AUGUST 2013
FOIA FILE

67
TOTAL DOCUMENTS

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 **August 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.

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 JO WHITE, CHAIR

ELISSE B. WALTER, COMMISSIONER

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 26, 2013

IN THE MATTER OF NORSTRA ENERGY 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 Norstra Energy Inc. ("Norstra"). Norstra is a Nevada corporation based in South Lake, Texas, and its stock is currently quoted on OTC Link, operated by OTC Markets Group, Inc. under the symbol NORX. Questions have arisen concerning the adequacy and accuracy of press releases and other public statements concerning Norstra's business operations.

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

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on June 26, 2013 through 11:59 p.m. EDT, on July 10, 2013.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

August 1, 2013

In the Matter of **Zenergy International, 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 Zenergy International, Inc. because it has not filed any periodic reports since the period ended June 23, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on August 1, 2013, through 11:59 p.m. EDT on August 14, 2013.

By the Commission.

Elizabeth M. Murphy
Secretary

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

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Commissioner Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

August 2, 2013

IN THE MATTER OF BERGAMO ACQUISITION CORP. File No. 500-1	ORDER OF SUSPENSION OF TRADING

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bergamo Acquisition Corp. ("Bergamo"). Bergamo is a Delaware corporation based in Henderson, Nevada, and its stock is currently quoted on OTC Link, operated by OTC Markets Group, Inc. under the symbol BGMO. Questions have arisen concerning the adequacy and accuracy of press releases and other public statements concerning Bergamo's business operations and financial condition.

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

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THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on August 2, 2013 through 11:59 p.m. EDT, on August 15, 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. 70094 / August 2, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15404

In the Matter of **Convergence Ethanol, Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Convergence Ethanol, Inc. ("CETH") [1] (CIK No. 23778) is a revoked Nevada corporation located in Las Vegas, Nevada. On June 5, 2012, the Secretary of the Commission, pursuant to delegated authority, entered a consent order revoking the registration of each class of CETH's securities registered with the Commission pursuant to Exchange Act Section 12(g). *In the Matter of Alderox, Inc., et al. (as to Convergence Ethanol, Inc.),* Exchange Act Rel. No. 67117, Administrative Proceeding File No. 3-14886 (June 5, 2012).

B. MATERIALLY DEFICIENT REGISTRATION FORM

2. On December 18, 2012, CETH filed a Form 10 with the Commission to re-register its common stock under Exchange Act Section 12(g).

[1] The short form of the issuer's name is its former ticker symbol.

3. On December 20, 2012 the Division of Corporation Finance sent a letter to CETH advising it of certain deficiencies in its original Form 10. Thereafter, on January 17, 2013, CETH filed an amended Form 10-A ("Amended Form 10"). The Amended Form 10 contained the following deficiencies:

i. The Amended Form 10 failed to include "since inception" figures for its statements of income, cumulated deficit, and cumulative cash flow in its periodic and annual financials statements as required by ASC Topic 915. The annual figures are required to be audited.

ii. The Amended Form 10 also failed to include interim financial information for the period ended December 31, 2012. According to Rule 3-12 of Regulation S-X, if the financial statements included in a filing are date as of a date 135 days or more before the expected effective date of the filing, the financial statements must be updated to include interim financial information prior to effectiveness.

iii. The Management's Discussion and Analysis in the Amended Form 10 fails to comply with Item 303 of Regulation S-K in several respects. For example, the financial information presented therein does not match that presented in the financial statements and relates to different periods.

4. CETH's Amended Form 10 became effective, and its common stock became registered pursuant to Exchange Act Section 12(g), by operation of law, on February 16, 2013. As of July 25, 2013, no ticker symbol had been issued to CETH nor had public trading commenced.

5. As a result of the foregoing, the Respondent re-registered its common stock on the basis of the materially deficient Amended Form 10. Exchange Act Section 12(g) requires issuers wishing to register a class of securities pursuant thereto to "file[] with the Commission a registration statement . . . containing such information and documents as the Commission may specify . . .." Form 10, promulgated by the Commission pursuant to Exchange Act Sections 12(b) and 12(g), is the primary form used by issuers seeking to register securities thereunder, and contains fifteen items which require certain specific information spelled out in Regulations S-K and S-X concerning, among other things, the issuer's business and financial position.

6. As a result of the foregoing, Respondent failed to comply with Exchange Act Section 12(g), Rule 12b-20 and Regulations S-K and S-X 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 that may become registered pursuant thereto.

IV.

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

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

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter
Commissioner Gallagher
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70105 / August 2, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3641 / August 2, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15405

In the Matter of

RONALD MUSICH,

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 against Ronald Musich ("Musich" 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 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. Musich, 62, is a resident of Spring Park, Minnesota. Musich is not registered as a broker-dealer or associated with a broker or dealer registered with the Commission. During the relevant period, Musich was a part-owner of Rocket Capital Management, LLC, a state-registered investment advisory firm with its principal place of business in Wayzata, Minnesota.

2. On July 11, 2013, a final judgment was entered by consent against Musich, permanently enjoining him from future violations of Section 15(a) of the Exchange Act, in the civil action entitled Securities and Exchange Commission v. Collyard, et al., Civil Action No. 11-cv-3656, in the United States District Court for the District of Minnesota.

3. The Commission's complaint alleged that, from approximately 2004 to 2008, as part of a large network of unregistered brokers, or so-called "finders" and "consultants," Musich solicited investors for Bixby Energy Systems, Inc. ("Bixby"), a privately held Delaware corporation with its principal place of business in Ramsey, Minnesota. Specifically, the complaint alleged that Musich, in partnership with Gary A. Collyard ("Collyard") and the Collyard Group, LLC, sold over $3.1 million in Bixby securities to more than 120 investors. The complaint further alleged that, as compensation for the sale of securities, Bixby paid Collyard and the Collyard Group $420,000 in cash and warrants to purchase at least 340,000 shares of Bixby common stock, and Musich received approximately half of these commissions paid to Collyard Group, LLC. The complaint further alleged that, in 2007 and 2008, Musich received additional commissions of $100,000 in cash from Bixby for the sale of Bixby securities. Finally, the complaint alleged that Musich, while acting as a broker or dealer, effected transactions in, and induced and attempted to induce the purchase or sale of securities, when he was not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker or dealer.

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, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

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

with a right to apply for reentry after three years to the appropriate self-regulatory organization or, if there is none, to the Commission.

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

By the Commission.

Elizabeth M. Murphy
Secretary

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

Chair White
Commissioner Gallagher
not participating
Commissioner Paredes
Disapproved

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT of 1934
Rel. No. 70120 / August 5, 2013

In the Matter of

ANWAR v. FAIRFIELD GREENWICH LIMITED, No. 09 Civ. 00118 (S.D.N.Y.)

ORDER DENYING PETITION FOR REVIEW

Pursuant to Rule 431(b)(2) of the Rules of Practice,[1] it is ORDERED that the Petition of Citco Fund Services (Europe) B.V.; Citco (Canada), Inc.; Citco Group Limited; Citco Global Custody N.V.; Citco Fund Services (Bermuda) Limited; Citco Bank Nederland N.V. Dublin Branch; PricewaterhouseCoopers Accountants N.V.; PricewaterhouseCoopers LLP; and GlobeOp Financial Services LLC (collectively, "Petitioners") seeking review of the June 7, 2013 decision by delegated authority of the Office of the General Counsel ("Office") declining to authorize testimony requested in subpoenas to nine former or current Commission staff members is hereby denied.

On February 27, 2013, the Petitioners asked the Office to authorize nine depositions of former or current Commission staff members who had worked on an examination or investigation of Bernard Madoff and/or Bernard L. Madoff Investment Securities, LLC ("BLMIS"). On June 7, 2013, the Office notified the Petitioners that it would not authorize any testimony because the burden on the SEC of providing the testimony outweighed the very limited relevance of the testimony sought. In their Petition for Review, the Petitioners contend that the information sought is relevant to litigation that is pending against the Petitioners and that there is no burden that would outweigh the relevance.

In considering whether to accept or reject the Petition, the Commission must consider the factors in Rule 411(b)(2) of the Rules of Practice,[2] that is, whether:

[1] 17 CFR 201.431(b)(2).

[2] 17 CFR 201.411(b)(2). Rule 431(b)(2) makes the factors in Rule 411(b)(2) applicable to a decision whether to review action taken pursuant to delegated authority.

(i) a prejudicial error was committed in the conduct of the proceeding; or

(ii) the decision embodies:

(A) a finding or conclusion of material fact that is clearly erroneous; or

(B) a conclusion of law that is erroneous; or

(C) an exercise of discretion or decision of law or policy that is important and that the Commission should review.

The Petition does not allege that any prejudicial error was committed in the conduct of the proceedings or that the Office's decision embodies a finding of material fact that is clearly erroneous, and the Commission finds that no such errors occurred.

With respect to conclusions of law, the Commission finds that the Petitioners have not shown that the Office's conclusions of law were incorrect. Because the Petitioners have not shown that any information the potential witnesses may provide about Madoff will affect any specific claims in the *Anwar* litigation, they have not countered the Office's conclusion that the testimony they seek is at most minimally relevant. The Petitioners also have not shown that the Office improperly concluded that the burden on the Commission outweighs the limited relevance of the testimony because of the burden giving testimony would place on the Commission. Authorizing the testimony would mean that at least three current staff members would each lose multiple days of work to prepare for and appear at a deposition. In addition, preparing for all of the depositions would place an additional burden on other staff members, particularly because of the complexity of determining what matters relating to Madoff remain privileged.

Finally, the Commission finds that the Office's decision does not embody an exercise of discretion or a decision of law or policy that is important and that the Commission should review. Although the underlying litigation is clearly large and significant, Commission policies and practices are at best tangentially involved, and staff depositions are not likely to address any significant issues of law or policy.

Because the Petitioners have not satisfied any of the factors in Rule 411(b)(2) of the Rules of Practice, their Petition for Review is denied.

By the Commission.

Elizabeth Murphy
Secretary

By: Lynn M. Powalski
Deputy Secretary

Commissioner Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

August 5, 2013

IN THE MATTER OF	:	
	:	
HUTECH21 CO., LTD.	:	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 Hutech21 Co., Ltd. ("Hutech21"). Hutech21 is a British Virgin Islands corporation based in Rathwell, Manitoba, and its stock is currently quoted on OTC Link, operated by OTC Markets Group, Inc. under the symbol CLGZF. Questions have arisen concerning the adequacy and accuracy of press releases issued by Hutech21 concerning its business operations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Hutech21.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on August 5, 2013 through 11:59 p.m. EDT, on August 16, 2013.

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. 3642 / August 5, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15406

In the Matter of

BENJAMIN DANIEL DEHAAN,

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 Benjamin Daniel DeHaan ("Respondent" or "DeHaan").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. DeHaan was the owner and president of Lighthouse Financial Partners, LLC ("Lighthouse"), an investment adviser registered with the State of Georgia, from 2007 until mid-2012. DeHaan, 38 years old, is a resident of Tucker, Georgia.

B. INJUNCTION, CRIMINAL CONVICTION AND STATE ACTION

2. On October 10, 2012, an Order of Permanent Injunction was entered by consent against DeHaan, 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. Benjamin Daniel DeHaan and Lighthouse Financial Partners, LLC, Civil Action Number 1:12-CV-1996-TWT, in the United States District Court for the Northern District of Georgia.

3. The Commission's complaint in the civil action alleged that from approximately January 2011 through early May 2012, DeHaan moved approximately $1.2 million in funds belonging to his clients from their accounts at a custodial broker-dealer into a bank account in Lighthouse's name that he controlled, thus gaining custody and control of these client assets. DeHaan and Lighthouse told the clients that these funds would be used to open new accounts at another broker-dealer. The complaint further alleged that once in this account, at least some of these funds were moved to a personal account belonging to DeHaan and to accounts used by Lighthouse for business expenses. At least $600,000 in client funds remained unaccounted for at the time the complaint was filed. DeHaan was also alleged to have provided false documents to the Commission's staff and to an examiner for the State of Georgia.

4. On February 1, 2013, DeHaan pled guilty to one count of wire fraud in violation of Title 18, United States Code, Section 1343 before the United States District Court for the Northern District of Georgia, in United States of America v. Benjamin Daniel DeHaan, Criminal Information No. 1:13-CR-27-SCJ (N.D. Ga. Feb. 1, 2013).

5. The count of the criminal information to which DeHaan pled guilty alleged, among other things, that DeHaan defrauded investors and misappropriated funds from them to pay his own expenses and those of Lighthouse while providing false information to them in quarterly account statements.

6. On July 24, 2012, the Commissioner of Securities for the State of Georgia ("Commissioner") issued an administrative order revoking the registration of Lighthouse as an investment adviser and DeHaan as an investment adviser representative. In the Matter of Lighthouse Financial Partners, LLC (CRD# 142816), and Benjamin Daniel DeHaan (CRD# 4213868), Case No. ENSC-120156 (July 24, 2012).

7. The Commissioner's order found, among other things, that Lighthouse and DeHaan had provided false information and documents to the Commissioner's staff during an examination of Lighthouse's books and records.

III.

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

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

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

IV.

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

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

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

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

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

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

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Chair White
Commissioner Gallagher
not participating
Commissioner Paredes
Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9438 / August 6, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70121 / August 6, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3643 / August 6, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15407

In the Matter of UBS SECURITIES LLC, Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO 8A OF THE SECURITIES ACT OF 1933, SECTION 15(b)(4) OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTIONS 203(E) AND 203(K) 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 8A of the Securities Act of 1933 ("Securities Act"), Section 15(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against UBS Securities LLC ("Respondent" or "UBS").

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 [redacted]nistrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of [redacted], Section 15(b)(4) of the Exchange Act, and Sections 203(e) and 203(k) 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 finds[1] that:

Summary

1. UBS violated certain provisions of the federal securities laws in connection with the structuring and marketing of a largely synthetic collateralized debt obligation ("CDO") known as ACA ABS 2007-2 ("ACA 07-2"). UBS structured this CDO, and marketed it together with the CDO's collateral manager, ACA Management LLC ("ACA"). The CDO's collateral consisted largely of credit default swaps ("CDS") referencing subprime residential mortgage-backed securities ("RMBS").

2. As collateral manager, ACA was responsible for determining the price that the CDO paid for collateral. In the case of CDS collateral, the price was the amount the CDO was paid for selling protection on the underlying asset. ACA typically would select collateral for this type of CDO by sending out to the street BWIC ("bids wanted in competition") lists soliciting bids for CDS on particular single-name RMBS. The winners of the BWIC process would be those counterparties who offered to pay the highest premiums on the CDS. For example, a counterparty might agree to pay a running spread of 550 basis points to purchase protection against default on $10 million of a designated reference obligation. The counterparty would pay this running spread to the investment bank that was structuring the CDO for a certain number of years, with the bank agreeing to pay the $10 million notional amount to the counterparty in the event that the reference security defaulted. The bank, in its role as CDS counterparty to the CDO, would then pay the same running spread minus a small intermediation fee to the CDO, with the CDO agreeing to pay the $10 million notional amount to the bank in the event that the reference security defaulted. (The spreads are called "running" because the counterparty agrees to make the payments on a regular basis until maturity or default. In the example above, the annual dollar value of the running spread would be $550,000.)

3. For ACA 07-2, however, the bidding on a number of BWICs was bifurcated: UBS and ACA agreed that, in certain BWICs, ACA would instruct prospective bidders to bid in two parts. The first part was a specified running spread: for example, in the first BWIC, ACA told prospective bidders that they would need to pay a running spread of 300 basis points. The spread was nonnegotiable. Instead, the competition was over the second part, called "upfront points." ACA solicited the upfront points as one-time cash payments to be made by the bidders to UBS when the CDS were traded. Thus, the winners of the BWIC were those who, in addition to agreeing to pay the specified base premium, bid the highest number of upfront points.

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

4. By the time the ACA 07-2 CDO was launched, the BWICs had resulted in approximately $23.6 million in upfront points. However, those upfront points were retained by UBS and not contributed to the CDO. The marketing materials for the CDO did not disclose UBS's retention of the $23.6 million in upfront points. The materials further represented that the CDO had to acquire all collateral "on an 'arm's-length basis' for fair market value," or at the price the collateral was acquired by UBS. This representation was inaccurate because the CDO did not receive the $23.6 million in upfront points retained by UBS. UBS employees referred to the upfront points internally as an extra "fee" on top of UBS's disclosed fee of approximately $10.8 million. Additionally, UBS negligently caused violations of the securities laws by ACA, which had a fiduciary duty as an investment adviser to ACA 07-2.

Respondent

5. **UBS Securities LLC ("UBS")** is a Delaware entity with principal executive offices in Stamford, CT and New York, NY. It is a broker-dealer and investment adviser dually registered with the SEC through which UBS AG principally conducts its investment banking business in the U.S.

Other Relevant Entity

6. **ACA Management LLC ("ACA")**, a Delaware entity headquartered in New York, NY, was the entity through which ACA Financial Guaranty Corporation ("ACAFGC") operated its CDO advisory business. ACA was registered with the SEC as an investment adviser 2006 and 2007. ACA's CDO management business was sold to third parties in 2008 as part of the restructuring of ACAFGC. ACA no longer has any advisory business or responsibilities, and the sole function of ACAFGC is to operate as a runoff municipal bond insurance company under the oversight of the Maryland Insurance Administration.

Background

7. A CDO is a special-purpose vehicle that raises capital principally through the issuance of debt securities and uses the proceeds to invest in fixed-income securities, often real estate assets. The CDO's debt is issued in different tranches that feature varying risks and rewards. The highest-rated tranche has the first priority of repayment through what is called the CDO's waterfall. In other words, on certain predetermined payment dates, the holders of the higher tranches of debt are the first to receive their scheduled principal and/or interest payments. Because of their priority of repayment, the higher tranches have lower rates of return. In contrast, holders of lower-rated tranches generally are paid only after more senior holders are paid and these tranches feature higher rates of return. At the bottom of the waterfall sits the equity holder, which receives any residual payments available after the debt holders receive their scheduled payments.

8. A CDS is a type of derivative through which two parties transfer the risk of ownership of a particular reference obligation. The protection buyer of a CDS pays to purchase protection from a default, downgrade, or another credit event impacting the reference obligation. The protection seller sells that protection and assumes the risk of a credit event on the reference obligation. In this way the protection seller of the CDS operates as a kind of insurer to the buyer,

for which the seller receives some form of payment. A reference obligation can take many forms. In ACA 07-2, the reference obligations were securitized pools of residential mortgage loans. In addition, the form of payment that the protection buyer pays to the protection seller can take different forms. Several of the CDS acquired for the ACA 07-2 warehouse featured not only the typical periodic "running spreads" paid by the buyer, but also one-time cash "upfront points."

9. A CDO can be backed by bonds (a "cash CDO"), by CDS (a "synthetic CDO"), or by both bonds and CDS (a "hybrid CDO"). ACA 07-2 was a hybrid CDO. As was common with CDOs, ACA 07-2 was set up as an issuer organized under the laws of the Caymans Islands, with a board of directors in the Caymans, and with a co-issuer incorporated in Delaware and a director in Delaware.

The Roles and Obligations of ACA and UBS in ACA 07-2

10. UBS affiliates structured ACA 07-2 and acted as its warehouse provider and the initial CDS counterparty for the CDS collateral that went into ACA 07-2. A warehouse is essentially a credit line extended to the CDO before it launches to allow the CDO to acquire collateral while investors consider purchasing a tranche in the CDO. As the warehouse provider for ACA 07-2, UBS AG bore the risk of loss on the warehoused assets unless and until the CDO closed and UBS was able to sell the CDO notes to investors. As the initial CDS counterparty, UBS AG faced third parties on the CDS entered into for the ACA 07-2 warehouse; at closing UBS entered into offsetting CDS with ACA 07-2. UBS AG received a small intermediation fee for acting as the initial CDS counterparty. In the case of ACA 07-2, this fee was 2 basis points, so that, for example, if a third party agreed to pay a running spread of 300 basis points on a particular reference obligation, UBS AG would retain 2 basis points and transfer 298 basis points to the CDO. Finally, UBS earned any principal or interest paid by the collateral during the warehouse period; this is known as the "carry."

11. UBS, together with its affiliate UBS Limited, acted as arranger, placement agent, and initial purchaser of the notes and equity issued by CDO. UBS agreed in an engagement letter with ACA that, among other things, it would structure the CDO; advise the CDO in obtaining ratings on its notes; assist the CDO in preparing offering materials; formulate a marketing strategy for the CDO's securities; advise the CDO on negotiations with prospective investors; and use best efforts to place the CDO's securities. UBS and UBS Limited were entitled to a fee of approximately $10.8 million for these services.

12. ACA was the collateral manager for ACA 07-2. As collateral manager, ACA was responsible for selecting the collateral that went into ACA 07-2 and determining the price that the CDO would pay for that collateral (or, in the case of CDS collateral, the amount the CDO would be paid for selling protection). ACA owed a fiduciary duty to ACA 07-2 as its investment adviser. In addition to that duty, ACA was required to follow guidelines set out in certain documents governing the operation of the CDO. These included a "collateral management agreement," which was an investment advisory agreement between ACA and ACA 07-2, and the indenture, which was a document that governed the rights of investors in the CDO, among other things. The collateral management agreement required ACA to identify appropriate CDS to be acquired by the

CDO; to comply with the terms of the CDO's indenture affecting ACA's functions, including the investment criteria found in the indenture that set forth specific guidelines for qualified investments; and to seek to obtain best prices and executions when causing the CDO to acquire collateral. ACA represented to the CDO that all CDS purchased by the CDO at its closing satisfied all terms and conditions applicable to such purchases found in the indenture and collateral management agreement as of the date of purchase or, if earlier, the date of commitment. One requirement in the CDO's indenture was that transactions be conducted "on an arm's-length basis for fair market value." The CDO's offering circular also stated that CDS could only be acquired by the CDO if such CDS satisfied this arm's-length, fair-market-value requirement, but it allowed the transfer of collateral into the CDO at the same price that UBS paid during the warehouse period. ACA could fulfill its fiduciary duty to the CDO by determining the fair market value of the collateral at close and transferring the collateral into the CDO at such price, or transferring the collateral into the CDO at the price at which it was acquired for the warehouse. This second option was the industry standard for this type of CDO.

Solicitation Of Bids With Upfront Points

13. In early 2007, spreads on CDS referencing RMBS began to widen substantially. Certain market participants, including UBS, viewed these CDS as cheap because a protection seller could receive a substantially larger spread than it would have received in 2006 for selling protection on the same RMBS. Because UBS CDO desk employees believed that the RMBS market would improve and spreads would tighten, UBS and ACA began negotiations for what uld become ACA 07-2.

14. In late March 2007, UBS employees asked ACA to begin ramping the CDO by acquiring CDS referencing RMBS with a preset running spread and upfront points. ACA then sent out BWICs to acquire collateral for inclusion in the CDO. Through the first three BWICs, by early April 2007 UBS acquired $297.5 million notional amount of CDS with running spreads of 300, 350, or 375 basis points and with upfront payments totaling approximately $28.9 million. The remainder of the CDS referencing RMBS for ACA 07-2 were ramped by May 14, 2007, but no other positions were acquired for ACA 07-2 using upfront points. Because two of the CDS needed to be unwound before the CDO closed, the total amount of upfront points collected during the warehouse dropped to approximately $23.6 million. The total notional value of the CDO's collateral when the CDO launched was $750 million.

UBS Keeps the Upfront Points

15. From the outset, UBS employees working on ACA 07-2 intended for UBS to retain the upfront points. Early in the structuring, the head of the U.S. CDO group at UBS stated: "Let's see how much money we can draw out of the deal." Similarly, the manager of UBS's CDO syndicate book stated that he viewed the ACA 07-2 CDO as an "arbitrage opportunity" — i.e., a chance for UBS to make trading gains when selling the assets into the CDO.

16. After the ACA 2007-2 CDO was partially ramped using CDS with upfront points, employees discussed how to retain the upfront points. In early May 2007, those employees

discussed two ways in which UBS could do so: (1) UBS could contribute the upfront points to the CDO and arrange to have the CDO pay them back to UBS on a fully disclosed basis, or (2) UBS could simply keep the upfront points without disclosing their retention to prospective investors. At the request of the head of the U.S. CDO group, one of the UBS CDO group employees contacted the in-house UBS attorney assigned to the ACA 07-2 CDO ("Deal Counsel") to discuss whether UBS could retain the upfront points. Deal Counsel, apparently having identified a potential tax issue, then contacted an in-house UBS tax counsel and UBS's external tax counsel to discuss the desire of the UBS CDO group to retain the upfront points and the possible tax ramifications of doing so. All of these attorneys were informed of the CDO group's desire to retain these upfront points, and the fact that the CDS spreads without the upfront points were not representative of then-current fair market value. The undisclosed retention of the upfront points by UBS was inconsistent with how UBS had structured other CDOs, where upfront points, if they existed, were transferred to the CDO at closing. But neither Deal Counsel nor the other attorneys involved appear to have considered whether the retention of the upfront points needed to be disclosed to investors or to the other outside counsel working on the ACA 07-2 documentation. Ultimately, Deal Counsel signed off on the ACA 07-2 documentation and disclosures without suggesting to anyone that any amendment be made to the documents to address UBS's retention of the upfront points.

17. ACA employees were aware that UBS would not transfer the upfront points to ACA 07-2. During the ramp of this CDO, employees from ACA and UBS discussed in telephone conversations recorded at ACA whether UBS would transfer all, some, or none of the upfront points to the CDO. In one conversation, an ACA employee said that UBS would transfer the CDS to the CDO at a "mid-market" price and keep the rest of the upfront points (even though the price was not "mid-market" at the time). In another conversation about the upfront points, an ACA employee asked: "Is there, uh, 20 million dollars lying around?" The UBS employee responded: "There's no 20 million. . . . We spent it already." Finally, after a prospective investor learned of the existence of the upfront points, he was told by an ACA employee that UBS was keeping those upfront points as a "hedge" for itself.

UBS and ACA Fail to Disclose that UBS Kept the Upfront Points

18. The offering circular for ACA 07-2 stated that the CDO had to acquire all collateral "on an 'arm's-length basis' for fair market value." The CDO's indenture contained the same requirement, and ACA's collateral management agreement required it to seek best execution on behalf of the CDO. UBS and ACA together prepared an asset list in connection with UBS's effort to market the CDO to investors beginning in mid-May 2007. The asset list was distributed to prospective investors, and it did not contain any reference to the upfront points. Similarly inaccurate information later was provided to the CDO's directors. In addition, the marketing materials disclosed a fee to UBS of approximately $10.8 million, but made no reference to the $23.6 million in upfront points being retained by UBS.

19. UBS also failed to disclose its retention of the $23.6 million in upfront points in communications with prospective investors, with two exceptions. On both of these occasions, the

disclosure came only after the investor specifically questioned the information UBS had disclosed about its economic benefit from the deal.

20. UBS received its first commitments from investors to purchase ACA 07-2 CDO notes in early June 2007. UBS ultimately was able to sell only $186 million face value of the CDO's securities to 9 investors, for which UBS actually received $153 million because of discounts offered on such securities. UBS retained approximately $598 million of the CDO's securities, including a $375 million super senior note, approximately $188 million in junior notes, and $35 million of the CDO's equity securities. Only four months after it closed, ACA 07-2 issued a notice of default, as a result of the deterioration of the subprime mortgage-backed securities market, and ratings agency downgrades of thousands of RMBS bonds, including bonds referenced in ACA 07-2. At the time the CDO was liquidated in June 2008, outside investors lost approximately $130 million on their investments in this CDO.

21. In connection with ACA 07-2, UBS retained approximately $23.6 million in undisclosed upfront points, a disclosed fee of approximately $10.8 million, and the warehouse carry.

Violations

22. As a result of the conduct described above, UBS willfully violated Sections 17(a)(2) of the Securities Act, which prohibits any person from "obtain[ing] 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," and willfully violated Section 17(a)(3) of the Securities Act, which prohibits any person from "engag[ing] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."[2]

23. As a result of the conduct described above, UBS also negligently caused ACA's violations of Section 206(2) of the Advisers Act, which prohibits investment advisers from engaging in any transaction, practice, or course of business that defrauds clients.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b)(4) of the Exchange Act, and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

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

A. Respondent UBS cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 206(2) of the Advisers Act.

B. Respondent UBS is censured.

C. Respondent UBS shall, within 30 days of the entry of this Order, pay disgorgement of $34,408,185, prejudgment interest of $9,719,002.24, and a civil money penalty of $5,655,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and to 31 U.S.C. § 3717. 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 UBS Securities LLC 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 Robert Keyes, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281. All disgorgement, prejudgment interest, and civil money penalty payments made by UBS pursuant to the Order, and any future funds collected from UBS by the Commission related to the Order, including any interest payments, will be transferred to the United States Treasury.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Chair White
Commissioner Gallagher
not participating
Commissioner Paredes
Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9439 / August 6, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70122 / August 6, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15407

In the Matter of **UBS SECURITIES LLC,** **Respondent.**	**ORDER UNDER SECTION 27A(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO UBS SECURITIES LLC AND ITS AFFILIATES**

UBS Securities LLC ("UBS") has submitted a letter on behalf of itself and its affiliates, dated July 1, 2013, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 (the "Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 (the "Exchange Act") arising from UBS's settlement of public administrative and cease-and-desist proceedings instituted by the Commission. On August 6, 2013 the Commission instituted an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 15(b)(4) of the Exchange Act, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order") against UBS.

Under the Order, the Commission found that UBS, a registered broker-dealer and investment adviser, willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and caused violations of Section 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") by its undisclosed retention of approximately $23.6 million in "upfront points" in connection with the structuring of a CDO known as ACA ABS 2007-2. Without admitting or denying the findings in the Order, except as to the Commission's jurisdiction over it and the subject matter of the proceedings, UBS consented to the Order. In the Order, the Commission ordered that UBS be censured, cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 206(2) of the [redacted]sers Act, and pay disgorgement of $34,408,185, prejudgment interest of $9,719,002.24, [redacted] civil money penalty of $5,655,000 to the United States Treasury.

The safe harbor provisions of Section 27(A)(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of a judicial or administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the securities laws. . . ." Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in UBS's letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the order instituting proceedings is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to UBS and its affiliates resulting from the Commission's Order is hereby granted.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Walter
Commissioner Gallagher
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70126 / August 6, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3645 / August 6, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30642 / August 6, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15409

In the Matter of

THOMAS GARY COOPER

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 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 Thomas Gary Cooper ("Cooper" 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, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

Respondent

1. **Cooper**, age 58, resides in Houston, Texas. Cooper is the sole owner of Second Mile Wealth Management, Inc. From January 1993 until December 2007, Cooper was a registered representative with a firm that was registered as a broker-dealer and investment adviser. Cooper held Series 7, 63, and 65 licenses, and became a Certified Financial Planner in 2006.

Other Relevant Entity

2. **Second Mile Wealth Management, Inc.** ("Second Mile" or "SMWM") is a Texas corporation formed by Cooper on November 16, 2007. Second Mile was registered with the Commission as an investment adviser from January 07, 2008 until May 26, 2009, and with the Texas Securities Board from January 23, 2009 to May 26, 2009.

Facts

3. From January 1993 to December 2007, Cooper was employed as a broker-dealer and investment adviser representative. Near the end of 2007, Cooper convinced 17 of his customers to move their existing brokerage accounts to a different registered broker-dealer with Second Mile as the investment adviser on the accounts.

4. Second Mile maintained an omnibus trading account ("omnibus account") at the registered broker-dealer, which it used to place most of the trades on behalf of its advisory clients. The buying power of the omnibus account was based on the aggregate buying power of *all* Second Mile client accounts - including cash and margin accounts. However, because the omnibus account was not a client account, it was not subject to the broker-dealer's margin limits for client accounts, and possessed buying power in excess of the aggregate buying power of Second Mile's cash and margin client accounts.

5. Based on information contained in account opening forms, Second Mile's advisory clients: (1) had investment objectives that ranged from preservation of capital to speculation; (2) ranged in age from fifty to eighty years old (with the majority in their sixties); (3) had annual income ranging from $40 thousand to $1 million; and (4) had a net worth between $125,000 and $1 million. Although their net worth varied, almost all of Second Mile's clients indicated that their

level of investment experience was low. Finally, many of Second Mile's client accounts were retirement accounts.

6. In connection with establishing the advisory relationship, Second Mile provided each client with its Form ADV, which disclosed that Second Mile would: (1) emphasize continuous personal client contact in providing discretionary investment supervisory services; (2) work with its clients to identify their investment goals and objectives as well as their risk tolerance; and (3) manage each client's portfolio in accordance with his or her particular investment goals and objectives.

7. Second Mile's Form ADV stated that "Investment Strategies may include long-term buy and hold, short-term trading, short sales and option writing strategies." However, based on Cooper's oral representations and their prior dealings with Cooper, most of the clients believed that Cooper, through Second Mile, would continue to manage their accounts conservatively.

8. Second Mile's Form ADV also stated that "[t]ransactions for each client account generally will be effected independently, unless SMWM decides to purchase or sell the same securities for several clients at approximately the same time. SMWM may (but is not obligated to) combine or 'batch' such orders to obtain 'best execution' or to negotiate more favorable commission rates. SMWM will attempt to equally distribute differences in prices and commissions or other transaction costs that might have been obtained had such orders been placed independently. Under this procedure, transactions *will be averaged as to price* and will be allocated among SMWM's clients in proportion to the purchase and sale orders placed for each client account on any given day." (emphasis added)

9. Generally, Cooper traded in various securities (*i.e.*, day traded), and at the end of each trading day he zeroed out the omnibus account and allocated all profits, losses, and remaining securities to the Second Mile client accounts. Cooper was not consistent in how, or at what prices, he executed these allocations. Sometimes Cooper allocated all of the trades to one or a small group of accounts, while other times he allocated the trades among all of the accounts. In addition, sometimes Cooper allocated trades in a single security among client accounts at disparate prices. And, sometimes Cooper allocated profits to one account and losses to another – even though those purported profits and losses came from trading in a single security on a single day. Cooper's allocations were inconsistent with the disclosures in Second Mile's Form ADV.

10. Most of Second Mile's clients had been customers of Cooper for many years and implicitly trusted him. However, Cooper failed to explain to the clients how their accounts (both cash and margin) would be used in conjunction with Second Mile's omnibus account and the risks associated with such use. As a result, even though the clients received trade confirmations and monthly statements from Second Mile's broker-dealer, the clients did not understand the frequency or size of the trading undertaken by Cooper through the omnibus account, and therefore could not comprehend the associated risks.

11. Between January 2008 to April 2009, Cooper lost $7,847,688 day-trading on behalf of Second Mile's clients, and earned $48,300.23 in advisory fees.

12. As a result of the conduct described above, Cooper willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit an investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client, and from engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client. In addition, Cooper willfully violated Section 207 of the Advisers Act, which prohibits any person from, among other things, willfully making any untrue statement of a material fact in any Form ADV (or amendment thereto) filed with the Commission.

Disgorgement and Civil Penalties

13. Respondent has submitted a sworn Statement of Financial Condition dated December 31, 2011 ("Sworn Financial Statement"), and other evidence, and has asserted his inability to pay disgorgement, plus prejudgment interest thereon, or a civil penalty.

IV.

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

Accordingly, pursuant to Section 15(b)(6) of the Exchange Act, 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. Cooper cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 207 of the Advisers Act.

B. Cooper 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;

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

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

C. Any reapplication for association by Cooper will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of [illegible]rs, including, but not limited to, the satisfaction of any or all of the following: (a) any [illegible]rgement ordered against Cooper, 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. Cooper shall pay disgorgement of $48,300.23, plus prejudgment interest of $5,502.75 thereon, but that payment of those amounts is waived based upon Cooper's sworn representations in his Sworn Financial Statement and other documents submitted to the Commission. Furthermore, based upon Cooper's Sworn Financial Statement and other documents, the Commission is not imposing a penalty against him.

E. The Division of Enforcement may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest and payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (3) contest the findings in this Order; (4) assert that payment of disgorgement and interest or that payment of a penalty should not be ordered; (5) contest the amount of disgorgement and interest to be ordered or the imposition of the maximum penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70154 / August 9, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15411

In the Matter of

PACIFIC NORTHWESTERN ENERGY, LLC,

Respondent.

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

I.

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

II.

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

III.

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

1. Pacific is a Wyoming corporation incorporated in 2011. It was engaged in the business of U.S. oil exploration and investment. Pacific served as the general partner and sponsor for two offerings of limited partnership units in Rock Castle Drilling Fund LP and Rock Castle Drilling Fund II LP. Pacific has never been registered with the Commission in any capacity.

2. On May 6, 2013, a judgment was entered by consent against Pacific, permanently enjoining it from future violations of Sections 5(a) and (c) and 17(a) of the Securities Act of 1933 ("Securities Act"), and Sections 15(a)(1) and 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Joseph Hilton, et al., Civil Action Number 12-cv-81033, in the United States District Court for the Southern District of Florida.

3. The Commission's complaint alleged that, in connection with the sale of limited partnership units, Pacific made misrepresentations and omissions to investors about Pacific's drilling success and oil production, and otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors. The complaint also alleged that Pacific sold unregistered securities.

IV.

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70164 / August 12, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15412

In the Matter of **Gaming World International, Ltd., Gaspe Minerals, Ltd., Gem Porphyry, Inc., Genuity, Inc., Georgestore, Inc., Georgian Bancorp, Inc., and Gold & Green, 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 Gaming World International, Ltd., Gaspe Minerals, Ltd., Gem Porphyry, Inc., Genuity, Inc., Georgestore, Inc., Georgian Bancorp, Inc., and Gold & Green, Inc. ("Respondents")

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Gaming World International, Ltd. (CIK No. 919229) is a dissolved Delaware corporation located in Ellwood City, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Gaming World International 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, 1996, which reported a net loss of over $1.2 million for the prior nine months.

2. Gaspe Minerals, Ltd. (CIK No. 1132514) is a permanently revoked Nevada corporation located in Westmount, Quebec, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Gaspe Minerals is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB on October 18, 2002, which reported a net loss of $23,708 for the period ended December 31, 2001.

3. Gem Porphyry, Inc. (CIK No. 1102916) is a permanently revoked Nevada corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Gem Porphyry 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, 2000, which reported a net loss of $21,800 since its July 13, 1994 inception.

4. Genuity, Inc. (CIK No. 1110794) is a void Delaware corporation located in Woburn, Massachusetts with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Genuity 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 $1.9 million for the prior six months. On September 10, 2001, Genuity filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Delaware, and the case was closed on January 17, 2003.

5. Georgestore, Inc. (CIK No. 1141602) is a dissolved Delaware corporation located in Mamaroneck, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Georgestore is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB for the period ended December 20, 2001, which reported a net loss of $8,158 since its February 3, 2000 inception.

6. Georgian Bancorp, Inc. (CIK No. 1038227) is an Ontario, Canada corporation located in Newmarket, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Georgian Bancorp 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 June 30, 1998, which reported a net loss of over $1.3 million for the prior twelve months.

7. Gold & Green, Inc. (CIK No. 1072194) is a permanently revoked Nevada corporation located in Port Washington, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Gold & Green 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 August 31, 2001, which reported a net loss of $114,846 from its June 4, 1995 inception to August 31, 2001.

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/or 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

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70167 / August 13, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15414

In the Matter of

MARTIN A. POOL,

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 Martin A. Pool ("Pool" or "Respondent").

II.

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

III.

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

1. Pool was an owner and control person of The Elva Group, LLC ("Elva Group"). From at least January 2006 through November 2010 Elva Group issued promissory notes and raised investor capital. Pool, 42 years old, is a resident of Atlanta, Georgia.

2. On August 7, 2013, a final judgment was entered by consent against Pool, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, 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. Pool, et al., Civil Action Number 1:13-cv-00096 CW, in the United States District Court for the Central District of Utah.

3. The Commission's complaint alleged that, in connection with the offer and sale of promissory notes, Pool made material misrepresentations to investors regarding, among other things, the security of their investment and the guaranteed returns. The complaint also alleges that Pool misappropriated investor funds, used new investor funds to pay interest payments to prior investors, and otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors. The complaint also alleged that Pool sold unregistered securities and acted as an unregistered broker or dealer, by, among other things, soliciting investments on behalf of Elva Group, receiving investor funds and signing promissory notes issued by Elva Group.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and that Respondent Pool 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 [redacted]mer, whether or not related to the conduct that served as the basis for the Commission order; [redacted](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. 70172 / August 13, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-9923

In the Matter of L.T. LAWRENCE & CO., INC., TODD E. ROBERTI, AND LAWRENCE PRINCIPATO Respondents.	ORDER CREATING A FAIR FUND AND TRANSFERRING THE FAIR FUND TO A COURT REGISTRY FOR DEPOSIT INTO A CRIMINAL RESTITUTION FUND

On July 24, 2000, the United States Securities and Exchange Commission (the "Commission") issued an Order Making Findings and Imposing Remedial Sanctions against Todd E. Roberti ("Roberti") and others ("Order"). Securities Act Rel. No. 7876 (July 24, 2000). Roberti consented to the entry of the Order finding that he willfully violated Section 17(a) of the Securities Act of 1933 and Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder and willfully aided and abetted and caused violations of Section 15(c) of the Exchange Act, and Rules 15c1-2 and 15c1-8 thereunder. The Order required Roberti to pay $274,276.27 in disgorgement and prejudgment interest and a $100,000 civil money penalty. The Commission ultimately collected $151,923.08 from Roberti that included two disgorgement payments of $75,000, plus a $100,000 civil money penalty payment, minus fees paid to the United States Department of Treasury ("Treasury") for its assistance in the Commission's collections efforts.

In a parallel criminal action, *United States v. Roberti*, 01-Cr-0588-02, Roberti pleaded guilty to one count of conspiracy to commit wire fraud and securities fraud and two separate counts of securities fraud in the United States District Court for the Southern District of New

York ("SDNY"). The criminal charges against Roberti involved an illegal scheme to manipulate Initial Public Offerings of securities and after market trading in securities of two publicly traded companies. On May 5, 2006, Roberti was ordered to pay restitution in the amount of $1,623,770.00. To date, Roberti has made restitution payments totaling $620,685.92. Roberti's criminal violations are based on the same or substantially similar facts as those alleged in the Order.[1]

The staff now seeks that a Fair Fund be created pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the $151,923.08 in disgorgement and civil money penalty payments collected from Roberti, and that the Fair Fund be transferred to SDNY pursuant to a request from the United States Attorney's Office for the Southern District of New York, so that the Fair Fund can be combined with the criminal restitution fund ordered in the criminal case against Roberti and distributed by SDNY to harmed investors.

Accordingly, IT IS HEREBY ORDERED that: a) pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for Roberti's $151,923.08 disgorgement and civil money penalty payments; and b) the Fair Fund will be transferred to SDNY's court registry for deposit into the criminal restitution fund ordered in, *United States v. Roberti*, 01-Cr-0588-02, for a distribution to harmed investors.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Lynn M. Powalski
Deputy Secretary

[1] 17 C.F.R. § 201.1102(a) states, "Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan for the administration of a Fair Fund or a disgorgement fund may provide for payment of funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings."

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70177 / August 14, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15415

In the Matter of **CNC Development, Ltd.,** **Exousia Advanced Materials, Inc., and** **South American Minerals, 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 CNC Development, Ltd., Exousia Advanced Materials, Inc., and South American Minerals, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. CNC Development Ltd. (CIK No. 1442508) is a British Virgin Islands company located in Chicago, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CNC Development 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 December 31, 2010, which reported a net loss of over $7.6 million for the prior year. As of August 13, 2013, the company's stocks (symbols "CDLVF" and "CDLKF") were quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link"), the common stock ("CDLVF") had five market makers and the preferred stock ("CDLKF") had four market

makers, and both stocks were eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Exousia Advanced Materials, Inc. (CIK No. 1136868) is a Texas corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Exousia Advanced Materials 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 $5.1 million for the prior nine months. As of August 6, 2013, the company's stock (symbol "EXOU") was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. South American Minerals, Inc. (CIK No. 1304668) is a Nevada corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). South American Minerals is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB/A registration statement on January 19, 2005, which reported a net loss of over $326,000 for the nine months ended September 20, 2004. As of August 6, 2013, the company's stock (symbol "SAMM") was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

4. 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.

5. 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.

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

August 14, 2013

In the Matter of

CNC Development, Ltd.,
Exousia Advanced Materials, Inc., and
South American Minerals, 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 CNC Development, Ltd. 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 Exousia Advanced Materials, 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 South American Minerals, Inc. because it has not filed any periodic reports since it filed a Form 10-SB/A registration statement on January 19, 2005.

