and Deutsche Börse. See http://www.etfsecurities.com/en/updates/document_pdfs/ETFS_Physical_Industrial_Copper_Fact_Sheet.pdf. A discussion of the effect of ETFS Physical Copper on the price of copper is included below. See infra Section III.B.

⁹⁶ See V&F May 9 Letter, supra note 6, at 5. See also V&F September 12 Letter, supra note 6, at 2 ("In the short term, any resulting price appreciation from copper-backed ETF share owners will not affect mine production and may minutely benefit refined production, to the extent that higher copper prices encourage additional scrap recovery and processing. The copper ETF is unlikely to affect the supply of copper from copper refineries in a 0 -

would hold as much as 121,200 metric tons of copper if the Sponsor sells all of the Shares it seeks to register pursuant to the Registration Statement.⁹⁷

The Sponsor argues that it is not possible to extrapolate the ultimate size of the Trust from the number of Shares initially registered because the Trust may not issue any Shares if it is unsuccessful, or the Trust may need to file additional registration statements if it is very successful.⁹⁸ The Sponsor also argues that prior experience of other existing commodity-based trusts contradicts the commenter's assertions;⁹⁹ specifically, the Sponsor states that it took over two years to sell the shares initially registered for the SPDR Gold Trust and ETFS Physical Platinum and one year to sell the shares initially registered for the iShares Silver Trust.¹⁰⁰

As a preliminary matter, as the Sponsor pointed out, the commenter appears to conflate the amount of copper held by the Trust with the number of Shares issued. When commodity-based trusts redeem shares, those redeemed shares do not get put "back on the shelf"; once securities are redeemed, the issuer cannot resell securities of the same amount unless there is either sufficient capacity left on the registration statement (i.e., enough registered securities to cover the new issuance of shares by the issuer) or unless a new registration statement is filed to register the offer and sale of the securities.¹⁰¹ Accordingly, 12,120,000 issued Shares will correspond to 121,200 metric tons of copper held by the Trust only if authorized participants do

12 month timeframe.""). The commenter states that, in the longer term, copper miners are likely to respond to price signals and increase production. See V&F August 24 Letter, supra note 6, at 28.

⁹⁷ See V&F July 18 Letter, supra note 4, at 1.

⁹⁸ See BlackRock Letter, supra note 6, at 3.

⁹⁹ See id.

¹⁰⁰ See id. The Sponsor also notes that ETFS Physical Palladium has yet to deplete the shares initially registered in December 2009. See id.

¹⁰¹ See Sections 5 and 6 of the Securities Act, 15 U.S.C. 77e and 15 U.S.C. 77f, respectively.

not redeem any Shares.¹⁰² Based on the existence of the arbitrage mechanism of the Trust,¹⁰³ which is common to many exchange-traded vehicles, the Commission believes it is very unlikely that no Shares will be redeemed.

The Commission believes that the amount of copper held by the Trust will depend on investor demand for the Shares and the extent to which authorized participants fulfill such demand by exchanging copper for Baskets of Shares and do not redeem issued Shares. Investor demand for the Shares is currently unknown. The Commission notes that ETFS Physical Copper has not grown to a substantial size since its inception.¹⁰⁴

The commenter also predicts that copper supply will not increase fast enough to accommodate what he views as the new demand that will be created by the Trust. The Commission believes that the commenter has not provided evidence to support this projection. Data submitted by the commenter provides that the global supply of refined copper has increased every year since 2000 – except 2002 and 2003 – and in those years where supply increased, in all but one year (2009), it increased by more than the amount of copper that the commenter predicts

¹⁰² The Commission drew a similar conclusion regarding the size of the JPM Copper Trust. See JPM Order, supra note 6, 77 FR 75468, 75476 (“6,180,000 issued Shares will correspond with 61,800 metric tons of copper held by the [JPM Copper Trust] only if authorized participants do not redeem any Shares”).

¹⁰³ The arbitrage mechanism allows authorized participants to create and redeem Shares, and is designed to align the secondary market price per Share to the NAV per Share. See, e.g., BlackRock Letter, supra note 6, at 7 n.32.

¹⁰⁴ According to the commenter, on December 17, 2010 (one week after the product was launched), ETFS Physical Copper held 1,445.4 metric tons of copper, and on August 3, 2012, it held 1,763.7 metric tons of copper, although there have been periods where ETFS Physical Copper has held greater quantities of copper, reaching as high as 7,072.9 metric tons of copper in March and April of 2012. See V&F August 24 Letter, supra note 6, at 15.

the iShares Trust and the JPM Copper Trust will hold collectively.¹⁰⁵ Further, data provided by the commenter project that production will increase through 2016 in amounts that also exceed – and in most years greatly exceed – the amount of copper that the commenter predicts the iShares Trust and the JPM Copper Trust will hold collectively.¹⁰⁶

As discussed above, the Commission believes that copper held by the Trust will be available for immediate delivery.¹⁰⁷ However, even assuming that the Trust's copper will be unavailable for immediate delivery, the Commission believes that the commenter has not supported his predictions that the Trust will grow so quickly, and that the supply of copper will not increase sufficiently, such that that the Trust will significantly disrupt the supply of copper available for immediate delivery.

4. Other Physical Commodity Trusts

The commenter admits that the introduction of commodity-based trusts that hold other metals had virtually no impact on the available supply, but asserts that these other metals – gold, silver, platinum, and palladium – are fundamentally different because they have traditionally been held for investment purposes and currently are used as currency, and that, as a result, there were ample stored sources available to fund commodity-based trusts overlying those metals.¹⁰⁸ The commenter asserts that copper, in contrast, generally is not held as an investment, but rather is used exclusively for industrial purposes, with the annual demand generally exceeding the

¹⁰⁵ See id. at 2.

¹⁰⁶ See id. (providing data indicating that global refined copper production is projected to increase by 519,000 metric tons in 2012; 1,603,000 metric tons in 2013; 1,195,000 metric tons in 2014; 1,091,000 metric tons in 2015; and 375,000 metric tons in 2016).

¹⁰⁷ See supra Section III.A.1.

¹⁰⁸ See V&F May 9 Letter, supra note 6, at 2.

available supply, and, therefore, believes that the introduction of the Trust would impact supply.¹⁰⁹

In response, the Sponsor states that while gold is used primarily as a currency equivalent and perhaps silver is as well, “there is little plausible reason to regard platinum and palladium as currency equivalents in a manner that copper is not;”¹¹⁰ the Sponsor states that silver, platinum, and palladium are used primarily for industrial purposes.¹¹¹ The Sponsor also asserts that copper trading on the OTC market and futures exchanges “clearly demonstrates that copper is utilized for investment purposes and is viewed by the investment community as an investable asset.”¹¹²

Given the industrial usage of silver, platinum, and palladium as compared to copper,¹¹³ the Commission believes that it is reasonable to project that any impact of the listing and trading

¹⁰⁹ See V&F May 9 Letter, supra note 6, at 2–3. The Levin Letter, which the commenter attached to the V&F July 18 Letter, states that because copper is very expensive to store and difficult to transport, relative to precious metals, copper is not currently held for investment purposes, and predicts that holding copper for investment purposes will have a significantly greater impact on the copper market than the precious metals commodity-based trusts had on their markets and the broader economy. See Levin Letter, supra note 6, at 7.

¹¹⁰ See BlackRock Letter, supra note 6, at 7.

¹¹¹ See id. at 7–8.

¹¹² See id. at 8. For example, the Sponsor cites data showing that non-commercial market participants trading copper futures on the COMEX accounted for, on average, 40% of total reported copper positions in the first half of 2012, which the Sponsor suggests is similar to the non-commercial market participation in the precious metals markets. See id. at 8 n.35.

¹¹³ In the Order Instituting Proceedings, the Commission asked for comment regarding how much gold, silver, platinum, and palladium has been used for investment and industrial purposes in each of the last 10 years. See Order Instituting Proceedings, supra note 5, 77 FR 48181, 48187. In response, the Sponsor stated that silver, platinum, and palladium are used “primarily for industrial purposes.” BlackRock Letter, supra note 6, at 7–8. The Sponsor also provided data to support its contention that the investment community regards copper – like gold, silver, platinum, and palladium – as an investable asset. See id. While declining to provide data regarding the industrial usage of silver, the commenter presented evidence that gold, platinum, and palladium are put to industrial

of the Shares will not be meaningfully different than that of the listing and trading of shares of these other commodity-based trusts due solely to the nature of the underlying commodity markets. In any event, the Commission's analyses above in Sections III.A.1-3 are the primary bases for the Commission's belief that the listing and trading of the Shares is not likely to disrupt the supply of copper available for immediate delivery. The non-impact of those other trusts on the supplies in the underlying precious metals markets is consistent with this view, but it is not a significant factor underlying it.

B. The Trust's Impact on the Price of Copper

Due to what he predicts will be a rapid growth of the Trust, the commenter believes a substantial portion of the supply of immediately available LME-warranted copper would be removed from the market,¹¹⁴ which would drive up the price of copper.¹¹⁵ As noted above, the commenter estimates that the iShares Trust, which would hold up to 121,200 metric tons of copper, and the JPM Copper Trust, which would hold up to 61,800 metric tons of copper, collectively would hold approximately 63% of the copper available in LME and COMEX warehouses, which the commenter asserts is the only refined copper generally available for immediate delivery.¹¹⁶ The commenter concludes that the removal of so much copper from LME and COMEX warehouses will lead to artificially inflated prices.¹¹⁷ The commenter also

use. See V&F August 24 Letter, supra note 6, at 18-19. Further, in approving the listing and trading of shares of the JPM Copper Trust, the Commission similarly noted the industrial use of silver, platinum, and palladium. See JPM Order, supra note 6, 77 FR 75468, 75477.

¹¹⁴ See supra Section III.A.1.

¹¹⁵ See V&F May 9 Letter, supra note 6, at 5. See also V&F September 12 Letter, supra note 6, at 4.

¹¹⁶ See V&F July 18 Letter, supra note 4, at 1.

¹¹⁷ See id. at 1-2.

states: “[t]he LME settlement price is axiomatically affected by the quantity of copper on warrant . . . because the quantity on warrant defines how much copper is eligible to be delivered against a cash contract, i.e. it is the total supply that is available when setting the settlement price.”¹¹⁸ The commenter further asserts that the launch of the UK-listed ETFS Physical Copper security and announcements about the proposed copper trusts in the United States were part of the cause of a copper price run up,¹¹⁹ and predicts that the price increases for copper would be especially dramatic in the U.S., where copper currently is relatively inexpensive.¹²⁰ The commenter further argues that the listing and trading of the Shares would “risk endangering the price discovery functions of the LME and [COMEX].”¹²¹

In contrast, the Sponsor asserts that copper prices are a function of demand and supply, as well as other factors, and that it would be difficult to predict the impact of the introduction of an exchange-traded vehicle backed by physical copper on copper prices given the many variables that exist.¹²² The Sponsor argues that it is impossible to predict demand for the Shares; the future behavior of investors and copper market participants; the supply and demand dynamics of the copper market outside of the Trust; or fundamental economic factors that impact demand for copper.¹²³ In addition, the Sponsor asserts that data show that there is a weak correlation

¹¹⁸ See V&F August 24 Letter, supra note 6, at 7.

¹¹⁹ See id. at 16.

¹²⁰ See V&F July 18 Letter, supra note 4, at 4.

¹²¹ See id. The commenter does not explain why he believes the listing and trading of the Shares would endanger the price discovery functions of the LME and COMEX.

¹²² See BlackRock Letter, supra note 6, at 5.

¹²³ See id.

between LME copper prices and global supply and demand balances.¹²⁴ The Sponsor also states its disagreement with contentions that any increase in copper prices that results from the listing and trading in the Shares will be especially dramatic in the U.S.¹²⁵ According to the Sponsor, “[t]here exists widespread lack of consensus in the marketplace regarding where authorized participants will have the most ready access to copper and where an authorized participant will be economically incentivized to deliver copper in connection with a creation of Shares of the Trust.”¹²⁶

As discussed above,¹²⁷ the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery, which is what the commenter predicts would increase the price of copper. However, even if the supply of copper under LME warrant would decrease because previously warranted copper were transferred to the Trust, for the reasons discussed below, the Commission does not believe that lower LME inventory level by itself will increase the LME Bid Price (or any other price of copper).

¹²⁴ See *id.* The Sponsor provided charts showing correlation coefficients between monthly and annual changes in copper prices and copper supply/demand balance. As discussed below, Commission staff performed its own analyses to look for evidence of price impact related to changes in copper inventory levels and fund flows. See *infra* note 128.

¹²⁵ See BlackRock Letter, *supra* note 6, at 5 n.26. See also *supra* notes 91–93 and accompanying text (stating the Commission’s belief that there is significant uncertainty about the locations from which copper will be purchased to create Shares).

¹²⁶ See BlackRock Letter, *supra* note 6, at 5 n.26.

¹²⁷ See *supra* Section III.A.

To analyze the potential impact of changes in the LME inventory level on changes in the LME Bid Price, Commission staff performed two regression analyses.¹²⁸ The first analysis was a linear regression of daily copper price changes, using five years of daily data from 2007–2012, against the following explanatory variables: the change in LME copper inventory from the previous day (*i.e.*, the lagged change in LME copper inventory), and the changes in spot prices of nickel, tin, gold, silver, platinum, and palladium, and the S&P 500, VIX index, and the China A-Shares index returns. The results indicate that LME copper inventories do not appear to have any independent statistical effect on prices.¹²⁹

Commission staff also performed a similar regression analysis using monthly data from January 2000 until June 2012 obtained from the International Copper Study Group (“ICSG”) to determine whether a relation between copper prices and LME inventories exists over a longer time horizon. The second analysis was a linear regression of monthly copper price changes against the following explanatory variables: the previous month’s change in LME copper inventory, total exchange copper inventory (*i.e.*, combined inventory from LME, COMEX, and SHFE), non-exchange copper inventory (*i.e.*, inventory from merchants, producers, and consumers), and spot price changes for nickel, tin, and platinum. This analysis again indicates that LME inventories specifically do not appear to have any independent statistical effect on prices.¹³⁰

¹²⁸ See Memorandum to File, dated November 6, 2012, from the Division of Risk, Strategy, and Financial Innovation (“RF Analysis”). The RF Analysis was designed to look for evidence of price impact related to changes in copper inventory levels and fund flows.