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

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 14, 2013, through 11:59 p.m. EDT on August 27, 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. 70185 / August 14, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15419

In the Matter of **AIMS Worldwide, Inc.,** **Apollo Capital Group, Inc.,** **CommunitySouth Financial Corp.,** **Last Mile Logistics Group, Inc.,** **Made in America Entertainment, Inc.,** **Millenia Hope, Inc., and** **Winfield Capital 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. AIMS Worldwide, Inc. ("AMWW")[1] (CIK No. 1094363) is a dissolved Nevada corporation located in Washington, DC with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AMWW 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. As of August 2, 2013, the common stock of AMWW was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link"), had seven

[1]The 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-(3).

2. Apollo Capital Group, Inc. ("APLI") (CIK No. 1444702) is a dissolved Florida corporation located in Aventura, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). APLI 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. As of August 2, 2013, the common stock of APLI was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. CommunitySouth Financial Corp. ("CBSO") (CIK No. 1295879) is a South Carolina corporation located in Easley, South Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CBSO 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 $9,002,000 for the prior nine months. As of August 2, 2013, the common stock of CBSO was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Last Mile Logistics Group, Inc. ("LMLG") (CIK No. 1379926) is a Florida corporation located in Elkridge, Maryland with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LMLG 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 $132,266 for the prior three months. As of August 2, 2013, the common stock of LMLG was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Made in America Entertainment, Inc. ("MAEI") (CIK No. 1058056) is a Florida corporation located in Longwood, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MAEI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2008, which reported a net loss of $1,031,749 for the prior six months. As of August 2, 2013, the common stock of MAEI was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Millenia Hope, Inc. ("MLHI") (CIK No. 1060827) is a void Delaware corporation located in Wilmington, Delaware with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MLHI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended February 29, 2008, which reported a net loss of $849,720 for the prior three months. As of August 2, 2013, the common stock of MLHI was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. Winfield Capital Corp. ("WCAP") (CIK No. 936404) is a dissolved New York oration located in Washington, DC with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). WCAP 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, 2005, which reported a net decrease in shareholder's equity resulting from operations of $460,358 for the prior three months. The Commission suspended trading in the securities of WCAP for ten business days commencing on May 14, 2012. Exchange Act Rel. No. 66980 (May 14, 2012). As of August 2, 2013, the common stock of WCAP was traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

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

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

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

III.

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

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

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

IV.

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

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

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

August 14, 2013

In the Matter of **AIMS Worldwide, Inc.,** **Apollo Capital Group, Inc.,** **CommunitySouth Financial Corp.,** **Last Mile Logistics Group, Inc.,** **Made in America Entertainment, Inc., and** **Millenia Hope, 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 AIMS Worldwide, Inc. because it has not filed any periodic reports since the period ended June 30, 2010.

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

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CommunitySouth Financial 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 Last Mile Logistics Group, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

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

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

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 14, 2013, through 11:59 p.m. EDT on August 27, 2013.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

August 14, 2013

In the Matter of **Soil Biogenics Ltd.,** **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 Soil Biogenics Ltd. because it has not filed any periodic reports since the period ended December 31, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on August 14, 2013, through 11:59 p.m. EDT on August 27, 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

SECURITIES EXCHANGE ACT OF 1934
Release No. 70181 / August 14, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15417

In the Matter of **Soil Biogenics Ltd.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Soil Biogenics Ltd. ("SOBGF")[1] (CIK No. 1049576) is a British Virgin Islands corporation located in Moscow, Russia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SOBGF 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 December 31, 2006, which reported a net loss of $132,300 for the prior year. As of August 2, 2013, the common shares of SOBGF were quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc., had ten market makers, and were eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

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

[1]The short form of the issuer's name is also its stock symbol.

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

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

4. As a result of the foregoing, the Respondent failed to comply with Exchange Act Section 13(a) and Rule 13a-1 thereunder.

III.

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

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

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

IV.

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

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

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

This Order shall be served forthwith upon the Respondent personally or by certified, ered, 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. 70183 / August 14, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15418

In the Matter of **Altus Pharmaceuticals, Inc.,** **Blackhawk Capital Group BDC, Inc.,** **Cargo Connection Logistics Holding, Inc.,** **Diapulse Corporation of America,** **Globus International Resources Corp.,** **Kingston Systems, Inc., and** **Mega Media Group, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Altus Pharmaceuticals, Inc. ("ALTUQ")[1] (CIK No. 1340744) is a void Delaware corporation located in Burlington, Massachusetts with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ALTUQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2009, which reported a net loss of $25,593,000 for the prior six months. On November 11, 2009, ALTUQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Massachusetts, which was closed on January 22, 2013. As of August 2, [redacted], the common stock of ALTUQ was quoted on OTC Link (formerly "Pink Sheets") operated

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

by OTC Markets Group Inc. ("OTC Link"), had ten market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Blackhawk Capital Group BDC, Inc. ("BHCG") (CIK No. 1294345) is a delinquent Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BHCG 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 investment loss of $408,653 for the prior nine months. As of August 2, 2013, the common stock of BHCG was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Cargo Connection Logistics Holding, Inc. ("CRGO") (CIK No. 1093819) is a dissolved Florida corporation located in East Meadow, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CRGO is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2009, which reported a net loss of $146,727 for the prior year. As of August 2, 2013, the common stock of CRGO was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Diapulse Corporation of America ("DIAC") (CIK No. 28742) is a Delaware corporation located in Great Neck, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). DIAC 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 $200,158 for the prior nine months. As of August 2, 2013, the common stock of DIAC 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. Globus International Resources Corp. ("GBIR") (CIK No. 1033114) is a revoked Nevada corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GBIR 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, 2004. As of August 2, 2013, the common stock of GBIR was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Kingston Systems, Inc. ("KSYT") (CIK No. 810837) is a void Delaware corporation located in Hampton, New Hampshire with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). KSYT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended December 27, 2008, which reported a net loss of $890,252 for the prior nine months. As of August 2, 2013, the common stock of KSYT 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. Mega Media Group, Inc. ("MMDAQ") (CIK No. 1063262) is a revoked Nevada [redacted]ration located in Brooklyn, New York with a class of securities registered with the [redacted]mission pursuant to Exchange Act Section 12(g). MMDAQ 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, 2009, which reported a net loss of $1,674,480 for the prior six months. On August 10, 2009, MMDAQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Eastern District of New York, which was closed on June 14, 2013. As of August 2, 2013, the common stock of MMDAQ was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

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 [redacted]mestic issuers to file quarterly reports.

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

III.

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

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

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

IV.

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

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) 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

August 14, 2013

In the Matter of

Altus Pharmaceuticals, Inc.,
Blackhawk Capital Group BDC, Inc.,
Cargo Connection Logistics Holding, Inc.,
Diapulse Corporation of America,
Globus International Resources Corp.,
Kingston Systems, Inc., and
Mega Media Group, Inc.,

File No. 500-1

ORDER OF SUSPENSION OF TRADING

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Altus Pharmaceuticals, Inc. because it has not filed any periodic reports since the period ended June 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Blackhawk Capital Group BDC, 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 Cargo Connection Logistics Holding, Inc. because it has not filed any periodic reports since the period ended December 31, 2009.

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

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Globus International Resources Corp. because it has not filed any periodic reports since the period ended December 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kingston Systems, Inc. because it has not filed any periodic reports since the period ended December 27, 2008.

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

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 14, 2013, through 11:59 p.m. EDT on August 27, 2013.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter
Commissioner Gallagher
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70187 / August 14, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15420

In the Matter of MARTIN C. HARTMANN III, 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 Martin C. Hartmann III ("Hartmann" or "Respondent").

II.

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

III.

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

1. Hartmann offered and sold securities of Agape World, Inc. ("Agape") from, at least, September 2006 through January 2009. The Agape securities were neither registered with the Commission nor exempt from registration. Hartmann has never been registered with the Commission in any capacity. Hartmann, 38 years old, is a resident of Nassau County, New York.

2. On July 9, 2013, a final judgment was entered by consent against Hartmann in the civil action entitled Securities and Exchange Commission v. Bryan Arias, et al., Civil Action Number 12-CV-2937, in the United States District Court for the Eastern District of New York, permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), and Sections 15(a) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Under the judgment, Hartmann is liable to pay disgorgement in the amount of $3,591,388, representing $3,594,818 in profits gained as a result of the conduct alleged in the Commission's complaint less $3,430 forfeited in United States v. All Funds Previously Seized in Place in the Following Accounts: Bank of America A/C 009476825850, in the Name of Agape World Operating, et al., CV-10-0624 (E.D.N.Y.), plus prejudgment interest thereon in the amount of $560,932, and a civil penalty in the amount of $3,594,818.

3. The Commission's complaint alleged that Hartmann made misrepresentations to investors concerning the Agape securities he sold and Hartmann sold Agape securities despite incredible returns promised by Agape, his knowledge of previous defaults by Agape, and dire warnings from Agape's president about Agape's financial condition. The complaint further alleged that the Agape securities were a sham with, at best, a small fraction of investor funds used as represented; the Agape securities were neither registered with the Commission nor exempt from registration; and Hartmann was not associated with a registered broker or dealer while selling the Agape Securities.

IV.

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

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

By Jill M. Peterson
Assistant Secretary

Commissioner Walter
Commissioner Gallagher
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70188 / August 14, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15421

In the Matter of LAURA ANN TORDY, 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 Laura Ann Tordy ("Tordy" or "Respondent").

II.

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

III.

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

1. Tordy offered and sold securities of Agape World, Inc. ("Agape") from, at least, February 2007 through January 2009. The Agape securities were neither registered with the Commission nor exempt from registration. Tordy has never been registered with the Commission in any capacity. Tordy, 42 years old, is a resident of Nassau County, New York.

2. On July 9, 2013, a final judgment was entered by consent against Tordy in the civil action entitled Securities and Exchange Commission v. Bryan Arias, et al., Civil Action Number 12-CV-2937, in the United States District Court for the Eastern District of New York, permanently enjoining her from future violations of Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), and Sections 15(a) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Under the judgment, Tordy is liable to pay disgorgement in the amount of $1,048,485, representing profits gained as a result of the conduct alleged in the Commission's complaint, plus prejudgment interest thereon in the amount of $163,761, and a civil penalty in the amount of $1,048,485.

3. The Commission's complaint alleged that Tordy made misrepresentations to investors concerning the Agape securities she sold and Tordy sold Agape securities despite incredible returns promised by Agape, her knowledge of previous defaults by Agape, and dire warnings from Agape's president about Agape's financial condition. The complaint further alleged that the Agape securities were a sham with, at best, a small fraction of investor funds used as represented; the Agape securities were neither registered with the Commission nor exempt from registration; and Tordy was not associated with a registered broker or dealer while selling the Agape Securities.

IV.

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

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

August 14, 2013

In the Matter of

iVoice, Inc.,
Protectus Medical Devices, Inc., and
St. Lawrence Energy Corp.,

File No. 500-1

ORDER OF SUSPENSION OF TRADING

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of iVoice, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Protectus Medical Devices, 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 St. Lawrence Energy Corp. because it has not filed any periodic reports since the period ended September 30, 2009.

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

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 14, 2013, through 11:59 p.m. EDT on August 27, 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. 70179 / August 14, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15416

In the Matter of **iVoice, Inc.,** **Protectus Medical Devices, Inc., and** **St. Lawrence Energy 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 iVoice, Inc., Protectus Medical Devices, Inc., and St. Lawrence Energy Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. iVoice, Inc. (CIK No. 1105064) is a New Jersey corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). iVoice 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, 2011, which reported a net loss of over $826,000 for the prior nine months. As of August 6, 2013, the company's stock (symbol "IVOI") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link"), had ten market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Protectus Medical Devices, Inc. (CIK No. 1422128) is a forfeited Delaware corporation located in Minneapolis, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Protectus Medical Devices 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 $1.9 million for the prior nine months. As of August 6, 2013, the company's stock (symbol "PTMD") was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. St. Lawrence Energy Corp. (CIK No. 917821) is a void Delaware corporation located in Palo Alto, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). St. Lawrence Energy 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 $186,000 for the prior nine months. As of August 6, 2013, the company's stock (symbol "SLAW") was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

4. 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.

5. 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.

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 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. 70208 / August 15, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-11246

In the Matter of

Freedom Financial, Inc., Freedom Track, Inc., Freedom Financial Group, Inc., Associated Investment Management, Inc., John Patrick Pierce, and Gary L. Winn,

Respondents.

ORDER TRANSFERRING REMAINING FUNDS AND ANY FUTURE FUNDS RETURNED TO THE DISGORGEMENT FUND TO THE U.S. TREASURY, TERMINATING THE DISGORGEMENT FUND, AND DISCHARGING THE FUND ADMINISTRATOR

On May 20, 2004, the Commission issued an Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Orders pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") stating that Freedom Financial, Inc., Freedom Track, Inc., and Freedom Financial Group, Inc. (together "Freedom Financial"); Associated Investment Management, Inc.; Jon Patrick Pierce; and Gary L. Winn (collectively "Respondents") materially misrepresented and failed to disclose material information to prospective investors in the offer and sale of certain stocks ("Order"). Exchange Act Rel. No. 49744 (May 20, 2004). The Order stated that: a) Freedom Financial, Inc., Freedom Track, Inc., and Jon Patrick Pierce ("Pierce") willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder; b) Freedom Financial, Inc., Freedom Financial Group, Inc., and Pierce willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder and Freedom Financial, Inc. willfully violated, and Pierce willfully aided and abetted and caused Freedom Financial, Inc.'s violations of Sections 15(b), 15(c)(3) and 17(a) of the Exchange Act, and Rules 15b1-1, 15b3-1, 15c3-1, 15c3-3 and 17a-5(a) thereunder; and c) Associated Investment Management, Inc. ("AIM"), Pierce, and Gary L. Winn ("Winn") willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, AIM and Winn willfully violated Section 207 of the Advisers Act, and AIM willfully violated and Pierce and Winn willfully aided and abetted and caused AIM's violations of Sections 206(1), (2) and (4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder.

Pursuant to the Order, Freedom Financial paid $25,000 to the U.S. Treasury ("Treasury") and Pierce paid $50,000 to the Treasury. The Commission further ordered that AIM pay disgorgement of $150,000 plus prejudgment interest. The Commission waived all but $26,223 of such amount based upon AIM's sworn representations in its Statement of Financial Condition and other documents submitted to the Commission.

On December 13, 2005, the Office of the Secretary ("Secretary"), by delegated authority, issued a Notice of Proposed Plan of Disgorgement Distribution and Opportunity for Comment by Non-Parties. Exchange Act Rel. No. 52945 (Dec. 13, 2005). No comments were received, and on May 16, 2006, the Secretary, by delegated authority, issued an Order Approving Plan of Disgorgement Distribution and Appointing Administrator ("Distribution Plan"). Exchange Act Rel. No. 53814 (May 16, 2006). After Commission staff employed reasonable efforts to locate the claimants identified in the Distribution Plan and to gather information as contemplated by the Distribution Plan, the Secretary, by delegated authority, issued an Order Approving Distribution of Disgorgement Fund on September 29, 2006, ordering that $20,849.35 be distributed to forty-three harmed investors. Exchange Act Rel. No. 54547 (Sept. 29, 2006).

The $26,223 Disgorgement Fund paid $2,950 in tax administrator fees and expenses and $300 to the District of Columbia for state tax payments, leaving $22,973 for a disbursement ("Remaining Disgorgement Fund"). Ultimately, $20,849.35, or ninety percent, of the Remaining Disgorgement Fund was distributed to forty-three harmed investors. The difference between the Remaining Disgorgement Fund and the total funds actually distributed to harmed investors resulted from funds not claimed by eligible claimants after notice or funds attributable to claimants who could not be located despite reasonable efforts to do so.

The average payment was in the amount of $484.87. The highest payment was in the amount of $6,639.20, and the lowest payment was in the amount of $6.58. All but seven payments went to individual investors. The seven non-individuals were non-profits and like organizations.

The final accounting of the Disgorgement Fund has been submitted pursuant to Rule 1105(f) of the Commission's Rules on Fair Fund and Disgorgement Plans. The Commission approved the final accounting. According to the final accounting, all fees, costs, and expenses have been paid, and $2,275.21 remains in the Disgorgement Fund.

Accordingly, IT IS ORDERED that:

1. The remaining balance in the Disgorgement Fund and any future funds returned to the Disgorgement Fund will be sent to the United States Treasury;
2. The Disgorgement Fund is terminated; and
3. The fund administrator is discharged.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Lynn M. Powalski
Deputy Secretary

Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70221 / August 16, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15428

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

I.

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

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e)

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

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

the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. McZeal, age 43, is a Texas resident living in Houston, Texas. McZeal is a member of the Texas State Bar and is a partner with the law firm of Grealish & McZeal LLP. McZeal was chief executive officer, chief counsel, and member of the board of directors of PGI Energy, Inc. ("PGI Energy"). McZeal has appeared and practiced before the Commission as an attorney. McZeal has never held any securities licenses and is not registered with the Commission in any capacity.

2. On July 31, 2013, the Commission filed a complaint against McZeal in SEC v. Gandy et al. (Civil Action No. 4:13-cv-2233), in the United States District Court for the Southern District of Texas. On August 1, 2013, the court entered a final judgment permanently enjoining McZeal by consent from future violations of Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder.

3. The Commission's complaint alleged that McZeal violated Section 17(a) of the urities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by engaging in a dulent scheme to cause a transfer agent to issue millions of PGI Energy shares without restrictive legends. The complaint further alleged that McZeal violated Section 5 of the Securities Act by offering and selling securities when no registration statement had been filed or was in effect as to such securities and when no exemption from registration was available.

IV.

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

By Jill M. Peterson
Assistant Secretary

Commissioner Piwowar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9442 / August 16, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70223 / August 16, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3651 / August 16, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30651 / August 16, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15429

In the Matter of

North East Capital, LLC and Anthony T. Vicidomine

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted against North East Capital, LLC ("North East") and Anthony T. Vicidomine ("Vicidomine") (collectively, "Respondents"), pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), 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") as to Vicidomine, and pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act as to North East.

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

Summary

These proceedings arise from Vicidomine's receipt of unauthorized fees from the North East Capital Fund LP (the "Fund"), a pooled investment vehicle that Vicidomine created and offered to investors through North East Capital, LLC ("North East"), an unregistered investment adviser that he owned and controlled. From November 2011 through March 2012, Vicidomine misappropriated $189,415 of the Fund's assets in the form of unearned "incentive fees" and used the money to pay his own personal expenses and to finance his business ventures. In addition, Vicidomine and North East made false statements to current and prospective investors in connection with the offer and sale of limited partnership interests in the Fund, including misrepresentations about Vicidomine's own investment in the Fund, his use of procedures to mitigate investors' risk of loss, and an independent audit of the Fund.

Respondents

1. Anthony T. Vicidomine ("Vicidomine"), age 34, resides in Staten Island, New York. He is the founder of North East, an unregistered investment adviser, and the Fund, a pooled investment vehicle. North East is the general partner of and investment adviser to the Fund, and Vicidomine is North East's sole principal and control person.

2. North East Capital, LLC ("North East") is a Delaware limited liability corporation that Vicidomine formed in February 2011. North East's principal place of business is in New York, New York. North East is an unregistered investment adviser and general partner of the Fund. Vicidomine is North East's sole principal and control person.

Other Relevant Entity

3. North East Capital Fund LP ("Fund") is a Delaware limited partnership formed by Vicidomine in February 2011 with its principal place of business in New York, New York. The Fund is not registered with the Commission or associated with any entity registered with the Commission. The Fund ceased accepting investments in June 2012 and is no longer active.

Background

4. Beginning in March 2011 and continuing through May 2012, Vicidomine, through North East, solicited at least 19 investors, including his relatives and friends, as well as acquaintances of his friends, to invest in the Fund. He met with each investor in person, orally described the Fund, and provided each investor with the Fund's Private Offering Memorandum ("Offering Memo") and subscription agreements. Vicidomine signed subscription agreements on behalf of North East to accept purchases of limited partnership interests in the Fund. In April 2012, Vicidomine solicited an additional $320,000 in investments from existing Fund investors, including $120,000 from a close family member on April 4, 2012. The close family member also made an additional $90,000 payment to the Fund in April 2012, which represented reimbursement to the Fund of certain excessive fees withdrawn by Vicidomine rather than a follow-on investment in the Fund. In total, Vicidomine succeeded in raising $1,900,000 from his friends and family, including $919,000 from the close family member, who was the Fund's largest investor. The close family member fully redeemed his interest in the Fund between approximately August 2011 and June 2012.

5. No registration statement was on file with the Commission or in effect as to the limited partnership interests in the Fund. At least several of the purchasers of interests in the Fund were unsophisticated and/or unaccredited, and several investors did not have a pre-existing relationship with Vicidomine. In addition, Vicidomine and North East did not provide investors audited financial information concerning the Fund.

Vicidomine's Misappropriation of Fund Assets and Misrepresentations Made by Vicidomine and North East

6. The Fund's Offering Memo stated that the Fund's general partner was entitled to 50% of the Fund's net profits at the end of every three-month period following the first capital contribution to the Fund and then on a quarterly basis as of December 31, 2011.

7. The Offering Memo further stated that this 50% "Incentive Allocation" would be calculated separately for each capital contribution from each limited partner. However, neither Vicidomine nor anyone else at North East followed such procedures when calculating the allowable Incentive Allocation.

8. The amount Vicidomine took in incentive fees exceeded the amount to which he was entitled. Beginning in June 2011, Vicidomine made numerous withdrawals from

e Fund's bank account each month rather than one allocation payment every three months, as was represented in the Offering Memo. Vicidomine disbursed these funds directly into his own personal account, to his other business ventures, or to North East to pay his personal expenses. In this manner, Vicidomine misappropriated a total of $189,415 from the Fund.

9. Vicidomine and North East misrepresented to prospective Fund investors that Vicidomine would invest his own money in the Fund. Specifically, the Fund's Offering Memo represented that Vicidomine would "make an initial investment in the Partnership of $500,000." Vicidomine never invested any of his own money in the Fund.

10. Vicidomine and North East made misrepresentations to current and prospective investors concerning the safety of their investments in the Fund. The Fund's Offering Memo represented that the Fund would "utilize trading strategies that circumvent risk and maximize returns despite general market conditions." It further disclosed that the Fund would invest "mainly in large cap multi-national corporations" and would limit its risk exposure by "following strict investment guidelines and utilizing an assortment of mathematical models... monitored by experienced personnel." Vicidomine also orally represented to certain Fund investors that he would prevent stock losses in after-hours trading by "closing-out" (or selling) all of his positions at the end of each trading day.

11. Contrary to his and North East's representations, Vicidomine often caused the Fund to carry investments for longer than a day or, in the case of two large positions, for nths. The Fund did not employ mathematical models, and no one monitored Vicidomine's ng on behalf of the Fund to ensure compliance with Fund guidelines.

12. The Fund's Offering Memo further represented that the Fund would undergo an annual audit conducted by an independent auditor. No such audit was performed.

Violations

13. As a result of the conduct described above, Respondents violated Section 5 of the Securities Act, which prohibits any person from selling a security through interstate commerce "[u]nless a registration statement is in effect as to [such] security," or from offering to sell or offering to buy a security "unless a registration statement has been filed as to such security."

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

15. As a result of the conduct described above, Respondents willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent and deceptive conduct by an investment adviser with respect to any client or prospective client, and Section 206(4) of th visers Act and Rule 206(4)-8 promulgated thereunder, which prohibit making an untrue

atement of a material fact or omitting any material fact to any investor or prospective investor in a pooled investment vehicle and engaging in any act, practice, or course of business that is fraudulent or deceptive with respect to any investor or prospective investor in the pooled investment vehicle.

Undertaking

Respondents have undertaken to:

16. For a period of five years from the date of this Order, Respondents shall not engage in or participate in any unregistered offering of securities conducted in reliance on Rule 506 of Regulation D (17 C.F.R. § 230.506), including by occupying any position with, ownership of, or relationship to the issuer enumerated in 17 C.F.R. § 230.506(d)(1) ("'Bad Actor' disqualification").

In determining whether to accept the Offer, the Commission has considered this undertaking.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, 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. Respondents cease and desist from committing or causing directly or indirectly any violations and any future violations of Sections 5 and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

B. Respondent Vicidomine 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 five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Respondent Vicidomine 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 Respondents, 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. Respondents shall, within 3 days of the entry of this Order, pay disgorgement of $189,415, prejudgment interest of $6,717.04, and a civil money penalty of $150,000, for which Respondents are jointly and severally liable, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondents 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) Respondents 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 Vicidomine and North East as Respondents 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 Marshall Sprung, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Los Angeles, CA 90036.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest and penalties referenced in paragraph D above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If

the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

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. 70238 / August 20, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15431

In the Matter of G-Cats Acquisition Corp., GalaGen, Inc., Galena Acquisition Corp., and Garment Graphics, 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 G-Cats Acquisition Corp., GalaGen, Inc., Galena Acquisition Corp., and Garment Graphics, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. G-Cats Acquisition Corp. (CIK No. 1124875) is a permanently revoked Nevada corporation located in Bismarck, North Dakota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). G-Cats 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 June 30, 2001, which reported a net loss of $6,600 since its September 7, 2000 inception.

2. GalaGen, Inc. (CIK No. 889872) is a void Delaware corporation located in Minnetonka, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GalaGen 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 $1.7 million for the prior nine months. On February 25, 2002, GalaGen filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Minnesota, which was closed on June 30, 2005.

3. Galena Acquisition Corp. (CIK No. 1107603) is a dissolved Delaware corporation located in Singapore with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Galena 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 September 30, 2001, which reported a net loss of $835 since its March 24, 1999 inception.

4. Garment Graphics, Inc. (CIK No. 895641) is an inactive Minnesota corporation located in Coon Rapids, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Garment Graphics 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 over $470,374 for the prior six months.

B. DELINQUENT PERIODIC FILINGS

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

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

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

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70240 / August 21, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15434

In the Matter of Advantage Technologies, Inc., Electronic Game Card, Inc., Faucet Impressions International, Inc. (f/k/a Europa Acquisition V, Inc.), and Molecular Imaging 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 Advantage Technologies, Inc., Electronic Game Card, Inc., Faucet Impressions International, Inc. (f/k/a Europa Acquisition V, Inc.), and Molecular Imaging Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Advantage Technologies, Inc. (CIK No. 1092803) is a void Delaware corporation located in Dana Point, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Advantage Technologies 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, 2000, which reported a net loss of $542 for the prior nine months.

2. Electronic Game Card, Inc. (CIK No. 1083036) is a revoked Nevada corporation located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Electronic Game Card is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q/A for the period ended September 30, 2009. On September 28, 2010, Electronic Game Card filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Nevada, and the case was still pending as of April 1, 2013. As of August 12, 2013, the company's stock (symbol "EGMIQ") was traded on the over-the-counter markets.

3. Faucet Impressions International, Inc. (f/k/a Europa Acquisition V, Inc.) (CIK No. 1497029) is a revoked Nevada corporation located in Scottsdale, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Faucet Impressions International 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 $8,000 for the prior nine months.

4. Molecular Imaging Corp. (CIK No. 1097181) is a void Delaware corporation located in San Diego, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Molecular Imaging 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, 2004, which reported a net loss of over $458,000 for the prior three months.

B. DELINQUENT PERIODIC FILINGS

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

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

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

Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3654 / August 21, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15435

In the Matter of David B. Welliver, 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 David B. Welliver ("Welliver" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Sections III.2 and III.4 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 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. Welliver was the Chief Executive Officer and Chief Investment Officer of Dblaine Capital, LLC ("Dblaine Capital"), an investment adviser based in Buffalo, Minnesota and registered with the Commission during the relevant period. Welliver was also President, Chief Executive Officer, Treasurer, Chief Financial and Accounting Officer, Secretary and Chairman of the Board of Trustees for the Dblaine Investment Trust, a registered investment company. At all relevant times, Dblaine Capital served as investment adviser to both series of the Dblaine Investment Trust: the Dblaine Fund and the Dblaine Disciplined Fund. At all relevant times, Welliver served as portfolio manager to the Dblaine Fund and the Dblaine Investment Trust. Welliver, 52 years old, is a resident of Buffalo, Minnesota.

2. On August 13, 2013, a final judgment was entered by consent against Welliver, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, Sections 206(1), 206(2), 206(3), and 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder, and Sections 17(a)(2), 17(e)(1), 22(e), and 34(b) of the Investment Company Act of 1940 ("Investment Company Act"), and Rules 22c-1 and 38a-1 thereunder, in the civil action entitled Securities and Exchange Commission v. David B. Welliver and Dblaine Capital, LLC, Civil Action Number 11-cv-3076, in the United States District Court for the District of Minnesota ("SEC v. Welliver").

3. The Commission's complaint alleged that, from at least October 2010 to August 2011, Welliver breached his fiduciary duty to the Dblaine Fund by, among other things, entering into an improper and undisclosed *quid pro quo* agreement pursuant to which he and Dblaine Capital obtained $4 million in loans in exchange for investing Dblaine Fund assets in an illiquid private placement that was affiliated with the lender. The complaint also alleged that Welliver and Dblaine Capital made these investments even though they knew that the investments violated various investments restrictions and policies governing the Dblaine Fund, as set forth in the Dblaine Fund's registration statement and other Commission filings. The complaint further alleged that Welliver and Dblaine Capital fraudulently provided the Dblaine Fund with inaccurate, inflated valuations for the private placement security and, as a result, Welliver and Dblaine Capital caused the Dblaine Fund to misstate its net asset value in Commission filings, shareholder reports and other publicly available documents, and to offer, sell, and redeem securities at a price other than the current net asset value of the Dblaine Fund. The complaint also alleged that Welliver and Dblaine Capital engaged in improper affiliated transactions with the Dblaine Fund; improperly suspended redemptions in the fund; and failed to adopt and implement policies and procedures reasonably designed to prevent violations of the federal securities laws. Finally, the Commission's complaint alleged that Welliver and Dblaine Capital ultimately discovered that the private placement security was worthless, but continued their fraud by concealing this from Dblaine Fund investors. The complaint alleged that, while the Dblaine Fund's investors suffered almost total l[redacted]as a result of the investment in the private placement, Welliver enriched himself by spending a[redacted]t $500,000 of the loans proceeds for his personal benefit.

4. By Memorandum and Order entered on April 30, 2013, in SEC v. Welliver, the Court granted summary judgment as to liability against Welliver and Dblaine Capital on the following Counts of the Commission's complaint: Three (Section 17(a)(2) and 17(a)(3) of the Securities Act), Twelve (Section 206(3) of the Advisers Act), Thirteen (Section 17(a)(2) of the Investment Company Act), Fifteen (Section 22(e) of the Investment Company Act), Sixteen (Section 34(b) of the Investment Company Act), Eighteen (Rule 22c-1 under the Investment Company Act), and Nineteen (Rule 38a-1 under the Investment Company Act).

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 Welliver 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

SECURITIES EXCHANGE ACT OF 1934
Release No. 70254 / August 26, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15439

In the Matter of Anasazi Capital Corp., Certified Diabetic Services, Inc., Chartwell International, Inc. (n/k/a Covalent Energy International, Inc.), China Junlian Integrated Surveillance, Inc., First Sun South Corp., FirstPlus Financial Group, Inc., and Great American Hotels & Resorts, 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 Anasazi Capital Corp., Certified Diabetic Services, Inc., Chartwell International, Inc. (n/k/a Covalent Energy International, Inc.), China Junlian Integrated Surveillance, Inc., First Sun South Corp., FirstPlus Financial Group, Inc., and Great American Hotels & Resorts, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Anasazi Capital Corp. (CIK No. 1373797) is a dissolved Florida corporation located in Brandon, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Anasazi Capital 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 $68,000 for the prior three months.

2. Certified Diabetic Services, Inc. (CIK No. 1047153) is a void Delaware corporation located in Fort Myers, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Certified Diabetic 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 September 30, 2009, which reported a net loss of over $6 million for the prior nine months.

3. Chartwell International, Inc. (n/k/a Covalent Energy International, Inc.) (CIK No. 1329184) is a void Delaware corporation located in Washington, D.C. with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Chartwell International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended December 31, 2009, which reported a net loss of over $4.9 million for the prior six months. On August 16, 2010, Chartwell International filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of New York, and the case was terminated on September 8, 2011.

4. China Junlian Integrated Surveillance, Inc. (CIK No. 1065467) is a revoked Nevada corporation located in Guangzhou, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Junlian Integrated Surveillance 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, 2008, which reported a net loss of over $8,000 for the prior three months.

5. First Sun South Corp. (CIK No. 43566) is a forfeited South Carolina corporation located in Columbia, South Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). First Sun South 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, 1995. As of July 3, 2013, the company's stock (symbol "FSSU") was traded on the over-the-counter markets.

6. FirstPlus Financial Group, Inc. (CIK No. 1000368) is a defaulted Nevada corporation located in Beaumont, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). FirstPlus Financial Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2008, which reported a net loss of over $5.4 million for the prior six months. On June 23, 2009, FirstPlus Financial Group filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Texas, and the case was still pending as of April 1, 2013.

7. Great American Hotels & Resorts, Inc. (CIK No. 879586) is a Georgia corporation located in Duluth, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Great American Hotels & Resorts is delinquent in its periodic filings with the Commission, having not filed any periodic

reports since it filed a Form 10-Q for the period ended December 31, 1996, which reported a net loss of over $1 million for the prior nine months.

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/or 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. 70265 / August 27, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15441

In the Matter of

BERTRAM A. HILL,

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 Bertram A. Hill ("Hill" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Hill, 65 years old, is a resident of Morganville, New Jersey.

2. From at least August 2010 until at least March 2011, Hill was the sole officer and director of Secure Capital Funding Corporation, a Delaware corporation that purports to be a subsidiary of ST Underwriters. ST Underwriters holds itself out as a private banking group operating out of the Republic of Panama and to be a subsidiary of an entity known as "Secure Trust." From 1997 through 2001, Hill was a registered representative associated with broker-dealers registered with the Commission.

3. On August 6, 2012, a judgment was entered by consent against Hill, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled *Securities and Exchange Commission v. Secure Capital Funding Corporation, et al.*, Civil Action Number 3:11-CV-00916, in the United States District Court for the District of New Jersey.

4. The Commission's complaint alleged that Hill directly and/or through the use of promoters, multiple websites and offering materials fraudulently induced investors to purchase risk-free "private placement debentures" issued or to be issued by or through Secure Trust in Switzerland. The complaint further alleged that Hill misused and misappropriated investor funds, falsely stated to investors that their funds were invested, and otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors. The complaint also alleged that Hill sold unregistered securities.

IV.

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

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

ctors, 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: Lynn M. Powalski
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70280 / August 28, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15332

In the Matter of

JOSHUA CONSTANTIN and
BRIAN SOLOMON,

Respondents.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 15(b)(6) OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO BRIAN SOLOMON

I.

On May 23, 2013, the Securities and Exchange Commission ("Commission") initiated proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Brian Solomon ("Solomon" 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, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 as to Brian Solomon, as set forth below.

III.

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

1. From approximately January 2007 through December 2008, Solomon was a registered representative at Windham Securities, Inc. ("Windham"), a registered broker-dealer. At various times from approximately July 2000 through July 2011, Solomon was a registered representative associated with several other broker-dealers registered with the Commission. Solomon, 39 years old, is a resident of Gardena, California.

2. On July 6, 2011, the Commission filed a complaint against Solomon and others in the United States District Court for the Southern District of New York (the "District Court"), in a civil action entitled Securities and Exchange Commission v. Joshua Constantin, et al., Civil Action Number 11-cv-4642. The complaint alleged that Solomon and others engaged in a fraudulent investment scheme and misappropriated approximately $1.2 million from seven investors.

3. On July 3, 2012, the Commission moved for summary judgment against Solomon on all of its claims against him. The Commission sought permanent injunctions against future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, in addition to other relief.

4. On April 2, 2013, the District Court issued a Memorandum & Order granting the Commission's motion for summary judgment. In its opinion, the District Court concluded that the following facts, among others, were undisputed and served as the basis for summary judgment against Solomon and others:

a. Solomon joined Windham in November 2006 and was a registered representative from July 2007 through January 2009.

b. "Solomon…told clients that Windham had 'a floor of traders in New York'… when, in fact, at the time the company did not."

c. "On numerous occasions, Solomon lied to clients about his involvement in foreign markets, [falsely] indicating, for example, …that he 'often worked the European open.'"

d. "Solomon frequently misrepresented Windham's investment experience and prior performance to potential investors. For example, he advised one client that he had previously worked with small companies and had 'brought them to market.' . . . Solomon then proceeded in the same email to list six company stocks in a chart comparing the companies' stock prices at the time of public offering and as of the date of Solomon's email. In fact, no one at Wyndham [sic] had participated in any of those syndicates or, for that matter, had ever successfully taken a private company public."

e. "Solomon promised, and otherwise encouraged clients to believe, that they could expect unreasonably large and rapid returns on their investments through Windham, [up to 500%]."

f. Based on Solomon's "litany of misrepresentations," seven customers invested approximately $1.2 million through Windham. "After several clients had invested funds with Windham for purposes of purchasing stock in [a company called] Leeward," Windham diverted those funds.

g. Solomon "provided clients with misleading documents to cover up the fraudulent nature of their investment scheme." In one case, Solomon "prepared monthly account statements that misleadingly represented Leeward holdings that [the investor] did not actually have."

5. On May 7, 2013, the District Court entered a final judgment against Solomon, permanently enjoining him from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 15(b)(6) of the Exchange Act, Solomon shall 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

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter
Commissioner Paredes
not participating

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30644; 812-14176]

Wells Fargo Bank, N.A., et al.; Notice of Application and Temporary Order

August 6, 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 an injunction effective July 15, 2013, entered against Wells Fargo Bank, N.A. ("Wells Fargo Bank") by the United States District Court for the Northern District of California, until the Commission takes final action on an application for a permanent order. Applicants have requested a permanent order.

Applicants: Wells Fargo Bank, Alternative Strategies Brokerage Services, Inc. ("Alternative Strategies Brokerage"), Alternative Strategies Group, Inc. ("Alternative Strategies"), First International Advisors, LLC ("First International"), Galliard Capital Management, Inc. ("Galliard"), Golden Capital Management, LLC ("Golden Capital"), Metropolitan West Capital Management, LLC ("Metropolitan West"), Peregrine Capital Management, Inc. ("Peregrine"), Wells Capital Management Incorporated ("Wells Capital Management"), Wells Fargo Funds Distributor, LLC ("WF Funds Distributor"), and Wells Fargo Funds Management, LLC ("WF Funds Management") (each an "Applicant" and collectively, the "Applicants").[1]

Filing Date: The application was filed on July 12, 2013.

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which Wells Fargo Bank 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").

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 September 3, 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: Wells Fargo Bank, 101 North Phillips Avenue, Sioux Falls, SD 57104; Alternative Strategies Brokerage and Alternative Strategies, 401 South Tryon Street, TH 3, 5th Floor, Charlotte, NC 28202; First International, 30 Fenchurch Street, London, England, UK EC3M 3BD; Galliard, 800 LaSalle Avenue, Suite 1100, Minneapolis, MN 55402; Golden Capital, 5 Resource Square, Suite 400, 10715 David Taylor Drive, Charlotte, NC 28262; Metropolitan West, 610 Newport Center Drive, Suite 1000, Newport Beach, CA 92660; Peregrine, 800 LaSalle Avenue, Suite 1850, Minneapolis, MN 55402; West Capital Management, 525 Market Street, 10th Floor, San Francisco, CA 94105; and WF Funds Distributor and WF Funds Management, 525 Market Street, 12th Floor, San Francisco, CA 94105.

For Further Information Contact: Laura J. Riegel, Senior Counsel, at (202) 551-6873 or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Exemptive Applications).

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

[redacted]earching 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. Wells Fargo Bank is a national banking association wholly-owned, directly and indirectly, by Wells Fargo & Company ("Wells Fargo"). Through its direct and indirect subsidiaries, Wells Fargo, a registered financial holding company and bank holding company under the Bank Holding Company Act of 1956, as amended, offers banking, brokerage, advisory and other financial services to institutional and individual customers worldwide. Wells Fargo also is the ultimate parent of the other Applicants, who, as direct or indirect, majority-owned or wholly-owned, subsidiaries of the same ultimate parent, are, or may be considered to be, under common control with Wells Fargo Bank.

2. [redacted]h a separately identifiable department within Wells Fargo Bank and each registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"), serve as investment advisers to one or more Funds (as defined below). Alternative Strategies, First International, Galliard, Golden Capital, Metropolitan West, Peregrine, Wells Capital Management, and WF Funds Management are registered as investment advisers under the Advisers Act and serve as investment advisers or sub-advisers to various Funds. Alternative Strategies Brokerage and WF Funds Distributor are registered as broker-dealers under the Securities Exchange Act of 1934, and each serves as principal underwriter to various Funds. "Fund" means any registered investment company, including a registered unit investment trust ("UIT") or registered face amount certificate company, as well as any business development co[redacted]ny ("BDC") or employees' securities company ("ESC"). "Fund Servicing Activities"

[redacted]eans acting as an adviser, sub-adviser or depositor to Funds, or principal underwriter for any registered open-end investment company, UIT, registered face amount company or ESC.

3. On May 14, 2013, the United States District Court for the Northern District of California issued an order (the "Court Order") in a certified consumer class action under Section 17200 of the California Business and Professions Code relating to a Wells Fargo Bank bookkeeping device known as "high-to-low" posting.[2] The plaintiffs in the class action alleged that Wells Fargo Bank, without adequate disclosure to account holders, posted debit card transactions received each day for payment beginning with the highest amount and ending with the lowest amount (*i.e.*, high-to-low), which could have the effect of increasing the number of items posting into overdraft and, therefore, increased overdraft fees.[3] While the plaintiffs' challenge to the practice of high-to-low posting and to the adequacy of the bank's disclosures was found to be preempted by the National Bank Act, Wells Fargo Bank was found liable under [redacted] California law for making misleading statements regarding the practice.[4] The Court Order enjoined Wells Fargo Bank from making or disseminating, or permitting to be made or disseminated, any false or misleading representations relating to the posting order of debit-card purchases, checks, and ACH transactions in its customer bank accounts (the "Injunction"). The Court Order set July 15, 2013, as the effective date of the Injunction.

Applicants' Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from acting as a bank, or from engaging in or continuing any conduct or practice in

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[2] *Gutierrez v. Wells Fargo Bank, N.A.*, Case No. C 07-05923 WHA (N.D. Cal., May 14, 2013) (granting in part and denying in part motion for judgment following remand).

[3] [redacted]

[4] *Id.* at 3 (*citing Gutierrez v. Wells Fargo Bank, N.A.*, 704 F.3d 712, 725-730 (9th Cir. 2012)).

[redacted]nnection with such activity, from acting, among other things, as an investment adviser or depositor of any registered investment company, or as a principal underwriter for any registered open-end investment company, UIT or registered face-amount certificate company. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(2) to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). 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 Wells Fargo Bank is, or may be considered to be, under common control with and therefore an affiliated person of each of the other Applicants. Applicants state that the Injunction may result in Applicants being subject to the disqualification provisions of section 9(a) of the Act because Wells Fargo Bank is enjoined from engaging in or continuing certain conduct and/or practices in connection with its banking activity.[5]

[redacted] 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 unduly 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 July 15, 2013, Applicants received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Injunction from July 15, 2013 until the Commission takes final action on an application for a permanent order or, if earlier, September 13, 2013.

[5] [redacted]ants believe that the conduct and/or practices covered by the Injunction could be deemed to be in connection with Wells Fargo Bank's banking activity.

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 unduly 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 state that the conduct giving rise to the Injunction did not involve any of the Applicants acting in their capacity as investment adviser, sub-adviser, or principal underwriter for Funds. Applicants also state that the alleged conduct giving rise to the Injunction did not involve any Fund or the assets of any Fund for which they provided Fund Servicing Activities. Applicants further state that to the best of their reasonable knowledge: (i) none of the Applicants' (other than certain of Wells Fargo Bank's) current or former directors, officers or employees had any knowledge of, or had any involvement in, the conduct alleged in the Court Order that provided a basis for the Injunction; (ii) the personnel who were involved in the [redacted]lations have had no involvement in, and will not have any future involvement in, providing advisory, sub-advisory, depository or underwriting services to Funds; and (iii) because the personnel of the Applicants involved in Fund Servicing Activities did not have any involvement in the alleged misconduct, shareholders of Funds that received investment advisory, depository and principal underwriting services from the Applicants were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser, depositor or principal underwriter.

5. Applicants further represent that the inability of Applicants to continue providing Fund Servicing Activities would result in potentially severe financial hardships for both the Funds and their shareholders. Applicants state that they will distribute written materials, in[redacted]ing 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

e Act, of such Fund, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. The Applicants will provide the Funds with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if the Applicants were barred from engaging in Fund Servicing Activities, 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.

plicants' Condition

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

> 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.