¹²⁹ See *id.* at 10.

¹³⁰ See *id.* at 11.

Based on these analyses, even if the listing and trading of Shares were to result in the removal of copper on warrant from LME inventories, the Commission does not believe that such a supply reduction will by itself directly impact the LME Bid Price (or any other price of copper). Although total exchange inventories, in contrast to LME inventories, appear to have some effect on monthly copper prices in this linear regression analysis, the coefficient estimate associated with total exchange inventories indicates that copper prices should decrease when copper is taken off-exchange.¹³¹

Commission staff also performed Granger causality analyses¹³² to test the causal effect the holdings of other commodity-based trusts historically have had on the prices of their underlying commodities. Specifically, to evaluate whether the introduction of the SPDR Gold Trust, iShares Silver Trust, ETFs Platinum Trust, ETFs Physical Palladium Shares, and ETFs Physical Copper had an impact on the return of the metals underlying those trusts, using monthly data from their inception until September 2012, Commission staff examined flows into these funds and subsequent changes in underlying prices over time.¹³³ This analysis revealed no

¹³¹ See *id.* The commenter asserts that Commission staff “included likely heteroskedastic variables of other LME and LBMA metals prices in the regression, which may in the least, have undermined the cogency of the coefficient pertaining to LME copper inventory levels.” See V&F November 16 Letter, *supra* note 6, at 1–2. There is no evidence in the record of the existence of heteroskedasticity in these variables that would affect the results of the RF Analysis.

¹³² Granger causality is a statistical concept of causality that is based on prediction. If a signal X “Granger-causes” a signal Y, past values of X should contain information that helps predict Y above and beyond the information contained in past values of Y alone. See RF Analysis, *supra* note 128, at 3 n.9.

¹³³ See *id.* at 2–9. Because ETFs Physical Copper is small relative to the potential size of the Trust – holding only approximately 2,000 metric tons of copper as of August 2012 – Commission staff augmented its analysis by comparing asset growth of SPDR Gold Trust, iShares Silver Trust, ETFs Platinum Trust, and ETFs Physical Palladium Shares with changes in spot prices for the underlying metals.

observable relation between the flow of assets and subsequent price changes of the underlying metal prices.¹³⁴ Commission staff repeated this analysis on a daily frequency for iShares Silver Trust, ETFS Platinum Trust, ETFS Physical Palladium Shares, and ETFS Physical Copper.¹³⁵ Again, Commission staff found no evidence that fund flows were statistically related to subsequent changes in the underlying metals prices. Given the industrial usage of silver, platinum, and palladium as compared to copper,¹³⁶ the Commission believes that it is reasonable to project that any impact of the listing and trading of the Shares will not be meaningfully different from that of the listing and trading of shares of other commodity-based trusts due solely to the nature of the underlying commodity markets.

In connection with the proposed rule change, the Commission received one comment letter regarding the Commission staff's analysis.¹³⁷ This letter includes comments on both the substantive conclusions reached as well as the methodology used. As described further below, the Commission believes the staff's analysis reasonably evaluates whether historical price impacts are associated with changes in copper supply, one of the commenter's contentions.

The commenter states that the Granger causality analyses appear on their face to be incongruous.¹³⁸ The commenter asserts that Commission staff appears to be comparing assets under management to the respective price of the commodity held by the trust, and provides a chart that the commenter purports to show that there is a 92% correlation between the rolling

¹³⁴ See id. at 4.

¹³⁵ Daily asset data was not available for the SPDR Gold Trust within the Commission's existing data sources.

¹³⁶ See supra note 113.

¹³⁷ See V&F November 16 Letter, supra note 6.

¹³⁸ See id.

monthly change in NAV of the iShares Silver Trust and the silver price.¹³⁹ The Granger causality analysis from Tables 1 and 2 of the RF Analysis examines the relation between dollar flows into the funds and subsequent changes in the prices of the underlying metals. It does not examine the relation between changes in assets under management, which are driven by both flows and returns of the underlying, and the concurrent change in the prices of the underlying metals. Therefore, the Commission believes that the relation between the change in NAV for these funds and the concurrent change in the prices of the underlying metal is irrelevant for the purposes of the cited analysis.

The commenter also asserts that the Commission staff should have examined alternative price variables in its analysis. The commenter suggests that Commission staff should have examined the cash to three month time spread and provides its own analysis, which the commenter concludes demonstrates a strong relationship between LME inventory changes and the cash to three month time spread.¹⁴⁰ The commenter states that if the iShares Trust and the JPM Copper Trust were to sell all of the shares registered through their respective registration statements, the cash to three month time spread “would blow out to a massive backwardation, potentially approaching record levels, making it impossible for copper consumers to finance their inventory.”¹⁴¹ The analysis provided by the commenter, however, does not provide the

¹³⁹ See *id.* at 6–7.

¹⁴⁰ See *id.* at 3.

¹⁴¹ See *id.* The commenter further states that the mechanics of unit creation for commodity-based trusts backed by precious metals are fundamentally different than those for commodity-based trusts backed by industrial metals, citing the lack of copper in unallocated accounts that could be used in creating Shares. According to the commenter, neither producers nor consumers carry meaningful inventories of copper, which would require authorized participants to acquire copper from LME and COMEX inventories to create Shares. The commenter asserts that a backwardation would be necessary to trigger

significance level of any test statistics associated with these findings, which would provide an assessment of the likelihood that relations were observed in the data by statistical chance.

Without an assessment of statistical significance, it is difficult to conclude whether observed relations in the commenter's data are systematic or anecdotal. Furthermore, an assessment of the statistical significance of these results is not possible without knowing which alternative tests of the hypothesis were also examined and reported. The commenter did not provide any information about which alternative tests were examined, if any. In addition, the commenter's analysis appears to analyze inventory changes against concurrent price changes. The Commission does not believe that such a concurrent analysis can isolate the effect of inventory changes on prices because such an analysis cannot distinguish whether price changes lead to inventory changes or vice versa.

Further, as discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery,¹⁴² and believes that the commenter has not supported its prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery.¹⁴³

The commenter also states that Commission staff should have considered the impact on locational premia.¹⁴⁴ The commenter asserts that the relationship between COMEX inventory

the movement of copper to authorized participants, and that consumers would have to compete for this metal or lend to authorized participants. See id. at 4.

¹⁴² See supra Section III.A.

¹⁴³ See supra Section III.A.3.

¹⁴⁴ See V&F November 16 Letter, supra note 6, at 3, 5. The commenter refers to "physical" premia in describing the manner in which the Trust will value its copper holdings: "Another market price that the SEC could have done well to look into is the physical

and locational premia in the U.S. is strong, and provides data that the commenter suggests shows that when COMEX inventories are at anemic levels, locational premia can be very high (above \$200 per metric ton).¹⁴⁵ Thus, the commenter argues that if the Trust results in the removal of inventory from LME and COMEX warehouses, the associated market impact will be much higher locational premia.¹⁴⁶ The analysis provided by the commenter, however, does not provide the significance level of any test statistics associated with these findings.¹⁴⁷ In addition, the commenter's analysis appears to analyze inventory changes against concurrent price changes. The Commission does not believe that such a concurrent analysis can isolate the effect of inventory changes on prices, as discussed previously.¹⁴⁸ In addition, according to data provided by the commenter, locational premia typically appear to be no greater than 2%.¹⁴⁹ Therefore, the Commission believes the degree to which such premia can be influenced is limited. Further, even assuming that copper was taken off LME warrant to be deposited into the Trust, the Commission believes that the Trust's copper will remain available for immediate delivery to

premia, especially in light of the [Trust's] implied objective to value metal . . . on an in-situ basis, taking into account regional physical price variations." See *id.* at 5. Consistent with this description, the Commission refers to locational premia rather than physical premia. The Trust will value its copper using the LME Bid Price, and unlike the JPM Copper Trust, will not take into account locational premia. See *infra* note 216.

¹⁴⁵ See V&F November 16 Letter, *supra* note 6, at 3, 5.

¹⁴⁶ See *id.*

¹⁴⁷ See *supra* text following note 141.

¹⁴⁸ See *supra* text following note 141.

¹⁴⁹ See V&F August 24 Letter, *supra* note 6, at 11–12. The data provided relates to locational premia for warehouses that would be used to store copper held in the JPM Copper Trust, which are different from the warehouses that would be used by the iShares Trust. As the locational premia provided do not reflect all of the cities in which the iShares Trust's warehouses will be located, the Commission evaluated the data only to understand the significance of locational premia as compared to copper prices.

consumers and participants in the physical markets,¹⁵⁰ which will limit the possible effect on locational premia.

The commenter also believes that Commission staff erred by using lagged daily LME stock data. The commenter asserts that because there are “many consecutive and non-consecutive days that LME stock levels and LME traded metals do not change while LME prices do . . . , running a daily LME stock series through a regression analysis will yield statistically weak results in most cases.”¹⁵¹ The commenter states that LME inventory data for the prior day is released at 9:00 a.m. in the London trading day, thereby giving the market a full trading day to digest the data.¹⁵² The lagged daily LME inventory change used in the RF Analysis in fact was regressed against the change in copper prices for the day on which this information was released at 9:00 a.m.¹⁵³

In addition, the commenter asserts that there is not a strong statistical relationship between lagged copper inventories and contemporaneous copper prices because the LME represents the copper market’s “warehouse of last resort.”¹⁵⁴ According to the commenter, when LME stocks are drawn down or added to, market participants “should have already fully

¹⁵⁰ See supra text accompanying note 94.

¹⁵¹ See V&F November 16 Letter, supra note 6, at 2.

¹⁵² See id. at 5–6.

¹⁵³ To confirm this, Commission staff reconciled a sample of historical LME stock data from the LME website (<http://www.lme.com/dataprices.asp>) and the Bloomberg LME stock data used in the RF Analysis. Additional reconciliation was done against historical LME copper warehouse stock data found at <http://www.metalprices.com/historical/database/copper/lme-copper-warehouse-stocks>.

¹⁵⁴ See V&F November 16 Letter, supra note 6, at 6.

discounted the fundamental information contained within that particular stock move.”¹⁵⁵ This assertion seems consistent with a hypothesis that price changes precede inventory changes, which is contrary to the commenter’s assertions that inventory changes precede price changes.¹⁵⁶ The Commission believes that this argument provides further weight to the Commission staff’s finding that the LME copper inventory changes do not appear to precede price changes. In sum, the Commission believes the daily periods used in the RF Analysis were reasonable and appropriate because evidence of the relationship between inventories and prices would likely be seen at daily intervals.¹⁵⁷

The commenter suggests that, instead of looking at lagged daily LME stock data, the Commission staff should have looked at the 30 largest quarter-to-quarter LME inventory declines against changes in the LME cash price over the same time periods. The commenter asserts that such analysis, which the commenter submitted, shows that for the 30 largest observations, the median stock decline was 28.6%, and that the LME cash price rose in 25 out of 30 observations, for a median increase of 10.5%.¹⁵⁸ The commenter states that these findings

¹⁵⁵ See *id.* (stating that LME stocks are drawn down by consumers because neither producers nor traders have material to sell to consumers and consumers are willing to go through the logistical hassle of being long LME warrants, swapping the warrants for their preferred brands, and transporting the copper to their individual plant, and that “[i]t is nonsensical to assume that the trading community has not already discounted this information into the LME price”). But see *id.* at 2 (“Intuitively it doesn’t make sense to argue that in a physically settled exchange system that fungible stock levels don’t exert some statistically robust influence on metals prices.”).

¹⁵⁶ See *supra* notes 115–120 and accompanying text.

¹⁵⁷ In particular, LME inventory data for the previous day is released on the morning of each trading day so that prices are able to react over the course of that day. Moreover, the use of the monthly lag period confirmed the results of the daily analysis and allowed for the examination of the effect of non-exchange copper inventories for which only monthly data were available within the Commission’s existing data sources.

¹⁵⁸ See V&F November 16 Letter, *supra* note 6, at 2.

suggest that if LME and COMEX inventories were to decline by more than 50%, which the commenter asserts could happen if the iShares Trust and the JPM Copper Trust were to sell all of the shares registered through their respective registration statements, prices could increase 20–60% in the quarter that the LME and COMEX inventory decline occurs.¹⁵⁹

The analysis provided by the commenter, however, does not provide the significance level of any test statistics associated with these findings.¹⁶⁰ In addition, the commenter's analysis appears to analyze inventory changes against concurrent price changes. The Commission does not believe that such a concurrent analysis can isolate the effect of inventory changes on prices.¹⁶¹ Further, as discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery,¹⁶² and believes that the commenter has not supported his prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery.¹⁶³

Finally, the commenter asserts that the listing and trading of the Shares could change the fundamental structure of the copper market, and that Commission staff should “ponder” such a structural change in the copper market.¹⁶⁴ The commenter states that the ex-post implications for copper outright prices in a market that involves listing and trading of the Shares cannot be accurately inferred from what the commenter characterizes as “an overly-simplistic ex-ante

¹⁵⁹ See id.

¹⁶⁰ See supra text following note 141.

¹⁶¹ See supra text following note 141.

¹⁶² See supra Section III.A.

¹⁶³ See supra Section III.A.3.

¹⁶⁴ See V&F November 16 Letter, supra note 6, at 3–4.

statistical analysis of LME/global inventories and LME settlement prices.”¹⁶⁵ According to the commenter, never before has it been possible for financial players to “lock up” significant amounts of LME and COMEX inventory in a short period of time and remove that copper from the market.¹⁶⁶ Further, while the commenter indicates that “[o]verall historically the level of LME inventories has been generally indicative of the trading environment, not a driver of the metal price per se,” the commenter believes creation of the Trust could change the role of LME inventories from being a function of the fundamentals to being a fundamental, and “arguably THE fundamental, as has become the case in precious metals.”¹⁶⁷

The Commission believes that such assertions are speculative and unsupported by the record. As discussed in detail throughout this order, the Commission does not believe that the listing and trading of the Shares is likely to alter the supply and demand fundamentals of the copper market. Further, as discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery¹⁶⁸

¹⁶⁵ See id. at 4.

¹⁶⁶ See id. at 3–4, 8.

¹⁶⁷ See id. at 6 (emphasis in original). The commenter states that exchange-traded vehicles backed by silver, platinum, and palladium have become the largest single holder of those metals in a remarkably short period of time (less than eight years) and that exchange-traded vehicles backed by gold are eclipsed at a national level only by the U.S. and Germany. According to the commenter, while the cumulative impact of exchange-traded vehicles on prices has dissipated as these products have matured, “the reality is that they have become a key fundamental in terms of analyzing the precious metals markets,” and have become the main asset class. See id. at 7. The commenter asserts that it is not certain, and that it should not be assumed, that potential investors in the Trust will “be as sticky as they have been in gold and silver, and to a lesser degree in platinum and palladium.” See id. The commenter’s “stickiness” argument has been addressed above. See supra Section III.A.1.

¹⁶⁸ See supra Section III.A. Even assuming that the Trust’s copper will be unavailable for immediate delivery, the Commission believes that the commenter has not supported his

and, even assuming that copper was taken off LME warrant to be deposited into the Trust, the Commission believes that the Trust's copper will remain available for immediate delivery to consumers and participants in the physical markets.¹⁶⁹

Because the Commission does not believe that the listing and trading of the Shares, by itself, will increase the price of copper, the Commission also believes that approval of the proposed rule change will not have an adverse effect on the efficiency of copper allocation for industrial uses and will also not have an adverse effect on capital formation for industrial uses of copper.

C. The Trust's Impact on Copper Price Volatility

The commenter asserts that the successful creation and growth of the Trust would make the price of copper, which the commenter states already is volatile, even more volatile.¹⁷⁰

Specifically, the commenter asserts that the successful creation and growth of the Trust, which the commenter believes would substantially restrict supply and increase copper prices, would create a boom and bust cycle in copper prices.¹⁷¹ The commenter predicts that this ultimate sell-off would be quick, and that the expected "dumping" of thousands of metric tons of copper back

prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery. See supra Section III.A.3.

¹⁶⁹ See supra text accompanying note 94.

¹⁷⁰ See V&F May 9 Letter, supra note 6, at 5.

¹⁷¹ See id. But see V&F November 16 Letter, supra note 6, at 8 (stating that if Commission staff were to analyze whether the discrete flow of ounces in and out of exchange-traded vehicles drives underlying metals price, it would likely show that volatility in precious metals is not solely a function of net metal flow in and out of the exchange-traded vehicles). The commenter cites to a statement in the Registration Statement to argue that the Sponsor admits that this boom and bust cycle may occur. See V&F July 18 Letter, supra note 4, at 4 (citing Registration Statement, supra note 15, at 10).

onto the market would depress the price of copper and negatively impact the world economy at large.¹⁷²

In contrast, the Sponsor asserts that it would be difficult to predict the impact of the introduction of an exchange-traded vehicle backed by physical copper on price volatility given that many variables exist.¹⁷³ The Sponsor asserts that the arguments presented in the Levin Letter based on research reports and hearing testimony related to futures and other derivative-based instruments do not demonstrate that an exchange-traded vehicle backed by physical copper would contribute to price volatility.¹⁷⁴ Further, the Sponsor believes that “the physical-backed nature of the Trust may in fact reduce price volatility as the Trust may take up excess supply during times when the market is oversupplied and provide an inventory of metal ready for delivery during times when the market is in a shortage.”¹⁷⁵

The commenter’s prediction that the listing and trading of the Shares would cause a boom and bust is premised upon both the supply and price impacts he predicts. As discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery¹⁷⁶ or increase the price of copper.¹⁷⁷ In addition, this boom and bust prediction is unsupported by any empirical evidence. As a result, the Commission does not believe that the proposed listing and trading of the Shares will impact

¹⁷² More specifically, the commenter states that, because of this predicted boom and bust, mines will go bust and resources will be needlessly misallocated. See V&F August 24 Letter, supra note 6, at 28.

¹⁷³ See BlackRock Letter, supra note 6, at 5. See also supra text accompanying note 123 (discussing the Sponsor’s view of the variables that can impact price volatility).

¹⁷⁴ See BlackRock Letter, supra note 6, at 5–6.

¹⁷⁵ See id. at 6.

¹⁷⁶ See supra Section III.A.

¹⁷⁷ See supra Section III.B.

copper volatility in the manner that the commenter suggests. Further, the Commission does not believe that approval of the proposed rule change will impede the use of copper because the listing and trading of the Shares is not expected to, as discussed above, result in heightened volatility. Therefore, the Commission does not believe that the listing and trading of the Shares will have an adverse effect on the efficiency of copper allocation and capital formation.

D. The Trust's Impact on the Potential to Manipulate the Price of Copper

The commenter sets forth a number of arguments about why the Trust would increase the potential for manipulation of the copper market. The commenter asserts that the Trust, in effect, would introduce so much transparency into the copper market that it would allow the Trust to manipulate, or alternatively provide market participants an effective means to manipulate, the price of copper and thereby the price of the Shares.¹⁷⁸ According to the commenter, investors in the Trust would be able to measure how much impact their collective removal of copper from the supply available for immediate delivery would have on copper prices each day, and could adjust their purchasing strategies accordingly.¹⁷⁹ Therefore, the commenter argues that the increased market transparency would not be in the public interest.¹⁸⁰ Instead, the commenter believes the transparency of the Trust's holdings would provide market participants with critical information about "how much copper needs to be removed on any given day in order to artificially inflate [copper] prices and thus the price of the Trust's shares."¹⁸¹

¹⁷⁸ See V&F May 9 Letter, supra note 6, at 9-10.

¹⁷⁹ See id. at 9.

¹⁸⁰ See id. at 10.

¹⁸¹ See V&F July 13 Letter, supra note 6, at 10. The commenter also states that anyone who knows that market participants are buying LME warrants to create Shares could front-run the creation by buying Shares on the Exchange and profit thereby. See V&F September 12 Letter, supra note 6, at 9. The profitability of such action appears premised upon the

The commenter also predicts that the Trust would make the copper market more susceptible to squeezes and corners by reducing the supply of copper available for immediate delivery.¹⁸² According to the commenter, after a substantial portion of the copper market is deposited in one or more physical copper trusts, the costs of acquiring the remaining inventory would be relatively inexpensive, thus reducing a hurdle to engineering a corner or squeeze.¹⁸³ The Levin Letter, which the commenter attached to the V&F July 18 Letter, also states that such manipulative activities could go undetected by the LME because trusts that hold physical commodities are not subject to any form of commodity regulations; by holding physical copper rather than LME warrants, the Trust would be able to control more of the available supply of copper without triggering LME reporting or rules.¹⁸⁴

The Sponsor does not believe that the presence of the Trust would increase the likelihood of market squeezes because in the Sponsor's view: (1) market squeezes have been occurring in

commenter's belief that the creation of Shares will cause the LME Bid Price, and correspondingly the price of the Shares, to increase. As discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery, which is what the commenter predicts would cause the price of copper to increase. See supra Section III.B. With respect to other types of front-running, the Exchange's surveillance program for the Trust, which is designed in part to identify and deter manipulative activity, is described in Section III.E.

¹⁸² See V&F May 9 Letter, supra note 6, at 1, 10. The Levin Letter, which the commenter attached to the V&F July 18 Letter, describes a squeeze on the copper market as occurring "when a lack of supply and excess demand forces the price upward, and a corner is when one party acquires enough copper to be able to manipulate its price." Levin Letter, supra note 6, at 7. Senator Levin asserts that the Trust will make the copper market more susceptible to squeezes because it could be used by market participants to remove copper from the available supply in order to artificially inflate the price. See id. at 7.

¹⁸³ See V&F September 10 Letter, supra note 6, at 7. The commenter also suggests that mere launch of the Trust could create a corner and squeeze given the relatively small amount of copper on LME warrant.

¹⁸⁴ See Levin Letter, supra note 6, at 7.

the markets since long before the introduction of commodity-based trusts; (2) no evidence has been presented to show that the introduction of the Trust will contribute to a market squeeze; (3) current investors in the physical copper markets, which the Sponsor expects will be the most likely investors in the Trust, are not “speculators in the guise of purchasers’ seeking to create a squeeze on the copper market;” (4) incremental demand from new investors will broaden the investor base in copper, which could reduce the possibility of collusion among market participants to manipulate the copper market; and (5) trading in the Shares would be overseen by the Exchange and the Commission, while the CFTC would police for manipulation in the underlying copper market.¹⁸⁵

The Sponsor also identifies a number of features of the Trust designed to meet the requirements of Section 6(b)(5) of the Act.¹⁸⁶ Specifically, the Sponsor states that “[t]he Trust offers complete transparency through its website, where information on the Trust’s copper holdings as well as additional detailed data regarding the Trust will be available.”¹⁸⁷ In addition, the Trust will provide daily valuations of the Trust’s copper based on that day’s announced LME Bid Price.¹⁸⁸ The Sponsor also expects the Trust’s arbitrage mechanism will facilitate the correction between the Share price and the price of the Trust’s copper.¹⁸⁹

¹⁸⁵ See BlackRock Letter, supra note 6, at 6.

¹⁸⁶ 15 U.S.C. 78f(b)(5).

¹⁸⁷ See BlackRock Letter, supra note 6, at 9. More specifically, the Trust will disclose on its website: (1) for each copper lot held by the Trust, the warehouse location, warehouse identification number, lot number, net weight, and brand; and (2) the order in which lots will be delivered to redeeming authorized participants pursuant to the algorithm. See Amendment No. 2, supra note 9. See also notes 27–28 and accompanying text (describing the Trust’s redemption procedure).

¹⁸⁸ See BlackRock Letter, supra note 6, at 10.

¹⁸⁹ See id.

The Sponsor also argues “that the physical copper market is no more susceptible to manipulation than other existing commodity markets, particularly given the[] many layers of regulatory oversight.”¹⁹⁰ The Sponsor states that (1) trading in the Shares would be subject to the oversight of both NYSE Arca and the Commission, and (2) manipulation of physical copper would be subject to the oversight jurisdiction and enforcement authority of the CFTC.¹⁹¹ The Sponsor also asserts the introduction of exchange-traded vehicles backed by other metals “has not led to any credible evidence of an increase in manipulation of the markets for their underlying metals.”¹⁹²

The Commission does not believe that the listing and trading of the Shares is likely to increase the likelihood of manipulation of the copper market and, correspondingly, of the price of the Shares. Generally, the Commission believes that increased transparency helps mitigate risks of manipulation. For example, in approving the listing and trading of shares of the iShares Silver Trust, the Commission stated that the dissemination of information about the silver shares would “facilitate transparency with respect to the Silver Shares and diminish the risk of manipulation or unfair informational advantage.”¹⁹³ In this case, the Commission believes the transparency that the Trust will provide with respect to its holdings,¹⁹⁴ as well as the

¹⁹⁰ See id. at 6.

¹⁹¹ See id.

¹⁹² See id. While the commenter states that “traders and investors have sought to manipulate silver on at least two occasions,” the commenter does not identify any instances of manipulation tied to exchange-trade vehicles. Nonetheless, the commenter asserts that “[f]undamentally the copper market is much easier to manipulate” based on its reasoning, discussed above. See V&F September 12 Letter, supra note 6, at 8.

¹⁹³ See Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967, 14975 (March 24, 2006) (approving the listing and trading of shares of the iShares Silver Trust).

¹⁹⁴ See supra note 187 and accompanying text.

dissemination of quotations for and last-sale prices of transactions in the Shares and the IIV and NAV of the Trust,¹⁹⁵ all are expected to help reduce the ability of market participants to manipulate the physical copper market or the price of Shares.¹⁹⁶ Also, the Commission believes that the listing and trading of the Shares on the Exchange (and any other national securities exchange that trades the Shares pursuant to unlisted trading privileges)¹⁹⁷ may serve to make the overall copper market more transparent if OTC trading of unreported warehouse receipts shifts to trading Shares on exchanges.¹⁹⁸ In particular, additional information regarding the supply of

¹⁹⁵ See *supra* notes 31–36 and accompanying text.

¹⁹⁶ Further, the Trust is a passive vehicle, and therefore the commenter’s concerns about manipulation by the Trust itself are misplaced.