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 Injunction, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

Commissioner Paredes not participating

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30647; File No. 811-07528]

Special Opportunities Fund, Inc.; Notice of Application

August 8, 2013

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

Action: Notice of an application for a declaratory order under Section 554(e) of the Administrative Procedure Act of 1946 ("APA") concerning a proxy voting procedure under Section 12(d)(1)(F) of the Investment Company Act of 1940 ("Act").

Summary of Application: Applicant requests an order declaring that its proxy voting procedure does not cause the applicant to be in violation of Section 12(d)(1) of the Act.

Applicant: Special Opportunities Fund, Inc. ("SPE" or "Fund").

Filing Dates: The application was filed on December 13, 2011 and amended on November 5, 2012.

Hearing or Notification of Hearing: Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 3, 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. Absent a request for a hearing that is granted by the Commission, the Commission intends to issue an order under Section 554(e) of the APA declaring that applicant's proxy voting procedure does not satisfy Section 12(d)(1)(F) of the Act.

Addresses: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicant, 615 East Michigan Street, Milwaukee, Wisconsin 53202.

For Further Information Contact: Adam Glazer, Senior Counsel, at (202) 551-6825, Division of Investment Management, Office of Chief Counsel.

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website at http://www.sec.gov/rules/ic/2012/special-opportunities-fund-application.pdf or by calling (202) 551-8090.

Applicant's Representations:

1. SPE is organized as a Maryland corporation and is registered under the Act as a closed-end management investment company. Brooklyn Capital Management, LLC ("Adviser"), a Delaware limited liability company, is an investment adviser registered under the Investment Advisers Act of 1940 and currently serves as investment adviser to SPE. SPE seeks to rely on Section 12(d)(1)(F) of the Act to invest its assets in securities of other investment companies registered under the Act ("underlying funds") that are closed-end investment companies, in excess of the limits in Section 12(d)(1)(A) of the Act.

2. On December 7, 2011, SPE's shareholders approved a proposal to "instruct the Adviser to vote proxies received by the Fund from any [underlying fund] on any proposal (including the election of directors) in a manner which the Adviser reasonably determines is likely to favorably impact the discount of such [underlying fund's] market price as compared to its net asset value" ("Voting Procedure"). SPE requests a declaratory order pursuant to Section

554(e) of the APA stating that the Voting Procedure "does not cause it to be in violation of Section 12(d)(1) of the Act."

Applicant's Legal Analysis:

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that it shall be unlawful for any registered investment company ("acquiring fund") to purchase or otherwise acquire any security issued by an underlying fund if immediately after such purchase or acquisition: (i) the acquiring company owns more than 3% of the underlying fund's total outstanding voting stock; (ii) securities issued by the underlying fund have an aggregate value in excess of 5% of the value of the acquiring fund's total assets ("5% limit"); or if such securities, together with the securities of other investment companies, have an aggregate value in excess of 10% of the value of the acquiring fund's total assets ("10% limit").

2. Section 12(d)(1)(F) of the Act provides a conditional exemption from the 5% and 10% limits in Section 12(d)(1)(A). Section 12(d)(1)(F) permits an acquiring fund to purchase or otherwise acquire shares of an underlying fund if, immediately after the purchase or acquisition, the acquiring fund and all of its affiliated persons would not own more than 3% of the underlying fund's total outstanding stock, and if certain sales load restrictions are met. Section 12(d)(1)(F) further provides that the underlying fund is not obligated to redeem, during any period of less than 30 days, securities held by the acquiring fund in an amount exceeding 1% of the underlying fund's outstanding securities. Finally, Section 12(d)(1)(F) provides that the acquiring fund "shall exercise voting rights by proxy or otherwise with respect to any security purchased or acquired pursuant to [Section 12(d)(1)(F)] in the manner prescribed by [Section 12(d)(1)(E)]." Section 12(d)(1)(E)(iii), in turn, provides, in relevant part, that "the purchase or acquisition is made pursuant to an arrangement with the issuer of, or principal underwriter for, the issuer of the

security whereby [the acquiring fund] is obligated either to seek instructions from its security holders with regard to the voting of all proxies with respect to such security and to vote such proxies only in accordance with such instructions, or to vote the shares held by it in the same proportion as the vote of all other holders of such security." The first alternative is referred to as "Pass-Through Voting Condition." The second alternative is referred to as "Mirror Voting."

3. SPE asserts that its Voting Procedure satisfies the Pass-Through Voting Condition. SPE states that it has been "unable to find anything in the legislative history of Section 12(d)(1) that provides any clue as to the reason for the [Pass-Through Voting Condition]." SPE further asserts that "there are good reasons for interpreting the [Pass-Through Voting Condition] to allow an acquiring fund to seek standing instructions to vote on proposals regarding acquired funds." In this regard, SPE asserts that it is not cost effective for an acquiring fund to obtain voting instructions for a particular underlying fund after it receives a proxy. SPE also states that "there is almost never sufficient time for an acquiring fund to seek and actually obtain instructions from its own shareholders as to how to vote a specific proxy solicited by a particular acquired fund." SPE further states that "SPE has no such relationship with any fund and it would be futile for SPE to try to persuade an unrelated acquired fund to transmit its proxy materials to SPE's stockholders."

4. SPE requests an order under section 554(e) of the APA declaring that the Voting Procedure "does not cause it to be in violation of Section 12(d)(1) of the Act." Section 554(e) of the APA provides that "[t]he agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty." SPE states that, if the Commission issues the requested declaratory order, SPE intends to submit the Voting Procedure for shareholder approval on an annual basis "to insure

that its standing proxy voting instructions do not become stale."

The Commission's Preliminary Views:

1. Section 12(d)(1)(F) of the 1940 Act provides a conditional exemption from the restrictions in Section 12(d)(1)(A) on an acquiring fund purchasing or otherwise acquiring a security issued by an underlying fund. The legislative history of Section 12(d)(1)(A) suggests that these restrictions were designed, in part, to address the concern that an acquiring fund could be used by an investment adviser, among others, as a vehicle to control or unduly influence, through voting, threat of redemption or otherwise, an underlying fund for its own benefit and to the detriment of the shareholders of both funds.[1] The conditions contained in the exemption provided by Section 12(d)(1)(F), and in particular the condition requiring voting in accordance with Section 12(d)(1)(E)(iii), attempts to minimize the influence that an acquiring fund may exercise over an underlying fund through voting.[2]

2. Shortly after Section 12(d)(1)(F) was enacted in 1970, the Commission issued a release providing guidance on the various provisions enacted by the new legislation, including specifically the Pass-Through Voting Condition.[3] The 1971 Release stated that the Pass-Through Voting Condition in Section 12(d)(1)(F) "in effect, requires the fund holding company to make an arrangement with the issuer or principal underwriter of the issuer whereby

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[1] *See* U.S. SECURITIES AND EXCHANGE COMMISSION, INVESTMENT TRUSTS AND INVESTMENT COMPANIES, H.R. DOC NO. 279, 76th Cong., 1st Sess., pt. 3, at 2721-95 (1939).

[2] *See Fund of Funds Investments*, Investment Company Act Release No. 27399 (June 20, 2006) at n.11 and accompanying text.

[3] *Changes in the Investment Company Act of 1940 Made by the Investment Company Amendments Act of 1970 (P.L. 91-547) Relating to the Repeal and Modification of Exemptions for Certain Companies; The Pyramiding of Investment Companies and the Regulation of Fund Holding Companies; and Rescission of Rule 11b-1 under the Investment Company Act*, Investment Company Act Release No. 6440 (May 6, 1971) ("1971 Release").

sufficient proxy solicitation or other material may be transmitted to the fund holding company's security holders so that their instructions may be obtained."[4] This approach addresses the concern underlying the restrictions in Section 12(d)(1)(A) – that the fund of funds' investment adviser or another affiliate not exercise undue influence over the management or policies of an underlying fund – by placing the voting of the underlying fund's proxies in the hands of the fund of funds' shareholders (rather than its investment adviser). Consistent with the Commission's analysis in the 1971 Release, the Commission interprets Section 12(d)(1)(F), through the incorporation of the requirement in Section 12(d)(1)(E)(iii), to require SPE, if it chooses the Pass-Through Voting Condition, to have an arrangement with each underlying fund or its principal underwriter whereby SPE will pass through the proxies to SPE's shareholders and vote according to their instructions.

3. In the Commission's preliminary view, SPE's Voting Procedure does not appear to be consistent with the purposes and policies behind Section 12(d)(1)(F) of the Act, or with the guidance that the Commission articulated in the 1971 Release. The Voting Procedure gives the Adviser broad discretion in voting the underlying funds' proxies and thus presents the potential for the Adviser to exercise undue influence over the management and policies of the underlying funds. As to SPE's assertion that soliciting proxies as described in the 1971 Release is "prohibitively expensive and logistically impractical," we note that Section 12(d)(1)(E) requires there to be "an arrangement" between the acquiring fund and an underlying fund concerning the voting of proxies, which suggests that at least the logistics of the Pass-Through Voting Condition could be addressed as part of "the arrangement." We also note that funds of funds similar to SPE

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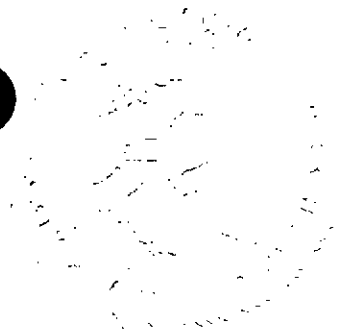
[4] *Id.* at 4.

existed at the time the 1971 Release was issued and the Pass-Through Voting Condition was enacted as an alternative to Mirror Voting, yet Congress nevertheless determined the statutory conditions to be appropriate.[5] To the extent that SPE finds making "an arrangement" with an underlying fund under the Pass-Through Voting Condition "futile," SPE has the option of using Mirror Voting. Therefore, absent a request for a hearing that is granted by the Commission, the Commission intends to respond to SPE's application by issuing an order under Section 554(e) of the APA declaring that the Voting Procedure does not satisfy Section 12(d)(1)(F) of the Act.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary



[5] *See Mutual Fund Legislation of 1967: Hearings on S. 1659 Before the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. 882-891 (1967) (statement of Milton Mound, President, First Multifund of America, Inc.).

Commissioner Gallagher not participating

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70148 / August 8, 2013

Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: Eurex Deutschland

I. Introduction

The United States Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to issue this Report of Investigation ("Report") pursuant to Section 21(a) of the Securities Exchange Act[1] ("Exchange Act") to highlight the risks that exchanges and investment professionals undertake when they operate without the appropriate compliance measures in place to monitor the composition of indices on which financial instruments are offered to ensure that they are in compliance with the federal securities laws. Exchanges and investment professionals should take the appropriate steps to verify that they are in compliance with the federal securities laws, which could include establishing policies and procedures to appropriately monitor the composition of indices on which futures are based to determine if they are offering security futures products. This Report also serves to highlight analogous situations involving swaps, and reminds investment professionals who engage in swap transactions of their responsibility to ascertain the characteristics of such swaps to ensure that, for those that are securities, the investment professional is appropriately offering the securities to persons in the United States, and otherwise complying with all applicable federal securities law requirements.

Eurex, a foreign derivatives exchange headquartered in Frankfurt, Germany, self-reported to the Commission and Commodity Futures Trading Commission ("CFTC") staff that it had been offering and selling contracts to persons in the U.S. on a non-narrow based index that had shifted to security futures on a narrow-based security index for approximately 18 months without complying with the applicable registration requirements prescribed by the federal securities laws.[2] The Division of Enforcement has investigated whether Eurex violated the federal securities laws by effecting transactions in the U.S. in security futures contracts that were not listed on a national securities exchange or a national securities association, and whether Eurex improperly offered and sold the security futures contracts while there was no registration

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[1] Section 21(a) of the Exchange Act authorizes the Commission to investigate violations of the federal securities laws and, in its discretion, to "publish information concerning any such violations." Eurex Deutschland ("Eurex") has consented to the issuance of this Report without admitting or denying any of the statements or conclusions herein. This Report does not constitute an adjudication of any fact or issue addressed herein. In addition, the statements and conclusions in this Report do not represent determinations by the Commission with respect to any persons or entities other than Eurex.

[2] Eurex self-reported the conduct to the Commission and CFTC staff on October 21, 2011 after discovering the issue.

[redacted]tatement in effect or where there was no available exemption from registration under the Securities Act of 1933 ("Securities Act").[3]

II. Facts

A. Structure and Organization of Eurex Deutschland

Eurex is a derivatives exchange located in Frankfurt, Germany, which lists futures contracts and options on futures based on interest rates, volatility indexes, broad-based security indexes, inflation rates, and commodities. Eurex is operated by Eurex Frankfurt AG and clears its transactions through Eurex Clearing AG, a wholly-owned subsidiary of Eurex Frankfurt AG. Eurex is regulated and subject to market surveillance by German regulatory agencies, including the Exchange Supervisory Authority in the State of Hesse, where Eurex is located, and by the German Federal Financial Supervisory Agency (Bundesanstalt für Finanzdienstleistungsaufsicht) (the "BaFin").

Eurex operates through an all-electronic trading platform, with members connected to Eurex via a dedicated communications network from hundreds of locations worldwide. Firms located in the United States who are members of Eurex have been able to access Eurex's trading platform directly from trading terminals in the United States since 1996 with respect to futures and options on futures contracts under conditions set forth by the CFTC.

Eurex membership is offered to financial institutions, financial services institutions and [redacted]dit institutions across the world, provided certain conditions are met. Eurex does not offer membership to individuals. Persons in the United States may obtain direct market access to Eurex through a U.S. financial institution[4] that is a Eurex member, with respect to futures and options on futures contracts under conditions set forth by the CFTC. Persons in the United States also may send orders to Eurex through international Eurex members who are futures commission merchants ("FCMs") or exempt from FCM registration.[5]

B. The EURO STOXX Banks Index

Eurex initially offered futures on the EURO STOXX Banks Index ("Index") for trading on March 19, 2001. On April 2, 2002, the staff of the CFTC issued a no-action letter in connection with Eurex's request to offer and sell futures on the Index in the U.S. from Eurex

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[3] The Commission notes that, although the registration issues highlighted in this Report relate to Eurex, a foreign exchange, similar issues could arise if a U.S. futures exchange were to offer or sell security futures on a broad-based index that shifted to a narrow-based index.

[4] To the extent a financial institution effected transactions in the United States through Eurex in futures on the EURO STOXX Banks Index once the futures on the Index became a security futures product, the financial institution would have needed to ensure that it was registered with the Commission as a broker-dealer or otherwise could rely on a specific exclusion or exemption from registration.

[5] [redacted]tures commission merchant is an individual who, or organization that, solicits or accepts orders to buy or sell [redacted]s contracts or options on futures contracts and accepts money or other assets from customers in connection with such orders. An FCM must be registered with the CFTC.

[redacted]erminals located in the United States,[6] based in part on the fact that Eurex represented that the Index was a broad-based security index.[7]

According to Eurex, as of October 10, 2001, the Index consisted of stocks from 44 issuers in ten European countries, including Italy, Greece, Spain, Germany, Belgium, France, Ireland, Portugal, Austria, and the Netherlands. Eurex represented to the CFTC staff in its request for no-action relief that, as of October 10, 2001, no single stock in the Index represented more than 10.7% of the Index, and the five most heavily weighted stocks in the Index represented 48.3% of the Index. The CFTC staff concluded that the Index complied with the relevant sections of the CEA, including that it was a broad-based security index, and determined that it would not recommend an enforcement action if futures contracts based on the Index were offered or sold in the United States.[8] As a future on a broad-based security index, the future was subject to the exclusive jurisdiction of the CFTC. According to Eurex, from at least April 2, 2002 through October 21, 2011, Eurex offered and sold security futures on the Index in the U.S. through direct market access and other methods.

C. Discovery of the Conduct Leading to the Self-Report

In September 2011, the CFTC adopted new procedures requiring markets with existing CFTC no-action letters to certify that they remained in compliance with the guidance set forth in those no-action letters. In connection with CFTC's new procedures, Eurex conducted a review of the Index and discovered that the Index no longer qualified as a broad-based security index. In fact, Eurex discovered that the Index had not been a broad-based security index for [redacted]proximately eighteen months.

Eurex's review revealed that the Index first assumed a characteristic that would, but for the statutory tolerance and grace periods, render it a narrow-based security index in January 2010, because the five highest weighted component securities in the Index exceeded 60% of the Index's weighting. Following a three month grace period, the Index transitioned from a broad-based to a narrow-based security index, and futures on the Index became subject to joint CFTC and Commission jurisdiction. Further, futures on the Index became subject to registration and regulatory requirements under the federal securities laws with which Eurex did not comply.[9]

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[6] CFTC Staff Letter No. 02-38 (April 2, 2002).

[7] Section 1a(35) of the Commodity Exchange Act ("CEA") and Section 3(a)(55)(B) of the Exchange Act.

[8] CFTC Staff Letter No. 02-38 (April 2, 2002).

[9] In this regard, the Commission notes that Congress provided in the definition of the term "narrow-based security index" in both the CEA and the Exchange Act for a tolerance period ensuring that, under certain conditions, a futures contract on a security index traded on a designated contract market ("DCM") may continue to trade, even when the index temporarily assumes characteristics that would render it a narrow-based security index under the statutory definition. See CEA section 1a(35)(B)(iii), 7 U.S.C. 1a(35)(B)(iii); section 3(a)(55)(C)(iii) of the Exchange Act, 15 U.S.C. 78c(a)(55)(C)(iii). In general, an index is subject to this tolerance period, and therefore is [redacted]arrow-based security index, if: (i) a futures contract on the index traded on a DCM for at least 30 days as a [redacted] contract on a broad-based security index before the index assumed the characteristics of a narrow-based security index; and (ii) the index does not retain the characteristics of a narrow-based security index for more than 45 business days over 3 consecutive calendar months. Pursuant to these statutory provisions, if the index becomes

From on or about April 2010 through October 2011, after the Index transitioned to a narrow-based security index, Eurex sold 6 million future contracts worldwide on the Index through approximately 79 foreign-based intermediaries and direct market access trading terminals in the United States. During the same period of time, other orders were facilitated through omnibus customer accounts carried by foreign-based intermediaries on behalf of persons in the U.S. Eurex allowed persons to directly access its market using means or instrumentalities of interstate commerce to effect transactions in security futures through trading terminals located in the U.S. This practice resulted in the sale of approximately 120,000 security futures to persons in the U.S.

Based on its investigation, the staff has determined that Eurex did not comply with the federal securities laws by effecting transactions in the U.S. in security futures: (1) that were not listed on a national securities exchange or national securities association;[10] and (2) without registering as a national securities exchange.[11] In addition, Eurex offered and sold security futures in the U.S without registering the transactions and without having a valid exemption from registration for the transactions as required by Section 5 of the Securities Act.[12]

However, due, in part, to its substantial cooperation and remedial efforts, the Commission is not bringing an enforcement action against Eurex. Eurex self-reported the findings of its review to the Commission and CFTC staff on October 21, 2011, and has been in continuous and close contact with the staff, providing updates and documents on a voluntary basis to the staff. [redacted]urex also obtained additional information from its customers and has been cooperative in [redacted]oviding documents and information to the BaFin for production to the staff.

III. The Relevant Provisions of the Federal Securities Laws

We wish to highlight the relevant provisions of the Exchange Act and Securities Act that were at issue in this investigation. Enforcement actions infrequently involve the application of the Securities Act and Exchange Act to derivative contracts and other less-traditional financial instruments, and an expanded discussion of the relevant provisions in this investigation may assist exchanges and investment professionals in determining whether they are appropriately offering securities to persons in the United States.

A. Section 6(h)(1) of the Exchange Act

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narrow-based for more than 45 business days over 3 consecutive calendar months, the index is excluded from the definition of the term "narrow-based security index" for the following 3 calendar months as a grace period.

[10] Section 6(h)(1) of the Exchange Act states that "it shall be unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a)."

[redacted]ion 5 of the Exchange Act.

[12] Section 5 of the Securities Act.

Section 6(h)(1) of the Exchange Act prohibits any person from effecting any transaction in security futures products that are not listed on a national securities exchange registered pursuant to Section 6 of the Exchange Act or a national securities association registered pursuant to Section 15A of the Exchange Act. It is important that a security futures product be traded on a national securities exchange pursuant to Section 6(h) of the Exchange Act to ensure that the product meets a national securities exchange's listing standards and that the trading of the product is subject to both such exchange's and the Commission's oversight. Section 3(a)(55)(A) of the Exchange Act defines a security future to mean a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under Section 3(a)(12).

More specifically, Section 3(a)(55)(B) provides that a "narrow-based security index" is an index:

i. that has 9 or fewer component securities;

ii. in which a component security comprises no more than 30 percent of the index's weighting;

iii. in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

iv. in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

Based on the information obtained during the investigation, the staff has determined that Eurex did not comply with Section 6(h)(1) of the Exchange Act when Eurex effected transactions in the U.S. in security futures products that were not listed on a national securities exchange or a national securities association. According to Eurex, as of June 2009, the five highest weighted component securities in the Index, in the aggregate, comprised more than 60 percent of the Index's weighting. By April 2010, after the expiration of the applicable tolerance period and grace period, the Index transitioned to a narrow-based security index and futures on

[redacted]ne Index became security futures,[13] subject to registration and regulatory requirements with which Eurex did not comply.[14]

B. Section 5 of the Exchange Act

Section 5 of the Exchange Act makes it unlawful for any broker, dealer, or exchange to effect any transaction in a security, or to report any such transaction, unless such exchange is registered as a national securities exchange under Section 6 of the Exchange Act or is exempted from such registration. Section 3(a)(1) of the Exchange Act defines an "exchange" to mean "any organization, association, or group of persons...which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities...." The Commission has stated that "an exchange or contract market would be required to register under Section 5 of the Exchange Act if it provides direct electronic access to persons located in the U.S."[15] An entity's registration as a national securities exchange pursuant to the requirements of Section 5 of the Exchange Act is important because a national securities exchange acts as a self-regulatory organization responsible for overseeing trading on its market and its members' compliance with applicable statutory and regulatory provisions. Further, as a national securities exchange, it is subject to Commission oversight of, among others, its rules, disciplinary actions, and books and records.

Eurex regularly and consistently offered and sold security futures on the Index in the U.S. through direct market access. Eurex should have registered as a national securities exchange [redacted]ith, or been exempted from such registration by, the Commission before providing direct [redacted]arket access to effect transactions in security futures products on the Index to persons in the U.S. Accordingly, Eurex did not comply with Section 5 of the Exchange Act.

C. Section 5 of the Securities Act

Section 5(a) of the Securities Act provides that, unless a registration statement is in effect as to a security, it is unlawful for any person, directly or indirectly, to engage in the unregistered offer or sale of securities in interstate commerce. Section 5(c) of the Securities Act provides a similar prohibition against offers to sell, or offers to buy, unless a registration statement has been

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[13] As noted in footnote 9 above, the CEA and the Exchange Act provide for a grace period within which a futures contract on a broad-based security index may continue to trade, even when the index temporarily assumes characteristics that would render it a narrow-based security index under the statutory definition. See CEA section 1a(35)(B)(iii), 7 U.S.C. 1a(35)(B)(iii); section 3(a)(55)(C)(iii) of the Exchange Act, 15 U.S.C. 78c(a)(55)(C)(iii). In this instance, the Index assumed the characteristics of a narrow-based security index in June 2009, and later transitioned to a narrow-based security index after the expiration of the applicable grace period. See id.

[14] Persons effecting transactions in security futures for persons or accounts in the U.S. are required to register with the Commission as a broker-dealer pursuant to the process set forth under Section 15(b) of the Exchange Act. To the extent Eurex or any other person facilitated or effected transactions in security futures for persons or accounts in the U.S., unless an exemption or exclusion were applicable, registration as a broker-dealer would have been [redacted]d.

[15] Securities Exchange Act Release No. 60194 (June 30, 2009), 74 FR 32200 (July 7, 2009).

[redacted]led. Thus, both Sections 5(a) and 5(c) of the Securities Act prohibit the unregistered offer or sale of securities in interstate commerce, unless the offerings are exempt.

The Securities Act includes a statutory exemption in Section 3(a)(14) from all provisions of the Securities Act, other than Section 17(a) anti-fraud provisions, for security futures that are cleared by a U.S.-registered or exempt clearing agency and traded on a national securities exchange.[16] The statutory exemption for security futures was not available for the particular security futures involved because the conditions of the exemption were not met – the security futures were not traded on a national securities exchange and cleared by a U.S.-registered or exempt clearing agency. As a result, Eurex was required to comply with Section 5 of the Securities Act with respect to the offer and sale of the security futures. Based on the information obtained by the staff, Eurex did not comply with Section 5 of the Securities Act. The contracts on the Index were securities from the time the Index transitioned from a broad-based index to a narrow-based index. Eurex offered and sold the securities to customers through means of interstate commerce without registration or a valid exemption from registration.

Because Eurex was not able to rely on the statutory exemption for security futures and did not register the security futures at issue under the Securities Act, certain disclosures under the Securities Act were not available to investors. For example, if Eurex had registered the security futures at issue under the Securities Act, it would have filed a registration statement with the Commission covering the offer and sale of the security futures that would disclose to investors information about the security futures and about the clearing agency that is the issuer of the [redacted]curity futures. Moreover, investors would have been entitled to the protections of Section 11 [redacted] Section 12(a)(2) of the Securities Act with respect to the disclosures contained in the registration statement and other offering materials.

IV. Discussion

The Commission is issuing this Report, and foregoing an enforcement action against Eurex, in part, because of its substantial and timely cooperation and prompt remediation efforts. On October 21, 2011, Eurex self-reported to the Commission and CFTC staff that it had been offering and selling contracts in the U.S. on a non-narrow based index that had shifted to security futures on a narrow-based security index for approximately 18 months without complying with the applicable registration requirements prescribed by the federal securities laws. Immediately on discovering the issue, Eurex ceased offering and selling the security futures on the Index in the United States and sent a notice informing Eurex members of the change in status of the futures on the Index.

Up until the discovery that the Index had become a narrow-based security index, Eurex had no policies and procedures in place to monitor compliance of the futures on its indices with the conditions of the CFTC no-action letter or the requirements of the federal securities laws applicable to security futures. Eurex has since implemented comprehensive policies and procedures that now require monthly, and in some instances daily, compliance monitoring of indices on which it offers futures contracts in the U.S. Specifically, if through monthly

[redacted]

[16] Section 3(a)(14) of the Securities Act.

[redacted]onitoring Eurex staff determines that the Index is on the verge of becoming a narrow-based security index, the procedures require that Eurex staff will commence monitoring on a daily basis.[17]

In issuing this Report, we observe that Eurex's failure to comply with the federal securities laws could have been prevented if Eurex had adequate internal controls to ensure compliance with the provisions of the federal securities laws governing security futures. Up until its discovery that the Index had become a narrow-based index, Eurex did not regularly monitor the composition of the Index or otherwise verify that the Index was not a narrow-based security index while it was offering and selling security futures contracts in the U.S. for approximately eighteen months. Exchanges and investment professionals should take the appropriate steps to verify that they are in compliance with the federal securities laws, which could include establishing policies and procedures to appropriately monitor the composition of indices on which futures are based to determine if they are offering security futures products.

In addition, we note that Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act gives the Commission jurisdiction over security-based swaps by including them in the definition of security under the Securities Act and the Exchange Act and the CFTC jurisdiction over swaps (collectively, "Title VII Instruments"). The test for whether an agreement, contract, or transaction is a swap or a security-based swap also uses the definition of narrow-based security index in Section 1a(35) of the CEA and Section 3(a)(55)(B) of the Exchange Act.[18] However, while futures (including security futures) sold in the United States [redacted] listed on exchanges where the exchange's requirements often require a review of whether the [redacted]ure is on a single-stock security, narrow-based security index, or broad-based security index, such is not the case with bilaterally negotiated swaps and security-based swaps that are entered into solely with eligible contract participants ("ECPs"). Unlike futures, swaps and security-based swaps may be sold over-the-counter solely with ECPs, where the characteristics must be vetted by the counterparties to the transaction based on the statutory and rule-based definitions of narrow-based security index.[19]

As such, anyone entering into Title VII Instruments based on an index should carefully consider the characteristics of the instrument to determine whether it is a security-based swap. The investment professional will need to make this determination before offering to enter into

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[17] Eurex's newly-implemented policy for monitoring an index's status states monitoring shall switch from a "monthly" to a "daily" basis if any index: (1) has 10 component securities; (2) has a component security that comprises more than 25% of the index's weighting; (3) has five highest weighted component securities that in the aggregate comprise more than 55% of the index's weighting; or (4) has the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting that has an aggregate dollar value of average daily trading volume of less than $55,000,000 (or in the case of an index with 15 or more component securities, $35,000,000).

[18] See Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement;" Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (July 18, 2012), 77 Fed. Reg. 48208 (Aug. 13, 2012).

[redacted]ere there is an offer and sale to a non-ECP of a security-based swap, the transaction must be registered under the Securities Act and traded on a national securities exchange.

he transaction in order to determine whether the federal securities laws apply. Failure to do so could put a party at risk of violating Section 5 of the Securities Act for offering and selling securities in unregistered transactions without a valid exemption, or other applicable provisions of the Exchange Act relating to security-based swaps.

V. Conclusion

When offering financial instruments based on indices, exchanges and investment professionals should take the appropriate steps to verify that they are in compliance with the federal securities laws, which could include establishing policies and procedures to appropriately monitor the composition of indices on which futures are based to determine if they are offering security futures products. In analogous situations involving security-based swaps, investment professionals who engage in swap transactions similarly are responsible for ascertaining the characteristics of such swaps to ensure that, if such swaps are security-based swaps, the investment professional is appropriately offering the securities to persons in the United States, and meeting all registration and other requirements associated with those securities.

By the Commission.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70140 / August 8, 2013

Admin. Proc. File No. 3-15161

In the Matter of

STEPHANIE HIBLER
1277 South Beverly Glen Boulevard, Suite #202
Los Angeles, CA 90024-5223

ORDER GRANTING IN PART AND DENYING IN PART APPLICATION TO VACATE ADMINISTRATIVE BAR ORDER

I.

Stephanie Hibler seeks to vacate an administrative bar order based on a 1981 criminal conviction for securities fraud. The Division of Enforcement opposes Hibler's request to the extent that she seeks to vacate the broker and dealer bars but supports the grant of relief as to the investment adviser and investment company bars. As discussed below, we have determined to grant in part and deny in part Hibler's request.

II.

On December 7, 1981, Hibler was sentenced after pleading guilty to a one-count information charging her with violating the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.[1] The violations identified in the information occurred in connection with the sale of Westamerica Automotive Corporation common stock by Hibler while she was employed as a sales representative and turned on Hibler's acceptance of secret, substantial payments from an affiliate of Westamerica in return for selling stock of that company to her customers.[2] Hibler was sentenced to probation for five years and 1,000 hours of public service.[3] Based on that criminal proceeding, on June 2, 1982, administrative proceedings were instituted against Hibler,[4] and, on December 15, 1982, we

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1 *United States v. Hibler (C.D. Cal., CR-81-931)*, Lit. Release No. 9529, 1981 SEC LEXIS 108, at *1 (Dec. 16, 1981).

2 *Id.*

3 *See NASD, Inc.*, Exchange Act Release No. 22067, 48 SEC 169, 1985 SEC LEXIS 1472, at *1 (May 23, 1985).

4 *Stephanie Hibler*, Exchange Act Release No. 18786, 1982 SEC LEXIS 1565, at *1 (June 2, 1982).

[redacted]ntered a consent order barring Hibler "from being associated with any broker or dealer or investment adviser or investment company or affiliate of a broker or dealer or investment adviser or investment company."[5]

On May 23, 1985, we denied an application by NASD seeking our consent to allow Hibler to associate with two NASD member firms.[6] We found then that such relief was not in the public interest given, among other things, the seriousness of Hibler's misconduct and the short period of time that had then passed since we had imposed the bars.[7] Hibler now moves to lift the bars in their entirety.

III.

In reviewing requests to lift or modify administrative bar orders, we consider whether, "under all the facts and circumstances presented, it is consistent with the public interest and investor protection to permit the petitioner to function in the industry without the safeguards provided by the bar."[8] Maintaining a bar serves the public interest and investor protection by ensuring that the Commission "retains its continuing control over [a] barred individual['s] activities."[9] Thus, relief is appropriate only in "compelling circumstances" and, in the usual case, we will retain administrative bars in place.[10] In determining whether to grant relief, we are guided by a number of relevant factors, including whether "there exists any . . . circumstance that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors."[11]

IV.

Hibler presents various arguments in support of her application. Unlike in 1985, when the Commission denied NASD's application to permit Hibler to associate with two member firms

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5 *Stephanie Hibler*, Exchange Act Release No. 19338, 1982 SEC LEXIS 140, at *2-3 (Dec. 15, 1982).

6 *NASD, Inc.*, 1985 SEC LEXIS 1472.

7 *Id.* at *6.

8 *Ciro Cozzolino*, Exchange Act Release No. 49001, 57 SEC 175, 2003 SEC LEXIS 3083, at *12 (Dec. 29, 2003). The same day we issued *Cozzolino*, we also issued two other decisions announcing and applying the same standard. *See Edward I. Frankel*, Exchange Act Release No. 49002, 57 SEC 186, 2003 SEC LEXIS 3086 (Dec. 29, 2003); *Stephen S. Wien*, Exchange Act Release No. 49000, 57 SEC 162, 2003 SEC LEXIS 3087 (Dec. 29, 2003).

9 *Cozzolino*, 2003 SEC LEXIS 3083, at *14.

10 *Id.* at *13-14. In adopting our present standard, we recognized that significant Commission interests would be impaired if a modification standard too readily lifted consent orders in light of the significant benefits that both violators and the Commission receive from settlement. *Id.* at *14 n.20. We also observed that our approach reflects the need in the usual case for finality in administrative adjudication. *Id.*

11 *Id.* at *13. The relevant factors also include "the nature of the misconduct at issue in the underlying matter;" "the time that has passed since issuance of the administrative bar;" "the compliance record of, and any regulatory interest in, the petitioner since issuance of the administrative bar;" "the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative [redacted]whether the petitioner has identified verifiable, unanticipated consequences of the bar;" and "the position and [redacted]siveness of the Division of Enforcement, as expressed in response to the petition for relief." *Id.*

based in part on the short period of time that had elapsed since imposition of the bars, it has now been over thirty years since the bar order was entered. Hibler asserts that, since that time, she has complied with the order, has been employed in other licensed professions (insurance and real estate) without incident, has not been the subject of any other governmental or regulatory actions, and has continued a fifty-year record of charitable service. Hibler also asserts that the initial bar order, to which she consented, was excessive in light of the fact that, "[a]t the time she pled guilty to the criminal charge in 1981, [Hibler] did not realize that it would also lead to proceedings against her by the Commission a few months later."[12] In addition, Hibler argues that the Commission should consider that the presiding judge in her criminal case observed that she "was never trained in the use or in the effectiveness of [Rule] 10b-5 or [Section 10(b) of the Exchange Act], and that she should have special consideration"[13] and that he wrote a letter to her employer urging it not to terminate her employment.[14] Based on these assertions, Hibler argues that it is not in the public interest to maintain the bar order against her.

In response, the Division of Enforcement recommends that we deny the request to vacate the broker and dealer bars because Hibler has failed to demonstrate the compelling circumstances necessary to obtain relief from an administrative bar. Citing our precedent,[15] the Division asserts that, although Hibler can show the passage of time, this is insufficient to establish that her bar order should be vacated. Instead, the Division asserts that, because she has not previously obtained Commission consent to associate with a regulated entity and thus cannot establish a "track record" of association without incident, Hibler falls short of what we previously have found to constitute compelling circumstances sufficient to vacate a bar order.[16]

The Division recommends, however, that we vacate the collateral portion of Hibler's bar rder, as we have done in prior instances[17] following the D.C. Circuit's decision in *Teicher v.*

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12 Hibler Appl. at 5.

13 Rep.'s Tr. of Sentencing H'rg at 3-4, *United States v. Hibler*, Case No. CR-81-931-AAH (C.D. Cal. Dec. 7, 1981).

14 Hibler also explains that she aspires to be engaged as a solicitor of separate investment accounts for one or more licensed investment advisers under Commission Rule 206(4)-3. *See* 17 C.F.R. § 275.206(4)-3. That rule prohibits investment advisers from paying cash fees to solicitors for solicitation activities unless the conditions specified in the rule are satisfied. Because Hibler was convicted of willfully violating the Exchange Act, she may not act as a solicitor under Rule 206(4)-3. *See* 17 C.F.R. § 275.206(4)-3(a)(ii)(C) (prohibiting persons convicted of engaging in conduct referenced in § 203(e)(5) of the Investment Advisers Act from working as solicitors); 15 U.S.C. § 80b-3(e)(5) (referencing conduct that "willfully violated any provision of . . . the Securities Exchange Act").

15 *See, e.g., Frankel*, 2003 SEC LEXIS 3086, at *16 ("It has been 31 years since the consent order issued–an amount of time that, while lengthy, does not, standing alone, weigh significantly in favor of relief.").

16 *See Jesse M. Townsley, Jr.*, Exchange Act Release No. 52161, 58 SEC 743, 2005 SEC LEXIS 1919, at *8 (July 29, 2005) ("We generally first grant incremental relief in our cases vacating bars.").

17 *See, e.g., Mark S. Parnass*, Exchange Act Release No. 65261, 2011 SEC LEXIS 3213, at *16 (Sept. 2, *Townsley*, 2005 SEC LEXIS 1919, at *8-9; *Salim B. Lewis*, Exchange Act Release No. 51817, 58 SEC 491, EC LEXIS 1360, at *24 (June 10, 2005).

SEC.[18] This would remove the prohibition on Hibler's association with investment advisers and investment companies under the bar order.

V.

Based on our consideration of the record and of the factors identified in relevant precedent, we conclude that Hibler has failed to carry her burden of demonstrating the compelling circumstances necessary to vacate the bar order in its entirety. We find the Division's arguments persuasive.[19] While thirty years have passed since the bar order was entered and Hibler asserts that she has worked in other licensed capacities without incident during that time, Hibler has not obtained permission to associate with a broker or dealer in any capacity since the order was entered.[20] Thus, she cannot demonstrate a record of compliance in this capacity. Lifting the broker and dealer bars now would permit Hibler to engage in activities restricted by those bars without a prior period of demonstrated compliance with applicable law. In addition, Hibler's misconduct was very serious and she has not identified any unanticipated consequences of the bar. Accordingly, in light of our precedent and the Division's recommendation, we vacate the bar order to the extent that it prohibits Hibler from associating with investment advisers or investment companies but maintain the order to the extent it applies to brokers or dealers.[21]

By the Commission.

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

Elizabeth M. Murphy
Secretary

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[18] 177 F.3d 1016, 1021-22 (D.C. Cir. 1999) (vacating collateral bar prohibiting association with investment adviser as beyond the scope of the Commission's statutory authority when bar was ordered). *See also William Masucci*, Exchange Act Release No. 53121, 58 SEC 1115, 2006 SEC LEXIS 3190, at *1 n.1 (Jan. 13, 2006) (explaining that *Teicher* held that the Commission could "not impose a collateral bar on association with an investment adviser or investment company in a litigated proceeding instituted pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934").

[19] Hibler chose not to file a reply brief addressing the Division's arguments in opposition to her application.

[20] For this reason, Hibler's relevant securities industry experience effectively is limited to her experience prior to the bar order. Neither Hibler nor the Division argues that Hibler's age, one of the factors identified in prior Commission decisions, should factor in our analysis.

[21] We note that portions of the Division's brief could be construed as suggesting that Hibler may be able to obtain "the ultimate relief she seeks–the ability to work as a solicitor for one or more licensed investment advisers" through no-action relief. Resp. of the Division of Enforcement to Mot. to Set Aside Admin. Bar Order at 1; *see also id.* at 8. We further note, however, that the circumstances addressed in the sole no action letter that the Division cites in support of its statements, *Fahnestock & Co., Inc.*, 2003 SEC No-Act. LEXIS 550 (Apr. 21, 2003), could be deemed to be readily distinguishable from Hibler's circumstances. Accordingly, we caution Hibler not to rely on [redacted] interpretation of the Division's brief regarding the availability of no action relief, which in the first instance [redacted]be directed to the Division of Investment Management, not the Division of Enforcement.

Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70152 / August 9, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15273

In the Matter of **JOSEPH HILTON,** **a/k/a JOSEPH YURKIN** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

On April 11, 2013, the Securities and Exchange Commission ("Commission") instituted public administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Joseph Hilton, a/k/a Joseph Yurkin ("Hilton" or "Respondent").

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 him and the subject matter of these proceedings, 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

1. Hilton, who is 51 years of age, resides in Boca Raton, Florida. From no later than March 2011 until January 2012, Hilton sold securities in the form of limited partnership units in at least three oil drilling projects in Tennessee sponsored by United States Energy Corporation ("U.S. Energy"). In connection with these sales, Hilton managed a boiler room and

sales agents to assist him in soliciting contributions and paid these sales agents transaction-based commissions in exchange for finding investors and selling U.S. Energy securities.

2. In 2008, the Commission entered an order barring Hilton, a/k/a Joseph Yurkin, from associating with a broker-dealer. In the Matter of Joseph Yurkin, Exchange Act Release No. 58768 (Oct. 10, 2008).

3. Hilton, who has never been registered as or with a licensed broker-dealer, and who is barred from associating with a broker-dealer, participated in unregistered broker-dealer conduct in connection with the U.S. Energy offerings.

4. In September 2012, the Commission filed a complaint against Hilton in Securities and Exchange Commission v. Joseph Hilton, et al. (Civil Action Number 12-CV-81033 (S.D. Fla.). On February 28, 2013, the Court entered a judgment, to which Hilton consented, permanently enjoining Hilton from violating Sections 15(a)(1) and 10(b) and Rule 10b-5 of the Exchange Act, and Sections 5(a) and (c) and 17(a) of the Securities Act of 1933.

5. The Commission's complaint alleged, among other things, that from no later than March 2011 until January 2012, in connection with the sale of U.S. Energy securities, Hilton misrepresented his identity, the risks associated with the investment, the anticipated dividends due to investors, the amount of oil U.S. Energy's wells produced, and otherwise engaged in a variety of conduct that operated as a fraud and deceit on investors. The complaint also alleged that Hilton sold unregistered securities.

6. The complaint also alleged that in a second series of offerings from February 2012 until the date of filing the complaint, Hilton made numerous misrepresentations and omissions in connection with the offer and sale of unregistered securities in the form of units consisting of partnership shares in Rock Castle Drilling Fund I LP and Rock Castle Drilling Fund II LP (collectively, the "Companies"). These included false claims about the Companies' oil drilling success and omissions about Hilton's background and history with regulatory agencies.

IV.

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70153 / August 9, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15274

In the Matter of **NEW HORIZON PUBLISHING INC.** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

On April 12, 2013, the Securities and Exchange Commission ("Commission") instituted public administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against New Horizon Publishing Inc. ("New Horizon" or "Respondent").

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 Respondent and the subject matter of these proceedings, 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

1. New Horizon is a Florida corporation incorporated in March 2009 that purports to be in the business of selling sales leads. The Company has never been registered with the Commission in any capacity.

2. From no later than March 2011 until January 2012, New Horizon paid sales agents commission in exchange for finding investors and selling securities in the form of limited partnership units in at least three oil drilling projects in Tennessee sponsored by United States Energy Corporation ("U.S. Energy").

3. New Horizon, which has never been registered as or with a licensed broker-dealer, participated in unregistered broker-dealer conduct in connection with the U.S. Energy offerings.

4. In September 2012, the Commission filed a complaint against New Horizon and others in Securities and Exchange Commission v. Joseph Hilton, et al., (Civil Action Number 12-cv-81033) (S.D. Fla.). On March 21, 2013, the Court entered a judgment, to which New Horizon consented, permanently enjoining New Horizon from violation of Section 15(a)(1) of the Exchange Act.

5. The Commission's complaint alleged, among other things, that U.S. Energy paid New Horizon for raising investor funds directly and through a boiler room where sales agents solicited investors. New Horizon also paid sales agents commissions in exchange for finding investors and selling U.S. Energy securities.

IV.

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

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

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
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 **August 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.

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 JO WHITE, CHAIR

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

(14 Documents)

ADMINISTRATIVE PROCEEDING
File No. 3-15006

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
August 8, 2013

In the Matter of RAYMOND J. LUCIA COMPANIES, INC. and RAYMOND J. LUCIA, SR.	ORDER REMANDING CASE FOR ISSUANCE OF AN INITIAL DECISION PURSUANT TO RULE OF PRACTICE 360

On September 5, 2012, the Commission instituted administrative proceedings against the above-named respondents pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940.[1] On July 8, 2013, the administrative law judge issued an Initial Decision concluding that Raymond J. Lucia Companies, Inc. ("RJLC"), a registered investment adviser had violated Sections 206(1), 206(2), and 206(4) of the Advisers Act and that Raymond J. Lucia, RJLC's sole owner and also a registered investment adviser, had willfully aided and abetted those violations.[2]

The time for the parties to petition for review of the Initial Decision has not yet expired.[3] On our own initiative, we have determined that it is appropriate to remand the matter to the law judge for further consideration because the Initial Decision did not make findings with respect to all of the material allegations set forth in the Order Instituting Proceedings ("OIP") and presented for decision by the parties.