¹⁹⁷ When a national securities exchange extends “unlisted trading privileges” to a security, it allows the trading of a security that is not listed and registered on that exchange. See Securities Exchange Act Release No. 35637 (April 24, 1995), 60 FR 20891, 20891–92 (April 28, 1995) (adopting rules to reduce the period that exchanges have to wait before extending unlisted trading privileges to any listed initial public offering security). A number of national securities exchanges have rules that allow the extension of unlisted trading privileges to issues such as the Shares. See, e.g., Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR-Phlx-2008-34); Securities Exchange Act Release No. 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR-BATS-2008-004).

¹⁹⁸ Market participants that acquire a large percentage of the Shares must identify themselves to the Commission by filing Schedules 13D or 13G. See 17 CFR 240.13d-1. Specifically, Section 13(d) of the Act, 15 U.S.C. 78m(d), and the rules thereunder require that a person file with the Commission, within ten days after acquiring, directly or indirectly, beneficial ownership of more than five percent of a class of equity securities, a disclosure statement on Schedule 13D, subject to certain exceptions. See 17 CFR 240.13d-1. Section 13(g) and the rules thereunder enable certain persons who are the beneficial owners of more than five percent of a class of certain equity securities to instead file a short form Schedule 13G, assuming certain conditions have been met. Beneficial owners are also required to report changes in the information filed.

In addition, Section 13(f)(1) of the Act and Rule 13f-1 thereunder require every “institutional investment manager,” as defined in Section 13(f)(5)(A) of the Act, that exercises investment discretion with respect to “section 13(f) securities,” as defined in Rule 13f-1, having an aggregate fair market value of at least \$100 million (“Reportable Securities”), to file with the Commission quarterly reports on Form 13F setting forth each

copper will be disseminated, which will enable users of copper to make better-informed decisions. Over the long term, this additional transparency could enhance efficiency in the market for copper and capital formation for participants in this market. In addition, the Commission believes that the listing and delisting criteria for the Shares are expected to help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares.¹⁹⁹

The commenter asserts that serious disruptions in the supply of copper would make corners and squeezes more likely.²⁰⁰ As discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery.²⁰¹ Depending on the size of the Trust though, it is possible that copper holdings may be dispersed across an additional market – *i.e.*, less copper may be held under LME and/or COMEX warrant and more copper may be held by the Trust. However, the availability of inter-market arbitrage is expected to help mitigate any potential increase in the ability of market participants to engage in corners or squeezes as a result of any dispersion of copper holdings across markets (as distinguished from a reduction in the copper supply). For example, if the Trust grows large relative to the market for warrants on the LME, LME market

Reportable Security's name, CUSIP number, the number of shares held, and the market value of the position.

¹⁹⁹ For example, under NYSE Arca Equities Rule 8.201(e)(2)(ii), the Exchange will consider suspending trading in the Shares or delisting the Shares if, following the initial 12-month period following commencement of trading, there are fewer than 50,000 Shares issued and outstanding.

²⁰⁰ See *supra* notes 182–184 and accompanying text.

²⁰¹ See *supra* Section III.A. Similarly, the Commission has recently stated that it does not believe that the listing and trading of shares of the JPM Copper Trust is likely to disrupt the supply of copper available for immediate delivery. See JPM Order, *supra* note 6, 77 FR 75468, 75474.

participants faced with a potential corner or squeeze may acquire Shares, redeem them (through an authorized participant) for LME warrants, and deliver the warrants.²⁰² Further, although the Exchange currently provides for the listing and trading of shares of commodity-based trusts backed by physical gold, silver, platinum, and palladium, the commenter has not identified any evidence that the trading of shares of these commodity-based trusts has led to manipulation of the gold, silver, platinum, or palladium markets.

For the reasons discussed above, the Commission does not believe that the proposed listing and trading of the Shares is likely to render the copper market or the price of the Shares more susceptible to manipulation. Correspondingly, the Commission does not believe that approval of the proposed rule change will impose any burden on competition between participants in the market for copper as it will not provide market participants a greater opportunity to achieve an unfair competitive advantage.

E. Surveillance

The commenter questions whether NYSE Arca's surveillance procedures are adequate to prevent fraudulent and manipulative trading in the Shares. According to the commenter, NYSE Arca's surveillance procedures are not adequate because they are the kind of "garden-variety measures" that are always in place to prevent collusion and other forms of manipulation by traders.²⁰³

NYSE Arca states that its surveillance procedures will be adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of

²⁰² See supra notes 80–82 and accompanying text.

²⁰³ See V&F May 9 Letter, supra note 6, at 10.

Exchange rules and applicable federal securities laws.²⁰⁴ In particular, the Exchange represents the following:

- Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in Commodity-Based Trust Shares must file with the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the Market Maker may have or over which it may exercise investment discretion. No Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by NYSE Arca Equities Rule 8.201.
- In addition, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying copper, copper futures contracts, options on copper futures, or any other copper derivative, through ETP Holders acting as registered Market Makers, in connection with their proprietary or customer trades that they effect on any relevant market.²⁰⁵
- NYSE Arca has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business.²⁰⁶
- With respect to a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange can obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.²⁰⁷
- Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker in the Shares, and its affiliates, to establish,

²⁰⁴ See Notice, supra note 3, 77 FR at 38360. The Exchange also states that its existing surveillances will be augmented with a product-specific review designed to identify potential manipulative trading activity through the use of the creation and redemption process. See Amendment No. 1, supra note 7.

²⁰⁵ See Notice, supra note 3, 77 FR at 38360. See also Arca September 14 Letter, supra note 6, at 2-3.

²⁰⁶ See Amendment No. 1, supra note 7.

²⁰⁷ See id.

maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).²⁰⁸

- NYSE Arca may obtain trading information via ISG from other exchanges that are members of the ISG, including the COMEX.²⁰⁹ The Exchange also states that it has entered into a comprehensive surveillance sharing agreement with LME that applies to trading in copper and copper derivatives.²¹⁰

Further, in the context of preventing fraudulent and manipulative acts, the Exchange discusses its authority to halt trading in the Shares in the interest of promoting a fair and orderly market and protecting the interests of investors.²¹¹

In addition, NYSE Arca has obtained a representation from the Sponsor that it will: (1) implement a firewall with respect to its affiliates regarding access to material non-public information of the Trust concerning the Trust and the Shares; and (2) will be subject to procedures designed to prevent the use and dissemination of material non-public information of the Trust regarding the Trust and the Shares.²¹² The Commission believes the firewall that the

²⁰⁸ See Notice, supra note 3, 77 FR at 38360. See also Arca September 14 Letter, supra note 6, at 3.

²⁰⁹ See Notice, supra note 3, 77 FR at 38360.

²¹⁰ See id.

²¹¹ See Arca September 14 Letter, supra note 6, at 3 (“As stated in the Notice, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares, and trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.”).

²¹² See Amendment No. 1, supra note 7.

Exchange will require the Sponsor to erect is a reasonable measure to help prevent the flow of non-public information to the Sponsor's affiliates.²¹³

More generally, based on the Exchange's representations, the Commission believes that the Exchange's surveillance procedures appear to be reasonably designed to permit the Exchange to monitor for, detect, and deter violations of Exchange rules and applicable federal securities laws and rules.²¹⁴ In addition to all of the same surveillance procedures employed with respect to the trading of all other Commodity-Based Trust Shares, NYSE Arca states that a new product-specific review will be employed to monitor trading in the Shares to identify potential manipulative trading activity through the use of the creation and redemption process.²¹⁵ The commenters have not identified any specific deficiency in the proposed procedures or provided any evidence that the Exchange's surveillance program has been ineffective with respect to trading in other Commodity-Based Trust Shares.

F. Dissemination of Information About the Shares and Copper

The Commission believes the proposal is reasonably designed to promote sufficient disclosure of information that may be necessary to price the Shares appropriately. Specifically, the Commission believes that dissemination of the NAV, IIV, and copper holdings information,

²¹³ Further, NYSE Arca represents that it can obtain information about the activities of the Sponsor and its affiliates under the Exchange's listing rules. See Amendment No. 1, supra note 7.

²¹⁴ The Commission has discussed above in Section III.D other reasons why it believes that the listing and trading of the Shares as proposed is unlikely to increase the likelihood of manipulation of the copper market and, correspondingly, of the price of the Shares.

²¹⁵ See Amendment No. 1, supra note 7.

as discussed above, will facilitate transparency with respect to the Shares and diminish the risk of manipulation or unfair informational advantage.²¹⁶

Further, as noted above, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association, and the Exchange will make available via the Consolidated Tape trading volume, closing prices, and NAV for the Shares from the previous day.²¹⁷ Additionally, as discussed above, the Exchange has identified numerous sources of copper price information unconnected with the Exchange that are readily available to

²¹⁶ See supra notes 193–198 and accompanying text. The commenter asserts that, because the Trust will be valued using the LME Bid Price without taking into account locational premia, under certain circumstances, the NAV of the Trust may not be accurate. See V&F September 12 Letter, supra note 6, at 7–8. The commenter asserts that the values of LME-traded industrial metals are determined by their location, and that the LME Bid Price is the value of copper at the cheapest-to-deliver location. See id. The commenter predicts that, if the Trust accumulates all of the metal from LME warehouses in the cheapest-to-deliver location, then the cheapest-to-deliver location will change, and correspondingly the LME Bid Price will be based on a new location. See id. In that circumstance, the commenter argues, there may be a significant divergence between the NAV of the Trust and the actual value of the Trust's copper. See id. at 7–8.

The Sponsor states that the Trust does not assign locational premia because any warrant, regardless of location, can be delivered at the LME Bid Price, and further asserts that this valuation method will allow an authorized participant to effectively reconcile its position in copper. See BlackRock Letter, supra note 6, at 9.

The Commission believes that the use of the LME Bid Price to value the Trust's copper may lead to a divergence between the NAV of the Trust and the market value of the Trust's copper because the LME Bid Price is used to value the Trust's copper and the Trust's copper may not be in the cheapest-to-deliver location. The Commission does not expect any possible divergence to cause any problems with respect to trading in the Shares, and notes that the commenter did not assert it would. The Commission believes that the degree of divergence will be limited to the difference in the price of copper held by the Trust and the price of copper at the cheapest-to-deliver location. The Commission notes that the Trust will disclose on its website the location, warehouse identification number, lot number, net weight of the lot, and brand of each lot of copper it holds, as well as the order in which all lots will be delivered to redeeming authorized participants. See Amendment No. 2, supra note 9.

²¹⁷ See supra text accompanying notes 31–32.

investors.²¹⁸ The Commission therefore believes that sufficient venues for obtaining reliable copper pricing information exist to allow investors in the Shares to adequately monitor the price of copper and compare it to the NAV of the Shares.

G. Listing and Trading of the Shares

The Commission believes that the Exchange's proposed rules and procedures for the listing and trading of the Shares are consistent with the Act. For example, the Commission believes that the proposal is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. As detailed above, NYSE Arca Equities Rules 7.34(a)(5) and 8.201(e)(2) respectively provide that: (1) if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants;²¹⁹ and (2) the Exchange will consider suspension of trading if, after the initial 12-month period following commencement of trading: (a) the value of copper is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, or Custodian, or the Exchange stops providing a hyperlink on its website to any such unaffiliated source providing that value; or (b) if the IIV is no longer made available on at least a 15-second delayed basis.²²⁰ In addition, the Exchange's general authority to halt trading because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, also will advance this objective. Further, trading in the Shares will be subject to

²¹⁸ See Notice, supra note 3, 77 FR at 38358–59.

²¹⁹ See id. at 38359.

²²⁰ Additionally, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IIV occurs. If the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the of the trading day following the interruption. See id.

NYSE Arca Equities Rule 7.12, the Exchange's circuit breaker rule, which governs trading halts caused by extraordinary market volatility.

Further, the Shares will be subject to Exchange rules governing the responsibilities of market makers and customer suitability requirements. In addition, the Shares will be subject to Exchange Rule 8.201 for initial and continued listing of Shares.²²¹ As discussed above,²²² the Commission believes that the listing and delisting criteria for the Shares are expected to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. The Commission also believes that the Information Bulletin will adequately inform members and member organizations about the terms, characteristics, and risks of trading the Shares.

H. Commission Findings

After careful review, and for the reasons discussed in Sections III.A–G above, the Commission finds that the proposed rule change is consistent with the requirements of the Act, including Section 6 of the Act,²²³ and the rules and regulations thereunder applicable to a national securities exchange.²²⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²²⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market

²²¹ See id.

²²² See supra note 199 and accompanying text.

²²³ 15 U.S.C. 78f.

²²⁴ This approval order is based on all of the Exchange's representations.

²²⁵ 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest; with Section 6(b)(8) of the Act,²²⁶ which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act; and with Section 11A(a)(1)(C)(iii) of the Act,²²⁷ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.²²⁸

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendments No.1 and No. 2 to the proposed rule change are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2012-66 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

²²⁶ 15 U.S.C. 78f(b)(8).

²²⁷ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²²⁸ As noted above, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association, and the Exchange will make available via the Consolidated Tape trading volume, closing prices, and NAV for the Shares from the previous day. See supra text accompanying notes 31-32.

All submissions should refer to File Number SR-NYSEArca-2012-66. This file number should be included on the subject line if e-mail is used. To help the Commission 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/sro.shtml>). Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be 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 a.m. and 3:00 p.m. Copies of the filings also will be available for inspection and copying at the principal offices of the Exchanges. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2012-66 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change As Modified by Amendments No. 1 and No. 2

As discussed above, the Exchange submitted Amendment No. 1 to make additional representations regarding the Exchange's surveillance program,²²⁹ and submitted Amendment No. 2 to supplement representations regarding website disclosure of the Trust's copper

²²⁹ See supra note 7.

holdings.²³⁰ The Commission believes these additional representations are, among other things, useful to help assure adequate information is available to the Exchange to support its monitoring of Exchange trading of the Shares in all trading sessions; to help the Exchange deter and detect violations of NYSE Arca rules and applicable federal securities laws; and to help assure adequate availability of information to support the arbitrage mechanism. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²³¹ for approving the proposed rule change, as modified by Amendments No. 1 and No. 2, prior to the 30th day after the date of publication of notice in the Federal Register.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³² that the proposed rule change (SR-NYSEArca-2012-66), as modified by Amendments No. 1 and No. 2, be, and hereby is, approved on an accelerated basis.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

²³⁰ See supra note 9.