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[1] *Raymond J. Lucia Cos.*, Exchange Act Rel. No. 67781, Advisers Act Rel. No. 3456, Investment Company Act Rel. No. 30193, 2012 WL 3838150 (Sept. 5, 2012); *see* 15 U.S.C. §§ 78o(b), 80a-9(b), 80b-3(e), 80b-3(f), 80b-3(k).

[2] *Raymond J. Lucia Cos.*, Initial Decision Rel. No. 495, 2013 WL 3379719 (July 8, 2013).

[3] Rule of Practice 410(b) provides that a petition for review "shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer . . . unless a party has filed a motion to correct an initial decision with the hearing officer," which Respondents did here. 17 C.F.R. § 201.410(b).

We have previously described the vital role that initial decisions play in the Commission's decisional process. "Unlike the law judge, we have not observed the parties and witnesses who appeared and testified at the . . . hearing. As the presiding officer at the hearing, the law judge is in the best position to make findings of fact, including credibility determinations, and resolve any conflicts in the evidence. Our review of the record cannot replace the law judge's personal experience with the witnesses."[13]

It is a matter of considerable importance, therefore, that initial decisions comply fully with Rule of Practice 360(b), which provides that such decisions "shall include[] findings and conclusions, and the reasons or basis therefor, as to *all* the *material* issues of fact, law or discretion *presented on the record* and the appropriate order, sanction, relief, or denial thereof."[14] Indeed, because the Advisers Act calibrates maximum civil penalties based upon a certain dollar amount for "*each* act . . . or omission,"[15] and because we have repeatedly held that the determination of a proper sanction "rests on a careful consideration of each of the factors" enumerated in our precedent, "taking into account all of a respondent's arguments[]" and weighing the factors "against each other under the *specific facts and circumstances of each case*,"[16] the findings that a law judge makes in the course of disposing of all claims well might inform our determination of the appropriate sanction in the event of any appeal.[17] Moreover,

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(...continued)
. at *37-41. The Division of Enforcement had sought a greater civil penalty, but the law judge found the requested penalty to be excessive given the paucity of evidence of actual losses to investors, Respondents' otherwise clean regulatory record, and their cooperation with examiners. *Id.* at *41.

13 *Nasdaq Stock Market, LLC*, Exchange Act Rel. No. 57741, 93 S.E.C. Docket 301, 2008 WL 1902073, at *1 (Apr. 30, 2008).

14 17 C.F.R. § 360(b) (emphases added). It bears noting, though, that Rule 360(b) does *not* require that law judges, in every instance, make specific findings as to every fact that the parties place in dispute or may consider pertinent.

15 15 U.S.C. § 80b-3(i)(2) (emphasis added).

16 *Impax Labs, Inc.*, Exchange Act Rel. No. 57864, 93 S.E.C. Docket 853, 2008 WL 2167956, at *11 (May 23, 2008); *see, e.g.*, *John W. Lawton*, Advisers Act Rel. No. 3513, 2012 WL 6208750, at *9 n.42 (Dec. 13, 2012) ("sanctions determinations should show 'individual attention to the unique facts and circumstances of [the] case'"); *Janet Gurley Katz*, Exchange Act Rel. No. 61449, 97 S.E.C. Docket 2447, 2010 WL 358737 at *26 n.64 (Feb. 1, 2010) ("The appropriate sanction depends on the facts and circumstances of each particular case.") (quotation marks omitted).

17 *Cf. United States v. Fumo*, 655 F.3d 288, 311 (3d Cir. 2011) (holding, in the criminal sentencing context, that a "court should not refuse to find or calculate a loss" when doing so is necessary to determining the appropriate sentencing range under the Federal Sentencing Guidelines); *United States v. Robinson*, 435 F.3d 699, 701 (7th Cir. 2006) (similar).

even if no party chooses to seek review, the law judge's findings would assist our determination of whether to order review on own initiative pursuant to Rule of Practice 411(c).[18] Finally, we note that securing law judges' rulings on all claims presented for decision would facilitate the prompt resolution of administrative proceedings and avoid piecemeal litigation and appeals.[19] When claims are left unaddressed by an initial decision, and our subsequent review discerns error as to the resolution of the claims that were addressed, the law judge will have to spend additional time and effort on remand re-examining issues that could have been disposed of earlier.

The Initial Decision did not fully resolve the claims set forth in the OIP as to which the parties joined issue and then presented for decision. Accordingly, IT IS ORDERED that the matter be, and it hereby is, remanded to the law judge for issuance of an initial decision pursuant to Rule 360(b); and it is further ORDERED that the initial decision be filed with the Secretary of the Commission within 120 days from the date of this remand order.

By the Commission.

Elizabeth M. Murphy
Secretary

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[18] 17 C.F.R. § 201.411(c); *see, e.g.*, *Hunter Adams*, Exchange Act Rel. No. 52859, 86 S.E.C. Docket 1958, 2005 WL 3240600, at *1 & n.6 (Nov. 30, 2005); *Derek L. DuBois*, Securities Act Rel. No. 8264, Exchange Act Rel. No. 48332, 80 S.E.C. Docket 2403, 2003 WL 21946858, at *1, 5 (Aug. 13, 2003).

[19] *Cf. Phifer v. Warden, U.S. Penitentiary, Terre Haute, Ind.*, 53 F.3d 859, 863 (7th Cir. 1995) (noting, in the *habeas corpus* context, that "[o]rdinarily, a district court should try to rule upon all of the grounds presented in a habeas petition," because "[g]ranting a writ but leaving claims unresolved fails to take the possibility of reversal on appeal into account; should appellate court reverse the conditional grant of the writ, a petitioner's remaining claims will e to be addressed"); *Clisby v. Jones*, 960 F.2d 925, 936 (11th Cir. 1992) (en banc) (similar).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70149 / August 8, 2013

Admin. Proc. File No. 3-15119

In the Matter of

ADAM HARRINGTON a/k/a ADAM RUKDESCHEL
and ADAM HARRINGTON RUCKDESCHEL
40 Bond St., Apt. 5D
New York, NY 10012

ORDER DISMISSING REVIEW PROCEEDING AND NOTICE OF FINALITY

On April 17, 2013, an administrative law judge issued an initial decision barring respondent Adam Harrington a/k/a Adam Rukdeschel and Adam Harrington Ruckdeschel ("Harrington") from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[1] The law judge based the bar on Harrington's criminal conviction. Harrington was convicted in 2012 of securities fraud, wire fraud, mail fraud, and conspiracy to commit all three offenses.[2]

Harrington timely filed a petition for review on May 7, 2013. Our Office of the General Counsel, pursuant to delegated authority and Rule of Practice 411,[3] issued an order granting his petition for review on May 21, 2013. The order set a briefing schedule requiring that a brief in support of the petition for review be filed by June 20, 2013. In accordance with Rule of Practice 180(c),[4] the order stated that "failure to file a brief in support of the petition may result in dismissal of this review proceeding as to that petitioner."

1 *Adam Harrington*, Initial Decision Release No. 484, 2013 WL 1655690 (Apr. 17, 2013).

2 *United States v. Mandell*, No. 1:09-cr-00662 (S.D.N.Y. May 7, 2012).

3 17 C.F.R. § 201.411.

4 17 C.F.R. § 201.180(c).

Notwithstanding the May 21, 2013 order, Harrington failed to file a brief or request an extension. Harrington has not submitted anything to the Commission since his petition for review. It thus appears that Harrington has abandoned his appeal. Under the circumstances, we find that dismissal is appropriate.[5]

Accordingly, it is ORDERED that this review proceeding be, and it hereby is, dismissed.

We also hereby give notice that the April 17, 2013 initial decision of the administrative law judge has become the final decision of the Commission with respect to Harrington, in accordance with Rule of Practice 360(d)(2).[6] The order contained in that decision barring Harrington from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, is hereby declared effective.

By the Commission.

Elizabeth M. Murphy
Secretary

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[5] *See Markland Techs., Inc.*, Securities Exchange Act Release No. 59476, 2009 WL 586454 (Feb. 27, 2009) (dismissing on Commission's own initiative administrative proceeding where respondent failed to file brief in support of petition for review by deadline and where eighteen days had passed since deadline); *Alex David Shindman*, Exchange Act Release No. 38857, 1997 WL 406206 (July 22, 1997); *see also Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307 (Apr. 13, 2006) (dismissing proceeding on motion from Division of [illegible]rcement).

[6] 17 C.F.R. § 201.360(d)(2).

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70150)

August 8, 2013

Order Temporarily Exempting Certain Broker-Dealers and Certain Transactions from the Recordkeeping and Reporting Requirements of Rule 13h-1 under the Securities Exchange Act of 1934

On July 27, 2011, the Securities and Exchange Commission ("Commission") adopted Rule 13h-1 (the "Rule") under the Securities Exchange Act of 1934 ("Exchange Act") concerning large trader reporting to assist the Commission in both identifying and obtaining trade information for market participants that conduct a substantial amount of trading activity, as measured by volume or market value, in U.S. securities (such persons are referred to as "large traders").[1] The Financial Information Forum ("FIF") and the Securities Industry and Financial Markets Association ("SIFMA," and collectively the "Industry Organizations"), each representing a variety of broker-dealers and other market participants, have requested that the Commission grant certain substantive relief from the broker-dealer recordkeeping and reporting requirements of the Rule.[2] Pursuant to Section 13(h)(6) of the Exchange Act and Rule 13h-1(g)

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1 See Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46960 (Aug. 3, 2011) ("Large Trader Adopting Release"). The effective date of Rule 13h-1 was October 3, 2011.

2 See Letters from: Manisha Kimmel, Executive Director, FIF, to Robert Cook, Director, and David Shillman, Associate Director, Division of Trading and Markets, Commission, dated January 25, 2012 ("FIF Letter"); Ann L. Vlcek, Managing Director and Associate General Counsel, SIFMA, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated March 29, 2012 ("SIFMA Letter I"); and Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated February 13, 2013 ("SIFMA Letter II"). These letters are available at: http://www.sec.gov/comments/s7-10-10/s71010.shtml.

thereunder,[3] the Commission, by order, may exempt from the provisions of Rule 13h-1, upon specified terms and conditions or for stated periods, any person or class of persons or any transaction or class of transactions from the provisions of Rule 13h-1 to the extent that such exemption is consistent with the purposes of the Exchange Act.

In response to the Industry Organizations' requests and as further discussed below, the Commission extended the compliance date for the broker-dealer recordkeeping, reporting, and monitoring requirements and took a two-phased approach to implementation of the broker-dealer requirements under the Rule. Commencing on November 30, 2012, the first phase of implementation required clearing broker-dealers for large traders to keep records of and report upon Commission request data concerning: (1) proprietary trades by large traders that are U.S.-registered broker-dealers; and (2) transactions effected by large traders through a sponsored access arrangement (collectively, "Phase One").[4]

The second phase of implementation concerned those remaining requirements of the Rule that were not covered in Phase One. As more fully described below, the Commission is herein modifying this second phase by limiting the recordkeeping and reporting requirements of the Rule to include transactions effected by large traders through direct market access arrangements ("Phase Two"). The compliance date for Phase Two, as modified, will remain November 1, 2013.[5]

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3 See 15 U.S.C. 78m and 17 CFR 240.13h-1(g), respectively.

4 See Securities Exchange Act Release No. 66839 (April 20, 2012), 77 FR 25007, 25008 (April 26, 2012) ("Extension Order I").

5 See infra note 19.

Finally, the Commission is herein establishing a new third phase for which the compliance date will be November 1, 2015. As discussed further below, this new and final phase will include all of the remaining requirements of the Rule that have not been, or will not be, implemented in either Phase One or Phase Two (collectively, "Phase Three").

I. Background

A. The Requirements of Rule 13h-1 and Applicable Compliance Dates for Those Requirements

Large Trader Self-Identification. Rule 13h-1 requires that large traders register with the Commission by electronically filing and periodically updating Form 13H.[6] Additionally, promptly after receiving a large trader identification number ("LTID") assigned by the Commission,[7] a large trader must disclose its LTID to registered broker-dealers effecting transactions on its behalf and identify to each such broker-dealer each account to which the LTID number applies.[8] These requirements have been in effect since December 1, 2011.[9]

Broker-Dealer Recordkeeping and Reporting. Rule 13h-1 also requires that every registered broker-dealer maintain records of data specified in paragraphs (d)(2) and (d)(3) of the Rule ("Transaction Data"), including the applicable LTID(s) and execution time on each

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6 See Rule 13h-1(b)(1)(i)-(iii).

7 When a large trader files its initial Form 13H filing through EDGAR, the system sends an automatically generated confirmation email acknowledging acceptance of the filing. That email also contains the unique 8-digit LTID number assigned to the large trader.

8 See Rule 13h-1(b)(2). See also Large Trader Adopting Release, supra note 1, 76 FR at 46971 ("the requirements that a large trader provide its LTID to all registered broker-dealers who effect transactions on its behalf, and identify each account to which it applies, are ongoing responsibilities that must be discharged promptly").

9 See Large Trader Adopting Release, supra note 1, 76 FR at 46960.

component trade, for all transactions effected directly or indirectly by or through: (1) an account such broker-dealer carries for a large trader or an Unidentified Large Trader;[10] or (2) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion.[11] Additionally, where a non-broker-dealer carries an account for a large trader under the Rule, the broker-dealer effecting transactions directly or indirectly for such large trader must maintain records of all Transaction Data.[12]

Rule 13h-1 requires that, upon Commission request, every registered broker-dealer that is itself a large trader or carries an account for a large trader must electronically report Transaction Data to the Commission through the Electronic Blue Sheets ("EBS") system for all transactions, equal to or greater than the reporting activity level, effected directly or indirectly by or through accounts carried by such broker-dealer for large traders.[13] Additionally, where a non-broker-dealer carries an account for a large trader, the broker-dealer effecting such transactions directly or indirectly for a large trader must electronically report Transaction Data to the Commission

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10 The definition of "Unidentified Large Trader" is discussed below. See infra note 20 and accompanying text. In the context of the broker-dealer recordkeeping and reporting requirements, references in this release to "large trader" include Unidentified Large Traders.

11 See Rule 13h-1(d)(1)(i) and (ii).

12 See Rule 13h-1(d)(1)(iii).

13 Rule 13h-1(a)(8) defines the reporting activity level as: (i) each transaction in NMS securities, effected in a single account during a calendar day, that is equal to or greater than 100 shares; (ii) any other transaction in NMS securities, effected in a single account during a calendar day, that a registered broker-dealer may deem appropriate; or (iii) such other amount that may be established by order of the Commission from time to time.

through the EBS system. The Rule requires that reporting broker-dealers submit the requested Transaction Data no later than the day and time specified in the Commission's request.[14]

Initially, the compliance date for the broker-dealer requirements was April 30, 2012.[15] To allow additional time for the Commission to examine implementation issues identified by the Industry Organizations subsequent to the Commission's adoption of the Rule, the Commission deferred the initial compliance date and established a two-phased approach to implementation of the broker-dealer requirements.[16] Specifically, the Commission postponed until November 30, 2012, the obligations of clearing brokers for large traders (including the large trader itself if it is a self-clearing broker-dealer) to keep records and report Transaction Data for such customers' transactions that are either (1) proprietary trades by a U.S. registered broker-dealer; or (2) effected through a "sponsored access" arrangement (i.e., Phase One).[17] The Commission further deferred the compliance date for the recordkeeping and reporting of other large trader

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14 The Commission will not require reporting earlier than the opening of business of the day following such request, except under unusual circumstances. See Rule 13h-1(e). Accordingly, while information must be available on the morning after the transaction was effected, the reporting deadline is based upon the deadline specified in the Commission's request for Transaction Data.

15 See Large Trader Adopting Release, supra note 1, 76 FR at 46960.

16 See Extension Order I, supra note 4.

17 See id. at 25008-9. A sponsored access arrangement is one where a broker-dealer permits a customer to enter orders into a trading center without using the broker-dealer's trading system (i.e., using the customer's own technology or that of a third party provider). FIF indicated that broker-dealer compliance would be easier for sponsored access customers because those arrangements typically are distinct from all other business lines of the broker-dealer, with infrastructure that processes this order flow that is separate from the platforms that handle other client and proprietary flows. See id. at 25008 n.16.

transactions until May 1, 2013[18] and, more recently, the Commission extended that date to November 1, 2013 while it considered the industry's experience with Phase One implementation in further evaluating the requests for relief for the remainder of the Rule.[19]

Broker-Dealer Monitoring. As mentioned above, the recordkeeping and reporting requirements apply to customers that are large traders as well as Unidentified Large Traders. An "Unidentified Large Trader" is a person who (1) has not complied with the identification requirements of the Rule; and (2) a registered broker-dealer knows or has reason to know is a large trader based on transactions in NMS securities effected by or through such broker-dealer.[20] The Rule provides a safe harbor for broker-dealers that establish and maintain certain customer monitoring practices. For the purposes of the Rule, a registered broker-dealer is deemed not to know or have reason to know that a person is a large trader if it does not have actual knowledge that a person is a large trader and it establishes policies and procedures reasonably designed to (among other things): (1) identify persons who may be large traders but have not self-identified as required; and (2) inform those persons of the self-identification requirements of the Rule.[21] To take advantage of this safe harbor, broker-dealers are required to have appropriate policies and procedures in place by the Phase Two compliance date, which is November 1, 2013.[22]

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18 See id. at 25008.

19 See Securities Exchange Act Release No. 69281 (April 3, 2013), 78 FR 20960 (April 8, 2013) ("Extension Order II").

20 See Rule 13h-1(a)(9).

21 See Rule 13h-1(f).

22 See Extension Order II, supra note 19.

B. Relief Requests

The Industry Organizations have requested that the Commission provide certain substantive relief with respect to the recordkeeping and reporting requirements for broker-dealers.[23] In particular, they highlight implementation challenges associated with the Rule's recordkeeping and reporting requirements that have come to light as broker-dealers focused their attention on how to comply with the Rule, in particular with respect to obtaining and reporting the execution time of individual transactions by certain large traders.[24] According to the Industry Organizations, these challenges are most pronounced when a broker-dealer effects transactions for a large trader and processes the activity through a multi-client average price account.[25] As a result of the complexity and additional cost to capture and report disaggregated trades with execution time for large traders whose trades are processed in this manner, the Industry Organizations request relief from the requirement to provide execution times on transactions processed through average price accounts.[26]

The Industry Organizations also request relief for all broker-dealers other than self-clearing and clearing broker-dealers from the recordkeeping and reporting requirements of the Rule.[27] While the Rule focuses the reporting obligation on the universe of clearing brokers that currently report data through the EBS system, the Rule also authorizes the Commission to obtain

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23 See generally FIF Letter, SIFMA Letter I, and SIFMA Letter II, supra note 2.

24 See SIFMA Letter II, supra note 2 at 5. See also FIF Letter, supra note 2 at 2; and SIFMA Letter I, supra note 2 at 5.

25 See FIF Letter, supra note 2 at 31-32. See also SIFMA Letter I, supra note 2 at B-1.

26 See, e.g., SIFMA Letter I, supra note 2 at 5.

27 See FIF Letter, supra note 2 at 25-28. See also SIFMA Letter I, supra note 2 at B-2.

this data directly from certain non-clearing broker-dealer large traders, as well as broker-dealers that effect transactions, directly or indirectly, for large traders where a non-broker-dealer carries the account. The Industry Organizations have asked the Commission to impose the recordkeeping and reporting requirement exclusively on the clearing brokers that currently report through the EBS system.[28]

In addition, the Industry Organizations argue that the complex structure underlying execution, clearance, and settlement flows of large trader transactions, including the fact that information related to the identity of the large trader and the execution fill details often reside with different broker-dealers, presents challenges to implementation, and that these concerns are most relevant with respect to large trader institutional customers.[29] The Industry Organizations further highlight areas where the burdens as they relate to institutional large trader customers would be most extensive and impose the greatest potential cost for some broker-dealers, particularly for prime brokers, routing broker-dealers, and situations where clearing responsibility is transferred between multiple brokers, and the Industry Organizations request that the Commission provide relief from the recordkeeping and reporting obligations of the Rule for each of those areas.[30]

II. Discussion

The Commission continues to believe that implementation of the large trader reporting requirements contemplated by Rule 13h-1 is necessary to effectively assess the impact of large

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28 See FIF Letter, supra note 2 at 26-27. See also SIFMA Letter I, supra note 2 at B-3.

29 See FIF Letter, supra note 2 at 25-28. See also SIFMA Letter II, supra note 2 at 5-7.

30 See FIF Letter, supra note 2 at 25-28. See also SIFMA Letter II, supra note 2 at 5-7.

trader activity on the securities markets in the near term and support the Commission's investigative and enforcement activities. The Commission also believes that it is appropriate and consistent with the Exchange Act to provide exemptive relief limiting short-term compliance costs of the Rule to focus near-term compliance on the large trader information that is likely to be most useful to the Commission.

Accordingly, and as discussed more fully below, the Commission believes that it is appropriate and consistent with the purposes of the Exchange Act to extend the Phase Two November 1, 2013 compliance date for certain registered broker-dealers by temporarily exempting broker-dealers, until November 1, 2015, from the recordkeeping and reporting requirements of Rule 13h-1(d) and (e), except for:

(1) the clearing broker-dealer for a large trader,[31] with respect to[32]

(a) proprietary transactions by a large trader broker-dealer;

(b) transactions effected pursuant to a "sponsored access" arrangement;[33] and

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31 In its letter, FIF asked the Commission for "relief for broker dealers involved in Large Trader transactions that do not have a direct relationship with the Large Trader. Only the self-clearing and clearing broker dealers with a direct relationship with the Large Trader would perform Large Trader Reporting." See FIF Letter, supra note 2, at 2. In Appendix C of its letter, FIF provides an example of the entities for whom it recommends imposing a recordkeeping and reporting obligation. See id. at 25. In addition, FIF recommends that the reporting of execution time should rest with the clearing broker for the originating broker, and any prime broker would be relieved from being required to report execution times.

32 Items (a) and (b) are currently included in Phase One, which was effective beginning on November 30, 2012.

33 See infra note 39 (defining "sponsored access" arrangement).

(c) transactions effected pursuant to a "direct market access" arrangement;[34] and

(2) a broker-dealer that carries an account for a large trader, with respect to transactions other than those set forth above, and for Transaction Data other than the execution time.[35]

In accordance with Phase One, clearing broker-dealers for large traders have been complying with the recordkeeping and reporting requirements of Rule 13h-1, with respect to (a) proprietary transactions by a large trader broker-dealer, and (b) transactions effected pursuant to a "sponsored access" arrangement, since November 30, 2012. As part of Phase Two, in accordance with this Order, clearing broker-dealers for large traders also will have to comply with the recordkeeping and reporting requirements of Rule 13h-1 with respect to transactions effected pursuant to a "direct market access" arrangement as of November 1, 2013. In addition, with respect to all other types of transactions, the prime broker or other carrying broker-dealer for a large trader will have to report the applicable LTID, but not the execution time, as of November 1, 2013. Finally, the recordkeeping and reporting requirements with respect to

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34 See infra note 41 and text following note 41 (defining "direct market access" arrangement).

35 Accordingly, during Phase Two, a registered broker-dealer that is itself a large trader but does not self-clear, as well as a broker-dealer effecting transactions directly or indirectly for a large trader where a non-broker-dealer carries the account for the large trader, will continue to be temporarily relieved from the recording and reporting requirements of the Rule and therefore do not need to record and electronically report Transaction Data to the Commission through the EBS system for purposes of the Rule during Phase Two.

Neither of these temporary exemptions, however, relieves a broker-dealer from any other recordkeeping requirement that would otherwise apply under the federal securities laws, rules, or regulations, including Rules 17a-3 and 17a-4 under the Exchange Act, or any self-regulatory organization rule.

Unidentified Large Traders, and the related monitoring safe harbor provided by Rule 13h-1(f), will apply to broker-dealers that carry an account for a large trader as of November 1, 2013.

The Rule as adopted requires the following broker-dealers to obtain, keep records of, and report Transaction Data to the Commission upon request through the EBS infrastructure: (1) the broker-dealer that "carries" the account for the large trader (including the clearing broker for the large trader and the large trader's prime broker, if applicable); (2) broker-dealer large traders, with respect to their proprietary trades and transactions over which they exercise investment discretion; and (3) other brokers that directly or indirectly effect transactions for a large trader, including an executing broker, where a non-broker-dealer carries the large trader's account.[36] As SIFMA notes, at present, carrying brokers-dealers are the primary parties that report through the EBS infrastructure.[37] Accordingly, full compliance with the recordkeeping and reporting provisions of the Rule would require non-carrying broker-dealers to develop connectivity to the EBS system. In its initial exemption, the Commission temporarily limited the broker-dealer recordkeeping and reporting requirements to the clearing broker-dealer for a large trader.[38]

To reduce implementation burdens, the Commission believes that it is appropriate, at this time, to continue to limit the recordkeeping and reporting obligations of the Rule to broker-dealers that carry accounts for large traders, as they are already connected to the EBS system.

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36 See Rule 13h-1(d) and (e), respectively. See also Large Trader Adopting Release, supra note 1, 76 FR at 46996 (acknowledging SIFMA's comment that "some broker-dealers do not have access to execution times in a manner that is readily reportable under the EBS infrastructure" and would need to update their EBS infrastructure to gather that information).

37 See SIFMA Letter I, supra note 2, at B-2.

38 See Extension Order I, supra note 4, at 25008.

Accordingly, the Commission is extending its temporary exemption of non-carrying brokers from the reporting requirement of the Rule until November 1, 2015. In other words, for Phase Two, a registered broker-dealer that is itself a large trader but does not self-clear, as well as a broker-dealer effecting transactions directly or indirectly for a large trader where a non-broker-dealer carries the account for the large trader, are both temporarily relieved from the reporting requirements of the Rule and, therefore, they do not need to record and electronically report Transaction Data to the Commission through the EBS system solely for purposes of the Rule. For the types of large traders and transactions subject to reporting in Phases One and Two, the Commission will obtain the Transaction Data it needs from the carrying broker for the large trader, and therefore believes that it is reasonable, at this time, to extend the temporary exemption provided to other types of broker-dealers from the recordkeeping and reporting requirements of the Rule.

With respect to the specific transactions to be recorded and reported by carrying brokers, as part of Phase One, the Commission required recordkeeping and reporting of Transaction Data of proprietary trades by broker-dealer large traders and transactions effected by a large trader through a "sponsored access arrangement."[39] FIF had previously noted that the trading activity of large traders with sponsored access arrangements typically is processed by clearing brokers on

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39 In this context, a "sponsored access arrangement" was defined as an arrangement in which a broker-dealer permits a large trader customer to enter orders directly to a trading center where such orders are not processed through the broker-dealer's own trading system (other than any risk management controls established for purposes of compliance with Rule 15c3–5 under the Exchange Act) and where the orders are routed directly to a trading center, in some cases supported by a service bureau or other third party technology provider. See Extension Order I, supra note 4, 77 FR at 25009 n.22 (referencing the definition of the term used in the adopting release for Rule 15c3-5).

infrastructure separate from that used for other customers, so that implementation of the Rule for sponsored access customers would require less effort than for other types of large trader customers.[40] According to the Industry Organizations, many broker-dealers charged with recordkeeping and reporting of Transaction Data under the Rule do not currently have ready access to all of that data for other types of large trader customers, particularly disaggregated trades with execution time, when it resides at unaffiliated broker-dealers. For example, according to the Industry Organizations, while the executing broker knows the execution time of a large trader's transaction, it typically does not have the means to pass that information to the clearing broker for the large trader in a format that is readily reportable through EBS. Accordingly, to comply with the recordkeeping and reporting requirements of the Rule, the clearing broker for the large trader in many cases must make new arrangements to obtain execution time data for large trader customers for reporting through EBS.

Phase Two, as modified herein, represents an important incremental step in the implementation of the Rule that is designed to allow the Commission to collect Transaction Data, including execution time, with respect to an additional group of large traders that are of particular interest to the Commission in fulfilling its regulatory responsibilities. Specifically, Phase Two will include Transaction Data for large trader customers that trade through a "direct market access arrangement," which means an arrangement whereby a broker-dealer permits an institutional customer to enter orders into a trading center but such orders flow through the

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[40] See FIF Letter, supra note 2 at 5.

broker-dealer's trading systems prior to reaching the trading center.[41] Because large trader customers that trade through this type of direct market access arrangement have chosen to retain control over critical aspects of the handling of their orders, including the price, size, timing, and routing of individual orders, their order handling decisions are of particular interest to the Commission in conducting market reconstructions and analyses as well as investigations. Direct market access arrangements subject to recordkeeping and reporting in Phase Two, as modified, would include, for example, those where the large trader customer enters individual orders manually or through an algorithm under its control, but those orders flow through the broker-dealer's systems prior to reaching the trading center.[42] Phase Two would not include, for example, large trader customers that delegate to the broker-dealer the discretion to determine the price, size, timing, or routing of individual orders.

From the Commission's perspective, including large trader activity where the large trader retains control over the material terms of the order and uses the broker-dealer primarily as a conduit to an execution venue will capture trading activity that is similar in kind to the sponsored

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41 See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792, 69793 (November 15, 2010) (File No. S7-03-10) ("Generally, direct market access refers to an arrangement whereby a broker-dealer permits customers to enter orders into a trading center but such orders flow through the broker-dealer's trading systems prior to reaching the trading center. In contrast, sponsored access generally refers to an arrangement whereby a broker-dealer permits customers to enter orders into a trading center that bypass the broker-dealer's trading system and are routed directly to a trading center, in some cases supported by a service bureau or other third party technology provider."). The Commission notes that sponsored access arrangements and direct market access arrangements typically are entered into with the executing broker-dealer, which may or may not also be the clearing broker for the large trader.

42 See id. at 69793 (discussing how a direct market access arrangement involves a broker-dealer allowing its customer to use its systems to electronically access an exchange or alternative trading system).

access activity currently captured in Phase One, and is the type of activity for which the precise time and other aspects of the large trader's execution is of substantial regulatory interest. Accordingly, clearing broker-dealers for such large traders will be required to keep records of, and report to the Commission upon request, all of the Transaction Data covered by the Rule, including both LTID number(s) and execution time, on every EBS record for the categories of large trader covered in Phase One and Phase Two.

The Commission believes that capturing all of the Transaction Data for the types of large trader transactions covered by Phases One and Two (as modified herein) is important in the near term to the Commission's enforcement and regulatory programs, and therefore the Commission is requiring the recordkeeping and reporting of this information as of November 1, 2013 (the current compliance date for Phase Two). Accordingly, as of November 1, 2013, clearing broker dealers for a large trader will be required to keep records and report to the Commission upon request all Transaction Data for: (1) proprietary transactions by a large trader broker-dealer, (2) transactions effected pursuant to a sponsored access arrangement, and (3) transactions effected pursuant to a direct market access arrangement.

With respect to transactions other than those set forth above, broker-dealers that carry an account for a large trader must record and report, as of November 1, 2013, Transaction Data other than execution time (e.g., LTID). The Commission notes that the Industry Organizations have indicated that carrying brokers can readily provide the LTID, because that information is available to them today, and the arrangements to report it to the Commission through the EBS

system would not require significant technological development.[43] Given the relatively low implementation burdens, the Commission believes that including the LTID on EBS data for all large traders would be beneficial to the Commission, and help support, for example, its investigative activities and analysis of significant market events.

Finally, the recordkeeping and reporting requirements with respect to Unidentified Large Traders, and the related monitoring safe harbor provided by Rule 13h-1(f), will apply to broker-dealers that carry an account for a large trader as of November 1, 2013. The Commission believes that it is appropriate to apply the provisions that relate to Unidentified Large Traders to the broker-dealers that otherwise will be required to comply with the recordkeeping and reporting requirements as of Phase Two – namely broker-dealers that carry accounts for large traders – and that implementation of such provisions will help foster compliance with the large trader identification requirements.

III. Summary of Phased Implementation

With respect to Phase One and Phase Two, as modified, clearing broker-dealers for large traders[44] must obtain and report Transaction Data that includes both execution time and LTID on disaggregated trades for the following types of transactions:

(1) for **Phase One**, which began on November 30, 2012:

(a) proprietary transactions by large traders that are U.S.-registered broker-dealers;

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43 See, e.g., SIFMA Letter II, supra note 2 at 3.

44 See supra note 31 and text accompanying note 31.

(b) transactions effected by large traders through a sponsored access arrangement;[45] and

(2) for **Phase Two**, which will begin on November 1, 2013: transactions effected by large traders through a direct market access arrangement.[46]

Further, with respect to all other types of transactions, for **Phase Two**, the prime broker or other carrying broker-dealer for a large trader must obtain and report Transaction Data, including LTID, for all such large traders, but is not required to report execution time.

In addition, with respect to the requirements relating to Unidentified Large Traders, which will apply to carrying broker-dealers as of Phase Two, the compliance date for broker-dealers that wish to avail themselves of the monitoring safe harbor provided by Rule 13h-1(f) to establish appropriate policies and procedures is November 1, 2013.

Phase Three, which will begin November 1, 2015, covers the remaining types of large traders and transactions not covered by Phases One and Two. Specifically, all other broker-dealers subject to the recordkeeping and reporting requirements of the Rule (i.e., broker-dealers that are large traders but do not self-clear, and broker-dealers effecting transactions directly or indirectly for a large trader where a non-broker-dealer carries the account for the large trader) are temporarily exempted from recording and reporting Transaction Data through the EBS system for the duration of Phase Two. Unless the Commission otherwise provides in the future, Phase

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45 See supra note 39 (defining sponsored access arrangements).

46 See supra note 41 and text accompanying note 41 (defining direct market access arrangements).

Three will require all broker-dealers subject to the recordkeeping and reporting requirements of Rule 13h-1 to come into full compliance with those provisions.

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Exchange Act Section 13(h)(6) and Rule 13h-1(g) thereunder, that broker-dealers are exempted temporarily until November 1, 2015 from the recordkeeping and reporting requirements of Rule 13h-1(d) and (e), except for (1) the clearing broker-dealers for large traders, with respect to (a) proprietary transactions by a large trader broker-dealer; (b) transactions effected pursuant to a "sponsored access" arrangement;[47] and (c) transactions effected pursuant to a "direct market access" arrangement;[48] and (2) broker-dealers that carry an account for a large trader, with respect to transactions other than those set forth above, and for Transaction Data other than the execution time.[49]

By the Commission.

Elizabeth M. Murphy
Secretary

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47 See supra note 39 (defining sponsored access arrangements).

48 See supra note 41 and text accompanying note 41 (defining direct market access arrangements).

49 See supra note 35.

Chair White
Commissioner Walter
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70171 / August 13, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-13714

In the Matter of Ark Asset Management Co., Inc. Respondent.	AMENDED ORDER DIRECTING DISBURSEMENT OF DISGORGEMENT FUND

On January 6, 2011, the United States Securities and Exchange Commission ("Commission") issued a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice") (Exchange Act Rel. No. 63666) pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. §201.1103. The Notice advised parties they could obtain a copy of the proposed Distribution Plan at www.sec.gov. The Notice also advised that all persons desiring to comment on the proposed Distribution Plan could submit their comments, in writing, no later than 30 days from the date of the Notice. No comments were received by the Commission in response to the Notice. On March 1, 2011, the Commission issued an Order Approving Distribution Plan and Appointing a Plan Administrator (Exchange Act Rel. No. 63993).

On July 27, 2012, the Commission issued an Order Directing Disbursement of Disgorgement Fund ("Disbursement Order") (Exchange Act Rel. No. 67524) in the amount of $740,617. Subsequently, the Commission staff learned that incorrect information about one of the eligible recipients had been provided to the Plan Administrator. In the process of correcting that information, the amount available for distribution was affected. As a result, the amount available for distribution has been reduced, and the validated electronic payment file has been revised.

The Distribution Plan provides that the disbursement to Eligible Recipients will be implemented through the United States Department of Treasury's Financial Management Service. It further provides that upon receipt of a properly validated payment file, the Commission staff will obtain authorization from the Commission to disburse pursuant to Commission Rule 1101(b)(6). The revised validated electronic payment file in the amount of $737,571 has been received from the Plan Administrator and accepted by Commission staff, and the staff requests that the Commission authorize disbursement of the funds.

Accordingly, it is ORDERED that the Commission staff shall disburse the Disgorgement Fund in the amount stated in the validated electronic payment file of $737,571, as provided for in the Distribution Plan.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Lynn M. Powalski
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9440 / August 13, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70165 / August 13, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3647 / August 13, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15413

In the Matter of **RICHARD D. HICKS,** **Respondent.**	**CORRECTED ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(f) AND 203(k) 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 and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Richard D. Hicks ("Respondent" or "Hicks").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

Richard D. Hicks ("Hicks"), 51, is a resident of Tyler, Texas. He is the founder and controlling person of Elder Advisory Services, LLC ("Elder Advisory"). He and his wife are its only members. Hicks has never held a securities license. He has operated Elder Advisory and its predecessor business since 1995.

B. OTHER RELEVANT ENTITIES

1. **Elder Advisory Services, LLC**, is a Texas limited liability company located in Tyler, Texas and owned by Hicks and his wife. Elder Advisory's business involves assisting people whose family members need to enter care facilities, in protecting estate assets and qualifying for Medicaid benefits. It has never been registered as either a broker-dealer or investment adviser. In 2001 Hicks consented to an injunctive order issued by the Texas Supreme Court, for practicing law without a license through Elder Advisory.[1] Thereafter, he affiliated with an attorney in Tyler whose firm agreed to review all recommendations of a legal nature made through Elder Advisory.

In June 2013, the attorney discovered that Hicks had been using his name to provide legal advice to Elder Advisory clients without his knowledge. He obtained an ex parte temporary restraining order against Hicks, and Hicks agreed to a temporary injunction.[2]

2. **National Note of Utah, LC** ("National Note") is a Utah limited liability company formerly with its principal place of business in West Jordan, Utah. National Note claimed to purchase, manage, and sell real property and also buy and sell loans backed by real property interests. From at least 2004 to mid-2012, National Note sold over $100 million in promissory notes to approximately 600 investors in a purported Regulation D offering. National Note promised investors a guaranteed return of 12% a year, paid quarterly from the company's profits from real estate investments and lending. It raised these new investor funds, however, by means of a private placement memorandum ("PPM") and sales materials that contained material misstatements and omissions.

By the fall of 2010, National Note was having difficulty making some payments to investors. By approximately September 2011, it was no longer able to make payments on a timely basis, and within a few months it had ceased making payments altogether. On June 25, 2012, the Commission filed an emergency action against National Note and its principal in federal district court, alleging that National Note was a widespread offering fraud and Ponzi scheme.[3] On August 17, 2012, National Note and its principal consented to a preliminary injunction in that

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1 Unauthorized Practice of Law Committee for the Supreme Court of Texas v. Richard Hicks, Individually and d/b/a Elder Advisory Services, Case No. 01-0118B.

2 Peter G. Milne vs. Richard Hicks et al., cause no. 13-1388B, 114th Judicial District, Smith County, TX.

3 SEC v. National Note of Utah, LC, Civil Action No. 2:12-cv-00591 (D. Utah).

case. The assets of both continue to be subject to a freeze, and a receiver is in control of the company's business.

C. FACTS

1. Between December 2006 and February 2012, Hicks offered and sold over $1.8 million of National Note securities to 12 investors Their investments came largely from their savings and retirement funds.

2. Hicks offered and sold these securities without a registration statement being filed or in effect.

3. Hicks first learned of National Note in 2005 or 2006 from a personal friend who was a registered representative at a brokerage firm. This friend explained to Hicks that he himself would not be permitted to sell this kind of investment by his firm. This was a potential indication that National Note was not a sound investment.

4. Hicks called National Note and obtained its sales materials, which consisted of a folder containing a glossy brochure and a copy of its PPM. He then provided the PPM and sales brochure to potential investors.

5. Hicks located potential investors in National Note through his company, [redacted]der Advisory. He used a questionnaire to gather background information from new clients, including detailed information regarding the client's assets, in order to determine the client's eligibility for Medicaid. He then created a recommendation for the client. In the course of reviewing his clients' estates, he was also able to gather information about their retirement funds and other assets.

6. Beginning in 2006, Hicks began recommending to some of his clients that they invest in National Note. Hicks stressed to them that they were going to need National Note's purported 12% guaranteed return in order to afford nursing homes for themselves or their family members.

7. Of the 12 investors Hicks placed in National Note, at least half were not accredited and were also unsophisticated. Hicks never discussed accreditation with his clients and did not himself understand the concept. Nevertheless, he filled out the National Note accreditation questionnaire for most of his clients.

8. Hicks also acted as purchaser representative under Regulation D for at least three investors. In the Purchaser Representative Questionnaire Hicks filled out and signed for his clients, he made the following misrepresentations:

a. that he had had prior experience in advising clients with respect to investments similar to National Note;

b. that he, either alone or together with the investor, had such knowledge and experience in financial and business matters generally and in similar investments in particular so as to be capable of evaluating the merits and risks of the proposed investment; and
c. that he had disclosed to the investor all compensation he was to receive from National Note.

9. Hicks had been told by his friend in the brokerage industry that National Note investors had a collateral interest in real property to secure their investment. Although he only received such a collateral document from National Note for the first few of his clients, Hicks assumed that all his clients had such a security interest. He took no steps to verify this assumption, however.

10. National Note paid Hicks a commission of 2% of the amount invested by people he solicited, for a total of $33,591 in commissions. Hicks did not tell his clients that National Note was paying him a commission.

11. Hicks provided his clients with the National Note sales packet, which included its sales brochure, the PPM and other related documents. These materials, however, contained the following material misrepresentations:

a. the brochure, PPM and attached financial statements represented that National Note paid investor returns from the profits it earned from its real estate business; but in reality National Note was a Ponzi scheme;
b. the brochure and PPM stated that National Note was able to guarantee its investors 12% annually because it was successfully investing the funds in projects earning annual returns of 15-20%, but in fact National Note was earning no such returns;
c. the PPM, and the promissory notes investors received, stated that investor funds were secured by notes and trust deeds and/or security agreements secured by real estate, mobile homes and/or vehicles. This was untrue. Investors had no lien or security interest and were unsecured creditors;

12. The National Note materials also omitted to state material facts:

a. National Note was insolvent; and
b. since approximately 2010, National Note's real estate transactions had been exclusively with related parties.

13. In addition to giving National Note's PPM and brochure to prospective investors, Hicks repeated some of the above misrepresentations to his clients. He told them that National Note made its money in real estate; that their investments would be collateralized; and that they would receive a 12% return, guaranteed.

14. National Note's claim of a guaranteed 12% return was too good to be true, and Hicks repeated it to potential investors without a reasonable basis to believe that the claimed rate of return was true.

15. The National Note PPM Hicks gave his clients included financial statements that were unaudited and out of date. Hicks never requested additional financial statements from National Note.

16. National Note was an unsuitable investment for Hicks' elderly clients. Hicks knew that his clients were seeking to preserve assets to meet care facility costs, and in many cases were investing their retirement savings. By contrast, National Note was an extremely speculative, unsecured investment.

17. In October 2010, the note held by a client of Hicks matured. That client had decided that he wanted National Note to return his $500,000 principal. Hicks and the client contacted an employee of National Note together to request the return of the principal; however, the National Note employee responded that National Note was unable to return the client's principal at that time. When the client contacted Hicks shortly thereafter, Hick informed his client that National Note was having cashflow problems and could not return the principal. Hicks' client never received even a partial return of his principal.

18. Consequently, Hicks was aware, as early as October 2010, that National Note did not have sufficient funds to make payments to certain investors. Nevertheless, he subsequently solicited two clients to invest without mentioning this material fact. One of these clients invested $229,000 in November 2010. The other, who was an existing National Note investor, made an additional principal investment of $25,000 in January 2011.

19. By approximately September 2011, National Note was no longer able to make payments on a timely basis, and within a few months it had ceased making payments altogether.

20. From the fall of 2011 through the spring of 2012, Hicks exchanged numerous e-mails with National Note inquiring as to when his clients could expect their interest payments. He explained that his clients were anxiously awaiting these payments. Nevertheless, he solicited one more client to invest in National Note without telling him that National Note was no longer making payments. This client invested $55,000 in February 2012.

D. VIOLATIONS

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

2. As a result of the conduct described above, Respondent willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct on the part of an investment adviser.

3. As a result of the conduct described above, Respondent willfully violated Sections 5(a) and 5(c) of the Securities Act which prohibits the sale of unregistered securities.

4. As a result of the conduct described above, Respondent willfully violated Section 15(a) of the Exchange Act which prohibits acting as an unregistered broker.

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 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) of the Exchange Act including, but not limited to, disgorgement and prejudgment interest, and civil penalties pursuant to Section 21B of the Exchange Act and Section 203(i) of the Advisers Act; and,

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 Section 203 of the Advisers Act;

D. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act and Sections 203(f) and 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, and whether Respondent should be ordered to pay disgorgement and prejudgment interest pursuant to Section 8A(e) of the Securities Act, Section 21C(e) of the Exchange Act and Section 203 of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened 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 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

By: Lynn M. Powalski
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70214 / August 15, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15425

In the Matter of **Chicago Stock Exchange, Inc.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 19(h)(1) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 19(h)(1) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against the Chicago Stock Exchange, Inc. ("CHX" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purposes 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, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 19(h)(1) and 21C 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:

Summary

From December 2006 to December 2010, CHX failed to implement policies and procedures reasonably designed to detect and prevent violations of Rule 611 of Regulation NMS[1] ("Rule 611"), the Order Protection Rule, in connection with the use of the Exchange's proprietary Validated Cross Trade Reporting Functionality ("validated cross system"). The validated cross system was intended to permit CHX institutional brokers ("IBs") to report certain trades executed outside of the Exchange's automated limit-order matching system and ensure that such trades complied with Rule 611. However, due to the flawed implementation of the system, it failed to prevent IBs from trading outside of the prevailing National Best Bid or Offer ("NBBO"), *i.e.*, from "trading through" the NBBO in violation of Rule 611. Moreover, from at least December 2006 to August 2008, CHX failed to implement surveillance procedures reasonably designed to monitor or enforce IB compliance with the Exchange's rules governing the use of the validated cross system.

As a result of the conduct described above, CHX failed to implement policies and procedures reasonably designed to detect and prevent improper trade-throughs, and failed to regularly surveil to ascertain the effectiveness of such policies and procedures and take prompt action to remedy any deficiencies, in violation of Rule 611. In addition, CHX failed to monitor [redacted] enforce compliance by its members with the Exchange's own rules in violation of Section [redacted]g)(1) of the Exchange Act.

Respondent

CHX, located in Chicago, Illinois, is a national securities exchange registered with the Commission pursuant to Section 6 of the Exchange Act. As of May 2013, approximately 0.4% of the national equities trading volume was transacted on CHX. In 2012, CHX reported revenues of $17.1 million and net losses of $1.5 million.

Facts

A. The Validated Cross System

In December 2006, CHX underwent a complete overhaul of its operations, eliminating its physical trading floor and converting to a fully automated trading platform. The automated limit-order matching system ("matching system") was the core facility of the Exchange's new trading model. Instead of a physical trading floor, Exchange participants from any location could submit orders to the matching system, where they would then be immediately executed or displayed (when eligible) in price-time priority. Although CHX anticipated that most IB trades would be executed on the Exchange's matching system, it also enabled IBs to execute cross trades—both proprietary and agency—outside of the matching system. These non-matching

[1] [redacted]FR § 242.611

[redacted]stem transactions were also deemed to be "on the Exchange," however, and as such, could not trade through either the Exchange's book or the NBBO. The validated cross system, launched in December 2006, was intended to support the timely reporting of these non-matching system cross trades, while simultaneously ensuring (among other things) that these cross transactions did not trade through the prevailing NBBO in compliance with Rule 611.

The validated cross system was generally supposed to operate as follows. First, an IB would establish the material terms of the cross trade with its customer(s), *i.e.*, stock, price, and quantity. Then the IB would promptly open the validated cross window on its computer screen and enter the stock symbol into the proper data field. At the time that the IB moved to another data field, the validated cross window would capture and freeze a snapshot of the current NBBO and the Exchange's book, and a timer would start. The IB would then fill in the other required fields, such as the quantity and price of shares, and submit the trade for reporting within a prescribed period of time.

CHX rules required IBs to use reasonable efforts to submit the trade within ten seconds, but the timer gave them, at various times, between 20 and 180 seconds to do so.[2] If the IB failed to submit the transaction within ten seconds, a "SOLD" modifier was affixed to the trade report, indicating that the trade was reported late.[3] Once submitted, the system "validated" the transaction, *i.e.*, ensured that the proposed cross trade did not trade through the snapshot NBBO or the Exchange's book. If the cross trade satisfied all requirements, the trade was accepted by the system and reported to the consolidated tape. If the cross trade failed to satisfy all [redacted]quirements, then the trade was rejected.

However, if the IB did not fill in all of the required fields and submit the trade for reporting within the allotted time, the window would expire and the trade would not be processed. In addition, the validated cross window at various times permitted IBs to "refresh" (*i.e.*, obtain a new NBBO snapshot while preserving all other fields and restart the timer), "reset" (*i.e.*, clear all fields and restart the timer without closing the validated cross window), or "cancel" (*i.e.*, close the validated cross window without completing the transaction) the window. As discussed below, these features enabled some IBs to abuse the validated cross system by capturing an NBBO snapshot, watching the movement of the market, and then deciding whether to follow through with the execution at a price within the previously captured snapshot NBBO if the market had moved in favor of the position they were establishing (*i.e.*, up for buys and down for sells), or to cancel the transaction prior to completing the trade report and capture a new, more favorable snapshot NBBO if the market moved in the other direction.

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[2] Initially, the window expiration timer gave IBs up to 90 seconds to complete a trade report. In January 2007, CHX extended the timer from 90 seconds to 180 seconds. In May 2008, CHX reduced the timer to 20 seconds.

[3] [redacted]ly, the "SOLD" modifier was affixed after 10 seconds. In January 2007, CHX revised its rules to affix the "SOLD" modifier after 90 seconds, which was then the industry standard.

Article 17, Rule 3(e): CHX Rule Governing Use of Validated Cross System

In an effort to limit the opportunity for abuse that was afforded by the snapshot NBBO and the timing delays in the validated cross system, CHX adopted Article 17, Rule 3(e). Article 17, Rule 3(e) of the Exchange's rules required IBs that participated in a proprietary cross transaction to complete the transaction report without cancelling out the functionality (with narrow exceptions for, among other things, inputting the symbol for the wrong security or clearly erroneous trades), thus essentially locking in the trade once the snapshot NBBO was captured. In an October 16, 2006 Information Memorandum, CHX explained to its IBs that the purpose of the limitation was to "prevent the IB from cancelling a cross transaction prior to the completion of the trade report because the market moved in a direction favorable to the IB firm. . . ."

Article 17, Rule 3(e) also required IBs to use reasonable efforts to report all transactions that are not effected through the Exchange's matching system, *i.e.*, validated cross transactions, to the Exchange within ten seconds after the trade occurs. This requirement was intended to preserve the integrity of the validated cross system by preventing IBs from taking advantage of market movements over an extended period of time, and effectively provided assurances that IBs had in fact obtained agreement on the material terms of the trade prior to accessing the validated cross window. Due to deficiencies in its surveillance system, however, from December 2006 to August 2008, CHX had no means of reasonably enforcing IB compliance with either of these rule provisions.

C. Deficiencies in CHX Surveillance System

CHX failed to implement routine surveillance procedures to oversee the use of the validated cross system and to monitor for non-compliance with related rules for a period of over a year and a half. During the process of designing routine surveillance reports, CHX learned that the validated cross system could not reliably distinguish between cancellations of proprietary cross trades and cancellations of agency cross trades. As a result, CHX did not have the ability to monitor for IB compliance with Article 17, Rule 3(e), which set forth strict restrictions on the cancellation of proprietary cross trades. In January 2008, CHX resolved this problem by modifying the system to enable surveillance staff to separately analyze the cancellation of proprietary cross trades.

In August 2008, CHX finally implemented the first routine surveillance report for the validated cross system. This report identified cancellations of principal cross transactions that resulted in economic losses to the counterparty. In November 2008, CHX implemented a second routine surveillance report, which was designed to detect excessive cancellation of proprietary cross trades regardless of the impact on the counterparty. CHX never implemented a surveillance report to monitor for compliance with Article 17, Rule 3(e)'s requirement that IBs use reasonable efforts to report validated cross transactions within ten seconds of opening the validated cross window. In addition, CHX never implemented any surveillance reports designed to detect excessive cancellations and other improper activities in the context of agency cross trades.

Abuse of the Validated Cross System

Prior to the implementation of routine surveillance, CHX conducted several *ad hoc* surveillance reviews of the validated cross system. The first *ad hoc* review, which was conducted in November 2007—almost one year after the implementation of the system—showed high refresh and cancellation rates. The findings indicated that some IBs were not using the validated cross window in accordance with CHX guidance and rules. Subsequent *ad hoc* reviews—which resulted in two CHX enforcement actions[4]—confirmed that some IBs frequently violated Article 17, Rule 3(e), at times to the harm of their customers.

Moreover, in April 2008, CHX learned about abuse of the validated cross system from a broker-dealer that executed trades on the Exchange through a CHX IB. Specifically, the broker-dealer reported that some of its traders had repeatedly manipulated the validated cross system to execute trades that advantaged accounts held by hedge funds (which generally paid higher commissions) at the expense of accounts belonging to various employee stock purchase plans, employees stock option plans, and similar plans. At the trader's direction, the IB would open the validated cross window, capture the snapshot NBBO for a particular security, and then watch how the market moved for that security. If the price moved in a direction that was favorable to the hedge fund, the IB used the ability to refresh the NBBO to chase better prices for the hedge fund. If the market moved against the hedge fund, the IB executed the trades at the stale snapshot NBBO.[5]

Notwithstanding these red flags, CHX failed to implement effective surveillance [redacted]cedures reasonably designed to prevent abuses of the validated cross system. In December [redacted]10, CHX decommissioned the validated cross system.

E. Violations

Section 19(g)(1) of the Exchange Act

Section 19(g)(1) of the Exchange Act requires every exchange to comply with the provisions of the Exchange Act, the rules and regulations thereunder, and its own rules, and, absent reasonable justification or excuse, to enforce compliance by its members with such provisions. The Commission has consistently stated that an exchange's obligation to enforce compliance under Section 19(g)(1) "necessarily includes an obligation to monitor and maintain surveillance over its members."[6] An exchange violates Section 19(g)(1) when it fails "to be

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[4] *In the Matter of Dougall and Associates, Inc. and James Hennessey, Jr.*, CHX-D-2009-01 (May 6, 2009); *In the Matter of E*Trade Capital Markets, LLC*, CHX-D-2010-02 (Sept. 16, 2010).

[5] This information resulted in two Commission enforcement actions and one CHX enforcement action. *See In the Matter of Mark Shaw*, Securities Act Release No. 9174 (Jan. 14, 2011); *In the Matter of BNY Mellon Securities, LLC*, Exchange Act Rel. No. 63724 (Jan. 14, 2011); *In the Matter of Lyall Securities*, CHX-D-2008-04 (Dec. 31, 2008).

[6] *Matter of Boston Stock Exchange, Inc. and James B. Crofwell.*, Exchange Act Rel. No. 56352 (Sept. 5, 2007) (citations omitted).

vigilant in surveilling for, evaluating, and effectively addressing issues that could involve violations of its own rules."[7]

As discussed above, from December 2006 to January 2008, CHX could not reliably distinguish between the cancellation of proprietary cross trades and the cancellation of agency cross trades, and thus had no ability to monitor or enforce IB compliance with Article 17, Rule 3(e). In addition, from December 2006 to August 2008, CHX failed to implement routine surveillance procedures to identify potential violations of Article 17, Rule 3(e) of the Exchange's rules. Finally, CHX never formally monitored for compliance with Article 17, Rule 3(e)'s requirement that IBs use reasonable efforts to report transactions within 10 seconds. CHX thus violated Section 19(g)(1)of the Exchange Act by failing to enforce compliance with Article 17, Rule 3(e) of the Exchange's rules without reasonable justification or excuse.

Violation of Rule 611 of Regulation NMS

Rule 611 of Regulation NMS is intended to prevent the occurrences of trade-throughs. A trade-through occurs when a "trading center," such as CHX, executes an order at a price that is inferior to a "protected quotation." A "protected quotation" is the best automated bid or offer displayed by a national securities exchange, and is commonly referred to as the NBBO. Rule 611(a)(1) specifically provides that a "trading center" shall:

> establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in paragraph (b) of this section and, if relying on such an exception, that are reasonably designed to assure compliance with the terms of the exception.

In addition, Rule 611(a)(2) requires trading centers to:

> regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (a)(1) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

As discussed above, the validated cross system permitted IBs to execute transactions at stale prices within previously captured NBBOs. The system was thus not reasonably designed to prevent validated cross trades from trading through the NBBO prevailing at the time of execution. Moreover, CHX failed to enforce rules that were designed to limit the opportunities for abuse of the validated cross system. As a result, CHX failed to establish, maintain, or enforce policies and procedures reasonably designed to prevent trade-throughs, or regularly surveil to ascertain the effectiveness of such policies and procedures, in violation of Rule 611.

[7] *Id.*

Remedial Efforts

In determining to accept the Offer, the Commission considered the remedial acts undertaken by CHX, including the Exchange's repeated efforts to improve its surveillance of the validated cross system and its ultimate discontinuation of the system. The Commission also considered the Exchange's efforts to improve its regulatory program, including its voluntary retention of outside consultants to conduct reviews of its surveillance and enforcement programs, its augmentation of its regulatory staff, and its investments in automated surveillance tools. Finally, the Commission credits the Exchange's assistance with the Commission's enforcement actions against Mark Shaw and BNY Mellon Securities, LLC.[8] Under these circumstances, the Commission has determined that it is not in the public interest to impose additional limitations upon the activities, functions, or operations of CHX pursuant to Section 19(h)(1) of the Exchange Act.

IV.

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

Accordingly, pursuant to Sections 19(h)(1) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent be, and hereby is, censured;

B. Respondent cease and desist from committing or causing any violations and any future violations of Section 19(g)(1) of the Exchange Act and Rule 611 of Regulation NMS; and

C. Pursuant to Section 21B(a)(2) of the Exchange Act, Respondent shall within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $300,000 (three hundred thousand dollars) to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 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

[8] *See supra* note 5.

Payment by check or money order must be accompanied by a cover letter identifying CHX 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 C.J. Kerstetter, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604.

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. 70205 / August 15, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3648 / August 15, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15423

In the Matter of

EDWARD T. STEIN,

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 Edward T. Stein ("Respondent").

II.

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

III.

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

1. Stein was the founder and general partner of Gemini Fund I, LP; the founder of DISP, LLC, and Prima Capital Management Corp.; and the founder and chief executive officer of Vibrant Capital Corporation. He directed the actions and operations of those entities and solicited investments in them from the public. Stein acted as an investment adviser to Gemini Fund I, LP and DISP LLC because, for compensation, he advised each entity as to the value of securities or as to the advisability of investing in, purchasing or selling securities. He owned and directed the operations of Edward T. Stein Associates, Ltd., an entity through which he sold life and health insurance and through which money invested in his other operations was often routed. During at least part of the relevant period, from 1989 to 1998, Stein was a registered representative of a registered broker-dealer. Stein, 63 years old, is currently incarcerated at the Federal Correctional Institution in Otisville, New York.

2. On September 14, 2009, a judgment was entered by consent against Stein, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8, in the civil action entitled Securities and Exchange Commission v. Stein, et al., No. 09 Civ. 3125 (RJS), in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that, in connection with the sale of various securities, Stein misused and misappropriated investor funds, falsely stated to investors that their funds were invested, sent out false account statements indicating that investors funds were fully invested and earning returns, and otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors.

4. On June 22, 2009, Stein pled guilty to four counts of securities fraud in violation of Title 15 United States Code, Sections 78j(b) and 78(ff) and one count of wire fraud in violation of Title 18 United States Code, Section 1343 before the United States District Court for the Eastern District of New York, in United States v. Stein, No. 1:09 CR 00377 (JBW). On February 9, 2010, a judgment in the criminal case was entered against Stein. He was sentenced to a prison term of nine years followed by five years of supervised release and was ordered to pay a fine of $20,000 and make restitution in the amount of $46,396,373.08.

5. The counts of the criminal information to which Stein pled guilty alleged, inter alia, that Stein defrauded investors and obtained money and property by means of materially false and misleading statements, and that he used wire communication in interstate commerce to send false documents to a financial institution.

IV.

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

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3649 / August 15, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15424

In the Matter of **KARL MOTEY,** **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 Karl Motey ("Motey" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 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. Motey, age 48, is a resident of Los Altos, California. From 2006 through 2009, Motey was the owner and operator of Coda Group, Inc., ("Coda") an equity research firm located in Los Altos, California. Coda was an unregistered investment adviser that provided equity research and analysis to its hedge fund adviser clients.

2. On December 14, 2010, Motey pled guilty to one count of securities fraud and one count of conspiracy to commit securities fraud in violation of Title 18 United States Code, Sections 2 and 371, and Title 15 United States Code, Sections 78j(b) and 78ff, before the United States District Court for the Southern District of New York in United States v. Karl Motey, 10 CR 1249. On February 4, 2013, a judgment in the criminal case was entered against Motey. He was sentenced to one year of supervised release, and ordered to pay criminal forfeiture of $40,000.

3. The counts of the criminal information to which Motey pled guilty alleged, inter alia, that in 2007 through 2009, Motey, and others, participated in a scheme to defraud by executing securities trades based on material, nonpublic information regarding quarterly earnings and other market-moving information that had been misappropriated in violation of duties of trust and confidence. The information alleged that in 2007 through 2009, Motey obtained material, nonpublic information regarding Marvell Technology Group Ltd from a company employee, and [illegible]ed the information to individuals who executed securities transactions based, in part, on that [illegible]ormation.

IV.

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

Accordingly, it is hereby ORDERED:

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

Commissioner Gallagher not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9441 / August 15, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70216 / August 15, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30650 / August 15, 2013

Admin. Proc. File No. 3-14862

In the Matter of the Application of

MIGUEL A. FERRER and
CARLOS J. ORTIZ

ORDER GRANTING SECOND MOTION FOR 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 forty-five additional days 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., a Delaware corporation, and Carlos J. Ortiz, currently the Managing Director of Capital Markets at UBS PR.[2] The OIP alleges that Ferrer and Ortiz willfully violated and aided and abetted and caused UBS PR's violation of Section 17(a) of the Securities Act of 1933 and Section 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 Section 15(c).[3]

1 17 C.F.R. § 201.360(a)(3).

2 *Miguel A. Ferrer*, Securities Exchange Act Release No. 66892, 2012 SEC LEXIS 1403 (May 1, 2012).

3 15 U.S.C. § 77q; 15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5; 15 U.S.C. § 78o(c).

The OIP directed the presiding law judge 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 February 25, 2013, we granted the law judge's first motion requesting an extension of time until September 4, 2013 to file the initial decision "because the thirteen days of hearing resulted in an extensive record" and because the final brief was not due until almost three weeks after the due date for the initial decision specified in the OIP.[4]

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 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 second extension request by stating that "the thirteen-day hearing resulted in an extensive record that is taking time to review." 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 by forty-five days, until October 29, 2013.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Lynn M. Powalski
Deputy Secretary

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[4] *Miguel A. Ferrer*, Exchange Act Release No. 68978, 2013 SEC LEXIS 574, at *6 (Feb. 25, 2013).

[5] *See Adopting Release*, Securities Act Release No. 8240, 2003 SEC LEXIS 1404, at *5–7 (June 11, 2008).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70215 / August 15, 2013

INVESTMENT ADVISER ACT OF 1940
Release No. 3650 / August 15, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15426

In the Matter of

ADAM G. ERICKSON,

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 Adam G. Erickson ("Respondent" or "Erickson")).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. From June 2009 through October 2010, Erickson was engaged in the business of effecting transactions in securities for the accounts of others by offering and selling promissory notes to investors. During that time, Erickson was associated with a registered broker dealer and with a registered investment adviser.

2. On April 22, 2013, a judgment was entered by consent against Erickson, permanently enjoining him from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and from aiding and abetting future violations of Section 15(c) of the Exchange Act and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled *Securities and Exchange Commission v. Steven Brewer, et al.*, Civil Action Number 10-cv-6932-BMM-AK, in the United States District Court for the Northern District of Illinois.

3. The Commission's complaint alleged that, from June 2009 through at least the end of September 2010, Erickson and Steven Brewer ("Brewer"), Brewer Investment Group, LLC ("BIG"), Brewer Financial Services, LLC ("BFS"), a registered broker-dealer, and Brewer Investment Advisors, LLC ("BIA"), a registered investment adviser, participated in fraudulent, unregistered offerings of promissory notes issued by FPA Limited ("FPA"), an Isle of Man company, in the aggregate amount of $5.6 million to at least 74 investors. Through the fraudulent offerings, BIG and Brewer funneled cash to BIG and one of its subsidiaries when the entities were under significant financial distress. The offering materials that Defendants created and used for the offerings of FPA promissory notes ("FPA Notes") failed to disclose that over 90% of the proceeds would be disbursed at Brewer's direction to BIG and then to its wholly-owned subsidiaries. In addition, the offering materials misrepresented the risk of the investment and failed to disclose the precarious financial condition of BIG and its subsidiaries. The complaint further alleged that through the offering materials for the FPA Notes, Defendants also implicitly and explicitly represented to investors that the proceeds of the offerings would be used to procure collateral which would be used to secure the notes. Instead, over 90% of the proceeds were disbursed at Brewer's direction to BIG and then spent, including making payments to one of BIG's subsidiaries, and the promised collateral was never obtained. As a result, representations in the offering materials concerning the use of proceeds and representations concerning the risk of the investment were materially false and misleading. The complaint also alleged that in the offering materials, Defendants did not disclose that BIG was failing to make the required interest payments on the FPA Notes being sold to investors. Nor did Defendants disclose that material information to prospective investors in other communications. These material omissions rendered statements in the offering documents materially misleading. The complaint alleged that Erickson reviewed and approved the fraudulent offering documents used to sell the FPA Notes. Erickson directed BFS and BIA to sell the notes and encouraged individuals associated with those entities to sell the notes. He knew that over 90% of the proceeds of the offerings were being funneled to BIG and were not being used to procure collateral for the notes. He knew that the representations in the offering documents concerning the use of proceeds and risk were materially false and misleading. Erickson

also knew that material information about the precarious financial condition of BIG and BIG's failure to make required interest payments on the notes was not being disclosed to prospective investors. Nonetheless, Erickson continued to cause BFS and BIA to sell the notes.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Erickson'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 Erickson be, and hereby is barred from association with any broker, dealer, or investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

That Respondent Erickson 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; and

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

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 70219 / August 16, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15427

In the Matter of	
Jonathan S. Bristol, Esq.,	**ORDER OF FORTHWITH SUSPENSION PURSUANT TO RULE 102(e)(2) OF THE COMMISSION'S RULES OF PRACTICE**
Respondent.	

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Jonathan S. Bristol, Esq. ("Bristol") 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. Bristol was an attorney admitted to practice law in New Jersey and New York.

2. On December 16, 2010, the Commission added Bristol as a defendant to a civil action, *SEC v. Kenneth Ira Starr, et al.*, 10 Civ. 4270 (S.D.N.Y.), filed against investment advisor Kenneth Starr ("Starr"), alleging that Bristol aided and abetted Starr's scheme to misappropriate millions of dollars from Starr's investment advisory clients. The same day, the United States Attorney for the Southern District of New York filed a criminal action against Bristol.

3. In the criminal action, on May 2, 2011, Bristol pleaded guilty to one count of conspiracy to commit money laundering arising from helping Starr defraud his clients and concealing Starr's criminal conduct by using two separate attorney trust fund accounts that were under his control to launder Starr's misappropriated funds. Bristol agreed to pay $18.8 million in criminal restitution.

[1] Rule 102(e)(2) provides in pertinent part: "Any attorney who has been suspended or disbarred by a court of the United States or of any State; ... or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

4. On December 18, 2012, as a result of his guilty plea, Bristol was sentenced to time served and three years of supervised release.

5. On March 6, 2012, Bristol resigned from the New York bar.

6. On May 8, 2013, Bristol was permanently disbarred by consent from the New Jersey bar.

III.

In view of the foregoing, the Commission finds that Bristol is an attorney who has been suspended or disbarred from the practice of law and convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is HEREBY ORDERED that Bristol 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

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9443 / August 20, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70234 / August 20, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3652 / August 20, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30652 / August 20, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15430

In the Matter of

BRIAN WILLIAMSON,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AND NOTICE OF HEARING

I.

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

II.

After an investigation, the Division of Enforcement alleges that:

Summary

1. From September 2009 through June 2010, Brian Williamson made material false and misleading statements and omissions to investors and prospective investors concerning the valuation of Oppenheimer Global Resource Private Equity Fund I, L.P. ("OGR"), a fund of private equity funds he managed.

2. From in or about September 2009 through at least mid-October 2009, Williamson sent, or directed others to send, prospective OGR investors marketing materials that reported an OGR internal rate of return ("IRR") for the quarter ended June 30, 2009 that, misleadingly, did not take into account OGR fees and expenses that would have greatly lowered OGR's reported IRR.

3. From late October 2009 through June 2010, Williamson misrepresented, or caused OGR to misrepresent, to OGR investors and prospective investors that the reported performance of the fund's investments was "based on the underlying managers' estimated values." In fact, during that time period, OGR's reported value of its largest single holding – Cartesian Investors-A, LLC ("Cartesian") – was based not on the value assigned by Cartesian's manager but, rather, on Williamson's own materially higher valuation, a change that materially increased OGR's reported IRR.

4. In October and November 2009, Williamson also made, or caused others to make, [redacted]umber of additional material misrepresentations and omissions to individual OGR investors [redacted]potential investors (or their consultants) that were designed to hide Williamson's role in valuing Cartesian and to create the misleading impression that OGR's increased IRR was due to increased performance when, in fact, it was due to Williamson's revised valuation of Cartesian.

5. From in or about October 2009 through June 2010, Williamson, and OAM personnel he supervised, marketed OGR to potential investors by, among other things, touting OGR's increased IRR, and OGR raised approximately $61 million.

B. Respondent

6. Brian Williamson, age 42, is a resident of Newtown, Pennsylvania. From December 2005 to December 2011, he was an employee of Oppenheimer & Co. Inc. ("OPCO") and Oppenheimer Asset Management Inc. ("OAM"), Managing Director in Oppenheimer Alternative Investment Management, LLC ("OAIM") and the portfolio manager of OGR and other OAIM private equity funds. From at least January 2012 to the present, Williamson has been the sole owner and Managing Director of ROC Resources, LLC ("ROC"), an investment adviser registered with the Commission that is sub-adviser to OGR. As ROC's Managing Director, Williamson remains primarily responsible for managing OGR. Williamson also is licensed as an attorney in Pennsylvania and New Jersey and has been licensed as a certified public accountant in Pennsylvania, but that license is expired.

Other Relevant Entities

7. OAM is located in New York City and is registered with the Commission as an investment adviser. OAM is the sponsor of OGR, and OAM employees (including Williamson) provided investment advisory services to OGR. OAM is a subsidiary of E.A. Viner International Co., a subsidiary of Oppenheimer Holdings, Inc., a publicly held company listed on the New York Stock Exchange.

8. OAIM is located in New York City and is registered with the Commission as an investment adviser. OAIM is wholly owned by OAM, and OAM is the sole member of OAIM. OAIM is the general partner of – and through employees of OAM, provides investment advisory services to – several funds, including OGR and other private equity funds. Accordingly, OAM and OAIM were OGR's investment advisers.

9. OPCO is located in New York City and is registered with the Commission as both a broker-dealer and investment adviser. OPCO is an affiliate of OAM and OAIM, and all persons who work for OAM and OAIM (including Williamson) are OPCO employees. OPCO is owned directly by E.A. Viner International Co., a subsidiary of Oppenheimer Holdings, Inc.

10. OGR is a fund of private equity funds managed by Williamson, previously through OAM and now through a sub-advisory arrangement with ROC. OGR is organized as a Delaware limited partnership, with OAIM as its general partner, and OGR investors as its limited partners. Among other holdings, OGR holds an interest in Cartesian.

11. S.C. Fondul Proprietatea S.A ("Fondul") is a holding company established by the Romanian government to compensate its citizens whose land was seized by Romania's former communist regime. Fondul holds stakes in public and private Romanian energy and natural resource entities, such as power, gas and oil companies. In January 2011, Fondul was listed on the Bucharest Stock Exchange.

12. Cartesian Investors-A, LLC ("Cartesian") is a limited liability company that holds shares of Fondul for its members, who include Cartesian Capital Group Holdings, LLC ("Cartesian Capital"), Pangaea One-RDV Co-Investment Fund, L.P., and OGR. Fondul shares are Cartesian's only holding. Under Cartesian's "Limited Liability Company Agreement," Cartesian Capital is Cartesian's "Managing Member" and, as such (with certain express exceptions), manages the "business and affairs" of Cartesian, which include "making all investment decisions on behalf of [Cartesian]."

13. ROC Resources, LLC ("ROC") is located in Princeton, New Jersey, and is registered with the Commission as an investment adviser. Williamson is the sole owner and Managing Director of ROC, which began serving in January 2012 as sub-adviser to OGR and other funds for which OAIM acts as a general partner and primary investment manager.

Background

14. Williamson supervised the formation of OGR in 2007, and at all relevant times was primarily responsible for managing it.

15. OGR began admitting limited partners in April 2008, and its target investment size was $200 million. Investment in OGR was initially scheduled to close at the end of October 2009, but as of September 30, 2009, OGR had received only approximately $71 million in commitments from investors. Williamson subsequently obtained the investors' consent for two extensions of the closing date, ultimately to June 30, 2010.

16. From at least September 2009 through June 2010, Williamson and the investment team of OAM employees that he managed – who acted at Williamson's direction at all relevant times – marketed OGR to potential investors. Williamson located potential OGR investors both through independent "consultants" (who provided investment advice to their institutional clients) and OPCO's own network of registered representatives.

17. As part of their OGR marketing strategy, Williamson and his team sent prospective investors pitch books which, among other things, summarized OGR's performance as of the end of particular quarters. Williamson was the individual at OAM with primary responsibility for the content of the OGR pitch books.

18. Williamson's team also sent existing OGR investors quarterly reports containing OGR performance summaries as of a particular quarter. Williamson signed the quarterly report letters and was the individual at OAM with primary responsibility for the content of the quarterly reports.

E. Misleading Statements and Omissions Concerning OGR's Gross IRR

19. In or about early July 2009, at Williamson's direction, Williamson's team created an OGR pitch book that included OGR performance summaries as of the first quarter of 2009 (i.e., as of March 31, 2009). The performance summary table contained a column labeled "IRR" that did not list any IRR numbers, only dashes. Williamson's team submitted the pitch book containing the first-quarter 2009 performance numbers to OAM's regulatory compliance team ("Compliance") for approval.

20. In early September 2009, Williamson instructed his team to update the OGR pitch book to replace the March 31 performance figures with June 30, 2009 (second quarter) performance figures. The updated pitch book reported total OGR IRR of 12.4%, a figure that did not take into account any fees and expenses associated with OGR.[1] In other words, the 12.4% IRR figure took into account neither the fees and expenses that OGR paid to its underlying fund

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[1] OGR's IRR essentially is a measure of the rate of growth of its investments and was calculated as of a particular quarter.

nagers nor the additional fees and expenses that OGR paid OAM. Williamson's team did not submit to Compliance the changes that the team made in September 2009 to the OGR pitch book.

21. As Williamson knew or recklessly disregarded in September 2009, OGR's IRR as of June 30, 2009 was materially lower than 12.4% if OGR's fees and expenses were taken into account. OGR's IRR was 3.8% when the fees and expenses that OGR paid its underlying funds were taken into account; and OGR's IRR was -6.3% (a negative rate of return) when the additional fees that OGR paid to OAM were taken into account. Nonetheless, the OGR pitch book that Williamson used in September and much of October 2009 misleadingly reported to prospective investors only the 12.4% IRR figure, without disclosing that that figure was gross of all fees and expenses. By contrast, Williamson's October 7, 2009 OGR quarterly report, sent to then-existing OGR investors, disclosed OGR's "net" IRR figures (3.8% and -6.3%) but did not report the 12.4% IRR figure.

22. On multiple occasions in September and October 2009 – including on at least September 11, September 29, October 12, October 19, and October 20, 2009 – Williamson either personally sent, or directed members of his team to send, the OGR pitch book containing the misleading 12.4% IRR figure to individual prospective investors or consultants.

23. In his October 19, 2009 cover email to a prospective investor (attaching the misleading pitch book), Williamson misleadingly stated:

> [OGR] has performed well since being launched in June of 2008 (update attached). The fund has a 12.4% IRR as compared to the publicly traded natural resource benchmarks which are down anywhere from 30 to 80% since we launched last June.

F. False OGR Pitch book and Quarterly-Report Statements Concerning Valuation

24. The OGR pitch book and October 7, 2009 quarterly report stated that the reported values of OGR investments were "based on the underlying managers' estimated values as of June 30, 2009." The quarterly report further stated, "[i]nformation about portfolio holdings and valuations of the underlying funds is based on information received from the portfolio managers of underlying funds."

25. As of October 2009, Cartesian was OGR's largest single investment. Cartesian's manager, Cartesian Capital, reported the "fair value" of Cartesian's holdings (i.e., its Fondul shares) on an annual basis and, for the year ended December 31, 2008, reported the fair value of those shares as equivalent to "cost." Cartesian Capital also managed a fund called Pangaea One, L.P. ("Pangaea"), which also held Fondul shares (among other investments). For the quarters ended June 30 and September 30, 2009, Cartesian Capital likewise reported the fair value of Pangaea's Fondul holding at "cost."

26. Until late October 2009, consistent with Cartesian Capital's reported valuations, OGR reported the value of its Cartesian investment at cost – that is, at approximately $6 million. Thus, until late October 2009, Williamson reported Cartesian's $6 million valuation in OGR's pitch books and quarterly reports and used that valuation to calculate and report OGR's IRR.

27. On October 15, 2009, Williamson's team submitted for the first time to Compliance an OGR pitch book containing the June 30, 2009 performance numbers, including the 12.4% IRR figure (and no "net" IRR figures). By October 22, Compliance had returned the OGR pitch book to Williamson's team with its final changes, which included a statement that "OGR valuation represents the reported value of the underlying funds less OGR fees and expenses but does not represent the actual realized performance of OGR" – i.e., referencing the need to take into account fees and expenses, which would lower OGR's reported IRR to at least 3.8%, if not -6.3%.

28. Williamson subsequently modified the OGR pitch book to take into account the first level of OGR's fees and expenses (those charged by the underlying managers) in reporting OGR's IRR. However, he raised OGR's reported IRR by increasing the reported value of Cartesian. On or about October 22, 2009, Williamson increased the reported value of Cartesian from $6 million to approximately $9 million. The $9 million valuation was Williamson's own – not Cartesian Capital's. Williamson based his new valuation on the price at which Fondul shares were issued by the Romanian government to claimants, also referred to as the "par" value of the Fondul shares (1 RON per share).

29. Williamson's higher Cartesian valuation raised OGR's reported June 30, 2009 IRR from 3.8% to 38% (taking into account fees and expenses paid by OGR to its underlying fund investments); and from -6.3% to 12.5% (taking into account the additional layers of fees that OGR paid to OAM).

30. On or about October 22, 2009, Williamson directed his team to amend the Compliance-reviewed OGR pitch book to remove the old 12.4% gross IRR figure – which was inconsistent with Williamson's new, higher, Cartesian valuation – and to replace it with the 38% IRR figure (which was net of the first level of OGR fees only). Williamson's team did not submit the modified pitch book to Compliance.

31. Notwithstanding Williamson's new Cartesian valuation, Williamson left in place the pitch book statement that OGR's June 30, 2009 asset values were "based on the underlying manager's estimated values." As Williamson knew or recklessly disregarded at the time, that statement was false because Cartesian's reported value was not based on Cartesian Capital's valuation but, rather, was based on Williamson's own unilateral change to a $9 million valuation.

32. Although Williamson thus revised OGR's June 30 quarter performance numbers in the pitch book, he did not revise the June 30 quarterly report (which reflected OGR's "net" IRR figures (3.8% and -6.3%) but did not report the 12.4% IRR figure) that he had sent to then-existing OGR investors on October 7, 2009. Nor did Williamson otherwise notify already-[redacted] investors of OGR's revised June 30 quarter performance numbers.

33. From October 26, 2009 through June 2010, prospective OGR investors received OGR pitch books containing the false statement (described in paragraph 31 above) directly from Williamson, from Williamson's team (at Williamson's direction), and from OPCO representatives who received the pitch books from Williamson (or his team). A number of those prospective investors ultimately invested in OGR.

34. Williamson also used his own Cartesian valuation in the quarterly reports that he sent to then-existing investors for the third quarter of 2009 (sent January 5, 2010), and for the year ended December 31, 2009 (sent May 18, 2010). As Williamson knew or recklessly disregarded, those quarterly reports contained the same materially false statement that appeared in the pitch books (described in paragraph 31 above). At least one existing OGR investor increased its OGR investment after receiving a quarterly report containing the materially false statement.

35. The following chart compares OGR's IRR figures reported for Cartesian and for OGR as a whole – in its pitch books and quarterly reports from on or about October 22, 2009 through June 2010 – with the IRR that would have been reported had Williamson used Cartesian Capital's cost valuation of Fondul (per the statement contained in those disclosures), rather than his own par valuation:

	IRR of OGR Cartesian Investment		**Total OGR IRR**	
	OGR-Reported Cartesian IRR	Cartesian IRR Using Cartesian Valuation	OGR-Reported Total IRR	OGR IRR Using Cartesian Valuation
2Q2009	67.0%	-1.0%	38.3%	3.8%
3Q2009	53.5%	1.5%	31.8%	5.7%
4Q2009	37.8%	14.6%	21.0%	9.8%

36. In May 2010, Williamson approved a modification of the false statement in the OGR pitch book, but the modified statement was at least as misleading as the prior version, if not more so. The revised statement read:

> Net Asset Values are based on the underlying managers' estimated values as of 12/31/2009. However, the Net Asset Value for Fondul Real Asset Fund[2] is based on the 9/30/2009 valuation, as the 12/31/2009 valuation has not yet been provided by the underlying manager.

37. Williamson knew or recklessly disregarded that the May 2010 revised statement was false and misleading because the September 30, 2009 valuation was Williamson's – not

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[2] By that time, Cartesian's name had been changed to "Fondul Real Asset Fund."

tesian Capital's – and because the revised statement implied that OGR had been using Cartesian Capital's valuations all along (and that OGR would be incorporating Cartesian Capital's December 31, 2009 valuation). In fact, when the statement appeared in the pitch book, Williamson had not used the Cartesian Capital valuation in seven months. At least one prospective investor who received the May 2010 pitch book later invested in OGR.

G. Additional False Statements Concerning OGR's Valuation

38. In October and November 2009, Williamson made, or caused other OPCO employees to make, a number of additional materially false statements – to both OGR investors and prospective investors and consultants – related to his decision to increase the reported value of OGR's Cartesian investment.

October 25, 2009 Email

39. On October 25, 2009, Williamson emailed an OPCO Executive Director and registered representative ("Broker A") the updated OGR pitch book containing the 38% IRR figure and false statement described above. As Williamson knew at the time, Broker A was about to make an OGR presentation to an important consultant. In his email, Williamson made the following false and misleading statement:

> Big change is the valuation of Fondul – still valued at a discount to par but marked up b/c we now have Franklin Tempalton [*sic*] working on some near term liquidity options.

40. As Williamson knew or recklessly disregarded at the time, his October 25, 2009 email was false and misleading because OGR no longer valued Fondul at a "discount" to par; rather, OGR valued Fondul at par (1 RON per share). Furthermore, contrary to Williamson's email, the "marked up" value of Fondul was due to Williamson's decision to increase Fondul's reported value from cost to par.

October 26, 2009 RFI

41. On or about October 26, 2009, Williamson approved a response to a request for information ("RFI") from a consultant concerning OGR, which included the revised OGR pitch book (with the 38.3% IRR figure). The RFI response misleadingly stated that "[OGR's] underlying managers are required to conduct FAS 157 compliant independent audits annually and typically conduct third party FAS 157 valuations quarterly." As Williamson knew or recklessly disregarded, the RFI response was misleading because it falsely implied that OGR's reported Cartesian valuation came from Cartesian Capital and had been "audited." In fact, the reported valuation came from Williamson and was unaudited.

October 26, 2009 Email

42. On October 26, 2009, Williamson caused an OAM vice president and head of business development ("OAM VP") to send an additional false email. The OAM VP emailed the revised June 30 pitch book (with the 38% IRR figure) to a contact attempting to introduce OGR to overseas investors (and copied Williamson on that email). The OAM VP based the text of the email on information that Williamson had provided. The email falsely and misleadingly stated:

> We have updated the presentation as a result of recent increased performance of our underlying managers (particularly Cartesian Investors A/Pangea One investments).

43. As Williamson knew or recklessly disregarded at the time, the October 26, 2009 email was false because the "updated presentation" was not the result of "recent increased performance" of Cartesian or Pangaea but, rather, the result of Williamson's decision to increase Cartesian's (and, consequently, OGR's) reported value as of June 30, 2009.

October 29, 2009 Email

44. On October 29, 2009, Williamson caused Broker A to email similar and additional false statements to a consultant who was analyzing OGR for its clients. The day before, the consultant had emailed Broker A several questions concerning OGR, including a request for "a little color on the differences in [OGR's] IRR between 12/31/08 and 6/30/09? It [illegible]ears as though you've marked up your position, showing a 12.5% net IRR rather than a [illegible]tive 9-10% as of 12/31/09 [sic]." Broker A forwarded the consultant's request to Williamson. The next day, October 29, Williamson emailed Broker A a response to send the consultant, which included the following false and misleading language:

> Differences in IRR between 12/31/08 and 6/30/09
>
> Our IRR calculations are all derived from the underlying managers and their third party valuation firms. We review the valuations with our independent auditors primarily for material changes in valuation and the methodology used to derive the valuation (i.e., is it in compliance with FAS 157 guidelines).
>
> As of 6/30/09, OGR's had two underlying funds that were written up by their 3rd party evaluation firms (Fondul and Tripod).
>
> - Fondul was written up to approximately 75% of the par value of the investment due to its continued performance in 2009. This valuation is still only approximately 65-70% of the underlying assets market value.

45. At the time that Williamson emailed Broker A the information set forth in the preceding paragraph, he knew or recklessly disregarded that it was false and misleading because he knew or recklessly disregarded that: (i) OGR's IRR calculations were not "all derived from [illegible]erlying managers' calculations and their third party valuation firms"; rather, they were

ived in part from Williamson's own valuation of Cartesian; (ii) Williamson's Cartesian valuation was not reviewed by an auditor; (iii) Williamson increased Fondul's value not to 75% of par value but, rather, to 100% of par value; and (iv) Williamson did not increase Fondul's reported value "due to its continued performance in 2009" but, rather, due to his own unilateral decision to increase it.

46. On October 29, Broker A responded by email to the consultant's October 28 email, including in his email the false information that Williamson had given him (and Broker A copied Williamson on his email). At least one of that consultant's clients invested in OGR after October 29, 2009.

47. On November 5, 2009, Broker A emailed an OGR presentation to a second consulting firm (which advised a fund that later invested in OGR). In his cover email, relying on the same false language that Williamson had provided to him on October 29, Broker A made virtually identical false statements to the second consulting firm:

> You will notice on pg. 12 of our presentation (attached) that as of 6/30/2009, the Cartesian Fund (story below) and Tripod have been written up by their 3rd party evaluation firms - contributing to the early performance of [OGR] (38.3% IRR)
>
> - Fondul was written up to approximately 75% of the par value of the investment due to its continued performance in 2009. This valuation is still only approximately 65-70% of the underlying assets market value.

November 5, 2009 RFI

48. On or about November 5, 2009, Williamson reviewed and approved a response to another RFI concerning OGR, which included the revised OGR pitch book. The November 5 RFI response misleadingly stated:

> [W]e require our underlying fund managers to utilize third party valuation firms that provide valuations of the respective portfolios in accordance with FASB 157. These valuations are then reviewed by their respective independent auditors. . . .

49. As Williamson knew or recklessly disregarded at the time, the November 5 RFI response, like the October 26 RFI response, falsely implied that OGR's reported Cartesian valuation came from Cartesian Capital and had been "audited."

November 20 and 24, 2009 Emails

50. On November 20, 2009, Williamson caused his team to send false and misleading information to a consultant for an existing OGR investor, to hide from the consultant the fact that Williamson had raised Cartesian's reported valuation (and, consequently, OGR's reported IRR). On November 17, 2009, the consultant had emailed Broker A "requesting a schedule of cash and valuations from all of the underlying managers." On November 19, Broker A

warded the email to an analyst in Williamson's team, asking, "Can you provide me this info ..." On Friday, November 20, the analyst forwarded the request to Williamson, asking him whether, in response, "to include the updated Fondul valuation." Williamson responded, "Yes. Include the updated valuation." Later that day, at Williamson's direction, the analyst emailed Broker A (and copied Williamson) two charts, which included OGR's updated IRR figures (including the 38% total IRR figure). The first chart also included the following false and misleading footnote, which Williamson drafted and/or approved and directed his analyst to send:

> [OGR] received revised Q2 2009 valuation information for [Cartesian] post distribution of the quarterly report. Revised valuation information reflected above.