²³¹ 15 U.S.C. 78s(b)(2).

²³² 15 U.S.C. 78s(b)(2).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 68974 / February 25, 2013

Admin. Proc. File No. 3-14351

In the Matter of
ROBERT DAVID BEAUCHENE

ORDER GRANTING MOTION TO AMEND ORDER INSTITUTING PROCEEDINGS

On April 22, 2011, the Commission instituted proceedings against Robert David Beauchene.¹ The Order Instituting Proceedings alleged that Beauchene, an unregistered investment adviser and former registered representative of several registered broker-dealers, who is also the president and sole officer of Rhombus Amalgamated Enterprises, Inc., a New York corporation formed by Beauchene in December 2002, willfully violated § 17(a) of the Securities Act of 1933,² § 10(b) of the Securities Exchange Act of 1934³ and Rule 10b-5 promulgated thereunder,⁴ and §§ 206(1) and 206(2) of the Investment Advisers Act of 1940.⁵ The OIP alleged that Beauchene "fraudulently raised at least \$160,000 from four investors for investment in a purported hedge fund called [Rhombus]."⁶ The OIP directed the institution of proceedings to determine what, if any, remedial action is appropriate in the public interest, including associational bars against Beauchene, the imposition of civil penalties, and disgorgement, pursuant to § 15(b) of the Exchange Act,⁷ § 203(f) of the Advisers Act,⁸ and § 9(b) of the Investment Company Act of 1940.⁹

¹ *Robert David Beauchene*, Securities Exchange Act Release No. 64323, 2011 SEC LEXIS 1429, at *8 (Apr. 22, 2011).

² 15 U.S.C. § 77q(a).

³ *Id.*, § 78j(b).

⁴ 17 C.F.R. § 240.10b-5.

⁵ 15 U.S.C. § 80b-6(1) and (2), respectively.

⁶ *Beauchene*, 2011 SEC LEXIS 1429, at *1.

⁷ 15 U.S.C. § 78o(b).

⁸ *Id.*, § 80b-3(f).

⁹ *Id.*, § 80a-9(b).

On September 27, 2011, an administrative law judge stayed the proceeding against Beauchene, at the request of the United States Attorney for the Southern District of New York, "during the pendency of a criminal investigation arising out of the same facts at issue."¹⁰ On November 29, 2011, the U.S. Attorney filed a criminal information against Beauchene, alleging misconduct virtually identical to that set out in the OIP.¹¹ On April 5, 2012, Beauchene pleaded guilty to one count of securities fraud and one count of wire fraud.¹² On October 9, 2012, the district court entered a judgment against Beauchene and sentenced him to twelve months and one day of incarceration, three years of supervised release, and ordered him to pay restitution of \$160,000.¹³

On December 11, 2012, the administrative law judge lifted her stay in the case, granted the Division's application to move for summary disposition, and stated, "The Division may wish to request the Commission to amend the OIP to add or substitute [Beauchene's] conviction as the basis for the proceeding."¹⁴ On January 11, 2013, the Division filed a motion seeking to amend the OIP to include Beauchene's criminal conviction as a separate basis for seeking the associational bars sought in the original OIP and to withdraw the Division's original request for disgorgement from Beauchene, in light of the district court's \$160,000 restitution order. Beauchene has not responded.

Under Rule of Practice 200(d)(1),¹⁵ the Commission may, at any time, upon motion by a party, amend an OIP to include new matters of fact or law. We have stated that amendments to OIPs "should be freely granted, subject only to the consideration that other parties should not be surprised nor their rights prejudiced."¹⁶ The Division's proposed amendment of the OIP to add Beauchene's criminal conviction for securities fraud and wire fraud as a basis for relief in this action can neither surprise nor prejudice Beauchene. The criminal proceeding against Beauchene

¹⁰ Ex. D to Decl. of Alexander J. Janghorbani in Support of the Division of Enforcement's Mot. to the Comm'n to Amend the Order Instituting Proceedings at 1.

¹¹ *United States v. Beauchene*, 11-cr-1016-JPO (S.D.N.Y. Nov. 29, 2011). Ex. E to Decl. of Alexander J. Janghorbani in Support of the Division of Enforcement's Mot. to the Comm'n to Amend the Order Instituting Proceedings at 1-4.

¹² 15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R. § 240.10b-5, respectively (securities fraud) and 18 U.S.C. § 1343 (wire fraud). Ex. F to Decl. of Alexander J. Janghorbani in Support of the Division of Enforcement's Mot. to the Comm'n to Amend the Order Instituting Proceedings at 16. Ex. G to Decl. of Alexander J. Janghorbani in Support of the Division of Enforcement's Mot. to the Comm'n to Amend the Order Instituting Proceedings at 1.

¹³ *United States v. Beauchene*, 11-cr-1016-JPO (S.D.N.Y. Oct. 9, 2012). Ex. G to Decl. of Alexander J. Janghorbani in Support of the Division of Enforcement's Mot. to the Comm'n to Amend the Order Instituting Proceedings at 2-6.

¹⁴ *Robert David Beauchene*, Admin. Proc. Release No. 735, 2012 SEC LEXIS 3801, at *1 n.1 (Dec. 11, 2012).

¹⁵ 17 C.F.R. § 201.200(d)(1).

¹⁶ *Charles K. Seavey*, Investment Advisers Act Release No. 1925A, 55 SEC 17, 2001 SEC LEXIS 501, at *4-5 n.9 (Mar. 9, 2001) (citing *Carl L. Shipley*, Exchange Act Release No. 10870, 45 SEC 589, 1974 SEC LEXIS 3113, at *14 (June 21, 1974)).

was based on the same facts as the Commission's allegations in the OIP. Further, Beauchene's criminal conviction provides an independent basis for remedial sanctions, and it is more efficient to resolve all issues related to this conduct in a single proceeding.

The Division also seeks to modify the OIP to delete its request for disgorgement. As noted above, the district court ordered Beauchene to pay restitution of \$160,000, which was the exact amount of ill-gotten gain alleged in the OIP. We have previously deemed disgorgement satisfied by a respondent's payment of criminal restitution.¹⁷ We have also granted the Division's motion to amend the OIP to withdraw a disgorgement claim where "an order of disgorgement . . . would duplicate the state court's Order of Restitution and because attempts to enforce any disgorgement order by the Commission would duplicate efforts already undertaken by a state court Special Master."¹⁸ Similar concerns apply here, where any efforts by the Commission to enforce a disgorgement order would be duplicative of efforts by the U.S. Attorney's office to enforce the court's restitution order. Under the circumstances, we believe it is appropriate to grant the Division's motion to amend the OIP by withdrawing its disgorgement request. We do not suggest any view as to the outcome of these proceedings.

Accordingly, IT IS ORDERED that the Division of Enforcement's Motion to the Commission to Amend the Order Instituting Proceedings against Respondent Robert David Beauchene is granted.

By the Commission.

Elizabeth M. Murphy
Secretary


By: Jill M. Peterson
Assistant Secretary

¹⁷ See, e.g., *Melhado, Flynn & Assoc., Inc.*, Exchange Act Release No. 64469, 2011 SEC LEXIS 1664, at *16 (May 11, 2011); *Hunter Adams*, Exchange Act Release No. 63850, 2011 SEC LEXIS 454, at *6 n.3 (Feb. 7, 2011).

¹⁸ *A.S. Goldman & Co., Inc.*, Exchange Act Release No. 48091, 2003 SEC LEXIS 1504, at *2 (June 26, 2003).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 68979 / February 25, 2013

Admin. Proc. File No. 3-14781

In the Matter of
FAR VISTA INTERACTIVE CORP., *et al.*

ORDER DISMISSING PROCEEDING WITH RESPECT TO
FAR VISTA INTERACTIVE CORP.

On February 29, 2012, the Commission instituted an administrative proceeding against Far Vista Interactive Corp. and seven other respondents under § 12(j) of the Securities Exchange Act of 1934.¹ The Order Instituting Proceedings alleged that Far Vista violated periodic reporting requirements and sought to suspend or revoke the registration of Far Vista's securities.

On July 14, 2012, Far Vista filed with the Commission a Form 15, pursuant to Exchange Act Rule 12g-4(a),² to voluntarily terminate the registration of its securities under Exchange Act § 12(g), which it amended by filing a Form 15/A on July 25, 2012. Under Rule 12g-4(a), an issuer's registration is terminated ninety days after filing Form 15, which in this case was October 25, 2012. On January 2, 2013, the Division of Enforcement filed a motion to dismiss the proceeding against Far Vista, based on the deregistration of its securities. Far Vista did not respond.

¹ 15 U.S.C. § 78l(j). All of the other respondents' registrations have been revoked as part of this proceeding. *See Far Vista Interactive Corp.*, Exchange Act Release No. 67464, 2012 SEC LEXIS 2262, at *9 (July 19, 2012).

² 17 C.F.R. § 240.12g-4(a) (certification of termination of registration under § 12(g)).

It is appropriate to grant the Division's motion because the respondent does not now have a class of registered securities and because revocation or suspension of registration is the only remedy available in a proceeding instituted under Exchange Act § 12(j).³

Accordingly, IT IS ORDERED that this proceeding is dismissed with respect to Far Vista Interactive Corp.

By the Commission.

Elizabeth M. Murphy
Secretary


By: Jill M. Peterson
Assistant Secretary

³ See, e.g., *Amstem Corp.*, Exchange Act Release No. 67104, 2012 SEC LEXIS 1727, at *2 (June 4, 2012).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 68981 / February 25, 2013

Admin. Proc. File No. 3-15158

In the Matter of

STEWART A. MERKIN, ESQ.

ORDER DENYING MOTION
TO LIFT TEMPORARY SUSPENSION
AND DIRECTING HEARING

On December 27, 2012, we issued an order instituting proceedings ("OIP") against Stewart A. Merkin, Esq., pursuant to Commission Rule of Practice 102(e)(3)(i)(B).¹ The OIP temporarily suspended Merkin, an attorney licensed in Florida, from appearing or practicing before the Commission.² Merkin has now filed a petition, pursuant to Rule 102(e)(3)(ii),³ requesting that his temporary suspension be lifted. For the reasons set forth below, we have determined to deny Merkin's petition and set the matter down for hearing.

Merkin served as outside general counsel for StratoComm Corporation ("StratoComm") from at least May 2006 until early 2011. On October 3, 2011, the Commission filed a complaint against Merkin in the U.S. District Court for the Southern District of Florida alleging that Merkin violated antifraud provisions of the federal securities laws by making false public statements in connection with the purchase or sale of the stock of StratoComm. Specifically, the complaint alleged that Merkin made false statements in Attorney Letters addressed to Pink OTC Markets, Inc., dated April 8, 2008, June 17, 2010, September 15, 2010, and December 17, 2010, that appeared on the Pink OTC Markets, Inc. website, to the effect that StratoComm was not under investigation for violations of securities laws, when in fact, as Merkin knew when he prepared and signed those letters, StratoComm was under investigation by the Commission.

¹ 17 C.F.R. 201.102(e)(3)(i)(B) (authorizing the Commission to temporarily suspend from appearing or practicing before it an attorney who has been "[f]ound by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder").

² *Stewart A. Merkin, Esq.*, Securities Exchange Act Release No. 68543, 2012 SEC LEXIS 4084 (Dec. 27, 2012).

³ 17 C.F.R. 201.102(e)(3)(ii).

On October 3, 2012, the district court granted the Commission's motion for summary judgment on its antifraud claims against Merkin. The court found that Merkin made untrue statements of material fact when he authored and signed the Attorney Letters denying the Commission's investigation and forwarded them to StratoComm with the intent and understanding that the letters would be posted on the OTC Markets website; that the false statements denying that the Commission was investigating StratoComm would obviously be important to investors and therefore were material; that the false statements were made in connection with the purchase or sale of securities because they were (as Merkin knew they would be) posted on the OTC Markets website and thus made available to potential investors; and that Merkin, who drafted and signed the Attorney Letters knowing that the contents were false and who repeated the false statements on at least four occasions, acted with scienter.⁴ Although the court had not yet entered a final judgment, Merkin nonetheless filed a notice of appeal from the summary judgment order to the U.S. Court of Appeals for the Eleventh Circuit on November 30, 2012.⁵

In issuing the OIP, we found it "appropriate and in the public interest" that Merkin be temporarily suspended from appearing or practicing before the Commission based on the findings of the Southern District of Florida, a court of competent jurisdiction, in an action brought by the Commission, that Merkin violated the federal securities laws. We stated that the temporary suspension would become permanent unless Merkin filed a petition seeking to lift it within thirty days of service of the OIP, pursuant to Rule 102(e)(3)(ii). We further advised that, pursuant to Rule 102(e)(3)(iii), upon receipt of such a petition, we would either lift the temporary suspension, set the matter down for a hearing, or both.

In his petition, Merkin states that he disputes the legal and factual findings made by the district court in the enforcement action and is seeking appellate review of those findings. He points out that Rule 102(e)(3) permits the Commission to file a temporary suspension order "within 90 days of the final judgment or judicial order becoming effective," and that, also under Rule 102(e)(3), the order becomes effective "upon completion of review or appeal procedures or because further review or appeal procedures are no longer available." Since he is currently seeking appellate review, he argues, the district court's order is not "effective," and the Commission should therefore defer any administrative action "until there is a final judgment not subject to judicial review."

The Office of the General Counsel ("OGC") has opposed Merkin's petition. OGC argues, among other things, that: (1) the pendency of Merkin's appeal is not a valid reason for delaying Commission action under Rule 102(e)(3)⁶; (2) the Commission already found in the OIP that it was

⁴ *SEC v. Merkin*, No. 11-23585-CIV-Graham/Goodman (S.D. Fla. Oct. 3, 2012).

⁵ *Id.*, appeal docketed, No. 12-16238-A (11th Cir. Dec. 6, 2012). On December 28, 2012, Merkin filed an unopposed motion to stay or abate his appeal pending entry of a final judgment by the district court.

⁶ *See, e.g., Michael T. Studer*, Exchange Act Release No. 50411, 57 SEC 890, 2004 SEC LEXIS 2135, at *11 (Sept. 20, 2004) ("[T]he fact that Studer is still litigating that action [on appeal] does not affect [the Commission's] statutory authority to conduct this proceeding."), *aff'd*, 148 F. App'x 58 (2d Cir. 2005).

in the public interest that Merkin be temporarily suspended, and Merkin has offered no reason to question that determination; and (3) in view of the district court's findings that Merkin violated the antifraud provisions of the securities laws through at least four instances of intentional material false statements, Merkin is not an appropriate candidate for the lifting of a temporary suspension.

Rule 102(e)(3)(iii) provides that, "[w]ithin 30 days after filing of a petition [to lift a temporary suspension] in accordance with paragraph (e)(3)(ii) of this section, the Commission *shall* either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both."⁷ We have determined to deny Merkin's petition and set the matter down for hearing before an administrative law judge.⁸ Continuing Merkin's temporary suspension pending a hearing on the issues raised in his petition serves the public interest and protects the Commission's processes. As discussed, Merkin was found by a district court to have violated the federal securities laws by acting with scienter when he made material false statements in connection with the purchase and sale of securities on at least four occasions. That finding provided a statutory basis for the Commission to temporarily suspend Merkin without a preliminary hearing.⁹ It appears that Merkin remains licensed as an attorney and has not expressed any intent to stop working in the area of securities law. He thus remains in a position to harm the Commission's processes if the temporary suspension is lifted and he is permitted to practice before the Commission pending the outcome of a hearing.

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

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

⁷ 17 C.F.R. § 201.102(e)(3)(iii) (emphasis added).

⁸ The Commission has denied similar petitions in the recent past. *See, e.g., Jilaine H. Bauer*, Exchange Act Release No. 68214 (Nov. 13, 2012), 2012 SEC LEXIS 3509 (Nov. 13, 2012); *Mitchell Segal, Esq.*, Exchange Act Release No. 67930, 2012 SEC LEXIS 3044 (Sept. 26, 2012); *Ran H. Furman*, Exchange Act Release No. 65680, 2011 SEC LEXIS 3877 (Nov. 3, 2011); *Michael C. Pattison, CPA*, Exchange Act Release No. 64598, 2011 SEC LEXIS 1914 (June 3, 2011); *Carl W. Jasper, CPA*, Exchange Act Release No. 64077, 2011 SEC LEXIS 909 (Mar. 11, 2011); *William D. Shovers*, Exchange Act Release No. 59874, 2009 SEC LEXIS 1516 (May 6, 2009); *Chris G. Gunderson, Esq.*, Exchange Act Release No. 56396, 2007 SEC LEXIS 2025 (Sept. 12, 2007); *Ulysses Thomas Ware*, Exchange Act Release No. 51222, 2005 SEC LEXIS 391 (Feb. 17, 2005); *Daniel S. Lezak*, Exchange Act Release No. 50729, 2004 SEC LEXIS 2726 (Nov. 23, 2004); *Herbert M. Campbell, II*, Exchange Act Release No. 43422, 2000 SEC LEXIS 2154 (Sept. 25, 2000).

⁹ Although Merkin argues that we could wait until after a final judgment is effective before ordering a temporary suspension, we have already found that it was in the public interest to do so once the district court had made the findings set forth above.

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

ORDERED that the temporary suspension of Stewart A. Merkin, Esq., entered on September 12, 2012, remain in effect pending a hearing and decision in this matter.

By the Commission.

Elizabeth M. Murphy
Elizabeth M. Murphy
Secretary

*Commissioner Gallagher
not participating*

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9386 / February 25, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 68978 / February 25, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30404 / February 25, 2013

Admin. Proc. File No. 3-14862

In the Matter of the Application of

MIGUEL A. FERRER and
CARLOS J. ORTIZ

ORDER GRANTING
EXTENSION

I.

The Chief Administrative Law Judge, Brenda P. Murray, has moved, pursuant to Commission Rule of Practice 360(a)(3),¹ for an extension of time to file an initial decision in this proceeding. For the reasons set forth below, we have determined to grant the law judge's motion.

On May 1, 2012, we issued an Order Instituting Administrative and Cease-and-Desist Proceedings against Miguel A. Ferrer, formerly the Chairman and Chief Executive Officer of UBS Financial Services Inc. of Puerto Rico ("UBS PR"), a subsidiary of UBS Financial Services, Inc. ("UBS Financial"), a Delaware corporation, and Carlos J. Ortiz, currently the Managing Director of Capital Markets at UBS PR. The OIP alleges that Ferrer and Ortiz played

¹ 17 C.F.R. § 201.360(a)(3).

significant roles in a fraudulent "pump-and-dump" scheme² that misled thousands of UBS PR customers into buying and holding substantial amounts of shares in UBS PR-affiliated, non-exchange-traded closed-end funds ("CEFs") in 2008 and 2009. The OIP alleged that Ortiz, who was in charge of UBS PR's CEF trading desk, and Ferrer, who controlled all important aspects of UBS PR's CEF business, touted, or "pumped," the CEFs as safe, high-yield investments and promoted the liquidity of the CEF shares in a supposedly robust secondary market in which investors could sell their shares. Ferrer and Ortiz allegedly did not, however, disclose that Ortiz set the CEF share prices through the UBS PR trading desk, that UBS PR controlled the secondary market for CEF shares, and that their conduct was designed to prevent a collapse of the CEF market.

According to the OIP, in mid-2009, UBS Financial ordered UBS PR to reduce its inventory of CEFs after determining that such inventory posed a significant financial risk to the firm. The OIP alleged that in response to UBS Financial's mandate, Ferrer and Ortiz fraudulently caused UBS PR to "dump" CEF shares on unsuspecting investors in various ways. For example, they lowered the CEF share prices just enough to undercut pending customer limit—or sell—orders that, in turn, wiped the sell orders off the books and prevented the customers from executing the sale. Ferrer and Ortiz also ensured that UBS PR did not execute tens of millions of other customer sell orders and bought into inventory only dividend reinvestment shares. Ferrer and Ortiz facilitated an aggressive campaign to solicit new and existing customers to buy CEF shares by misrepresenting, among other things, that fund inventory levels were low, trading

² A "pump-and-dump" scheme typically involves artificially inflating a security's share price in return for a benefit, such as being able to sell one's holdings at a high price or maintaining the perception of market stability in that security, while victimizing unaware investors who suffer losses because they are persuaded to buy shares at the artificially high price and/or are prevented from selling shares at that high price. *See, e.g., SEC v. Cavanagh*, 445 F.3d 105, 107 (2d Cir. 2006); *United States v. Salmonese*, 352 F.3d 608, 612 (2d Cir. 2003).

volumes were at an all-time high, and prices were aligned with current market conditions. They also arranged for affiliated CEF companies to repurchase newly issued CEF shares from customers so that UBS PR could sell the customers CEF shares from its aged inventory. As a result of Ferrer's and Ortiz's conduct, UBS PR dumped approximately \$35 million in CEF shares, which was 75 percent of its inventory, on investors who lost approximately \$500 million or 10-15 percent of the value of their CEF holdings.

The OIP further alleged that Ferrer and Ortiz willfully violated and aided and abetted and caused UBS PR's violation of § 17(a) of the Securities Act of 1933 and § 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5 and also willfully aided and abetted and caused UBS PR's violation of Exchange Act § 15(c).³

The OIP directed the presiding law judge to hold a public hearing to take evidence regarding the allegations and the appropriate sanctions, and to file an initial decision no later than 300 days from the date of service of the OIP, *i.e.*, by March 4, 2013. On January 30, 2013, Judge Murray filed a motion pursuant to Commission Rule of Practice 360(a)(3)⁴ requesting an extension of time of six months to file such decision.

II.

We adopted Rules of Practice 360(a)(2) and 360(a)(3) as part of an effort to enhance the timely and efficient adjudication and disposition of Commission administrative proceedings,⁵ setting mandatory deadlines for completion of administrative hearings. We further provided for

³ 15 U.S.C. § 77q; 15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5; 15 U.S.C. § 78o(c).

⁴ 17 C.F.R. § 360(a)(3).

⁵ *See Adopting Release*, Securities Act Release No. 8240, 2003 SEC LEXIS 1404, at *5-7 (June 11, 2008).

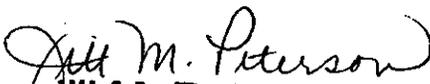
the granting of extensions to those deadlines under certain circumstances, if supported by a motion from the Chief Administrative Law Judge.

Judge Murray supports her extension request by stating that it "will not be possible to meet the 300-day deadline because the thirteen days of hearing resulted in an extensive record, including more than 3,000 pages of transcript."⁶ She also notes that a final brief is due on March 22, 2013, almost three weeks after the 300-day due date. Under the circumstances, it appears appropriate in the public interest to grant the Chief Law Judge's request and to extend the deadline for filing a decision in this matter.

Accordingly, IT IS ORDERED that the deadline for filing the initial decision in this matter is extended until September 4, 2013.

By the Commission.

Elizabeth M. Murphy
Secretary


By: Jill M. Peterson
Assistant Secretary

⁶ Miguel A. Ferrer, Motion for Extension, Admin. Proc. File No. 3-14862 (Jan. 30, 2103), at 1.

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68982; File No. SR-DTC-2012-810)

February 25, 2013

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing Amendment No. 1 and No Objection to Advance Notice Filing, as Modified by Amendment No. 1, to Reduce Liquidity Risk Relating to Its Processing of Maturity and Income Presentments and Issuances of Money Market Instruments

I. Introduction

On December 28, 2012, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR-DTC-2012-810 (“Advance Notice”) pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),¹ entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act” or “Title VIII”) and Rule 19b-4(n) of the Securities Exchange Act of 1934 (“Exchange Act”). The Advance Notice was published in the Federal Register on January 18, 2013.² DTC filed Amendment No. 1 to the Advance Notice on January 30, 2013.³ The Commission received one comment on the Advance

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

² Release No. 34-68690 (Jan. 18, 2013), 78 FR 5516 (Jan. 25, 2013). DTC also filed a proposed rule change under Section 19(b)(1) of the Exchange Act relating to these changes. Release No. 34-68548 (Dec. 28, 2012), 78 FR 795 (Jan. 4, 2013). The Commission extended the period of review of the proposed rule change on February 5, 2013. Release No. 34-68834 (Feb. 5, 2013), 78 FR 9762 (Feb. 11, 2013).

³ The Amendment revised the text of DTC’s Settlement Service Guide related to the Advance Notice by adding a sentence to clarify the change as stated in the Advance Notice and correcting a grammatical error.

Notice.⁴ This publication serves as notice of filing Amendment No. 1 and of no objection to the Advance Notice, as modified by Amendment No. 1.

II. Analysis

A. Description of MMI Processing and Proposed Rule Change

DTC filed the Advance Notice to permit it to make rule changes designed to reduce liquidity risk relating to DTC's processing of maturity and income presentments ("Maturity Obligations") and issuances of money market instruments ("MMIs"), as discussed below.

MMIs are settled at DTC on a trade-for-trade basis. Issuers of MMIs that are not direct members of DTC enlist banks ("Issuing/Paying Agent" or "IPA") to issue MMIs to broker-dealers, who in turn sell the MMIs to MMI investors. Debt issuance instructions are transmitted to DTC by the IPA, which triggers DTC crediting the IPA's DTC account and creating a deliver order to the broker-dealers' accounts on behalf of the investors.

Maturity Obligations are initiated automatically by DTC early each morning for MMIs maturing that day. DTC debits the amount of the Maturity Obligations to the appropriate IPA's account and credits the same amount to the appropriate broker-dealer and custodian accounts. The debits and credits are conditional until final settlement at the end of the day. According to DTC, IPAs do not have a legal obligation to honor maturing MMIs if they have not received funding from the issuer.

According to DTC, the common source of funding for Maturity Obligations is new issuances of MMIs in the same acronym by the same issuer on the day the Maturity Obligations

⁴ See Comment from Karen Jackson dated December 30, 2012, <http://sec.gov/comments/sr-dtc-2012-10/dtc201210-1.htm>. The comment discusses the ability of individuals to withdraw money from money market accounts, which is not implicated by the proposed rule change.

are due. In a situation where new MMI issuances exceed the Maturity Obligations, the issuer would have no net funds payment due to the IPA on that day. However, because Maturity Obligations are processed and debited from IPA accounts automatically, IPAs currently incur credit risk if the issuers do not issue MMIs that exceed the Maturity Obligations.⁵ Because IPAs do not have a legal obligation to honor maturing MMIs in the absence of funding from the issuer, IPAs may communicate to DTC an Issuer Failure/Refusal to Pay (“RTP”) for any issuer acronym up to 3:00 p.m. ET on the day of the affected Maturity Obligation. Such an instruction causes DTC, pursuant to its Rules, to reverse all transactions related to that issuer’s acronym, including Maturity Obligations and any new MMI issuances, posing a potential for systemic risk since the reversals may override DTC’s risk management controls such as the Collateral Monitor (“CM”)⁶ and net debit cap (“Net Debit Cap,” collectively with CM, “Settlement Risk Controls”).⁷

⁵ DTC guidelines suggest that issuers fund their net debit obligations to the IPA by 1:00 p.m. ET to alleviate this credit risk.