51. As Williamson knew or recklessly disregarded at the time, the information that the analyst sent to Broker A on November 20 was false and misleading because it did not include the "underlying managers" Cartesian valuation (as the consultant had requested) but, rather, Williamson's own valuation. As Williamson also knew or recklessly disregarded, the footnote above was false and misleading because it stated, or at least implied, that OGR had received the new June 30, 2009 Cartesian "revised" valuation from Cartesian Capital, rather than Williamson, and because, in fact, OAM had not received any "revised" valuation information for the June 30, 2009 quarter from anyone.

52. On Tuesday, November 24, the analyst on Williamson's team emailed the same rts that she had sent Broker A the previous Friday, November 20 – in a slightly revised hat – directly to the consultant (and copied Broker A).

H. Williamson and OAM Touted OGR's Increased Reported IRR to Prospective Investors

53. As Williamson admitted in testimony before the Division, OGR's performance mattered to his team's efforts to market OGR, and OGR's performance was at least part of prospective OGR investors' evaluations regarding whether to invest. Indeed, from at least November 2009 through June 2010, in their continuous efforts to market OGR to prospective investors, Williamson and his team repeatedly highlighted OGR's performance and, in particular, its 38% IRR.

54. For example, from November 16-24, 2009, an analyst in Williamson's team (at Williamson's direction) sent a series of at least eighteen similar emails pitching OGR to potential investors and/or consultants. Those emails prominently stated that:

> [OGR's] portfolio is currently valued at 1.3x cost and has generated a 38% IRR, all of which new investors will participate in. In comparison, the benchmark resource indices are down over 60% since inception.

55. On December 14, 2009, Williamson emailed an OGR presentation to a prospective investor, with a cover email also emphasizing OGR's 38% IRR:

> Our ability to select such managers and dissect their down-side price hedging strategies sets us apart from our peers—this is illustrated by our performance. OGR's IRR 38.3% to date v. liquid benchmarks which are down over 50%.

56. Williamson also approved similar language drafted by members of his team for use in soliciting investors. For example, in December 2009 he approved marketing emails drafted by the OAM VP touting OGR:

> Continued strong Fund performance of greater than 30% IRR (vs. -11% Cambridge top quartile benchmark).

57. On March 8, 2010, Williamson emailed another prospective investor, touting OGR's IRR performance:

> Over the last 18 months in our various meetings you have had the opportunity to watch us construct our portfolio and see its subsequent performance. Returns continue to be strong, with new investors getting to participate in our existing gains (31% IRR) – which will essentially mitigate or eliminate any J curve.[3]

58. On April 19, 2010, Williamson again emailed a prospective investor, touting [redacted]R's performance:

> You have very good visibility into the make up of our portfolio and also the ability to participate in the past positive performance (Q3 Value 1.2x cost). This performance, while no guarantee, should provide you the opportunity to avoid a J curve and show positive performance in the fund upon your commitment. It may also serve to effectively eliminate the costs associated with a fund of funds.

59. Also important to prospective investors was the source of OGR's valuations of its underlying funds, as such information permitted prospective investors properly to understand and evaluate the valuation methodology used. Indeed, it was particularly important for prospective investors to understand that, beginning in late October 2009, Williamson began to use a materially higher valuation for Cartesian than Cartesian Capital's valuation. Accurate reporting of this divergence from Cartesian Capital's valuation was necessary to permit prospective investors to compare and evaluate for themselves the relative merits of the two different valuations.

[redacted] In private equity funds, the "J curve" effect occurs when a fund experiences negative returns during the first several years.

Violations

60. As a result of the conduct described above, Williamson 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.

61. As a result of the conduct described above, Williamson 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.

62. As a result of the conduct described above, Williamson willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibits making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading, to any investor or prospective investor in a pooled investment vehicle, and prohibits any fraudulent, deceptive or manipulative act, practice, or course of business by an investment adviser with respect to any investor or prospective investor in a pooled investment vehicle.

63. In the alternative, as a result of and through Williamson's conduct described above, OAM and OAIM violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and Williamson willfully aided and abetted and caused OAM's and OAIM's violations of those provisions.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement 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 Section 203 of the Advisers Act;

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 Section 9 of the Investment Company Act; and

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

IV.

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

IT IS FURTHER ORDERED that 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 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

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70239 / August 21, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3653 / August 21, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30655 / August 21, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15433

In the Matter of **CHARIOT ADVISORS, LLC** **and** **ELLIOTT L. SHIFMAN,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 15(b)(6) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Chariot Advisors, LLC ("Chariot Advisors") and Elliott L. Shifman ("Shifman") (collectively, the "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

This proceeding relates to certain misrepresentations and omissions of material fact about a proposed investment strategy made by a registered investment adviser, Chariot Advisors, and its control person, Elliott L. Shifman, in connection with the process under Section 15(c) of the Investment Company Act by which Chariot Advisors obtained the approval to be the investment adviser of a registered fund, the Chariot Absolute Return Currency Portfolio (the "Chariot Fund" or "Fund").

Under Section 15(c) of the Investment Company Act, a registered fund's board of directors is required annually to evaluate and approve the fund's advisory agreement, and the fund's adviser is required initially, and thereafter annually, to provide the board with information reasonably necessary to make that evaluation (hereafter, the "15(c) process"). In December 2008 and again in May 2009, during the Chariot Fund's 15(c) process, Shifman, acting on behalf of Chariot Advisors, misrepresented Chariot Advisors's ability to implement the investment strategy Chariot Advisors proposed for the Chariot Fund—namely, Chariot Advisors's ability to conduct algorithmic currency trading—and, as a result, misled the Fund's board about the nature, extent, and quality of services that Chariot Advisors could provide. In fact, at the time of Shifman's representations to the Board, Chariot Advisors had not devised or otherwise possessed any algorithms or computer models capable of engaging in the currency trading that Shifman described during the 15(c) process. Moreover, after the Fund launched in July 2009, Chariot Advisors initially did not use an algorithm to perform the Fund's currency trading as represented to the Fund's Board, but instead hired an individual trader who was allowed to use discretion on trade selection and execution. Respondents' misconduct also led directly to misrepresentations and omissions in the Chariot Fund's registration statement and prospectus filed with the Commission. As a result, Respondents violated Sections 15(c) and 34(b) of the Investment Company Act, and Sections 206(1) and 206(2) of the Advisers Act, and Chariot Advisors violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

RESPONDENTS

1. Chariot Advisors has been registered with the Commission as an investment adviser since September 2008. Between July 2009 and August 2011, Chariot Advisors was the investment adviser to the Chariot Fund, a registered open-end investment company, which was a series of the Northern Lights Variable Trust ("Northern Lights"). Chariot Advisors is based in Cary, North Carolina.

2. Elliott L. Shifman was the sole owner and operator of Chariot Advisors from its founding in September 2008 until June 30, 2009. Trained as an actuary, Shifman is also the founder and principal of Outer Banks Financial, LLC, now known as OBF, LLC ("Outer Banks"), an unregistered entity through which he develops and markets variable annuities and resells investment signals. He is a registered representative associated with SummitAlliance Securities, LLC ("SummitAlliance"), a registered broker-dealer, and holds [illegible]ies 6 and 63 licenses. Shifman, 48 years of age, is a resident of Raleigh, North Carolina.

OTHER RELEVANT ENTITIES

3. Northern Lights is registered with the Commission as an open-end series management investment company. Organized as a Delaware statutory trust headquartered in Omaha, Nebraska, Northern Lights serves as an umbrella to a series of registered funds, providing to those funds turnkey services, including fund governance through the Northern Lights Board of Trustees ("Northern Lights Board" or "Board"). Between December 2008 and August 2011, the Chariot Fund was a series of Northern Lights and the Northern Lights Board served as the Chariot Fund's board.

4. Chariot Fund was a registered investment company and a series of the Northern Lights from June 30, 2009 until it was liquidated on August 31, 2011.

FORMATION OF CHARIOT ADVISORS

5. In 2006, Shifman developed for Midland National Life Insurance Company ("Midland") two variable annuities, called the Vector I and II, which he sold to investors through Outer Banks and SummitAlliance. Each Vector series allowed annuitants to invest their principal in various sub-accounts.

6. In September 2008, Shifman founded Chariot Advisors as a registered investment adviser. Thereafter, Chariot Advisors offered Vector annuity investors various risk-based models that allocated invested funds among the various sub-accounts. Chariot Advisors developed these models by combining trading signals that it purchased from several independent technical analysts.

7. Shortly after founding Chariot Advisors, Shifman began developing the Chariot Fund as a mutual fund that would be offered to investors in the Vector I and II variable annuities.

8. Chariot Fund's initial investment objective was to achieve absolute positive returns in all market cycles by investing approximately 80% of the Fund's assets under management in short-term fixed income securities and using the remaining 20% of the assets under management to engage in algorithmic currency trading.

CREATION OF THE CHARIOT FUND

9. In late 2008, Shifman approached Northern Lights with a request that it create the Chariot Fund as a series of Northern Lights, and approve Chariot Advisors as the new Fund's adviser.

10. On November 5, 2008, Shifman submitted responses to a new fund questionnaire to Northern Lights's counsel in which he indicated that the proposed fund would allocate 20% of its assets to currency trading, while investing the remaining 80% invested in fixed income securities.

11. On November 13, 2008, counsel for the Board of Northern Lights ("Board") requested in a letter certain information from Shifman for the Board's consideration of Chariot's proposed advisory contract at the Board's upcoming meeting scheduled for December 15, 2008.

12. In connection with this request, counsel for the Board told Shifman that this information was needed pursuant to Section 15(c) of the Investment Company Act, which required that the Board request, and that Chariot Advisors provide, all information that is reasonably necessary in connection with the decision to approve the advisory agreement between Chariot Advisors and the Chariot Fund.

13. Shifman responded to the Board in writing and prepared a PowerPoint presentation, which he made to the Board at its December 15, 2008 meeting. In the written submission, Shifman described the proposed new fund as "provid[ing] a currency arbitrage overlay on top of fixed income securities. The program is algorithmic in nature and searches for arbitrage opportunities on currency's [sic] in different markets." Shifman also indicated that an appropriate benchmark for the new fund's performance would be the S&P 500 Index.

14. Shifman's December 15, 2008 PowerPoint presentation to the Board gave further details on the Chariot Fund's proposed investment methodology. It stated that the Fund "will be a currency overlay product" and will "add[] 'alpha' by trading a[n] . . . algorithm" similar to one already used by an unrelated third party to trade the assets of a separate hedge fund Shifman also controlled.

15. The PowerPoint further stated that, by using this methodology, the Fund would be a "byproduct of extensive research of recent changes in FX market structure due to the adaptation of algorithmic and high frequency trading."

16. The PowerPoint then listed bullet points describing what Shifman described as "competitive" features of the Fund based on its use of algorithmic trading. These included, among others: "(i) High Frequency Algorithmic Trading enables [Chariot Advisors] to seek out untapped sources of alpha while controlling drawdowns; (ii) Algorithmic trading models allow 24/5.5 access to the markets extending trading opportunities and minimizing emotions associated with non-systematic trading; (iii)

Dynamic strategy model automatically adjusts trading behavior of sub-strategies to exploit current market conditions and volatility; and (iv) Intelligent execution Logic ensures best execution with minimum slippage." In return for these services, Shifman proposed that Chariot Advisors charge the Chariot Fund a 1.00% advisory fee on assets under management, plus a 0.60% distribution fee.

17. Board records of its December 15, 2008 meeting confirm that Shifman's representations in person before the Board were substantially similar to what he set forth in both the December 15(c) submission and his PowerPoint presentation. Those records indicate, among other things, that Shifman told the Board that the investment objective of the Chariot Fund is to seek consistent positive absolute returns through various market cycles and that Chariot Advisors would achieve this investment objective through two complementary strategies, namely, by investing primarily in short-term high quality fixed income securities and by engaging in proprietary foreign currency arbitrage. According to the Board records, Shifman represented that Chariot Advisors's currency trading strategy involves a computer model and algorithm that permit Chariot to make split-second trades and take advantage of currency arbitrage opportunities.

18. Following Shifman's presentation, the Board approved the Chariot Fund as a series of Northern Lights. It further concluded that Chariot Advisors's proposed management fee was acceptable in light of the quality of the services the Chariot Fund expected to receive from Chariot Advisors, and consequently approved the Fund's advisory agreement with Chariot Advisors.

TRANSFER OF CHARIOT ADVISORS

19. After the Northern Lights Board approved the Chariot Fund and its advisory agreement with Chariot Advisors but before the Fund launched, Shifman took steps to sell Chariot Advisors. On May 18, 2009, Shifman entered an agreement to transfer ownership of Chariot Advisors, effective June 30, 2009.

20. The pending change of control of Chariot Advisors prompted the Board to reconsider Chariot Advisors's advisory contract with the Fund. At the Board's request, Shifman made a second 15(c) submission on May 26, 2009.

21. The second 15(c) submission contained essentially the same claims about Chariot Advisors and the Chariot Fund that Shifman advanced in the December 15(c) submission except that in the second written submission Shifman now stated that "[t]he Fund invests in 80% diversified Treasuries or other AAA securities and currency." Shifman also proposed that Chariot Advisors charge the Fund a 1.50% advisory fee on assets under management and a 0.40% distribution fee, justifying the increase in the advisory fee by representing that the Fund's investment strategy required more work to implement than he had earlier anticipated. Additionally, the second 15(c) submission explained that, with the change of control of Chariot Advisors, the new owner rather than Shifman would operate Chariot Advisors and manage the Fund.

22. With the second 15(c) submission, Chariot Advisors also provided to the Board a proposed prospectus for a proposed mutual fund for which Shifman was attempting to obtain the approval of the Northern Lights Board. As described in the proposed prospectus, the envisioned mutual fund was to be advised by Chariot Advisors and have the same investment strategy as the Chariot Fund. The proposed prospectus also misrepresented Chariot's ability to engage in algorithmic currency trading. The prospectus stated:

> Electronic and algorithmic trading have dramatically changed many of the traditional assumptions and processes in the currency markets. The adviser believes that currency markets are rarely efficient in the short-term, and that it is possible to generate excess returns by exploiting various short-term structural inefficiencies and non-random price action in the FX market. Using high frequency market data, the adviser has created models of the FX market that it believes are able to analyze the price formation process of exchange rates in real-time.

23. As part of the second 15(c) submission, Shifman prepared and presented to the Northern Lights Board at its May 2009 meeting, a PowerPoint presentation substantially similar to the PowerPoint used at the December 2008 meeting. Among other things, the PowerPoint contained essentially the same claims as the December 2008 submission concerning the competitive benefits of algorithmic trading.

MISREPRESENTATIONS

24. Contrary to what Shifman told the Board, Chariot Advisors did not have an algorithm or model capable of conducting the currency trading that he described for the Chariot Fund.

25. The ability to conduct currency trading for the Chariot Fund was particularly significant for the Fund's performance because, in the absence of an operating history by which to judge the Fund's performance, the Board focused instead on Chariot Advisors's reliance on models in evaluating the advisory contract.

26. The Chariot Fund's ability to conduct currency trading was also important because the Fund's performance was benchmarked to the S&P 500 Index. Shifman believed that for the Fund to achieve a return comparable to that which he expected of the S&P 500 Index while having 80% of the Fund's assets invested in fixed income securities meant that the Fund's currency trading needed to achieve 25% to 30% return. That Chariot Advisors did not have an algorithm or model capable of achieving such a return was never disclosed to the Board or investors in the Fund.

27. On June 5, 2009, the Chariot Fund filed with the Commission a [redacted]stration statement and prospectus on Form N-1A that contained Shifman's claims,

among other things, that the Chariot Fund would use quantitative, proprietary trading models for currency trading. Specifically, the prospectus stated:

> The Advisor will seek profits by forecasting short-term movements in exchange rates and changes in exchange rate volatility aided by quantitative models. . . . The Advisor identifies potential foreign currency trading investment opportunities by using proprietary medium-frequency trading models that the Advisor believes will produce superior risk-adjusted returns in a variety of market conditions. The proprietary currency trading models use statistical analysis to uncover expected profitable trading opportunities. Large volumes of trading statistics are continually captured, monitored and evaluated before trading occurs. The models seek to identify pricing inefficiencies and other non-random price movements that signal potentially profitable trading opportunities. The strategy attempts to profit from short-term pricing fluctuations using medium-frequency trading rather than from longer-term price trends.

28. The registration statement and prospectus were prepared and filed based on information provided by Shifman, who reviewed the registration statement and prospectus before they were filed with the Commission. On June 30, 2009, the Chariot Fund's Registration Statement and Prospectus became effective. Also on June 30, 2009, Chariot legally changed ownership to its new owner.

29. On July 15, 2009, the Chariot Fund was launched. Chariot Advisors funded the Chariot Fund by reallocating approximately $17 million in assets in clients' annuities to the Fund, which was a sub-account on Midland's variable annuity platform.

30. Because Chariot Advisors possessed no algorithm, for at least the first two months after the Fund's launch, currency trading for the Fund was under the control of an individual trader who was not using an algorithm. Shifman had interviewed the trader prior to her being hired and knew that, for trading, she used a technical analysis, rules-based approach that combined a few market indicators with her own intuition.

31. The trader traded currencies for the Fund until September 30, 2009 when she was terminated due to poor trading performance. Subsequently, Chariot Advisors employed a third party who utilized a computer algorithm to conduct currency trading on behalf of the Chariot Fund.

VIOLATIONS

32. As a result of the conduct described above, Chariot Advisors willfully ...lated Section 15(c) of the Investment Company Act, which makes it the duty of an

investment adviser to a registered investment company to furnish such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser to such company.

33. As a result of the conduct described above, Shifman willfully aided and abetted and caused Chariot Advisors's violations of Section 15(c) of the Investment Company Act.

34. As a result of the conduct described above, Chariot Advisors and Shifman willfully aided and abetted and caused the Chariot Fund's violations of Section 34(b) of the Investment Company Act, which makes it unlawful for any person to make any untrue statement of a material fact in any registration statement, or other document filed or transmitted pursuant to the Investment Company Act, or for any person so filing or transmitting to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

35. As a result of the conduct described above, Chariot Advisors willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-8 promulgated thereunder, which prohibits any investment adviser to a pooled investment vehicle from making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle.

36. As a result of the conduct described above, Shifman willfully aided and abetted and caused Chariot Advisor's violations of Sections 206(1) and 206(2) of the Advisers 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 Chariot Advisors pursuant to Section 203(e) of the Advisers Act, and against Shifman pursuant to Section 203(f) of the Advisers Act, including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act including, but not

limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act;

D. Whether, pursuant to Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 15(c) and 34(b) of the Investment Company Act and Sections 206(1) and 206(2) of the Advisers Act and, as to Chariot Advisors, Section 206(4) of the Advisers Act, and Rule 206(4)-8 promulgated thereunder, whether Respondents should be ordered to pay a civil penalty pursuant to Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act, whether Respondent Shifman should be ordered to pay a civil penalty pursuant to Section 21B of the Exchange Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 203 of the Advisers Act, and Section 9 of the Investment Company Act; and

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

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

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

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

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually

related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9444 / August 22, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15437

In the Matter of

THE REGISTRATION STATEMENT OF COUNSELING INTERNATIONAL, INC.

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND ISSUING STOP ORDER

I.

A. On August 8, 2012, Counseling International, Inc. ("Counseling International") filed a registration statement in connection with an initial public offering of 764,000 shares of common stock. The registration statement was amended three times, most recently on January 9, 2013. The registration statement has not become effective.

B. The Commission now deems it appropriate and in the public interest that proceedings pursuant to Section 8(d) of the Securities Act be, and they hereby are, instituted to determine whether a stop order should issue suspending the effectiveness of Counseling International's registration statement.

II.

In anticipation of the institution of these proceedings, Counseling International 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

dings, 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 Instituting Proceedings Pursuant to Section 8(d) of the Securities Act of 1933, Making Findings, and Issuing Stop Order ("Order"), as set forth below.

III.

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

Background

1. On August 8, 2012, Counseling International filed a Form S-1 registration statement in connection with an initial public offering of 764,000 shares of common stock (the "Registration Statement"). The Registration Statement was amended on September 25, 2012, November 19, 2012, December 19, 2012, and January 9, 2013.

2. The Counseling International registration statement includes untrue statements of material facts and omits to state material facts necessary to make the statements therein not misleading. Among other things, the registration statement fails to disclose the identity of control persons and promoters of Counseling International and the amendments to the Registration Statement, dated December 19, 2012 and January 9, 2013, falsely describe the circumstances of the departure of Counseling International's former chief executive officer.

Undertaking

3. Respondent has undertaken to:

For a period of five years from the date of this Order, Respondent shall not engage in or participate in any unregistered offering of securities conducted in reliance on Rule 506 of Regulation D (17 C.F.R. § 230.506), including by occupying any position with, ownership of, or relationship to the issuer enumerated in 17 C.F.R. § 230.506(d)(1) (adopted by the Commission in Release No. 33-9414).

In determining whether to accept the Offer, the Commission has considered this undertaking.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to issue a stop order suspending the effectiveness of the registration statement agreed to in Counseling International's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 8(d) of the Securities Act that the effectiveness of the registration statement filed by Counseling International be, and hereby is, suspended.

This Order shall be served on Counseling International by certified mail forthwith.

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. 3655 / August 27, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30675 / August 27, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15440

In the Matter of **CARL D. JOHNS** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Carl D. Johns ("Johns" or "Respondent").

II.

In anticipation of the institution of these proceedings, Johns 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, which are admitted, Johns consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

Respondent

1. Respondent Carl D. Johns, 49 years old, is a resident of Louisville, Colorado. From January 1999 to January 2011, Johns was employed in various capacities by Boulder Investment Advisers, LLC ("BIA"), including assistant portfolio manager. Johns, on behalf of BIA and an affiliated adviser, Rocky Mountain Advisers, LLC ("RMA," together with BIA, the "Advisers"), assisted in the management of the portfolios for, and served as an officer of, several registered investment companies. On January 9, 2011, Johns was placed on administrative leave and, on January 12, 2011, he resigned from his positions with the Advisers and the Boulder Funds (as defined below).

Other Relevant Entities

2. BIA and RMA maintain their principal places of business in Boulder, Colorado. The Advisers are each registered with the Commission. The Advisers provided investment advisory services to four affiliated, closed-ended management investment companies registered with the Commission (collectively, the "Boulder Funds"). As of December 31, 2010, the Boulder Funds had approximately $900 million in combined net assets.

Background

3. While employed by the Advisers, Johns engaged in active personal trading in securities, including securities of companies held or to be acquired by the Boulder Funds. From 2006 through 2010, Johns executed approximately 850 personal securities transactions. In many instances, Johns held the securities for only a few days.

4. Rule 17j-1(d) under the Investment Company Act required Johns to submit quarterly reports of his personal securities transactions and annual reports of his securities holdings. In addition, the Advisers' and the Boulder Funds' joint Code of Ethics ("Code of Ethics"), applicable to Johns, contained further restrictions on when and how Johns could trade in securities. The Code of Ethics (i) required that all securities transactions be pre-cleared by the chief compliance officer, subject to certain limited exceptions, (ii) restricted trading in securities that the Boulder Funds were buying or selling, and (iii) required annual certification of compliance with the Code of Ethics. During the relevant period, Johns certified annually that he received, read, and understood the Code of Ethics.

5. From 2006 through 2010, Johns failed to comply with the Commission's reporting requirements and the Code of Ethics. Johns did not pre-clear or report approximately 640 of his trades, including at least 91 trades in securities held or to be acquired by the fund, as that term is defined in Rule 17(j)-1(a)(10), and 14 trades that did not comply with the Code of Ethics' restrictions on trading in securities that the Boulder Funds were buying or selling.

6. To conceal his personal securities trading, Johns submitted false quarterly and annual reports and falsely certified his annual compliance with the Code of Ethics. Johns' efforts to conceal his trading from the Advisers also included physically altering brokerage statements, trade confirmations, and pre-clearance approvals that were then submitted to the Advisers. For example:

- Johns created several documents that purported to be pre-clearance requests approved by the Advisers' and the Boulder Funds' chief compliance officer ("CCO"), but that were not actually reviewed or approved by the CCO. Johns created these false pre-clearance approvals to cover-up instances in which his year-end annual report contained securities transactions that were not pre-cleared.

- Johns altered trade confirmations submitted to the Advisers by backdating the dates of the securities transactions. Johns backdated the trade confirmations to make it falsely appear as though pre-clearances were granted in advance of the transactions.

- Johns manually deleted securities holdings listed on his brokerage statements before submitting them to the Advisers. Johns did this to avoid disclosing securities purchases that were not pre-cleared.

7. In late 2010, the CCO identified certain irregularities in the documents Johns submitted to the Advisers detailing his personal securities transactions. Based on those irregularities, the CCO made certain inquiries of Johns to ascertain his full compliance with the Code of Ethics.

8. In response, Johns misled the CCO. Johns falsely told the CCO that certain of his brokerage accounts were closed, when in fact they remained open and reflected trades that were not pre-cleared as required by the Code of Ethics. Johns also accessed the hard copy file of his previously submitted brokerage statements and physically altered them to create the false impression that Johns' trading was in compliance with the Code of Ethics.

Violations

9. Section 17(j) of the Investment Company Act prohibits persons affiliated with a registered investment company (a "fund") from engaging in any acts, practices, or courses of business in connection with the purchase or sale of a security held or to be acquired by the fund that violate the Commission's rules adopted to prevent fraud. Rule 17j-1(b) prohibits persons affiliated with a fund from, in connection with the purchase or sale, directly or indirectly, of a security held or to be acquired by the fund, employing devices, schemes, or artifices to defraud a fund, making untrue statements of a material fact to the fund or omitting to state material facts necessary in order to make the statements made to the fund, in light of the circumstances under which they were or are made, not misleading, engaging in acts, practices or courses of business which operate or would operate as a fraud or deceit on the fund, or engaging in manipulative practices with respect to the fund. Rule 17j-1(d) further requires that Access Persons, which includes persons employed by an investment adviser who have access to a fund's portfolio, must

timely submit reports regarding personal securities trading in covered securities, as that term is defined in Rule 17j-1(a)(4).

10. As a result of the conduct described above, Johns willfully violated Section 17(j) of the Investment Company Act and Rules 17j-1(b) and 17j-1(d) thereunder. Johns (i) failed to pre-clear or report hundreds of his transactions, including transactions in securities held or to be acquired by the Boulder Funds and covered securities that did not comply with the Code of Ethics' restrictions on trading in securities that the Boulder Funds were buying or selling, (ii) submitted false quarterly and annual reports, (iii) certified falsely his annual compliance with the Code of Ethics, and (iv) concealed his improper trading by physically altering documents submitted to the Advisers.

11. Rule 38a-1(c) under the Investment Company Act prohibits an officer, director, or employee of a fund, or its investment adviser, from, directly or indirectly, taking any action to coerce, manipulate, mislead, or fraudulently influence the fund's chief compliance officer in the performance of his or her duties under the Investment Company Act.

12. As a result of the conduct described above, Johns willfully violated Rule 38a-1(c) under the Investment Company Act. Johns misled the Advisers' and Boulder Funds' CCO in the performance of her duties by misrepresenting the status of certain of his brokerage accounts and tampering with the Boulder Funds' compliance files.

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(j) of the Investment Company Act and Rules 17j-1 and 38a-1 promulgated thereunder.

B. 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; 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 five (5) 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, within 20 days of the entry of this Order, pay disgorgement of $231,169 prejudgment interest of $23,889, and a civil money penalty in the amount of $100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. 3717. Payment must be made in one of the following ways: (1) 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 (2) 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 Carl D. Johns 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 Ian S. Karpel, Assistant Regional Director, Division of Enforcement, Denver Regional Office, Securities and Exchange Commission, 1801 California Street, Denver, CO 80202.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Commissioner Piwowar not participating

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70273; File No. 4-631)

August 27, 2013

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Fourth 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 thereunder[2], notice is hereby given that, on July 18, 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") for a proposal to amend the Plan to Address Extraordinary Market Volatility ("Plan").[3] The proposal represents the fourth amendment to the Plan ("Fourth Amendment"), and reflects changes unanimously approved by the Participants. The Fourth Amendment to the Plan proposes to make technical changes to the implementation schedule of the Plan. A copy of

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1 15 U.S.C. 78k-1.

2 17 CFR 242.608.

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

[redacted]he Plan, as proposed to be amended, 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 Fourth 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 [redacted]mit 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]

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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 Price[9] 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 Parameter[10] 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

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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 Bid[11] or National Best Offer[12] 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 pauses[15] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary

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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 centers[16] 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

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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.

esigned to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[19]

The following summarizes the Fourth Amendment to the Plan and the rationale behind those changes:

The Participants propose to amend Section VIII.B of the Plan to establish a new implementation schedule for Phase II of the Plan. The Plan currently provides that six months after the initial date of Plan operations, 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. Because the initial date of Plan operations was April 8, 2013, the Plan currently provides that it shall be fully implemented by October 8, 2013.

The Participants propose to amend Section VIII.B to provide that 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, eight months after the initial date of Plan operations. This will extend the time to fully implement the Plan to December 8, 2013. The Participants propose to make this change to accommodate a longer implementation period for Phase II of the Plan, which is currently scheduled to begin on August 5, 2013, that will separate the implementation of Phase II into two stages. During the first stage of Phase II, the Plan will be rolled out to all NMS Stocks beginning at 9:30 a.m. E.T. and ending at 3:45 p.m. ET each trading day, or fifteen minutes before the close in the case of an early scheduled close. Once this stage is complete, the Participants will extend the time of Plan operations to 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close.

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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).

The Participants believe that this proposed amendment is technical and ministerial in nature because it simply extends the implementation period of the Plan and does not change any substantive elements of the Plan. The proposed modification to the implementation schedule is in response to requests by the securities industry for additional time for systems testing by Participants and the securities industry, particularly around the close.[20] The Participants believe that providing additional time for the Participants and the securities industry to test the manner by which the Plan operates around the close, particularly when there is a trading pause less than five minutes before the scheduled close of trading, is necessary and appropriate in the public interest and for the protection of investors. In addition, the Participants note that they plan to file an additional amendment to the Plan[21] to revise the manner by which the Plan would operate near the close. Specifically, the Participants will be proposing to provide that if a Trading Pause is declared for an NMS Stock within the last ten minutes of trading, the Primary Listing Exchange will not reopen the NMS Stock and will instead attempt to close the NMS Stock using established closing procedures. The Participants believe that the proposal to extend the implementation period is necessary to provide additional time for the amendment to the Plan to go through an appropriate notice and comment period and approval process.

The Participants also propose a technical, non-substantive amendment to Section VIII(A)(3) to fix a typographical error. The amended version of the Plan also includes the

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20 See Letter from T.R. Lazo, Managing Director and Associate General Counsel, SIFMA to John Ramsey, Acting Director, Division of Trading and Markets, Commission, dated July 10, 2013. The Participants noted that SIFMA supports the proposed adjustment to the implementation schedule of Phase II of the Plan. See also Letter from Kimberly Unger, Chief Executive Office and Executive Director, STANY, to Elizabeth M. Murphy, Secretary, Commission, dated July 10, 2013.

21 See Letter from Janet M. McGinness, Executive Vice President & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated July 17, 2013 ("Fifth Amendment"). See also Securities Exchange Act Release No. XXXX (July X, 2013).

evised Appendix A – Schedule 1, which was updated for trading beginning on July 1, 2013. As set forth in Appendix A – Percentage Parameters, the Primary Listing Exchanges update Scheduled 1 to Appendix A semi-annually based on the fiscal year and such updates do not require a Plan amendment.

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.

C. Implementation of Plan

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

D. Development and Implementation Phases

The Plan will be implemented as a one-year pilot program in two Phases, consistent with ection VIII of the Plan: Phase I of Plan implementation began on April 8, 2013 and was completed on May 3, 2013 The Participants currently anticipate that Phase II of Plan implementation will begin on August 5, 2013. Phase II of the Plan may be rolled out to applicable NMS Stocks over a period not to exceed four months and will be in two stages: (1) applying the Plan to all NMS Stocks beginning at 9:30 a.m. ET and ending at 3:45 p.m. ET, or fifteen minutes before the close in the case of an early scheduled close; and (2) extending Plan operations to 4:00 p.m. ET, or earlier in the case of an early scheduled close. Any such roll-out period will be made available in advance of the implementation dates for Phase 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.[22]

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.

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[22] 15 U.S.C. 78k-1(c)(1)(D).

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 individual to represent the Participant as a member of an Operating Committee.[23] 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.[24]

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Fourth 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.

See Section I(J) of the Plan.

17 CFR 242.608.

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 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 Fourth Amendment to the Plan that are filed with the Commission, and all written communications relating to the Fourth 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

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

Table of Contents

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 (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 g 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 [redacted]ies 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 or because the transaction was an odd-lot sized transaction), 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.

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 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.

(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, the Plan shall fully apply to 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 [disseminated] and therefore trading shall not enter a Limit State less than 30 minutes before the end of Regular Trading Hours.

(B) Phase II – Full Implementation

[Six] Eight 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.

(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 July 2013 by each of the parties hereto.

BATS EXCHANGE, INC.

BY:_____

BATS Y-EXCHANGE, INC.

BY:_____

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

BY:_____

CHICAGO STOCK EXCHANGE, INC.

BY:_____

EDGA EXCHANGE, INC.

BY:_____

EDGX EXCHANGE, INC.

BY:_____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

BY:_____

NASDAQ OMX BX, INC.

BY:_____

NASDAQ OMX PHLX LLC

BY:_____

THE NASDAQ STOCK MARKET LLC

BY:_____

NATIONAL STOCK EXCHANGE, INC.

BY:_____

NEW YORK STOCK EXCHANGE LLC

BY:_____

NYSE MKT 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 $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

Ticker	Name	Primary Exchange
AAXJ	iShares MSCI All Country Asia ex Japan Index Fund	NASDAQ GM
ACWI	iShares MSCI ACWI Index Fund	NASDAQ GM
ACWV	iShares MSCI All Country World Minimum Volatility Index Fund	NYSE Arca
ACWX	iShares MSCI ACWI ex US Index Fund	NASDAQ GM
AGG	iShares Core Total US Bond Market ETF	NYSE Arca
AGOL	ETFS Asian Gold Trust	NYSE Arca
AGZ	iShares Barclays Agency Bond Fund	NYSE Arca
ALD	WisdomTree Asia Local Debt Fund	NYSE Arca
AMJ	JPMorgan Alerian MLP Index ETN	NYSE Arca
AMLP	Alerian MLP ETF	NYSE Arca
AMU	ETRACS Alerian MLP Index ETN	NYSE Arca
BAB	PowerShares Build America Bond Portfolio	NYSE Arca
BAL	iPath Dow Jones-UBS Cotton Subindex Total Return Callable ETN	NYSE Arca
BBH	Market Vectors Biotech ETF	NYSE Arca
BDG	PowerShares DB Base Metals Long ETN	NYSE Arca
BFOR	Barron's 400 ETF	NYSE Arca
BIK	SPDR S&P BRIC 40 ETF	NYSE Arca
[illegible]	SPDR Barclays 1-3 Month T-Bill	NYSE Arca
BIV	Vanguard Intermediate-Term Bond ETF	NYSE Arca
BKF	iShares MSCI BRIC Index Fund	NYSE Arca
BKLN	PowerShares Senior Loan Portfolio	NYSE Arca
BLV	Vanguard Long-Term Bond ETF	NYSE Arca
BND	Vanguard Total Bond Market ETF	NYSE Arca
BNDX	Vanguard Total International Bond ETF	NASDAQ GM
BNO	United States Brent Oil Fund LP	NYSE Arca
BOND	Pimco Total Return ETF	NYSE Arca
BOS	PowerShares DB Base Metals Short ETN	NYSE Arca
BRF	Market Vectors Brazil Small-Cap ETF	NYSE Arca
BSJE	Guggenheim BulletShares 2014 High Yield Corporate Bond ETF	NYSE Arca
BSJF	Guggenheim BulletShares 2015 High Yield Corporate Bond ETF	NYSE Arca
BSV	Vanguard Short-Term Bond ETF	NYSE Arca
BWV	iPath CBOE S&P 500 BuyWrite Index ETN	NYSE Arca
BWX	SPDR Barclays International Treasury Bond ETF	NYSE Arca
CEW	WisdomTree Emerging Currency Fund	NYSE Arca
CFT	iShares Barclays Credit Bond Fund	NYSE Arca
CHIQ	Global X China Consumer ETF	NYSE Arca
[illegible]	iShares Barclays Intermediate Credit Bond Fund	NYSE Arca
[illegible]	iShares 10+ Year Credit Bond Fund	NYSE Arca

Ticker	Name	Primary Exchange
CMF	iShares S&P California AMT-Free Municipal Bond Fund	NYSE Arca
CORN	Teucrium Corn Fund	NYSE Arca
CSD	Guggenheim Spin-Off ETF	NYSE Arca
CSJ	iShares Barclays 1-3 Year Credit Bond Fund	NYSE Arca
CUT	Guggenheim Timber ETF	NYSE Arca
CVY	Guggenheim Multi-Asset Income ETF	NYSE Arca
CWB	SPDR Barclays Convertible Securities ETF	NYSE Arca
CWI	SPDR MSCI ACWI ex-US ETF	NYSE Arca
DBA	PowerShares DB Agriculture Fund	NYSE Arca
DBB	PowerShares DB Base Metals Fund	NYSE Arca
DBC	PowerShares DB Commodity Index Tracking Fund	NYSE Arca
DBE	PowerShares DB Energy Fund	NYSE Arca
DBJP	db X-trackers MSCI Japan Hedged Equity Fund	NYSE Arca
DBO	PowerShares DB Oil Fund	NYSE Arca
DBP	PowerShares DB Precious Metals Fund	NYSE Arca
DBV	PowerShares DB G10 Currency Harvest Fund	NYSE Arca
DEM	WisdomTree Emerging Markets Equity Income Fund	NYSE Arca
DES	WisdomTree SmallCap Dividend Fund	NYSE Arca
DFJ	WisdomTree Japan SmallCap Dividend Fund	NYSE Arca
[redacted]L	PowerShares DB Gold Fund	NYSE Arca
[redacted]S	WisdomTree Emerging Markets SmallCap Dividend Fund	NYSE Arca
DGZ	PowerShares DB Gold Short ETN	NYSE Arca
DHS	WisdomTree Equity Income Fund	NYSE Arca
DIA	SPDR Dow Jones Industrial Average ETF Trust	NYSE Arca
DJCI	ETRACS DJ-UBS Commodity Index Total Return ETN	NYSE Arca
DJP	iPath Dow Jones-UBS Commodity Index Total Return ETN	NYSE Arca
DLN	WisdomTree LargeCap Dividend Fund	NYSE Arca
DLS	WisdomTree International SmallCap Dividend Fund	NYSE Arca
DOG	ProShares Short Dow30	NYSE Arca
DON	WisdomTree MidCap Dividend Fund	NYSE Arca
DTN	WisdomTree Dividend Ex-Financials Fund	NYSE Arca
DVY	iShares Dow Jones Select Dividend Index Fund	NYSE Arca
DWX	SPDR S&P International Dividend ETF	NYSE Arca
DXJ	WisdomTree Japan Hedged Equity Fund	NYSE Arca
EBND	SPDR Barclays Emerging Markets Local Bond ETF	NYSE Arca
ECH	iShares MSCI Chile Capped Investable Market Index Fund	NYSE Arca
ECON	EGShares Emerging Markets Consumer ETF	NYSE Arca
EDIV	SPDR S&P Emerging Markets Dividend ETF	NYSE Arca
EDV	Vanguard Extended Duration Treasury ETF	NYSE Arca
[redacted]	iShares MSCI Emerging Markets Index Fund	NYSE Arca
[redacted]X	iShares MSCI Emerging Markets Asia Index	NASDAQ GM

SECURITIES AND EXCHANGE COMMISSION

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

MARY JO WHITE, CHAIR

LUIS A. AGUILAR, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

KARA M. STEIN, COMMISSIONER

MICHAEL S. PIWOWAR, COMMISSIONER

(2 Documents)

Commissioner Piwowar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70203 / August 15, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15422

In the Matter of **REDFIN NETWORK, INC.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate and for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Redfin Network, Inc. ("Respondent" or "Redfin").

II.

After an investigation, the Division of Enforcement alleges that:

RESPONDENT

1. Redfin is a Nevada corporation with offices in Fort Lauderdale, Florida. Respondent has a class of equity securities registered with the Commission pursuant to Section 12(g) of the Exchange Act. As of August 8, 2013, the Respondent's common stock (ticker "RFNN") was quoted on the OTC Link (previously "Pink Sheets") operated by OTC Markets Group, Inc., had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

DELINQUENT FILINGS

2. Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers with classes of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission current and accurate information in periodic reports. Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

3. The Respondent filed its last Form 10-K for the year ended December 31, 2011 on March 30, 2012, and its last Form 10-Q for the quarter ended September 30, 2012 on November 9, 2012. Since then, the Respondent has not filed its required periodic reports.

4. The Respondent is delinquent in the following periodic filings:

Form	Period Ended	Due on or about
10-K	December 31, 2012	March 31, 2013
10-Q	March 31, 2013	May 15, 2011

5. As a result of the conduct described above, the Respondent has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

III.

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

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondent registered pursuant to Section 12 of the Exchange Act.

IV.