⁶ A DTC “Participant” is a regulated institution that is eligible to use and uses DTC’s services. See DTC Participant Handbook (Sept. 2011). DTC tracks collateral in a Participant’s DTC account through the CM. At all times, the CM reflects the amount by which the collateral value in the account exceeds the net debit balance in the account. When processing a transaction, DTC verifies that the CM of each of the deliverer and receiver will not become negative when the transaction is processed. If the transaction would cause either party to have a negative CM, the transaction will recycle until the deficient account has sufficient collateral to proceed or until the applicable cutoff occurs. See id.

⁷ The Net Debit Cap control is designed so that DTC may complete settlement even if a Participant fails to settle. Before completing a transaction in which a Participant is the receiver, DTC calculates the effect the transaction would have on such Participant’s account, and determines whether any resulting net debit balance would exceed the Participant’s net debit cap. Any transaction that would cause the net debit balance to exceed the net debit cap is placed on a pending (recycling) queue until the net debit cap will not be exceeded by processing the transaction. See DTC Participant Handbook (Sept. 2011).

DTC currently withholds intraday from each MMI member the largest provisional net credit ("LPNC") of a single issuer's acronym for purposes of calculating the member's position in relation to the Settlement Risk Controls. DTC believes that the LPNC control helps protect DTC against either (i) the single largest issuer failure on a business day, or (ii) multiple failures on a business day that, taken together, do not exceed the largest provisional net credit.

Recent market events have increased DTC's awareness of the possibility of multiple simultaneous MMI issuer failures. Multiple simultaneous MMI issuer failures may cause more IPAs on a given day to communicate an RTP to DTC, which could increase the amount of the reversal that could override the DTC Settlement Risk Controls. As a result, DTC is increasing the LPNC withholding to the two largest net credits (on an acronym basis). In order to alleviate any settlement blockage that may occur as a result of withholding the two largest LPNCs and to promote settlement finality, DTC will no longer process an RTP initiated by an IPA that serves as both an issuing agent and a paying agent in the same acronym on the same day when new MMI issuances in an acronym exceed, in dollar value, the Maturity Obligations in the same acronym on the same day and the receiving members' Settlement Risk Controls permit completion of the transaction. As a result, DTC will remove the LPNC withholding with respect to such acronyms at the point in time when it eliminates the IPA's option to initiate an RTP.

B. Discussion

Although Title VIII does not specify a standard of review for an Advance Notice, the stated purpose of Title VIII is instructive.⁸ The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically-important financial market

⁸ 12 U.S.C. 5461(b).

utilities (“FMUs”)⁹ and providing an enhanced role for the Federal Reserve Board in the supervision of risk management standards for systemically-important FMUs.¹⁰

Section 805(a)(2) of the Clearing Supervision Act¹¹ authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act¹² states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act on October 22, 2012 (“Clearing Agency Standards”).¹³ The Clearing Agency Standards became effective on January 2, 2013 and require clearing agencies that perform central counterparty services to establish, implement, maintain, and enforce written

⁹ DTC was designated a systemically-important FMU on July 18, 2012, by the Financial Stability Oversight Council. Financial Stability Oversight Council 2012 Annual Report, Appendix A, <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>.

¹⁰ 12 U.S.C. 5461(b).

¹¹ 12 U.S.C. 5464(a)(2).

¹² 12 U.S.C. 5464(b).

¹³ Release No. 34-68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.¹⁴ As such, it is appropriate for the Commission to review Advance Notices against these risk management standards that the Commission promulgated under Section 805(a) and the objectives and principles of these risk management standards as described in Section 805(b).

The proposal to increase the LPNC withholding from one to two on an acronym basis is designed to further mitigate intraday credit risk borne by DTC and its members during the time between the initiation of Maturity Obligations and the MMI issuer funding for those Maturity Obligations, typically by issuing new MMIs. DTC states that the initiative for the proposal was a heightened awareness of the possibility of multiple simultaneous MMI issuer failures. The proposal to no longer process an RTP initiated by an IPA when new issuances in an acronym exceed, in dollar value, the Maturity Obligations in the same acronym on the same day is designed to promote settlement finality and to alleviate the possibility of settlement blockage that may result from DTC increasing the LPNC withholding from one to two. Consistent with Section 805(a), the Commission believes these changes promote the safety and soundness of the operations of DTC, reduce systemic risks typically associated with MMI transactions, and support the stability of the broader financial system by promoting settlement finality of MMI transactions.

Furthermore, Commission Rules 17Ad-22(d)(11) regarding Default Procedures and 17Ad-22(d)(12) regarding Timing of Settlement Finality, both adopted as part of the Clearing

¹⁴ The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors governing the operations of designated FMUs that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. See Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012).

Agency Standards,¹⁵ require that clearing agencies establish, implement, maintain and enforce, written policies and procedures reasonably designed to establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, and require that intraday or real-time finality be provided where necessary to reduce risks, respectively.¹⁶ Here, as described in detail above, DTC's proposed rule change to increase the LPNC from one to two largest provisional credits should help it better contain losses and liquidity pressures, yet continue to meet its obligations; meanwhile, DTC's proposed rule change to no longer process RTPs for an acronym when the described circumstances are met and, then, remove the LPNC for the same acronym when an RTP is no longer viable should improve settlement finality, thus reducing DTC's risk. Since RTPs will no longer be processed when new issuances in an acronym exceed Maturity Obligations in the same acronym in the same day, removing the LPNC control in these cases should not increase DTC's exposure to MMI issuer credit risk.

¹⁵ Release No. 34-68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

¹⁶ Id. at 131-139.

III. Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,¹⁷ that the Commission DOES NOT OBJECT to the proposed rule change described in the Advance Notice, as modified by Amendment No. 1, and that DTC be and hereby is AUTHORIZED to implement the proposed rule change as of the date of this notice or the date of the "Notice of Filing Amendment No. 2 and Order Approving Proposed Rule Change, as Modified by Amendment No. 2, to Reduce Liquidity Risk Relating to [DTC's] Processing of Maturity and Income Presentments and Issuances of Money Market Instruments," SR-DTC-2012-10, whichever is later.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

¹⁷ 12 U.S.C. 5465(e)(1)(I).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68986 / February 26, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15217

In the Matter of

**My Complete Care, Inc.,
New Midwest Co., LLC,
NRG, Inc.,
Nugent Aerospace, Inc.,
Otter Tail Ag Enterprises, LLC,
Raines Lenders LP, and
Sadhana Equity Investment, 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 My Complete Care, Inc., New Midwest Co., LLC, NRG, Inc., Nugent Aerospace, Inc., Otter Tail Ag Enterprises, LLC, Raines Lenders LP, and Sadhana Equity Investment, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. My Complete Care, Inc. (CIK No. 1320474) is a Florida corporation located in Hollywood, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). My Complete Care is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10/A registration statement on May 28, 2010, which reported a net loss of over \$3,500 for the fiscal year ended December 31, 2009.

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2. New Midwest Co., LLC (CIK No. 1271285) is a cancelled Delaware limited liability company located in Renville, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). New Midwest Co. 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 May 31, 2009, which reported a net loss of over \$12.3 million for the prior nine months.

3. NRG, Inc. (CIK No. 73225) is a void Delaware corporation located in Lincolnwood, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NRG 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, 2004, which reported a net loss of \$7,250 for the prior three months.

4. Nugent Aerospace, Inc. (CIK No. 1439802) is a dissolved Florida corporation located in Charlotte, North Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Nugent Aerospace 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, 2010, which reported a net loss of over \$13,000 for the prior nine months.

5. Otter Tail Ag Enterprises, LLC (CIK No. 1425319) is a Minnesota limited liability company located in Fergus Falls, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Otter Tail Ag Enterprises 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, 2010, which reported a net loss of over \$852,000 for the prior three months. On October 30, 2009, Otter Tail Ag Enterprises filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Minnesota, and the case was closed on April 2, 2012.

6. Raines Lenders LP (CIK No. 845399) is a Delaware corporation located in Nashville, Tennessee with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Raines Lenders 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, 2011, which reported a net loss of over \$31,000 for the prior three months.

7. Sadhana Equity Investment, Inc. (CIK No. 1369141) is a dissolved Florida corporation located in Myakka City, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Sadhana Equity Investment 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, 2010, which reported a net loss of \$1,750 for the prior three months.

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 them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

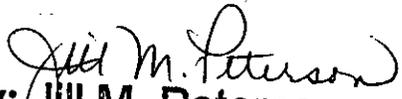
This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 68989 / February 26, 2013

ADMINISTRATIVE PROCEEDING

File No. 3-15218

In the Matter of

**Maxsys Holdings, Inc.,
Noble Consolidated Industries Corp.,
NSM Holdings, Inc.,
N.T. Properties, Inc.,
PrimePlayer, Inc.,
Skylyft Media Group, Inc., and
Spectrum Acquisition Corp.,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Maxsys Holdings, Inc., Noble Consolidated Industries Corp., NSM Holdings, Inc., N.T. Properties, Inc., PrimePlayer, Inc., Skylyft Media Group, Inc., and Spectrum Acquisition Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Maxsys Holdings, Inc. (CIK No. 1411164) is a void Delaware corporation located in Woodland Hills, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Maxsys Holdings 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, 2011, which reported a net loss of over \$10,300 for the prior three months.

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2. Noble Consolidated Industries Corp. (CIK No. 1104194) is a revoked Nevada corporation located in McCarran, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Noble Consolidated Industries 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 over \$896,000 for the prior three months. As of February 14, 2013, the company's stock (symbol "NBLC") was traded on the over-the-counter markets.

3. NSM Holdings, Inc. (CIK No. 1302947) is a void Delaware corporation located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NSM Holdings 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 November 30, 2006, which reported a net loss of over \$47,000 for the prior six months.

4. N.T. Properties, Inc. (CIK No. 1077665) is a permanently revoked Nevada corporation located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). N.T. Properties 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, 2000, which reported a net loss of \$100 for the prior six months.

5. PrimePlayer, Inc. (CIK No. 1119272) is a permanently revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Primeplayer 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, 2006, which reported a net loss of over \$63,000 for the prior six months. As of February 14, 2013, the company's stock (symbol "PPYR") was traded on the over-the-counter markets.

6. Skylyft Media Group, Inc. (CIK No. 1379173) is a California corporation located in Burbank, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Skylyft Media Group 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 over \$309,000 for the prior nine months.

7. Spectrum Acquisition Corp. (CIK No. 1408290) is a revoked Nevada corporation located in San Diego, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Spectrum Acquisition is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2008, which reported a net loss of over \$4,600 for the prior nine months.

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 them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f),

221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

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

17 CFR Part 201

Release Nos. 33-9387; 34-68994; IA-3557; IC-30408

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The Commission is adopting a rule adjusting for inflation the maximum amount of civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002.

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

FOR FURTHER INFORMATION CONTACT: James A. Cappoli, Senior Special Counsel, Office of the General Counsel, at (202) 551-7923, or Miles S. Treakle, Senior Counsel, Office of the General Counsel, at (202) 551-3609.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements the Debt Collection Improvement Act of 1996 ("DCIA").¹ The DCIA amended the Federal Civil Penalties Inflation Adjustment Act of 1990 ("FCPIAA")² to require each federal agency to adopt regulations at least once every four years that adjust for

¹ Pub. L. No. 104-134, 110 Stat. 1321-373 (1996) (codified at 28 U.S.C. 2461 note).

² 28 U.S.C. 2461 note.

inflation the maximum amount of the civil monetary penalties (“CMPs”) under the statutes administered by the agency.³

A civil monetary penalty (“CMP”) is defined in relevant part as any penalty, fine, or other sanction that: (1) is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.⁴ This definition covers the monetary penalty provisions contained in the statutes administered by the Commission. In addition, this definition encompasses the civil monetary penalties that may be imposed by the Public Company Accounting Oversight Board (the “PCAOB”) in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).⁵

The DCIA requires that the penalties be adjusted by the cost-of-living adjustment set forth in Section 5 of the FCPIAA.⁶ The cost-of-living adjustment is defined in the FCPIAA as the percentage by which the U.S. Department of Labor’s Consumer Price Index for all-urban consumers (“CPI-U”)⁷ for the month of June for the year preceding the adjustment exceeds the CPI-U for the month of June for the year in which the amount of the penalty was last set or adjusted pursuant to law.⁸ The statute contains specific rules for rounding each increase based

³ Increased CMPs apply only to violations that occur after the increase takes effect.

⁴ 28 U.S.C. 2461 note (3)(2).

⁵ The Commission may by order affirm, modify, remand, or set aside sanctions, including civil monetary penalties, imposed by the PCAOB. See Section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in federal district court pursuant to Section 21(e) of the Securities Exchange Act of 1934. As a result, penalties assessed by the PCAOB in its disciplinary proceedings are penalties “enforced” by the Commission for purposes of the Act. See Adjustments to Civil Monetary Penalty Amounts, Release No. 33-8530 (Feb. 4, 2005) [70 FR 7606 (Feb. 14, 2005)].

⁶ 28 U.S.C. 2461 note (5).

⁷ 28 U.S.C. 2461 note (3)(3).

⁸ 28 U.S.C. 2461 note (5)(b).

on the size of the penalty.⁹ Agencies do not have discretion over whether to adjust a maximum CMP, or the method used to determine the adjustment. Although the DCIA imposes a 10 percent maximum increase for each penalty for the first adjustment pursuant thereto, that limitation does not apply to subsequent adjustments.

The Commission administers four statutes that provide for civil monetary penalties: the Securities Act of 1933; the Securities Exchange Act of 1934; the Investment Company Act of 1940; and the Investment Advisers Act of 1940. In addition, the Sarbanes-Oxley Act of 2002 provides the PCAOB (over which the Commission has jurisdiction) authority to levy civil monetary penalties in its disciplinary proceedings.¹⁰ Penalties administered by the Commission were last adjusted by rules effective March 3, 2009.¹¹ The DCIA requires the civil monetary penalties to be adjusted for inflation at least once every four years. The Commission is therefore obligated by statute to increase the maximum amount of each penalty by the appropriate formulated amount.

Accordingly, the Commission is adopting an amendment to 17 CFR Part 201 to add § 201.1005 and Table V to Subpart E, increasing the amount of each civil monetary penalty authorized by the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the

⁹ 28 U.S.C. 2461 note (5)(a)(1) - (6).

¹⁰ 15 U.S.C. 7215(c)(4)(D).

¹¹ See 17 CFR 201.1004.

Sarbanes-Oxley Act of 2002.¹² The adjustments set forth in the amendment apply to violations occurring after the effective date of the amendment.

II. Summary of the Calculation

To explain the inflation adjustment calculation for CMP amounts that were last adjusted in 2009, we will use the following example. Under the current provisions, the Commission may impose a maximum CMP of \$1,425,000 for certain insider trading violations by a controlling person. To determine the new CMP amounts under the amendment, first we determine the appropriate CPI-U for June of the calendar year preceding the year of adjustment. Because we are adjusting CMPs in 2013, we use the CPI-U for June of 2012, which was 229.478. We must also determine the CPI-U for June of the year the CMP was last adjusted for inflation. Because the Commission last adjusted this CMP in 2009, we use the CPI-U for June of 2009, which was 215.693.

Second, we calculate the cost-of-living adjustment or inflation factor. To do this we divide the CPI for June of 2012 (229.478) by the CPI for June of 2009 (215.693). Our result is 1.0639.

Third, we calculate the raw inflation adjustment (the inflation adjustment before rounding). To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, \$1,425,000 multiplied by the inflation factor of 1.0639 equals \$1,516,058.

Fourth, we round the raw inflation amounts according to the rounding rules in Section 5(a) of the FCPIAA. Since we round only the increase amount, we calculate the increased amount by subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increase amount for the maximum penalty in our example is

¹² The Commission also is adopting technical corrections to Table I, Table II, Table III, and Table IV of 17 CFR Part 201. 17 CFR 201.1001 – 1004. Each of these tables referenced 15 U.S.C. 78ff(c)(2)(C), rather than 15 U.S.C. 78ff(c)(2)(B). The technical corrections will amend each table to refer to the correct paragraph.

\$91,072 (i.e., \$1,516,058 less \$1,425,000). Under the rounding rules, if the *penalty* is greater than \$200,000, we round the *increase* to the nearest multiple of \$25,000. Therefore, the maximum penalty increase in our example is \$100,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, \$1,425,000 plus \$100,000 yields a maximum inflation adjustment penalty amount of \$1,525,000.¹³

III. Related Matters

Administrative Procedure Act - Immediate Effectiveness of Final Rule

Under the Administrative Procedure Act ("APA"), a final rule may be issued without public notice and comment if the agency finds good cause that notice and comment are impractical, unnecessary, or contrary to public interest.¹⁴ Because the Commission is required by statute to adjust the civil monetary penalties within its jurisdiction by the cost-of-living adjustment formula set forth in Section 5 of the FCPIAA, the Commission finds that good cause exists to dispense with public notice and comment pursuant to the notice and comment provisions of the APA.¹⁵ Specifically, the Commission finds that because the adjustment is mandated by Congress and does not involve the exercise of Commission discretion or any policy judgments, public notice and comment is unnecessary.¹⁶

¹³ The adjustments in Table V to Subpart E of Part 201 reflect that the operation of the statutorily mandated computation, together with rounding rules, does not result in any adjustment to ten penalties. These particular penalties will be subject to slightly different treatment when calculating the next adjustment. Under the statute, when we next adjust these penalties, we will be required to use the CPI-U for June of the year when these particular penalties were "last adjusted," rather than the CPI-U for 2013.

¹⁴ 5 U.S.C. 553(b)(3)(B).

¹⁵ 5 U.S.C. 553(b)(3)(B).

¹⁶ A regulatory flexibility analysis under the Regulatory Flexibility Act ("RFA") is required only when an agency must publish a general notice of proposed rulemaking for notice and comment. See 5 U.S.C. 603. As noted above, notice and comment are not required for this final rule. Therefore, the RFA does not apply.

Under the DCIA, agencies must make the required inflation adjustment to civil monetary penalties: (1) according to a very specific formula in the statute; and (2) within four years of the last inflation adjustment. Agencies have no discretion as to the amount of the adjustment and have limited discretion as to the timing of the adjustment, in that agencies are required to make the adjustment at least once every four years. The regulation discussed herein is ministerial, technical, and noncontroversial. Furthermore, because the regulation concerns penalties for conduct that is already illegal under existing law, there is no need for affected parties to have thirty days prior to the effectiveness of the regulation and amendments to adjust their conduct. Accordingly, the Commission believes that there is good cause to make this regulation effective immediately upon publication.¹⁷

A. Economic Analysis

The Commission is sensitive to the costs and benefits that result from its rules. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the DCIA, and has no impact on disclosure or compliance costs. The Commission notes that the civil monetary penalties ordered in SEC proceedings in fiscal year 2012 totaled approximately \$1,021.0 million. Assuming that the Commission is successful in obtaining civil monetary penalties in fiscal years subsequent to the enactment of the new regulation in similar proportion to that obtained in fiscal year 2012, the inflationary adjustment pursuant to the new regulation would result in a maximum increase in the civil monetary penalties ordered of approximately 6.4%, or \$65.3 million. This figure assumes that the Commission would obtain a civil monetary penalty equal to the maximum statutory amount in each case, which clearly overstates the effect of the adjustment to the penalties. The Commission further notes that, in many cases in which it

¹⁷ Additionally, this finding satisfies the requirements for immediate effectiveness under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 808(2); see also id. 801(a)(4).

has obtained large civil monetary penalties, such penalties were calculated on the basis of the gross pecuniary gain rather than the maximum penalty dollar amount set by statute that will be adjusted by this rule.¹⁸ In addition, the Commission notes that this figure includes penalties imposed for insider trading, for which the statutory maximum is stated as an amount not to exceed three times the profit gained or loss avoided as a result of the violation, rather than by reference to a statutory dollar amount that is affected by this regulation.¹⁹ Therefore, the Commission does not believe that adjusting civil monetary penalties will significantly affect the amount of penalties it obtains.

The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the level of deterrence effectuated by the civil monetary penalties, and not allowing such deterrent effect to be diminished by inflation. The costs of implementing this rule should be negligible, because the only change from the current, baseline situation is determining potential penalties using a new maximum dollar amount. Furthermore, Congress, in mandating the inflationary adjustments, has already determined that any possible increase in costs is justified by the overall benefits of such adjustments.

B. Paperwork Reduction Act

This rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.²⁰

¹⁸ For example, 15 U.S.C. 77t(d)(2)(A), after adjusting for inflation as required by the DCIA, provides that “the amount of the penalty shall not exceed the greater of (i) [\$7,500] for a natural person or [\$80,000] for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.”

¹⁹ 15 U.S.C. 78u-1(a)(2). In fiscal year 2012, penalties imposed under this provision totaled over \$140 million.

²⁰ 44 U.S.C. 3501 *et. seq.*

C. Statutory Basis

The Commission is adopting these amendments to 17 CFR Part 201, Subpart E pursuant to the directives and authority of the DCIA, Pub. L. No. 104-134, 110 Stat. 1321-373 (1996).

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Claims, Confidential business information, Lawyers, Securities.

Text of Amendment

For the reasons set forth in the preamble, part 201, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 201 – RULES OF PRACTICE

SUBPART E – ADJUSTMENT OF CIVIL MONETARY PENALTIES

1. The authority citation for Part 201, Subpart E, is revised to read as follows:

Authority: 28 U.S.C. 2461 note.

§ 201.1001 [Amended]

2. Section 201.1001 is amended in the table in the first column labeled “U.S. code citation” by removing the reference “15 U.S.C. 78ff(c)(2)(C)” and adding in its place “15 U.S.C. 78ff(c)(2)(B)”.

§ 201.1002 [Amended]

3. Section 201.1002 is amended in the table in the first column labeled “U.S. code citation” by removing the reference “15 U.S.C. 78ff(c)(2)(C)” and adding in its place “15 U.S.C. 78ff(c)(2)(B)”.

§ 201.1003 [Amended]

4. Section 201.1003 is amended in the table in the first column labeled “U.S. code citation” by removing the reference “15 U.S.C. 78ff(c)(2)(C)” and adding in its place “15 U.S.C. 78ff(c)(2)(B)”.

§ 201.1004 [Amended]

5. Section 201.1004 is amended in the table in the first column labeled “U.S. code citation” by removing the reference “15 U.S.C. 78ff(c)(2)(C)” and adding in its place “15 U.S.C. 78ff(c)(2)(B)”.

6. Section 201.1005 and Table V to Subpart E are added to read as follows:

§ 201.1005 Adjustment of civil monetary penalties – 2013.

As required by the Debt Collection Improvement Act of 1996, the maximum amounts of all civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002 are adjusted for inflation in accordance with Table V to this subpart. The adjustments set forth in Table V apply to violations occurring after [insert date of publication in the Federal Register].

Table V to Subpart E	Civil monetary penalty inflation adjustments	Year penalty amount was last adjusted	Maximum penalty amount pursuant to last adjustment	Adjusted maximum penalty amount
U.S. Code citation	Civil monetary penalty description			
Securities and Exchange Commission: 15 U.S.C. 77h-1(g)	For natural person	2010	\$ 7500	\$ 7500
	For any other person	2010	75000	80000
	For natural person / fraud	2010	75000	80000
	For any other person / fraud	2010	375000	400000

	For natural person / substantial losses or risk of losses to others	2010	150000	160000
	For any other person / substantial losses or risk of losses to others	2010	725000	775000
15 U.S.C. 77t(d)	For natural person	2009	7500	7500
	For any other person	2009	75000	80000
	For natural person / fraud	2009	75000	80000
	For any other person / fraud	2009	375000	400000
	For natural person / substantial losses or risk of losses to others	2009	150000	160000
	For any other person / substantial losses or risk of losses to others	2009	725000	775000
15 U.S.C. 78ff(b)	Exchange Act / failure to file information documents, reports	1996	110	210
15 U.S.C. 78ff(c)(1)(B)	Foreign Corrupt Practices – any issuer	2009	16000	16000
15 U.S.C. 78ff(c)(2)(B)	Foreign Corrupt Practices – any agent or stockholder acting on behalf of issuer	2009	16000	16000
15 U.S.C. 78u-1(a)(3)	Insider Trading – controlling person	2009	1425000	1525000
15 U.S.C. 78u-2	For natural person	2009	7500	7500
	For any other person	2009	75000	80000
	For natural person / fraud	2009	75000	80000
	For any other person / fraud	2009	375000	400000
	For natural person / substantial losses to others / gains to self	2009	150000	160000
	For any other person / substantial losses to others / gain to self	2009	725000	775000
15 U.S.C. 78u(d)(3)	For natural person	2009	7500	7500
	For any other person	2009	75000	80000
	For natural person / fraud	2009	75000	80000
	For any other person / fraud	2009	375000	400000
	For natural person / substantial losses or risk of losses to others	2009	150000	160000

	For any other person / substantial losses or risk of losses to others	2009	725000	775000
15 U.S.C. 80a-9(d)	For natural person	2009	7500	7500
	For any other person	2009	75000	80000
	For natural person / fraud	2009	75000	80000
	For any other person / fraud	2009	375000	400000
	For natural person / substantial losses to others / gains to self	2009	150000	160000
	For any other person / substantial losses to others /gain to self	2009	725000	775000
15 U.S.C. 80a-41(e)	For natural person	2009	7500	7500
	For any other person	2009	75000	80000
	For natural person / fraud	2009	75000	80000
	For any other person / fraud	2009	375000	400000
	For natural person / substantial losses or risk of losses to others	2009	150000	160000
	For any other person / substantial losses or risk of losses to others	2009	725000	775000
15 U.S.C. 80b-3(i)	For natural person	2009	7500	7500
	For any other person	2009	75000	80000
	For natural person / fraud	2009	75000	80000
	For any other person / fraud	2009	375000	400000
	For natural person / substantial losses to others / gains to self	2009	150000	160000
	For any other person / substantial losses to others /gain to self	2009	725000	775000
15 U.S.C. 80b-9(e)	For natural person	2009	7500	7500
	For any other person	2009	75000	80000
	For natural person / fraud	2009	75000	80000
	For any other person / fraud	2009	375000	400000
	For natural person / substantial losses or risk of losses to others	2009	150000	160000
	For any other person / substantial losses or risk of losses to others	2009	725000	775000
15 U.S.C.	For natural person	2009	120000	130000

7215(c)(4)(D)(i)	For any other person	2009	2375000	2525000
15 U.S.C. 7215(c)(4)(D)(ii)	For natural person	2009	900000	950000
	For any other person	2009	17800000	18925000

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

February 27, 2013