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

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

SECURITIES AND EXCHANGE COMMISSION

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

MARY JO WHITE, CHAIR

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

MICHAEL S. PIWOWAR, COMMISSIONER

(2 Documents)

Commissioner Piwowar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

AUG 15 2013

In the Matter of	:	
REDFIN NETWORK, 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 Redfin Network, Inc. ("Redfin") because it has not filed a periodic report since it filed its Form 10-Q for the period ending September 30, 2012, filed on November 9, 2012.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Redfin. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Redfin is suspended for the period from 9:30 a.m. EDT on August 15, 2013, through 11:59 p.m. EDT on August 28, 2013.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

2 of 2

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Ticker	Name	Primary Exchange
EZA	iShares MSCI South Africa Index Fund	NYSE Arca
EZU	iShares MSCI EMU Index Fund	NYSE Arca
FBT	First Trust NYSE Arca Biotechnology Index Fund	NYSE Arca
FCG	First Trust ISE-Revere Natural Gas Index Fund	NYSE Arca
FDL	First Trust Morningstar Dividend Leaders Index	NYSE Arca
FDN	First Trust Dow Jones Internet Index Fund	NYSE Arca
FEM	First Trust Emerging Markets AlphaDEX Fund	NYSE Arca
FEX	First Trust Large Cap Core AlphaDEX Fund	NYSE Arca
FEZ	SPDR EURO STOXX 50 ETF	NYSE Arca
FGD	First Trust DJ Global Select Dividend Index Fund	NYSE Arca
FLOT	iShares Floating Rate Note Fund	NYSE Arca
FLRN	SPDR Barclays Investment Grade Floating Rate ETF	NYSE Arca
FM	iShares MSCI Frontier 100 ETF	NYSE Arca
FNX	First Trust Mid Cap Core AlphaDEX Fund	NYSE Arca
FRI	First Trust S&P REIT Index Fund	NYSE Arca
FTA	First Trust Large Cap Value AlphaDEX Fund	NYSE Arca
FVD	First Trust Value Line Dividend Index Fund	NYSE Arca
FXA	CurrencyShares Australian Dollar Trust	NYSE Arca
FXB	CurrencyShares British Pound Sterling Trust	NYSE Arca
[redacted]C	CurrencyShares Canadian Dollar Trust	NYSE Arca
[redacted]D	First Trust Consumer Discretionary AlphaDEX Fund	NYSE Arca
FXE	CurrencyShares Euro Trust	NYSE Arca
FXF	CurrencyShares Swiss Franc Trust	NYSE Arca
FXG	First Trust Consumer Staples AlphaDEX Fund	NYSE Arca
FXH	First Trust Health Care AlphaDEX Fund	NYSE Arca
FXI	iShares FTSE China 25 Index Fund	NYSE Arca
FXL	First Trust Technology AlphaDEX Fund	NYSE Arca
FXO	First Trust Financial AlphaDEX Fund	NYSE Arca
FXY	CurrencyShares Japanese Yen Trust	NYSE Arca
FXZ	First Trust Materials AlphaDEX Fund	NYSE Arca
GCC	GreenHaven Continuous Commodity Index Fund	NYSE Arca
GDX	Market Vectors Gold Miners ETF	NYSE Arca
GDXJ	Market Vectors Junior Gold Miners ETF	NYSE Arca
GII	SPDR S&P Global Infrastructure ETF	NYSE Arca
GIY	Guggenheim Enhanced Core Bond ETF	NYSE Arca
GLD	SPDR Gold Shares	NYSE Arca
GMF	SPDR S&P Emerging Asia Pacific ETF	NYSE Arca
GMM	SPDR S&P Emerging Markets ETF	NYSE Arca
GMTB	Columbia Core Bond ETF	NYSE Arca
[redacted]	SPDR S&P Global Natural Resources ETF	NYSE Arca
[redacted]	iShares Barclays U.S. Treasury Bond Fund	NYSE Arca

Ticker	Name	Primary Exchange
EEMV	iShares MSCI Emerging Markets Minimum Volatility Index Fund	NYSE Arca
EFA	iShares MSCI EAFE Index Fund	NYSE Arca
EFAV	iShares MSCI EAFE Minimum Volatility Index Fund	NYSE Arca
EFG	iShares MSCI EAFE Growth Index	NYSE Arca
EFV	iShares MSCI EAFE Value Index	NYSE Arca
EFZ	ProShares Short MSCI EAFE	NYSE Arca
EIDO	iSHARES MSCI Indonesia Investable Market Index Fund	NYSE Arca
ELD	WisdomTree Emerging Markets Local Debt Fund	NYSE Arca
ELR	SPDR Dow Jones Large Cap ETF	NYSE Arca
EMB	iShares JPMorgan USD Emerging Markets Bond Fund	NYSE Arca
EMLC	Market Vectors Emerging Markets Local Currency Bond ETF	NYSE Arca
EMM	SPDR Dow Jones Mid Cap ETF	NYSE Arca
ENZL	iShares MSCI New Zealand Capped Investable Market Index Fund	NYSE Arca
EPHE	iShares MSCI Philippines Investable Market Index Fund	NYSE Arca
EPI	WisdomTree India Earnings Fund	NYSE Arca
EPOL	iShares MSCI Poland Capped Investable Market Index Fund	NYSE Arca
EPP	iShares MSCI Pacific ex-Japan Index Fund	NYSE Arca
EPU	iShares MSCI All Peru Capped Index Fund	NYSE Arca
ERUS	iShares MSCI Russia Capped Index Fund	NYSE Arca
[redacted]M	ProShares Short MSCI Emerging Markets	NYSE Arca
[redacted]A	iShares MSCI Australia Index Fund	NYSE Arca
EWC	iShares MSCI Canada Index Fund	NYSE Arca
EWD	iShares MSCI Sweden Index Fund	NYSE Arca
EWG	iShares MSCI Germany Index Fund	NYSE Arca
EWH	iShares MSCI Hong Kong Index Fund	NYSE Arca
EWI	iShares MSCI Italy Capped Index Fund	NYSE Arca
EWJ	iShares MSCI Japan Index Fund	NYSE Arca
EWL	iShares MSCI Switzerland Capped Index Fund	NYSE Arca
EWM	iShares MSCI Malaysia Index Fund	NYSE Arca
EWN	iShares MSCI Netherlands Investable Market Index Fund	NYSE Arca
EWO	iShares MSCI Austria Capped Investable Market Index Fund	NYSE Arca
EWP	iShares MSCI Spain Capped Index Fund	NYSE Arca
EWQ	iShares MSCI France Index Fund	NYSE Arca
EWS	iShares MSCI Singapore Index Fund	NYSE Arca
EWT	iShares MSCI Taiwan Index Fund	NYSE Arca
EWU	iShares MSCI United Kingdom Index Fund	NYSE Arca
EWW	iShares MSCI Mexico Capped Investable Market Index Fund	NYSE Arca
EWX	SPDR S&P Emerging Markets SmallCap ETF	NYSE Arca
EWY	iShares MSCI South Korea Capped Index Fund	NYSE Arca
[redacted]	iShares MSCI Brazil Capped Index Fund	NYSE Arca
[redacted]	iShares S&P Global Industrials Sector Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
GSG	iShares S&P GSCI Commodity Indexed Trust	NYSE Arca
GSP	iPath GSCI Total Return Index ETN	NYSE Arca
GSY	Guggenheim Enhanced Short Duration Bond ETF	NYSE Arca
GUNR	FlexShares Global Upstream Natural Resources Index Fund	NYSE Arca
GVI	iShares Barclays Intermediate Government/Credit Bond Fund	NYSE Arca
GWL	SPDR S&P World ex-US ETF	NYSE Arca
GWX	SPDR S&P International Small Cap ETF	NYSE Arca
GXC	SPDR S&P China ETF	NYSE Arca
GXG	Global X FTSE Colombia 20 ETF	NYSE Arca
HAO	Guggenheim China Small Cap ETF	NYSE Arca
HDGE	Ranger Equity Bear ETF	NYSE Arca
HDV	iShares High Dividend Equity Fund	NYSE Arca
HEDJ	WisdomTree Europe Hedged Equity Fund	NYSE Arca
HUSE	Huntington US Equity Rotation Strategy ETF	NYSE Arca
HYD	Market Vectors High Yield Municipal Index ETF	NYSE Arca
HYG	iShares iBoxx $ High Yield Corporate Bond Fund	NYSE Arca
HYLD	Peritus High Yield ETF	NYSE Arca
HYMB	SPDR Nuveen S&P High Yield Municipal Bond ETF	NYSE Arca
[redacted]YS	PIMCO 0-5 Year High Yield Corporate Bond Index Exchange-Traded Fund	NYSE Arca
[redacted]	iShares Dow Jones US Broker Dealers Index Fund	NYSE Arca
[redacted]AT	iShares Dow Jones US Regional Banks Index Fund	NYSE Arca
IAU	iShares Gold Trust	NYSE Arca
IBB	iShares Nasdaq Biotechnology Index Fund	NASDAQ GM
IBND	SPDR Barclays International Corporate Bond ETF	NYSE Arca
ICF	iShares Cohen & Steers Realty Majors Index Fund	NYSE Arca
IDU	iShares Dow Jones US Utilities Sector Index Fund	NYSE Arca
IDV	iShares Dow Jones International Select Dividend Index Fund	NYSE Arca
IDX	Market Vectors Indonesia Index ETF	NYSE Arca
IEF	iShares Barclays 7-10 Year Treasury Bond Fund	NYSE Arca
IEFA	iShares Core MSCI EAFE ETF	NYSE Arca
IEI	iShares Barclays 3-7 Year Treasury Bond Fund	NYSE Arca
IELG	iShares Enhanced U.S. Large-Cap ETF	NYSE Arca
IEMG	iShares Core MSCI Emerging Markets ETF	NYSE Arca
IEO	iShares Dow Jones US Oil & Gas Exploration & Production Index Fund	NYSE Arca
IESM	iShares Enhanced U.S. Small-Cap ETF	NYSE Arca
IEV	iShares S&P Europe 350 Index Fund	NYSE Arca
IEZ	iShares Dow Jones US Oil Equipment & Services Index Fund	NYSE Arca
[redacted]	iShares FTSE EPRA/NAREIT Developed Real Estate ex-US Index Fund	NASDAQ GM
[redacted]	iShares S&P North American Natural Resources Sector Index Fund	NYSE Arca
IGF	iShares S&P Global Infrastructure Index Fund	NYSE Arca

SECURITIES AND EXCHANGE COMMISSION

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

MARY L. SCHAPIRO, CHAIRMAN

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

(1 Document)

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3656 / August 27, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15444

In the Matter of

WILLIAM LANDBERG,

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 William Landberg ("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 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. Landberg was the chief executive of West End Financial Advisors ("West End") from at least 2003 through June 2009. West End is a New York-based, unregistered investment adviser to a collection of hedge funds (the "West End funds"). West End is affiliated with Sentinel Investment Management Corporation ("Sentinel"), which has been registered with the Commission since 1986. Landberg was also the President and Chief Compliance Officer of Sentinel. Landberg, age 59, is a resident of New York, New York.

2. On January 17, 2012, a judgment was entered by consent against Landberg, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and 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. 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, among other things, that Landberg committed securities law violations at West End and Sentinel. According to the amended complaint, from at least January 2008 to May 2009, Landberg misled West End investors into believing that their money was held in stable, safe investment vehicles designed to provide steady streams of income. In reality, throughout most of that period, West End faced deepening financial problems stemming from Landberg's failed investment strategies. Landberg misused investor assets, fraudulently obtained over $8.5 million from a German bank that provided loans to finance certain investments by West End, and used millions of dollars from an interest reserve account for unauthorized purposes. Landberg used substantial amounts of the fraudulently obtained loan proceeds to make distributions to certain West End fund investors, thereby sustaining the illusion that West End's investments were performing well. At the same time that he was committing these frauds, Landberg misappropriated at least $1.5 million for himself and his family.

4. On November 18, 2011, Landberg pleaded guilty to one count of securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2 before the United States District Court for the Southern District of New York, in United States v. William Landberg, Crim. Information No. 10-CR-538.

5. The criminal information to which Landberg pleaded guilty alleged, inter alia, that Landberg perpetrated a scheme to defraud West End investors by failing to invest funds as promised to investors by certain West End fund documents and by misappropriating money for the benefit of other fund investors. Landberg further failed to inform certain West End fund investors that he had misappropriated that money.

IV.

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

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

Ticker	Name	Primary Exchange
IGM	iShares S&P North American Technology Sector Index Fund	NYSE Arca
IGN	iShares S&P North American Technology-Multimedia Networking Index Fund	NYSE Arca
IGOV	iShares S&P/Citigroup International Treasury Bond Fund	NASDAQ GM
IGS	ProShares Short Investment Grade Corporate	NYSE Arca
IGV	iShares S&P North American Technology-Software Index Fund	NYSE Arca
IHE	iShares Dow Jones US Pharmaceuticals Index Fund	NYSE Arca
IHF	iShares Dow Jones US Healthcare Providers Index Fund	NYSE Arca
IHI	iShares Dow Jones US Medical Devices Index Fund	NYSE Arca
IHY	Market Vectors International High Yield Bond ETF	NYSE Arca
IJH	iShares Core S&P Mid-Cap ETF	NYSE Arca
IJJ	iShares S&P MidCap 400/BARRA Value Index Fund	NYSE Arca
IJK	iShares S&P MidCap 400 Growth Index Fund	NYSE Arca
IJR	iShares Core S&P Small-Cap ETF	NYSE Arca
IJS	iShares S&P SmallCap 600 Value Index Fund	NYSE Arca
IJT	iShares S&P SmallCap 600/BARRA Growth Index Fund	NYSE Arca
ILF	iShares S&P Latin America 40 Index Fund	NYSE Arca
ILTB	iShares Core Long-Term US Bond ETF	NYSE Arca
INDA	iShares MSCI India Index Fund	BATS
INDY	iShares India 50 ETF	NASDAQ GM
[redacted]	iPath MSCI India Index ETN	NYSE Arca
IOO	iShares S&P Global 100 Index Fund	NYSE Arca
IPE	SPDR Barclays TIPS ETF	NYSE Arca
ISHG	iShares S&P/Citigroup 1-3 Year International Treasury Bond Fund	NASDAQ GM
ITB	iShares Dow Jones US Home Construction Index Fund	NYSE Arca
ITM	Market Vectors Intermediate Municipal ETF	NYSE Arca
ITOT	iShares Core S&P Total US Stock Market ETF	NYSE Arca
ITR	SPDR Barclays Intermediate Term Corporate Bond ETF	NYSE Arca
IVE	iShares S&P 500 Value Index Fund	NYSE Arca
IVOO	Vanguard S&P Mid-Cap 400 ETF	NYSE Arca
IVV	iShares Core S&P 500 ETF	NYSE Arca
IVW	iShares S&P 500 Growth Index Fund	NYSE Arca
IWB	iShares Russell 1000 Index Fund	NYSE Arca
IWC	iShares Russell Microcap Index Fund	NYSE Arca
IWD	iShares Russell 1000 Value Index Fund	NYSE Arca
IWF	iShares Russell 1000 Growth Index Fund	NYSE Arca
IWM	iShares Russell 2000 Index Fund	NYSE Arca
IWN	iShares Russell 2000 Value Index Fund	NYSE Arca
IWO	iShares Russell 2000 Growth Index Fund	NYSE Arca
IWP	iShares Russell Midcap Growth Index Fund	NYSE Arca
IWR	iShares Russell Midcap Index Fund	NYSE Arca
IWS	iShares Russell Midcap Value Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
IWV	iShares Russell 3000 Index Fund	NYSE Arca
IXC	iShares S&P Global Energy Sector Index Fund	NYSE Arca
IXG	iShares S&P Global Financials Sector Index Fund	NYSE Arca
IXJ	iShares S&P Global Healthcare Sector Index Fund	NYSE Arca
IXN	iShares S&P Global Technology Sector Index Fund	NYSE Arca
IXP	iShares S&P Global Telecommunications Sector Index Fund	NYSE Arca
IYC	iShares Dow Jones US Consumer Services Sector Index Fund	NYSE Arca
IYE	iShares Dow Jones US Energy Sector Index Fund	NYSE Arca
IYF	iShares Dow Jones US Financial Sector Index Fund	NYSE Arca
IYG	iShares Dow Jones US Financial Services Index Fund	NYSE Arca
IYH	iShares Dow Jones US Healthcare Sector Index Fund	NYSE Arca
IYJ	iShares Dow Jones US Industrial Sector Index Fund	NYSE Arca
IYK	iShares Dow Jones US Consumer Goods Sector Index Fund	NYSE Arca
IYM	iShares Dow Jones US Basic Materials Sector Index Fund	NYSE Arca
IYR	iShares Dow Jones US Real Estate Index Fund	NYSE Arca
IYT	iShares Dow Jones Transportation Average Index Fund	NYSE Arca
IYW	iShares Dow Jones US Technology Sector Index Fund	NYSE Arca
IYY	iShares Dow Jones US Index Fund	NYSE Arca
IYZ	iShares Dow Jones US Telecommunications Sector Index Fund	NYSE Arca
[redacted]	iPath Dow Jones-UBS Copper Subindex Total Return ETN	NYSE Arca
[redacted]	iPath Dow Jones-UBS Grains Subindex Total Return ETN	NYSE Arca
JKF	iShares Morningstar Large Value Index Fund	NYSE Arca
JKL	iShares Morningstar Small Value Index Fund	NYSE Arca
JNK	SPDR Barclays High Yield Bond ETF	NYSE Arca
JO	iPath Dow Jones-UBS Coffee Subindex Total Return ETN	NYSE Arca
JXI	iShares S&P Global Utilities Sector Index Fund	NYSE Arca
KBE	SPDR S&P Bank ETF	NYSE Arca
KBWB	PowerShares KBW Bank Portfolio	NYSE Arca
KBWD	PowerShares KBW High Dividend Yield Financial Portfolio	NYSE Arca
KIE	SPDR S&P Insurance ETF	NYSE Arca
KOL	Market Vectors Coal ETF	NYSE Arca
KRE	SPDR S&P Regional Banking ETF	NYSE Arca
KXI	iShares S&P Global Consumer Staples Sector Index Fund	NYSE Arca
LAG	SPDR Barclays Aggregate Bond ETF	NYSE Arca
LEMB	iShares Emerging Markets Local Currency Bond Fund	NYSE Arca
LQD	iShares iBoxx Investment Grade Corporate Bond Fund	NYSE Arca
LTPZ	PIMCO 15+ Year U.S. TIPS Index Exchange-Traded Fund	NYSE Arca
LWC	SPDR Barclays Long Term Corporate Bond ETF	NYSE Arca
MBB	iShares Barclays MBS Bond Fund	NYSE Arca
[redacted]	SPDR Barclays Mortgage Backed Bond ETF	NYSE Arca
[redacted]	iShares MSCI China Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
MDIV	First Trust NASDAQ US Multi-Asset Diversified Income Index Fun	NASDAQ GM
MDY	SPDR S&P MidCap 400 ETF Trust	NYSE Arca
MGC	Vanguard Mega Cap ETF	NYSE Arca
MGK	Vanguard Mega Cap Growth ETF	NYSE Arca
MGV	Vanguard Mega Cap Value ETF	NYSE Arca
MINT	PIMCO Enhanced Short Maturity Exchange-Traded Fund	NYSE Arca
MLPI	ETRACS Alerian MLP Infrastructure Index ETN	NYSE Arca
MLPN	Credit Suisse Cushing 30 MLP Index ETN	NYSE Arca
MOO	Market Vectors Agribusiness ETF	NYSE Arca
MUB	iShares S&P National Municipal Bond Fund	NYSE Arca
MXI	iShares S&P Global Materials Sector Index Fund	NYSE Arca
MYY	ProShares Short MidCap 400	NYSE Arca
NKY	MAXIS Nikkei 225 Index Fund ETF	NYSE Arca
OEF	iShares S&P 100 Index Fund	NYSE Arca
OIH	Market Vectors Oil Service ETF	NYSE Arca
OIL	iPath Goldman Sachs Crude Oil Total Return Index ETN	NYSE Arca
PALL	ETFS Physical Palladium Shares	NYSE Arca
PBJ	Powershares Dynamic Food & Beverage Portfolio	NYSE Arca
PBP	PowerShares S&P 500 BuyWrite Portfolio	NYSE Arca
[redacted]S	Powershares Dynamic Media Portfolio	NYSE Arca
[redacted]EF	PowerShares CEF Income Composite Portfolio	NYSE Arca
PCY	PowerShares Emerging Markets Sovereign Debt Portfolio	NYSE Arca
PDP	Powershares DWA Technical Leaders Portfolio	NYSE Arca
PFF	iShares S&P US Preferred Stock Index Fund	NYSE Arca
PGF	PowerShares Financial Preferred Portfolio	NYSE Arca
PGX	PowerShares Preferred Portfolio	NYSE Arca
PHB	PowerShares Fundamental High Yield Corporate Bond Portfolio	NYSE Arca
PHDG	PS S&P Downside Hdgd	NYSE Arca
PHO	PowerShares Water Resources Portfolio	NYSE Arca
PHYS	Sprott Physical Gold Trust	NYSE Arca
PID	PowerShares International Dividend Achievers Portfolio	NYSE Arca
PIE	PowerShares DWA Emerging Markets Technical Leaders Portfolio	NYSE Arca
PIN	PowerShares India Portfolio	NYSE Arca
PIZ	PowerShares DWA Developed Markets Technical Leaders Portfolio	NYSE Arca
PJP	Powershares Dynamic Pharmaceuticals Portfolio	NYSE Arca
PKW	PowerShares Buyback Achievers Portfolio	NYSE Arca
PPH	Market Vectors Pharmaceutical ETF	NYSE Arca
PPLT	ETFS Platinum Trust	NYSE Arca
PRF	Powershares FTSE RAFI US 1000 Portfolio	NYSE Arca
[redacted]	PowerShares FTSE RAFI US 1500 Small-Mid Portfolio	NASDAQ GM
[redacted]	SPDR Wells Fargo Preferred Stock ETF	NYSE Arca

Ticker	Name	Primary Exchange
PSLV	Sprott Physical Silver Trust	NYSE Arca
PSP	PowerShares Global Listed Private Equity Portfolio	NYSE Arca
PSQ	ProShares Short QQQ	NYSE Arca
PWV	PowerShares Dynamic Large Cap Value Portfolio	NYSE Arca
PXF	PowerShares FTSE RAFI Developed Markets ex-U.S. Portfolio	NYSE Arca
PXH	PowerShares FTSE RAFI Emerging Markets Portfolio	NYSE Arca
PZA	PowerShares Insured National Municipal Bond Portfolio	NYSE Arca
QAI	IndexIQ ETF Trust - IQ Hedge Multi-Strategy Tracker ETF	NYSE Arca
QQQ	Powershares QQQ Trust Series 1	NASDAQ GM
REM	iShares FTSE NAREIT Mortgage Plus Capped Index Fund	NYSE Arca
REZ	iShares FTSE NAREIT Residential Plus Capped Index Fund	NYSE Arca
RFG	Guggenheim S&P Midcap 400 Pure Growth ETF	NYSE Arca
RJA	ELEMENTS Linked to the Rogers International Commodity Index - Agri Tot Return	NYSE Arca
RJI	ELEMENTS Linked to the Rogers International Commodity Index - Total Return	NYSE Arca
RPG	Guggenheim S&P 500 Pure Growth ETF	NYSE Arca
RPV	Guggenheim S&P 500 Pure Value ETF	NYSE Arca
RSP	Guggenheim S&P 500 Equal Weight ETF	NYSE Arca
RSX	Market Vectors Russia ETF	NYSE Arca
[redacted]H	Market Vectors Retail ETF	NYSE Arca
[redacted]VM	ProShares Short Russell2000	NYSE Arca
RWO	SPDR Dow Jones Global Real Estate ETF	NYSE Arca
RWR	SPDR Dow Jones REIT ETF	NYSE Arca
RWX	SPDR Dow Jones International Real Estate ETF	NYSE Arca
RXI	iShares S&P Global Consumer Discretionary Sector Index Fund	NYSE Arca
SAGG	Direxion Daily Total Bond Market Bear 1x Shares	NYSE Arca
SBB	ProShares Short SmallCap600	NYSE Arca
SCHA	Schwab US Small-Cap ETF	NYSE Arca
SCHB	Schwab US Broad Market ETF	NYSE Arca
SCHD	Schwab US Dividend Equity ETF	NYSE Arca
SCHE	Schwab Emerging Markets Equity ETF	NYSE Arca
SCHF	Schwab International Equity ETF	NYSE Arca
SCHG	Schwab U.S. Large-Cap Growth ETF	NYSE Arca
SCHH	Schwab U.S. REIT ETF	NYSE Arca
SCHM	Schwab U.S. Mid-Cap ETF	NYSE Arca
SCHO	Schwab Short-Term U.S. Treasury ETF	NYSE Arca
SCHP	Schwab U.S. TIPs ETF	NYSE Arca
SCHR	Schwab Intermediate-Term U.S. Treasury ETF	NYSE Arca
SCHV	Schwab U.S. Large-Cap Value ETF	NYSE Arca
[redacted]	Schwab US Large-Cap ETF	NYSE Arca
[redacted]	Schwab U.S. Aggregate Bond ETF	NYSE Arca

Ticker	Name	Primary Exchange
SCIF	Market Vectors India Small-Cap Index ETF	NYSE Arca
SCPB	SPDR Barclays Short Term Corporate Bond ETF	NYSE Arca
SCZ	iShares MSCI EAFE Small Cap Index Fund	NYSE Arca
SDIV	Global X SuperDividend ETF	NYSE Arca
SDY	SPDR S&P Dividend ETF	NYSE Arca
SGOL	ETFS Gold Trust	NYSE Arca
SH	ProShares Short S&P500	NYSE Arca
SHM	SPDR Nuveen Barclays Short Term Municipal Bond ETF	NYSE Arca
SHV	iShares Barclays Short Treasury Bond Fund	NYSE Arca
SHY	iShares Barclays 1-3 Year Treasury Bond Fund	NYSE Arca
SIL	Global X Silver Miners ETF	NYSE Arca
SIVR	ETFS Physical Silver Shares	NYSE Arca
SJB	ProShares Short High Yield	NYSE Arca
SJNK	SPDR Barclays Short Term High Yield Bond ETF	NYSE Arca
SLV	iShares Silver Trust	NYSE Arca
SLX	Market Vectors Steel Index Fund	NYSE Arca
SLY	SPDR S&P 600 Small CapETF	NYSE Arca
SMH	Market Vectors Semiconductor ETF	NYSE Arca
SNLN	Highland/iBoxx Senior Loan ETF	NYSE Arca
[redacted]XX	iShares PHLX SOX Semiconductor Sector Index Fund	NASDAQ GM
[redacted]HB	PowerShares S&P 500 High Beta Port ETF	NYSE Arca
SPHD	PowerShares S&P 500 High Dividend Portfolio	NYSE Arca
SPLV	PowerShares S&P 500 Low Volatility Portfolio	NYSE Arca
SPPP	Sprott Physical Platinum & Palladium Trust	NYSE Arca
SPY	SPDR S&P 500 ETF Trust	NYSE Arca
SPYG	SPDR S&P 500 Growth ETF	NYSE Arca
SPYV	SPDR S&P 500 Value ETF	NYSE Arca
SRLN	SPDR Blackstone / GSO Senior Loan ETF	NYSE Arca
STIP	iShares Barclays 0-5 Year TIPS Bond Fund	NYSE Arca
STPZ	PIMCO 1-5 Year U.S. TIPS Index Exchange-Traded Fund	NYSE Arca
SUB	iShares S&P Short Term National AMT-Free Municipal Bond Fund	NYSE Arca
SVXY	ProShares Short VIX Short-Term Futures ETF	NYSE Arca
SYLD	Cambria Shareholder Yield ETF	NYSE Arca
TAN	Guggenheim Solar ETF	NYSE Arca
TAO	Guggenheim China Real Estate ETF	NYSE Arca
TBF	ProShares Short 20+ Year Treasury	NYSE Arca
TBX	ProShares Short 7-10 Treasury	NYSE Arca
TDTT	FlexShares iBoxx 3-Year Target Duration TIPS Index Fund	NYSE Arca
TFI	SPDR Nuveen Barclays Municipal Bond ETF	NYSE Arca
[redacted]	iShares MSCI Thailand Capped Investable Market Index Fund	NYSE Arca
[redacted]	iShares Barclays TIPS Bond Fund	NYSE Arca

Ticker	Name	Primary Exchange
TLH	iShares Barclays 10-20 Year Treasury Bond Fund	NYSE Arca
TLT	iShares Barclays 20+ Year Treasury Bond Fund	NYSE Arca
TUR	iShares MSCI Turkey Index Fund	NYSE Arca
UNG	United States Natural Gas Fund LP	NYSE Arca
USCI	United States Commodity Index Fund	NYSE Arca
USMV	iShares MSCI USA Minimum Volatility Index Fund	NYSE Arca
USO	United States Oil Fund LP	NYSE Arca
UUP	PowerShares DB US Dollar Index Bullish Fund	NYSE Arca
VAW	Vanguard Materials ETF	NYSE Arca
VB	Vanguard Small-Cap ETF	NYSE Arca
VBK	Vanguard Small-Cap Growth ETF	NYSE Arca
VBR	Vanguard Small-Cap Value ETF	NYSE Arca
VCIT	Vanguard Intermediate-Term Corporate Bond ETF	NASDAQ GM
VCLT	Vanguard Long-Term Corporate Bond ETF	NASDAQ GM
VCR	Vanguard Consumer Discretionary ETF	NYSE Arca
VCSH	Vanguard Short-Term Corporate Bond ETF	NASDAQ GM
VDC	Vanguard Consumer Staples ETF	NYSE Arca
VDE	Vanguard Energy ETF	NYSE Arca
VEA	Vanguard FTSE Developed Markets ETF	NYSE Arca
[redacted]U	Vanguard FTSE All-World ex-US ETF	NYSE Arca
[redacted]H	Vanguard Financials ETF	NYSE Arca
VGIT	Vanguard Intermediate-Term Government Bond ETF	NASDAQ GM
VGK	Vanguard FTSE Europe ETF	NYSE Arca
VGLT	Vanguard Long-Term Government Bond ETF	NASDAQ GM
VGSH	Vanguard Short-Term Government Bond ETF	NASDAQ GM
VGT	Vanguard Information Technology ETF	NYSE Arca
VHT	Vanguard Health Care ETF	NYSE Arca
VIG	Vanguard Dividend Appreciation ETF	NYSE Arca
VIIX	VelocityShares VIX Short Term ETN	NYSE Arca
VIIZ	VelocityShares VIX Medium Term ETN	NYSE Arca
VIOO	Vanguard S&P Small-Cap 600 ETF	NYSE Arca
VIS	Vanguard Industrials ETF	NYSE Arca
VIXM	ProShares VIX Mid-Term Futures ETF	NYSE Arca
VIXY	ProShares VIX Short-Term Futures ETF	NYSE Arca
VMBS	Vanguard Mortgage-Backed Securities ETF	NASDAQ GM
VNM	Market Vectors Vietnam ETF	NYSE Arca
VNQ	Vanguard REIT ETF	NYSE Arca
VNQI	Vanguard Global ex-U.S. Real Estate ETF	NASDAQ GM
VO	Vanguard Mid-Cap ETF	NYSE Arca
[redacted]	Vanguard Mid-Cap Value ETF	NYSE Arca
[redacted]E	Vanguard Russell 1000	NASDAQ GM

Ticker	Name	Primary Exchange
VONG	Vanguard Russell 1000 Growth ETF	NASDAQ GM
VONV	Vanguard Russell 1000 Value	NASDAQ GM
VOO	Vanguard S&P 500 ETF	NYSE Arca
VOOG	Vanguard S&P 500 Growth ETF	NYSE Arca
VOOV	Vanguard S&P 500 Value ETF	NYSE Arca
VOT	Vanguard Mid-Cap Growth ETF	NYSE Arca
VOX	Vanguard Telecommunication Services ETF	NYSE Arca
VPL	Vanguard FTSE Pacific ETF	NYSE Arca
VPU	Vanguard Utilities ETF	NYSE Arca
VQT	Barclays ETN+ ETNs Linked to the S&P 500 Dynamic VEQTORTM TotaL Return Index	NYSE Arca
VSS	Vanguard FTSE All World ex-US Small-Cap ETF	NYSE Arca
VT	Vanguard Total World Stock ETF	NYSE Arca
VTHR	Vanguard Russell 3000	NASDAQ GM
VTI	Vanguard Total Stock Market ETF	NYSE Arca
VTIP	Vanguard Short-Term Inflation-Protected Securities ETF	NASDAQ GM
VTV	Vanguard Value ETF	NYSE Arca
VTWG	Vanguard Russell 2000 Growth	NASDAQ GM
VTWO	Vanguard Russell 2000	NASDAQ GM
VTWV	Vanguard Russell 2000 Value	NASDAQ GM
[redacted]G	Vanguard Growth ETF	NYSE Arca
VV	Vanguard Large-Cap ETF	NYSE Arca
VWO	Vanguard FTSE Emerging Markets ETF	NYSE Arca
VWOB	Vanguard Emerging Markets Government Bond ETF	NASDAQ GM
VXF	Vanguard Extended Market ETF	NYSE Arca
VXUS	Vanguard Total International Stock ETF	NASDAQ GM
VXX	iPATH S&P 500 VIX Short-Term Futures ETN	NYSE Arca
VXZ	iPATH S&P 500 VIX Mid-Term Futures ETN	NYSE Arca
VYM	Vanguard High Dividend Yield ETF	NYSE Arca
WIP	SPDR DB International Government Inflation-Protected Bond ETF	NYSE Arca
WOOD	iShares S&P Global Timber & Forestry Index Fund	NASDAQ GM
XBI	SPDR S&P Biotech ETF	NYSE Arca
XES	SPDR S&P Oil & Gas Equipment & Services ETF	NYSE Arca
XHB	SPDR S&P Homebuilders ETF	NYSE Arca
XIV	VelocityShares Daily Inverse VIX Short Term ETN	NYSE Arca
XLB	Materials Select Sector SPDR Fund	NYSE Arca
XLE	Energy Select Sector SPDR Fund	NYSE Arca
XLF	Financial Select Sector SPDR Fund	NYSE Arca
XLG	Guggenheim Russell Top 50 Mega Cap ETF	NYSE Arca
XL[redacted]	Industrial Select Sector SPDR Fund	NYSE Arca
[redacted]	Technology Select Sector SPDR Fund	NYSE Arca
XLP	Consumer Staples Select Sector SPDR Fund	NYSE Arca

Ticker	Name	Primary Exchange
XLU	Utilities Select Sector SPDR Fund	NYSE Arca
XLV	Health Care Select Sector SPDR Fund	NYSE Arca
XLY	Consumer Discretionary Select Sector SPDR Fund	NYSE Arca
XME	SPDR S&P Metals & Mining ETF	NYSE Arca
XOP	SPDR S&P Oil & Gas Exploration & Production ETF	NYSE Arca
XPH	SPDR S&P Pharmaceuticals ETF	NYSE Arca
XRT	SPDR S&P Retail ETF	NYSE Arca
XSD	SPDR S&P Semiconductor ETF	NYSE Arca
XVZ	iPath S&P 500 Dynamic VIX ETN	NYSE Arca
YMLP	Yorkville High Income MLP	NYSE Arca
ZIV	VelocityShares Daily Inverse VIX Medium Term ETN	NYSE Arca
ZROZ	PIMCO 25+ Year Zero Coupon U.S. Treasury Index Exchange-Traded Fund	NYSE Arca

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 >= $0.75 and <= $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 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 (3-8) for cancels

10. Include: ticker, date, time at start, time of Limit State, all data item fields in 1, last sale prior to 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 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.

Commissioner Piwowar not participating

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70274; File No. 4-631)

August 27, 2013

Joint Industry Plan; Notice of Filing of the Fifth 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 thereunder[2], notice is hereby given that, on July 18, 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 fifth amendment to the Plan ("Fifth Amendment"), and reflects changes unanimously approved by the Participants. The Fifth Amendment to the Plan: (i) provides that, if a Trading Pause is triggered in the last ten minutes of trading before the end of Regular Trading Hours, then the NMS Stock shall not reopen for continuous trading and shall

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1 15 U.S.C. 78k-1.

2 17 CFR 242.608.

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

[redacted]ose pursuant to established closing procedures of the Primary Listing Exchange; and (ii) revises the definition of which Exchange Traded Products ("ETPs") are eligible to be included in the list of Tier 1 NMS Stocks under the Plan. A copy of the Plan, as proposed to be amended, is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments from interested persons on the Fifth 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.[4] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent [redacted]des in individual NMS Stocks from occurring outside of the specified Price Bands.[5] 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.[6] 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.[7]

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4 17 CFR 242.600(b)(47). See also Section I(H) of the Plan.

5 See Section V of the Plan.

6 Capitalized terms used herein but not otherwise defined shall have the meaning ascribed [redacted]to such terms in the Plan. See Exhibit A, infra.

7 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

[redacted]ose price bands would be based on a Reference Price[8] 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 Parameter[9] 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 [redacted]eminated, 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

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8 See Section I(T) of the Plan.

9 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. [redacted]McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012 ("First Amendment").

[redacted]seminate 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 Bid[10] or National Best Offer[11] 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,[12] 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.[13] 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 pauses[14] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary

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10 17 CFR 242.600(b)(42). See also Section I(G) of the Plan.

11 Id.

12 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.

13 See Section I(D) of the Plan.

14 The primary listing market would declare a trading pause in an NMS Stock; upon [redacted]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.

aps in liquidity). As set forth in more detail in the Plan, all trading centers[15] 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 lational 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,[16] thereby protecting investors and promoting a fair and orderly market.[17] In particular, the Plan is

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15 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.

16 17 CFR 242.600(b)(47).

17 See Transmittal Letter, supra note 3.

esigned to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[18]

The following summarizes the Fifth Amendment to the Plan and the rationale behind those changes:

1. Proposed Amendment to Section VII(C)

The Participants propose to amend Section VII(C)(1) of the Plan to provide that if a Trading Pause is declared for an NMS Stock in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen for trading and shall attempt to execute a closing transaction using its established closing procedures. Section VII(C) of the Plan currently addresses only the situation of when a Trading Pause is declared less than five minutes before the end of Regular Trading Hours. In such case, because a Trading Pause is inimum of five minutes and trading would not reopen, the Plan contemplates that the Primary Listing Exchange shall attempt a closing transaction using its established closing procedures.

Based on feedback from SIFMA and other market participants, the Participants believe it is appropriate to amend the Plan to provide that if a Trading Pause is declared in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen the NMS Stock for trading. Rather, such stock shall remain in a Trading Pause state, and at the end of regular trading hours, the Primary Listing Exchange shall attempt to close the NMS Stock using its established closing procedures.

The Participants note that SIFMA raised issues concerning how the Plan operates at the close in its comment letter on the initial filing of the Plan.[19] Based on additional concerns

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[18] 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).

ecently raised by SIFMA regarding its members' ability to effectively participate in the closing transaction if there is a Trading Pause declared near the close of trading and then reopening of continuous trading shortly before the close, the Participants propose a modified approach to how the Plan operates near the close. As currently provided for, the Participants believe that the manner by which Trading Pauses are declared should not change, meaning that a Trading Pause could be triggered up to the close of trading. The Participants note that the Plan already contemplates additional volatility near the close by providing for the doubling of the Percentage Parameters in the last 25 minutes of trading (see Section V(A)(1) of the Plan). The Participants propose to modify the Plan, however, to provide that if a Trading Pause were to be declared in the last ten minutes of Regular Trading Hours, the Primary Listing Exchange would not reopen for continuous trading but rather would close the NMS Stock pursuant to established closing cedures.

The Participants believe that the proposed amendment meets the goals of the Plan, which is to address extraordinary market volatility. Specifically, the Participants believe that reopening trading within five minutes of the closing transaction could introduce additional volatility into trading for that particular symbol. The Participants believe it would be more prudent to use the time during the Trading Pause and the period preceding the end of Regular Trading Hours for interest to be entered for the closing auction, rather than to hold a reopening auction that would be followed shortly by a closing auction. Holding two auctions so near in time may introduce additional uncertainty into the market as market participants may not want to enter interest for a reopening auction if the security is going to close shortly thereafter. This could cause price dislocations, uncertainty of executions, and added confusion during an already volatile period.

[19] See Letter from Ann L. Vlcek, Managing Director and Associated General Counsel, SIFMA, to Elizabeth M. Murphy, Secretary, Commission dated June 22, 2011.

As such, the Participants note that certain Primary Listing Exchanges will be filing rule changes with the Commission to update their respective closing procedures to address the ability to permit additional interest to be entered for the purpose of a closing auction if there is a Trading Pause declared near the end of Regular Trading Hours.

2. Proposed Amendment to Section I of Appendix A

The Participants propose to amend Section I of Appendix A of the Plan to revise the definition of which ETPs are eligible to be included in the list of Tier 1 NMS Stocks under the Plan by deleting the following language: "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 current definition of which ETPs are eligible to be included in the list of Tier 1 NMS Stocks under the Plan is based on a definition that was adopted in 2010 in connection with which ETPs were eligible for the pilot program for single-stock trading pauses ("trading pause pilot rules").[20] The goal of the 2010 amendment was to add more liquid ETPs, specifically, those with a minimum average daily volume ("ADV") of $2,000,000, to the list of securities eligible for the trading pause pilot rules because those ETPs tend to have similar trading characteristics as securities in the S&P 500 Index and Russell 1000 Index, and therefore using the 10% threshold for triggering a trading pause for those specified ETPs was appropriate. To assure that related

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20 See Securities Exchange Act Release No. 62884 (Sept. 10, 2010), 75 FR 56618 (Sept. 16, 2010) (SR-BATS-2010-018; SR-BX-2010-044; SR-CBOE-2010-065; SR-CHX-2010-14; SR-EDGA-2010-05; SR-EDGX-2010-05; SR-ISE-2010-66; SR-NASDAQ-2010-079; SR-NYSE-2010-49; SR-NYSEAmex-2010-63; SR-NYSEArca-2010-61; SR-NSX-2010-08) (Order approving amendment to pilot rule for trading pauses due to extraordinary volatility to expand the availability of the rule to Russell 1000 Index and specified ETPs).

ETPs were subject to a comparable circuit breaker, ETPs that did not meet the $2,000,000 ADV threshold, but tracked similar stocks and indices as ETPs meeting the volume criterion, were also included.

Based on experience to date with the Plan, the Participants believe that ETPs that do not meet the volume criterion are not as actively traded as other NMS Stocks included as Tier 1 NMS Stocks, and therefore the applicable Percentage Parameters are too narrow for such ETPs, even if they track the same index as an ETP that meets the volume criterion. The Participants note that this issue did not arise under the trading pause pilot rules because of the differing mechanisms for triggering a trading pause pursuant to the Plan and the trading pause pilot rules. Under the trading pause pilot rules, a trading pause is triggered if the last consolidated sale price of the security moves 10% or more over a five-minute period. Because a transaction is required before a trading pause may be triggered, a thinly traded stock may not have triggered any trading pauses.

In contrast, under the Plan, a bid or offer that crosses the applicable Price Band can result first in a Limit State Quotation, and if that Limit State Quotation is not exited within 15 seconds, a Trading Pause. Therefore, under the Plan, a transaction does not need to occur before a Trading Pause can be triggered. Based on experience thus far with the Plan, certain thinly traded ETPs with wide quotes that are included as Tier 1 NMS Stocks because they track an index of an ETP that meets the volume criterion are triggering trading pauses because of bids or offers that cross the Price Band rather than because of an execution of a security. This results in certain ETPs that have not traded during the day triggering Trading Pauses and requiring a reopening auction process, despite the lack of trading in that security. For example, since the initial date of Plan operations through to July 8, 2013, there have been 32 Trading Pauses in NYSE Arca-listed

ecurities triggered pursuant to the Plan. These Trading Pauses have been in only ten NMS Stocks,[21] some more than once a day, and all are ETPs with less than $2,000,000 notional ADV.

The Participants believe that amending the Plan to delete ETPs that do not meet the volume criterion from the definition of Tier 1 NMS Stocks is necessary for the maintenance of a fair and orderly market and removes impediments to and perfects the mechanism of a national market system because it reduces the potential for a thinly-traded NMS Stock that has not experienced any trading volatility to be halted and then have to go through a reopening auction process. The Participants therefore believe that the proposed amendment supports the original purpose of the Plan, which is to reduce extraordinary market volatility for NMS Stocks. The Participants believe that such thinly-traded ETPs are better suited for the applicable Percentage Parameters for NMS Stocks that are not S&P 500 or Russell 1000 stocks, which includes other ly traded securities.

The Participants will continue to assess during Plan operations whether the existing Percentage Parameters are appropriate for thinly-traded NMS Stocks, and will have more experience with this issue after Phase II of the Plan has been implemented across all NMS Stocks. In the meantime, the Participants believe that amending the Plan to revise the Percentage Parameters that will be applicable to ETPs with less than $2,000,000 notional ADV is an appropriate measure based on experience with the Plan to date.

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.

[21] The symbols are BXDB, BDG, GIY, VIOO, BOS, SAGG, IELG, IESM, HUSE, and GMTB.

C. Implementation of Plan

The initial date of the Plan operations was 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 began on April 8, 2013 and was completed on May 3, 2013 The Participants currently anticipate that Phase II of Plan implementation will begin on August 5, 2013.

The Participants propose that if this amendment is approved before August 5, 2013, ETPs that currently meet the definition of Tier 1 NMS Stocks and have already been added to the Plan pursuant to Phase I of the Plan, but that would not meet the proposed amended definition of Tier 1 NMS Stocks will no longer participate in Phase I of the Plan. Instead, those ETPs will be [redacted]ed to the Plan pursuant to Phase II of the Plan implementation. If approved after August 5, 2013 but during Phase II of the Plan implementation, those ETPs will be added to the Phase II implementation schedule. If approved after Phase II of the Plan has been fully implemented, the Primary Listing Exchange will provide notice via Trader Update within 30 days of approval of this amendment of when those ETPs will be moved to the new Percentage Parameter.

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.[22]

[redacted]

22 15 U.S.C. 78k-1(c)(1)(D).

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 [redacted]icipant 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 individual to represent the Participant as a member of an Operating Committee.[23] No later than the [redacted]itial date of the Plan, the Operating Committee would be required to designate one member

[23] See Section I(J) of the Plan.

f 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.[24]

II. Solicitation of Comments

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

ctronic 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 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,

[24] 17 CFR 242.608.

l subsequent amendments, all written statements with respect to the Fifth Amendment to the Plan that are filed with the Commission, and all written communications relating to the Fifth 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

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

Table of Contents

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.

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

articipant 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 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 (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

quirements 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 ect. 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 d Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma

eference 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 ular 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 ca ed 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

ower 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 or because the transaction was an odd-lot sized transaction), 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 t 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.

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 a[redacted]ing 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] Ten Minutes of the End of Regular Trading Hours

(1) If a Trading Pause for an NMS Stock is declared [less than five minutes] in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen trading and 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.

(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, the Plan shall fully apply to 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 and therefore trading shall not enter a Limit State less than 30 minutes before the end of Regular Trading Hours.

(B) Phase II – Full Implementation

Eight 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.

(C) Pilot

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

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 July 2013 by each of the parties hereto.

BATS EXCHANGE, INC.

BY:_____

BATS Y-EXCHANGE, INC.

BY:_____

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

BY:_____

CHICAGO STOCK EXCHANGE, INC.

BY:_____

EDGA EXCHANGE, INC.

BY:_____

EDGX EXCHANGE, INC.

BY:_____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

BY:_____

NASDAQ OMX BX, INC.

BY:_____

NASDAQ OMX PHLX LLC

BY:_____

THE NASDAQ STOCK MARKET LLC

BY:_____

NATIONAL STOCK EXCHANGE, INC.

BY:_____

NEW YORK STOCK EXCHANGE LLC

BY:_____

NYSE MKT 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 [redacted]ious 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 th[redacted].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

Ticker	Name	Primary Exchange
AAXJ	iShares MSCI All Country Asia ex Japan Index Fund	NASDAQ GM
ACWI	iShares MSCI ACWI Index Fund	NASDAQ GM
ACWV	iShares MSCI All Country World Minimum Volatility Index Fund	NYSE Arca
ACWX	iShares MSCI ACWI ex US Index Fund	NASDAQ GM
AGG	iShares Core Total US Bond Market ETF	NYSE Arca
AGOL	ETFS Asian Gold Trust	NYSE Arca
AGZ	iShares Barclays Agency Bond Fund	NYSE Arca
ALD	WisdomTree Asia Local Debt Fund	NYSE Arca
AMJ	JPMorgan Alerian MLP Index ETN	NYSE Arca
AMLP	Alerian MLP ETF	NYSE Arca
AMU	ETRACS Alerian MLP Index ETN	NYSE Arca
BAB	PowerShares Build America Bond Portfolio	NYSE Arca
BAL	iPath Dow Jones-UBS Cotton Subindex Total Return Callable ETN	NYSE Arca
BBH	Market Vectors Biotech ETF	NYSE Arca
BDG	PowerShares DB Base Metals Long ETN	NYSE Arca
BFOR	Barron's 400 ETF	NYSE Arca
[redacted]	SPDR S&P BRIC 40 ETF	NYSE Arca
[redacted]	SPDR Barclays 1-3 Month T-Bill	NYSE Arca
BIV	Vanguard Intermediate-Term Bond ETF	NYSE Arca
BKF	iShares MSCI BRIC Index Fund	NYSE Arca
BKLN	PowerShares Senior Loan Portfolio	NYSE Arca
BLV	Vanguard Long-Term Bond ETF	NYSE Arca
BND	Vanguard Total Bond Market ETF	NYSE Arca
BNDX	Vanguard Total International Bond ETF	NASDAQ GM
BNO	United States Brent Oil Fund LP	NYSE Arca
BOND	Pimco Total Return ETF	NYSE Arca
BOS	PowerShares DB Base Metals Short ETN	NYSE Arca
BRF	Market Vectors Brazil Small-Cap ETF	NYSE Arca
BSJE	Guggenheim BulletShares 2014 High Yield Corporate Bond ETF	NYSE Arca
BSJF	Guggenheim BulletShares 2015 High Yield Corporate Bond ETF	NYSE Arca
BSV	Vanguard Short-Term Bond ETF	NYSE Arca
BWV	iPath CBOE S&P 500 BuyWrite Index ETN	NYSE Arca
BWX	SPDR Barclays International Treasury Bond ETF	NYSE Arca
CEW	WisdomTree Emerging Currency Fund	NYSE Arca
CFT	iShares Barclays Credit Bond Fund	NYSE Arca
CHIQ	Global X China Consumer ETF	NYSE Arca
[redacted]	iShares Barclays Intermediate Credit Bond Fund	NYSE Arca
CLY	iShares 10+ Year Credit Bond Fund	NYSE Arca

Ticker	Name	Primary Exchange
CMF	iShares S&P California AMT-Free Municipal Bond Fund	NYSE Arca
CORN	Teucrium Corn Fund	NYSE Arca
CSD	Guggenheim Spin-Off ETF	NYSE Arca
CSJ	iShares Barclays 1-3 Year Credit Bond Fund	NYSE Arca
CUT	Guggenheim Timber ETF	NYSE Arca
CVY	Guggenheim Multi-Asset Income ETF	NYSE Arca
CWB	SPDR Barclays Convertible Securities ETF	NYSE Arca
CWI	SPDR MSCI ACWI ex-US ETF	NYSE Arca
DBA	PowerShares DB Agriculture Fund	NYSE Arca
DBB	PowerShares DB Base Metals Fund	NYSE Arca
DBC	PowerShares DB Commodity Index Tracking Fund	NYSE Arca
DBE	PowerShares DB Energy Fund	NYSE Arca
DBJP	db X-trackers MSCI Japan Hedged Equity Fund	NYSE Arca
DBO	PowerShares DB Oil Fund	NYSE Arca
DBP	PowerShares DB Precious Metals Fund	NYSE Arca
DBV	PowerShares DB G10 Currency Harvest Fund	NYSE Arca
DEM	WisdomTree Emerging Markets Equity Income Fund	NYSE Arca
DES	WisdomTree SmallCap Dividend Fund	NYSE Arca
DFJ	WisdomTree Japan SmallCap Dividend Fund	NYSE Arca
[redacted]	PowerShares DB Gold Fund	NYSE Arca
[redacted]	WisdomTree Emerging Markets SmallCap Dividend Fund	NYSE Arca
DGZ	PowerShares DB Gold Short ETN	NYSE Arca
DHS	WisdomTree Equity Income Fund	NYSE Arca
DIA	SPDR Dow Jones Industrial Average ETF Trust	NYSE Arca
DJCI	ETRACS DJ-UBS Commodity Index Total Return ETN	NYSE Arca
DJP	iPath Dow Jones-UBS Commodity Index Total Return ETN	NYSE Arca
DLN	WisdomTree LargeCap Dividend Fund	NYSE Arca
DLS	WisdomTree International SmallCap Dividend Fund	NYSE Arca
DOG	ProShares Short Dow30	NYSE Arca
DON	WisdomTree MidCap Dividend Fund	NYSE Arca
DTN	WisdomTree Dividend Ex-Financials Fund	NYSE Arca
DVY	iShares Dow Jones Select Dividend Index Fund	NYSE Arca
DWX	SPDR S&P International Dividend ETF	NYSE Arca
DXJ	WisdomTree Japan Hedged Equity Fund	NYSE Arca
EBND	SPDR Barclays Emerging Markets Local Bond ETF	NYSE Arca
ECH	iShares MSCI Chile Capped Investable Market Index Fund	NYSE Arca
ECON	EGShares Emerging Markets Consumer ETF	NYSE Arca
EDIV	SPDR S&P Emerging Markets Dividend ETF	NYSE Arca
EDV	Vanguard Extended Duration Treasury ETF	NYSE Arca
EEM	iShares MSCI Emerging Markets Index Fund	NYSE Arca
EEMA	iShares MSCI Emerging Markets Asia Index	NASDAQ GM

Ticker	Name	Primary Exchange
EEMV	iShares MSCI Emerging Markets Minimum Volatility Index Fund	NYSE Arca
EFA	iShares MSCI EAFE Index Fund	NYSE Arca
EFAV	iShares MSCI EAFE Minimum Volatility Index Fund	NYSE Arca
EFG	iShares MSCI EAFE Growth Index	NYSE Arca
EFV	iShares MSCI EAFE Value Index	NYSE Arca
EFZ	ProShares Short MSCI EAFE	NYSE Arca
EIDO	iSHARES MSCI Indonesia Investable Market Index Fund	NYSE Arca
ELD	WisdomTree Emerging Markets Local Debt Fund	NYSE Arca
ELR	SPDR Dow Jones Large Cap ETF	NYSE Arca
EMB	iShares JPMorgan USD Emerging Markets Bond Fund	NYSE Arca
EMLC	Market Vectors Emerging Markets Local Currency Bond ETF	NYSE Arca
EMM	SPDR Dow Jones Mid Cap ETF	NYSE Arca
ENZL	iShares MSCI New Zealand Capped Investable Market Index Fund	NYSE Arca
EPHE	iShares MSCI Philippines Investable Market Index Fund	NYSE Arca
EPI	WisdomTree India Earnings Fund	NYSE Arca
EPOL	iShares MSCI Poland Capped Investable Market Index Fund	NYSE Arca
EPP	iShares MSCI Pacific ex-Japan Index Fund	NYSE Arca
EPU	iShares MSCI All Peru Capped Index Fund	NYSE Arca
ERUS	iShares MSCI Russia Capped Index Fund	NYSE Arca
[redacted]	ProShares Short MSCI Emerging Markets	NYSE Arca
[redacted]	iShares MSCI Australia Index Fund	NYSE Arca
EWC	iShares MSCI Canada Index Fund	NYSE Arca
EWD	iShares MSCI Sweden Index Fund	NYSE Arca
EWG	iShares MSCI Germany Index Fund	NYSE Arca
EWH	iShares MSCI Hong Kong Index Fund	NYSE Arca
EWI	iShares MSCI Italy Capped Index Fund	NYSE Arca
EWJ	iShares MSCI Japan Index Fund	NYSE Arca
EWL	iShares MSCI Switzerland Capped Index Fund	NYSE Arca
EWM	iShares MSCI Malaysia Index Fund	NYSE Arca
EWN	iShares MSCI Netherlands Investable Market Index Fund	NYSE Arca
EWO	iShares MSCI Austria Capped Investable Market Index Fund	NYSE Arca
EWP	iShares MSCI Spain Capped Index Fund	NYSE Arca
EWQ	iShares MSCI France Index Fund	NYSE Arca
EWS	iShares MSCI Singapore Index Fund	NYSE Arca
EWT	iShares MSCI Taiwan Index Fund	NYSE Arca
EWU	iShares MSCI United Kingdom Index Fund	NYSE Arca
EWW	iShares MSCI Mexico Capped Investable Market Index Fund	NYSE Arca
EWX	SPDR S&P Emerging Markets SmallCap ETF	NYSE Arca
EWY	iShares MSCI South Korea Capped Index Fund	NYSE Arca
[redacted]	iShares MSCI Brazil Capped Index Fund	NYSE Arca
EXI	iShares S&P Global Industrials Sector Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
EZA	iShares MSCI South Africa Index Fund	NYSE Arca
EZU	iShares MSCI EMU Index Fund	NYSE Arca
FBT	First Trust NYSE Arca Biotechnology Index Fund	NYSE Arca
FCG	First Trust ISE-Revere Natural Gas Index Fund	NYSE Arca
FDL	First Trust Morningstar Dividend Leaders Index	NYSE Arca
FDN	First Trust Dow Jones Internet Index Fund	NYSE Arca
FEM	First Trust Emerging Markets AlphaDEX Fund	NYSE Arca
FEX	First Trust Large Cap Core AlphaDEX Fund	NYSE Arca
FEZ	SPDR EURO STOXX 50 ETF	NYSE Arca
FGD	First Trust DJ Global Select Dividend Index Fund	NYSE Arca
FLOT	iShares Floating Rate Note Fund	NYSE Arca
FLRN	SPDR Barclays Investment Grade Floating Rate ETF	NYSE Arca
FM	iShares MSCI Frontier 100 ETF	NYSE Arca
FNX	First Trust Mid Cap Core AlphaDEX Fund	NYSE Arca
FRI	First Trust S&P REIT Index Fund	NYSE Arca
FTA	First Trust Large Cap Value AlphaDEX Fund	NYSE Arca
FVD	First Trust Value Line Dividend Index Fund	NYSE Arca
FXA	CurrencyShares Australian Dollar Trust	NYSE Arca
FXB	CurrencyShares British Pound Sterling Trust	NYSE Arca
[redacted]	CurrencyShares Canadian Dollar Trust	NYSE Arca
[redacted]	First Trust Consumer Discretionary AlphaDEX Fund	NYSE Arca
FXE	CurrencyShares Euro Trust	NYSE Arca
FXF	CurrencyShares Swiss Franc Trust	NYSE Arca
FXG	First Trust Consumer Staples AlphaDEX Fund	NYSE Arca
FXH	First Trust Health Care AlphaDEX Fund	NYSE Arca
FXI	iShares FTSE China 25 Index Fund	NYSE Arca
FXL	First Trust Technology AlphaDEX Fund	NYSE Arca
FXO	First Trust Financial AlphaDEX Fund	NYSE Arca
FXY	CurrencyShares Japanese Yen Trust	NYSE Arca
FXZ	First Trust Materials AlphaDEX Fund	NYSE Arca
GCC	GreenHaven Continuous Commodity Index Fund	NYSE Arca
GDX	Market Vectors Gold Miners ETF	NYSE Arca
GDXJ	Market Vectors Junior Gold Miners ETF	NYSE Arca
GII	SPDR S&P Global Infrastructure ETF	NYSE Arca
GIY	Guggenheim Enhanced Core Bond ETF	NYSE Arca
GLD	SPDR Gold Shares	NYSE Arca
GMF	SPDR S&P Emerging Asia Pacific ETF	NYSE Arca
GMM	SPDR S&P Emerging Markets ETF	NYSE Arca
GMTB	Columbia Core Bond ETF	NYSE Arca
[redacted]	SPDR S&P Global Natural Resources ETF	NYSE Arca
GOVT	iShares Barclays U.S. Treasury Bond Fund	NYSE Arca

Ticker	Name	Primary Exchange
GSG	iShares S&P GSCI Commodity Indexed Trust	NYSE Arca
GSP	iPath GSCI Total Return Index ETN	NYSE Arca
GSY	Guggenheim Enhanced Short Duration Bond ETF	NYSE Arca
GUNR	FlexShares Global Upstream Natural Resources Index Fund	NYSE Arca
GVI	iShares Barclays Intermediate Government/Credit Bond Fund	NYSE Arca
GWL	SPDR S&P World ex-US ETF	NYSE Arca
GWX	SPDR S&P International Small Cap ETF	NYSE Arca
GXC	SPDR S&P China ETF	NYSE Arca
GXG	Global X FTSE Colombia 20 ETF	NYSE Arca
HAO	Guggenheim China Small Cap ETF	NYSE Arca
HDGE	Ranger Equity Bear ETF	NYSE Arca
HDV	iShares High Dividend Equity Fund	NYSE Arca
HEDJ	WisdomTree Europe Hedged Equity Fund	NYSE Arca
HUSE	Huntington US Equity Rotation Strategy ETF	NYSE Arca
HYD	Market Vectors High Yield Municipal Index ETF	NYSE Arca
HYG	iShares iBoxx $ High Yield Corporate Bond Fund	NYSE Arca
HYLD	Peritus High Yield ETF	NYSE Arca
HYMB	SPDR Nuveen S&P High Yield Municipal Bond ETF	NYSE Arca
[redacted]	PIMCO 0-5 Year High Yield Corporate Bond Index Exchange-Traded Fund	NYSE Arca
[redacted]	iShares Dow Jones US Broker Dealers Index Fund	NYSE Arca
IAT	iShares Dow Jones US Regional Banks Index Fund	NYSE Arca
IAU	iShares Gold Trust	NYSE Arca
IBB	iShares Nasdaq Biotechnology Index Fund	NASDAQ GM
IBND	SPDR Barclays International Corporate Bond ETF	NYSE Arca
ICF	iShares Cohen & Steers Realty Majors Index Fund	NYSE Arca
IDU	iShares Dow Jones US Utilities Sector Index Fund	NYSE Arca
IDV	iShares Dow Jones International Select Dividend Index Fund	NYSE Arca
IDX	Market Vectors Indonesia Index ETF	NYSE Arca
IEF	iShares Barclays 7-10 Year Treasury Bond Fund	NYSE Arca
IEFA	iShares Core MSCI EAFE ETF	NYSE Arca
IEI	iShares Barclays 3-7 Year Treasury Bond Fund	NYSE Arca
IELG	iShares Enhanced U.S. Large-Cap ETF	NYSE Arca
IEMG	iShares Core MSCI Emerging Markets ETF	NYSE Arca
IEO	iShares Dow Jones US Oil & Gas Exploration & Production Index Fund	NYSE Arca
IESM	iShares Enhanced U.S. Small-Cap ETF	NYSE Arca
IEV	iShares S&P Europe 350 Index Fund	NYSE Arca
IEZ	iShares Dow Jones US Oil Equipment & Services Index Fund	NYSE Arca
[redacted]	iShares FTSE EPRA/NAREIT Developed Real Estate ex-US Index Fund	NASDAQ GM
[redacted]	iShares S&P North American Natural Resources Sector Index Fund	NYSE Arca
IGF	iShares S&P Global Infrastructure Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
IGM	iShares S&P North American Technology Sector Index Fund	NYSE Arca
IGN	iShares S&P North American Technology-Multimedia Networking Index Fund	NYSE Arca
IGOV	iShares S&P/Citigroup International Treasury Bond Fund	NASDAQ GM
IGS	ProShares Short Investment Grade Corporate	NYSE Arca
IGV	iShares S&P North American Technology-Software Index Fund	NYSE Arca
IHE	iShares Dow Jones US Pharmaceuticals Index Fund	NYSE Arca
IHF	iShares Dow Jones US Healthcare Providers Index Fund	NYSE Arca
IHI	iShares Dow Jones US Medical Devices Index Fund	NYSE Arca
IHY	Market Vectors International High Yield Bond ETF	NYSE Arca
IJH	iShares Core S&P Mid-Cap ETF	NYSE Arca
IJJ	iShares S&P MidCap 400/BARRA Value Index Fund	NYSE Arca
IJK	iShares S&P MidCap 400 Growth Index Fund	NYSE Arca
IJR	iShares Core S&P Small-Cap ETF	NYSE Arca
IJS	iShares S&P SmallCap 600 Value Index Fund	NYSE Arca
IJT	iShares S&P SmallCap 600/BARRA Growth Index Fund	NYSE Arca
ILF	iShares S&P Latin America 40 Index Fund	NYSE Arca
ILTB	iShares Core Long-Term US Bond ETF	NYSE Arca
INDA	iShares MSCI India Index Fund	BATS
[redacted]	iShares India 50 ETF	NASDAQ GM
[redacted]	iPath MSCI India Index ETN	NYSE Arca
IOO	iShares S&P Global 100 Index Fund	NYSE Arca
IPE	SPDR Barclays TIPS ETF	NYSE Arca
ISHG	iShares S&P/Citigroup 1-3 Year International Treasury Bond Fund	NASDAQ GM
ITB	iShares Dow Jones US Home Construction Index Fund	NYSE Arca
ITM	Market Vectors Intermediate Municipal ETF	NYSE Arca
ITOT	iShares Core S&P Total US Stock Market ETF	NYSE Arca
ITR	SPDR Barclays Intermediate Term Corporate Bond ETF	NYSE Arca
IVE	iShares S&P 500 Value Index Fund	NYSE Arca
IVOO	Vanguard S&P Mid-Cap 400 ETF	NYSE Arca
IVV	iShares Core S&P 500 ETF	NYSE Arca
IVW	iShares S&P 500 Growth Index Fund	NYSE Arca
IWB	iShares Russell 1000 Index Fund	NYSE Arca
IWC	iShares Russell Microcap Index Fund	NYSE Arca
IWD	iShares Russell 1000 Value Index Fund	NYSE Arca
IWF	iShares Russell 1000 Growth Index Fund	NYSE Arca
IWM	iShares Russell 2000 Index Fund	NYSE Arca
IWN	iShares Russell 2000 Value Index Fund	NYSE Arca
IWO	iShares Russell 2000 Growth Index Fund	NYSE Arca
IW[redacted]	iShares Russell Midcap Growth Index Fund	NYSE Arca
IW[redacted]	iShares Russell Midcap Index Fund	NYSE Arca
IWS	iShares Russell Midcap Value Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
IWV	iShares Russell 3000 Index Fund	NYSE Arca
IXC	iShares S&P Global Energy Sector Index Fund	NYSE Arca
IXG	iShares S&P Global Financials Sector Index Fund	NYSE Arca
IXJ	iShares S&P Global Healthcare Sector Index Fund	NYSE Arca
IXN	iShares S&P Global Technology Sector Index Fund	NYSE Arca
IXP	iShares S&P Global Telecommunications Sector Index Fund	NYSE Arca
IYC	iShares Dow Jones US Consumer Services Sector Index Fund	NYSE Arca
IYE	iShares Dow Jones US Energy Sector Index Fund	NYSE Arca
IYF	iShares Dow Jones US Financial Sector Index Fund	NYSE Arca
IYG	iShares Dow Jones US Financial Services Index Fund	NYSE Arca
IYH	iShares Dow Jones US Healthcare Sector Index Fund	NYSE Arca
IYJ	iShares Dow Jones US Industrial Sector Index Fund	NYSE Arca
IYK	iShares Dow Jones US Consumer Goods Sector Index Fund	NYSE Arca
IYM	iShares Dow Jones US Basic Materials Sector Index Fund	NYSE Arca
IYR	iShares Dow Jones US Real Estate Index Fund	NYSE Arca
IYT	iShares Dow Jones Transportation Average Index Fund	NYSE Arca
IYW	iShares Dow Jones US Technology Sector Index Fund	NYSE Arca
IYY	iShares Dow Jones US Index Fund	NYSE Arca
IYZ	iShares Dow Jones US Telecommunications Sector Index Fund	NYSE Arca
[redacted]	iPath Dow Jones-UBS Copper Subindex Total Return ETN	NYSE Arca
[redacted]	iPath Dow Jones-UBS Grains Subindex Total Return ETN	NYSE Arca
JKF	iShares Morningstar Large Value Index Fund	NYSE Arca
JKL	iShares Morningstar Small Value Index Fund	NYSE Arca
JNK	SPDR Barclays High Yield Bond ETF	NYSE Arca
JO	iPath Dow Jones-UBS Coffee Subindex Total Return ETN	NYSE Arca
JXI	iShares S&P Global Utilities Sector Index Fund	NYSE Arca
KBE	SPDR S&P Bank ETF	NYSE Arca
KBWB	PowerShares KBW Bank Portfolio	NYSE Arca
KBWD	PowerShares KBW High Dividend Yield Financial Portfolio	NYSE Arca
KIE	SPDR S&P Insurance ETF	NYSE Arca
KOL	Market Vectors Coal ETF	NYSE Arca
KRE	SPDR S&P Regional Banking ETF	NYSE Arca
KXI	iShares S&P Global Consumer Staples Sector Index Fund	NYSE Arca
LAG	SPDR Barclays Aggregate Bond ETF	NYSE Arca
LEMB	iShares Emerging Markets Local Currency Bond Fund	NYSE Arca
LQD	iShares iBoxx Investment Grade Corporate Bond Fund	NYSE Arca
LTPZ	PIMCO 15+ Year U.S. TIPS Index Exchange-Traded Fund	NYSE Arca
LWC	SPDR Barclays Long Term Corporate Bond ETF	NYSE Arca
MBB	iShares Barclays MBS Bond Fund	NYSE Arca
[redacted]	SPDR Barclays Mortgage Backed Bond ETF	NYSE Arca
[redacted]	iShares MSCI China Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
MDIV	First Trust NASDAQ US Multi-Asset Diversified Income Index Fun	NASDAQ GM
MDY	SPDR S&P MidCap 400 ETF Trust	NYSE Arca
MGC	Vanguard Mega Cap ETF	NYSE Arca
MGK	Vanguard Mega Cap Growth ETF	NYSE Arca
MGV	Vanguard Mega Cap Value ETF	NYSE Arca
MINT	PIMCO Enhanced Short Maturity Exchange-Traded Fund	NYSE Arca
MLPI	ETRACS Alerian MLP Infrastructure Index ETN	NYSE Arca
MLPN	Credit Suisse Cushing 30 MLP Index ETN	NYSE Arca
MOO	Market Vectors Agribusiness ETF	NYSE Arca
MUB	iShares S&P National Municipal Bond Fund	NYSE Arca
MXI	iShares S&P Global Materials Sector Index Fund	NYSE Arca
MYY	ProShares Short MidCap 400	NYSE Arca
NKY	MAXIS Nikkei 225 Index Fund ETF	NYSE Arca
OEF	iShares S&P 100 Index Fund	NYSE Arca
OIH	Market Vectors Oil Service ETF	NYSE Arca
OIL	iPath Goldman Sachs Crude Oil Total Return Index ETN	NYSE Arca
PALL	ETFS Physical Palladium Shares	NYSE Arca
PBJ	Powershares Dynamic Food & Beverage Portfolio	NYSE Arca
PBP	PowerShares S&P 500 BuyWrite Portfolio	NYSE Arca
[redacted]	Powershares Dynamic Media Portfolio	NYSE Arca
[redacted]	PowerShares CEF Income Composite Portfolio	NYSE Arca
PCY	PowerShares Emerging Markets Sovereign Debt Portfolio	NYSE Arca
PDP	Powershares DWA Technical Leaders Portfolio	NYSE Arca
PFF	iShares S&P US Preferred Stock Index Fund	NYSE Arca
PGF	PowerShares Financial Preferred Portfolio	NYSE Arca
PGX	PowerShares Preferred Portfolio	NYSE Arca
PHB	PowerShares Fundamental High Yield Corporate Bond Portfolio	NYSE Arca
PHDG	PS S&P Downside Hdgd	NYSE Arca
PHO	PowerShares Water Resources Portfolio	NYSE Arca
PHYS	Sprott Physical Gold Trust	NYSE Arca
PID	PowerShares International Dividend Achievers Portfolio	NYSE Arca
PIE	PowerShares DWA Emerging Markets Technical Leaders Portfolio	NYSE Arca
PIN	PowerShares India Portfolio	NYSE Arca
PIZ	PowerShares DWA Developed Markets Technical Leaders Portfolio	NYSE Arca
PJP	Powershares Dynamic Pharmaceuticals Portfolio	NYSE Arca
PKW	PowerShares Buyback Achievers Portfolio	NYSE Arca
PPH	Market Vectors Pharmaceutical ETF	NYSE Arca
PPLT	ETFS Platinum Trust	NYSE Arca
PRF	Powershares FTSE RAFI US 1000 Portfolio	NYSE Arca
[redacted]	PowerShares FTSE RAFI US 1500 Small-Mid Portfolio	NASDAQ GM
PSK	SPDR Wells Fargo Preferred Stock ETF	NYSE Arca

Ticker	Name	Primary Exchange
PSLV	Sprott Physical Silver Trust	NYSE Arca
PSP	PowerShares Global Listed Private Equity Portfolio	NYSE Arca
PSQ	ProShares Short QQQ	NYSE Arca
PWV	PowerShares Dynamic Large Cap Value Portfolio	NYSE Arca
PXF	PowerShares FTSE RAFI Developed Markets ex-U.S. Portfolio	NYSE Arca
PXH	PowerShares FTSE RAFI Emerging Markets Portfolio	NYSE Arca
PZA	PowerShares Insured National Municipal Bond Portfolio	NYSE Arca
QAI	IndexIQ ETF Trust - IQ Hedge Multi-Strategy Tracker ETF	NYSE Arca
QQQ	Powershares QQQ Trust Series 1	NASDAQ GM
REM	iShares FTSE NAREIT Mortgage Plus Capped Index Fund	NYSE Arca
REZ	iShares FTSE NAREIT Residential Plus Capped Index Fund	NYSE Arca
RFG	Guggenheim S&P Midcap 400 Pure Growth ETF	NYSE Arca
RJA	ELEMENTS Linked to the Rogers International Commodity Index - Agri Tot Return	NYSE Arca
RJI	ELEMENTS Linked to the Rogers International Commodity Index - Total Return	NYSE Arca
RPG	Guggenheim S&P 500 Pure Growth ETF	NYSE Arca
RPV	Guggenheim S&P 500 Pure Value ETF	NYSE Arca
RSP	Guggenheim S&P 500 Equal Weight ETF	NYSE Arca
RSX	Market Vectors Russia ETF	NYSE Arca
[redacted]	Market Vectors Retail ETF	NYSE Arca
RWM	ProShares Short Russell2000	NYSE Arca
RWO	SPDR Dow Jones Global Real Estate ETF	NYSE Arca
RWR	SPDR Dow Jones REIT ETF	NYSE Arca
RWX	SPDR Dow Jones International Real Estate ETF	NYSE Arca
RXI	iShares S&P Global Consumer Discretionary Sector Index Fund	NYSE Arca
SAGG	Direxion Daily Total Bond Market Bear 1x Shares	NYSE Arca
SBB	ProShares Short SmallCap600	NYSE Arca
SCHA	Schwab US Small-Cap ETF	NYSE Arca
SCHB	Schwab US Broad Market ETF	NYSE Arca
SCHD	Schwab US Dividend Equity ETF	NYSE Arca
SCHE	Schwab Emerging Markets Equity ETF	NYSE Arca
SCHF	Schwab International Equity ETF	NYSE Arca
SCHG	Schwab U.S. Large-Cap Growth ETF	NYSE Arca
SCHH	Schwab U.S. REIT ETF	NYSE Arca
SCHM	Schwab U.S. Mid-Cap ETF	NYSE Arca
SCHO	Schwab Short-Term U.S. Treasury ETF	NYSE Arca
SCHP	Schwab U.S. TIPs ETF	NYSE Arca
SCHR	Schwab Intermediate-Term U.S. Treasury ETF	NYSE Arca
SCHV	Schwab U.S. Large-Cap Value ETF	NYSE Arca
SCH[redacted]	Schwab US Large-Cap ETF	NYSE Arca
SCHZ	Schwab U.S. Aggregate Bond ETF	NYSE Arca

Ticker	Name	Primary Exchange
SCIF	Market Vectors India Small-Cap Index ETF	NYSE Arca
SCPB	SPDR Barclays Short Term Corporate Bond ETF	NYSE Arca
SCZ	iShares MSCI EAFE Small Cap Index Fund	NYSE Arca
SDIV	Global X SuperDividend ETF	NYSE Arca
SDY	SPDR S&P Dividend ETF	NYSE Arca
SGOL	ETFS Gold Trust	NYSE Arca
SH	ProShares Short S&P500	NYSE Arca
SHM	SPDR Nuveen Barclays Short Term Municipal Bond ETF	NYSE Arca
SHV	iShares Barclays Short Treasury Bond Fund	NYSE Arca
SHY	iShares Barclays 1-3 Year Treasury Bond Fund	NYSE Arca
SIL	Global X Silver Miners ETF	NYSE Arca
SIVR	ETFS Physical Silver Shares	NYSE Arca
SJB	ProShares Short High Yield	NYSE Arca
SJNK	SPDR Barclays Short Term High Yield Bond ETF	NYSE Arca
SLV	iShares Silver Trust	NYSE Arca
SLX	Market Vectors Steel Index Fund	NYSE Arca
SLY	SPDR S&P 600 Small CapETF	NYSE Arca
SMH	Market Vectors Semiconductor ETF	NYSE Arca
SNLN	Highland/iBoxx Senior Loan ETF	NYSE Arca
[redacted]X	iShares PHLX SOX Semiconductor Sector Index Fund	NASDAQ GM
[redacted]B	PowerShares S&P 500 High Beta Port ETF	NYSE Arca
SPHD	PowerShares S&P 500 High Dividend Portfolio	NYSE Arca
SPLV	PowerShares S&P 500 Low Volatility Portfolio	NYSE Arca
SPPP	Sprott Physical Platinum & Palladium Trust	NYSE Arca
SPY	SPDR S&P 500 ETF Trust	NYSE Arca
SPYG	SPDR S&P 500 Growth ETF	NYSE Arca
SPYV	SPDR S&P 500 Value ETF	NYSE Arca
SRLN	SPDR Blackstone / GSO Senior Loan ETF	NYSE Arca
STIP	iShares Barclays 0-5 Year TIPS Bond Fund	NYSE Arca
STPZ	PIMCO 1-5 Year U.S. TIPS Index Exchange-Traded Fund	NYSE Arca
SUB	iShares S&P Short Term National AMT-Free Municipal Bond Fund	NYSE Arca
SVXY	ProShares Short VIX Short-Term Futures ETF	NYSE Arca
SYLD	Cambria Shareholder Yield ETF	NYSE Arca
TAN	Guggenheim Solar ETF	NYSE Arca
TAO	Guggenheim China Real Estate ETF	NYSE Arca
TBF	ProShares Short 20+ Year Treasury	NYSE Arca
TBX	ProShares Short 7-10 Treasury	NYSE Arca
TDTT	FlexShares iBoxx 3-Year Target Duration TIPS Index Fund	NYSE Arca
TFI	SPDR Nuveen Barclays Municipal Bond ETF	NYSE Arca
TH[redacted]	iShares MSCI Thailand Capped Investable Market Index Fund	NYSE Arca
TIP	iShares Barclays TIPS Bond Fund	NYSE Arca

Ticker	Name	Primary Exchange
TLH	iShares Barclays 10-20 Year Treasury Bond Fund	NYSE Arca
TLT	iShares Barclays 20+ Year Treasury Bond Fund	NYSE Arca
TUR	iShares MSCI Turkey Index Fund	NYSE Arca
UNG	United States Natural Gas Fund LP	NYSE Arca
USCI	United States Commodity Index Fund	NYSE Arca
USMV	iShares MSCI USA Minimum Volatility Index Fund	NYSE Arca
USO	United States Oil Fund LP	NYSE Arca
UUP	PowerShares DB US Dollar Index Bullish Fund	NYSE Arca
VAW	Vanguard Materials ETF	NYSE Arca
VB	Vanguard Small-Cap ETF	NYSE Arca
VBK	Vanguard Small-Cap Growth ETF	NYSE Arca
VBR	Vanguard Small-Cap Value ETF	NYSE Arca
VCIT	Vanguard Intermediate-Term Corporate Bond ETF	NASDAQ GM
VCLT	Vanguard Long-Term Corporate Bond ETF	NASDAQ GM
VCR	Vanguard Consumer Discretionary ETF	NYSE Arca
VCSH	Vanguard Short-Term Corporate Bond ETF	NASDAQ GM
VDC	Vanguard Consumer Staples ETF	NYSE Arca
VDE	Vanguard Energy ETF	NYSE Arca
VEA	Vanguard FTSE Developed Markets ETF	NYSE Arca
[redacted]	Vanguard FTSE All-World ex-US ETF	NYSE Arca
[redacted]	Vanguard Financials ETF	NYSE Arca
VGIT	Vanguard Intermediate-Term Government Bond ETF	NASDAQ GM
VGK	Vanguard FTSE Europe ETF	NYSE Arca
VGLT	Vanguard Long-Term Government Bond ETF	NASDAQ GM
VGSH	Vanguard Short-Term Government Bond ETF	NASDAQ GM
VGT	Vanguard Information Technology ETF	NYSE Arca
VHT	Vanguard Health Care ETF	NYSE Arca
VIG	Vanguard Dividend Appreciation ETF	NYSE Arca
VIIX	VelocityShares VIX Short Term ETN	NYSE Arca
VIIZ	VelocityShares VIX Medium Term ETN	NYSE Arca
VIOO	Vanguard S&P Small-Cap 600 ETF	NYSE Arca
VIS	Vanguard Industrials ETF	NYSE Arca
VIXM	ProShares VIX Mid-Term Futures ETF	NYSE Arca
VIXY	ProShares VIX Short-Term Futures ETF	NYSE Arca
VMBS	Vanguard Mortgage-Backed Securities ETF	NASDAQ GM
VNM	Market Vectors Vietnam ETF	NYSE Arca
VNQ	Vanguard REIT ETF	NYSE Arca
VNQI	Vanguard Global ex-U.S. Real Estate ETF	NASDAQ GM
VO	Vanguard Mid-Cap ETF	NYSE Arca
[redacted]	Vanguard Mid-Cap Value ETF	NYSE Arca
VONE	Vanguard Russell 1000	NASDAQ GM

Ticker	Name	Primary Exchange
VONG	Vanguard Russell 1000 Growth ETF	NASDAQ GM
VONV	Vanguard Russell 1000 Value	NASDAQ GM
VOO	Vanguard S&P 500 ETF	NYSE Arca
VOOG	Vanguard S&P 500 Growth ETF	NYSE Arca
VOOV	Vanguard S&P 500 Value ETF	NYSE Arca
VOT	Vanguard Mid-Cap Growth ETF	NYSE Arca
VOX	Vanguard Telecommunication Services ETF	NYSE Arca
VPL	Vanguard FTSE Pacific ETF	NYSE Arca
VPU	Vanguard Utilities ETF	NYSE Arca
VQT	Barclays ETN+ ETNs Linked to the S&P 500 Dynamic VEQTORTM TotaL Return Index	NYSE Arca
VSS	Vanguard FTSE All World ex-US Small-Cap ETF	NYSE Arca
VT	Vanguard Total World Stock ETF	NYSE Arca
VTHR	Vanguard Russell 3000	NASDAQ GM
VTI	Vanguard Total Stock Market ETF	NYSE Arca
VTIP	Vanguard Short-Term Inflation-Protected Securities ETF	NASDAQ GM
VTV	Vanguard Value ETF	NYSE Arca
VTWG	Vanguard Russell 2000 Growth	NASDAQ GM
VTWO	Vanguard Russell 2000	NASDAQ GM
[redacted]VV	Vanguard Russell 2000 Value	NASDAQ GM
[redacted]G	Vanguard Growth ETF	NYSE Arca
VV	Vanguard Large-Cap ETF	NYSE Arca
VWO	Vanguard FTSE Emerging Markets ETF	NYSE Arca
VWOB	Vanguard Emerging Markets Government Bond ETF	NASDAQ GM
VXF	Vanguard Extended Market ETF	NYSE Arca
VXUS	Vanguard Total International Stock ETF	NASDAQ GM
VXX	iPATH S&P 500 VIX Short-Term Futures ETN	NYSE Arca
VXZ	iPATH S&P 500 VIX Mid-Term Futures ETN	NYSE Arca
VYM	Vanguard High Dividend Yield ETF	NYSE Arca
WIP	SPDR DB International Government Inflation-Protected Bond ETF	NYSE Arca
WOOD	iShares S&P Global Timber & Forestry Index Fund	NASDAQ GM
XBI	SPDR S&P Biotech ETF	NYSE Arca
XES	SPDR S&P Oil & Gas Equipment & Services ETF	NYSE Arca
XHB	SPDR S&P Homebuilders ETF	NYSE Arca
XIV	VelocityShares Daily Inverse VIX Short Term ETN	NYSE Arca
XLB	Materials Select Sector SPDR Fund	NYSE Arca
XLE	Energy Select Sector SPDR Fund	NYSE Arca
XLF	Financial Select Sector SPDR Fund	NYSE Arca
XLG	Guggenheim Russell Top 50 Mega Cap ETF	NYSE Arca
X[redacted]	Industrial Select Sector SPDR Fund	NYSE Arca
X[redacted]	Technology Select Sector SPDR Fund	NYSE Arca
XLP	Consumer Staples Select Sector SPDR Fund	NYSE Arca

Ticker	Name	Primary Exchange
XLU	Utilities Select Sector SPDR Fund	NYSE Arca
XLV	Health Care Select Sector SPDR Fund	NYSE Arca
XLY	Consumer Discretionary Select Sector SPDR Fund	NYSE Arca
XME	SPDR S&P Metals & Mining ETF	NYSE Arca
XOP	SPDR S&P Oil & Gas Exploration & Production ETF	NYSE Arca
XPH	SPDR S&P Pharmaceuticals ETF	NYSE Arca
XRT	SPDR S&P Retail ETF	NYSE Arca
XSD	SPDR S&P Semiconductor ETF	NYSE Arca
XVZ	iPath S&P 500 Dynamic VIX ETN	NYSE Arca
YMLP	Yorkville High Income MLP	NYSE Arca
ZIV	VelocityShares Daily Inverse VIX Medium Term ETN	NYSE Arca
ZROZ	PIMCO 25+ Year Zero Coupon U.S. Treasury Index Exchange-Traded Fund	NYSE Arca

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 >= $0.75 and <= $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 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 (3-8) for cancels

10. Include: ticker, date, time at start, time of Limit State, all data item fields in 1, last sale prior to 15-second period (null if no trades today), range during 15-second period, last trade during 15-second period

I. **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 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.

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 **August 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.

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 JO WHITE, CHAIR

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

KARA M. STEIN, COMMISSIONER

(1 Document)

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70293 / August 30, 2013

WHISTLEBLOWER AWARD PROCEEDING
File No. 2013-3

In the Matter of the Claim for Related Action Award

in connection with

United States v. Andrey C. Hicks, 1:11-cr-10407-PBS
(D. Mass. 2011) (Related Action)

SEC v. Andrey C. Hicks and Locust Offshore Management, LLC,
1:11-cv-11888-RGS (D. Mass. 2011) (SEC Action)

ORDER DETERMINING RELATED ACTION WHISTLEBLOWER AWARD CLAIMS

On June 12, 2013, the Commission ordered that Claimant#1 , Claimant#2 and Claimant#3 each receive an award of five percent (5%) of the monetary sanctions collected in *SEC v. Andrey C. Hicks and Locust Offshore Management, LLC*, 1:11-cv-11888-RGS (D. Mass. 2011) (the "SEC Action").[1] On June 28, 2013, the Claims Review Staff issued a Preliminary Determination recommending that Claimant#1,Claimant#2, and Claimant#3 each also be allowed an award in the amount of five percent (5%) of the monetary sanctions collected in *United States v. Hicks*, 1:11-cr-10407-PBS (D. Mass. 2011), a criminal-law enforcement matter brought by the U.S. Department of Justice that is a related action to the SEC Action within the meaning of Rule 21F-3(b) under the Securities Exchange Act of 1934, 17 C.F.R. § 240.21F-3(b) (the "Related Action").

After giving their whistleblower award claims due consideration under Rules 21F-11(f)

[1] *See* In the Matter of the Claim for Award in Connection with *SEC v. Andrey C. Hicks and Locust Offshore Management, LLC*, (Release No. 69749) (June 12, 2013) (available at: http://www.sec.gov/rules/other/2013/34-69749.pdf). This award was made in connection with Notice of Covered Action 2012-27.

and (h), 17 C.F.R. § 240.21F-11(f) and (h), it is hereby ORDERED that Claimant#1 Claimant#2 and Claimant#3 shall each receive an award of five percent (5%) of the monetary sanctions collected in the Related Action, including any monetary sanctions collected after the date of this Order.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
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 **August 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.

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 JO WHITE, CHAIR

LUIS A. AGUILAR, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

KARA M. STEIN, COMMISSIONER

MICHAEL S. PIWOWAR, COMMISSIONER

4 Documents

Commissioner Piwowar not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70243 / August 21, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15436

In the Matter of ROBERT A. GIST, ESQ., Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e)(3) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

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

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these

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

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

oceedings, 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 Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Gist, age 62, is and has been an attorney licensed to practice in Georgia.

2. On May 31, 2013, the Commission filed a complaint against Gist in SEC v. Robert A. Gist, et al., (Civil Action No. 1:13-CV-01833-AT), in the United States District Court for the Northern District of Georgia. On May 31, 2013, the court entered an order permanently enjoining Gist, by consent, from future violations of Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Gist was also ordered to pay $5,400,000 in disgorgement of ill-gotten gains from his misappropriation of investor funds, and prejudgment interest thereon to be calculated from January 1, 2008, and a civil money penalty in the amount to be determined by the Court.

3. The Commission's complaint alleged that, in connection with the sale of securities, Gist misused and misappropriated investor funds, falsely stated to investors that ir funds were invested, sent out false account statements indicating that investors funds re fully invested and earning returns, and otherwise engaged in a variety of conduct, which operated as a fraud and deceit on investors. The complaint also alleged that for a portion of the time of the alleged misconduct, Gist was a registered representative of a Commission-registered broker-dealer, and that for a later portion of the time of the alleged misconduct, Gist acted as an unregistered broker-dealer.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that Gist is suspended from appearing or practicing before the Commission as an attorney.

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
Rel. No. 70290 / August 29, 2013

Admin. File Proc. No. 3-14104r

In the Matter of the Application of SHAREMASTER c/o Howard Feigenbaum 8747 Duval Lane Hemet, CA 92545 For Review of Disciplinary Action Taken by FINRA	ORDER DISMISSING PROCEEDINGS ON REMAND

I.

Sharemaster, a registered broker-dealer, seeks review of a Financial Industry Regulatory Authority ("FINRA") order suspending it from FINRA membership for failure to file an annual financial report audited by an accounting firm registered with the Public Company Accounting Oversight Board ("PCAOB"). In October 2011, we dismissed Sharemaster's application for review.[1] Sharemaster thereafter filed a petition for review with the United States Court of Appeals for the Ninth Circuit, and in its subsequent briefing Sharemaster clarified and elaborated upon the arguments it had originally made before us. In light of those arguments, we requested—and that court ordered—that this matter be remanded to us for further proceedings. Based upon those and the original proceedings in this matter, we find that we lack statutory jurisdiction to consider Sharemaster's application and, accordingly, dismiss that application.[2]

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1 *Sharemaster*, Order Dismissing Proceedings, Securities Exchange Act Release No. 65570, 2011 WL 4889100 (Oct. 14, 2011).

2 This matter is before us on a full remand, and our earlier opinion in this matter is hereby withdrawn. Thus, to the extent Sharemaster's May 29, 2012 "Motion for Commission's Full Review of FINRA Hearing Panel Decision of October 6, 2010 and the Disciplinary Actions Taken by FINRA" requests that we review in full our earlier opinion, that motion is granted. To the extent that Sharemaster's [illegible] requests that we address the merits of its challenge to FINRA's October 6, 2010 hearing panel order, however, that motion is denied because, as explained below, we lack jurisdiction to do so.

II.

This matter has a complex procedural history. On February 17, 2010, Sharemaster filed a 2009 annual report that contained financial statements audited by a firm that was not registered with the PCAOB. FINRA rejected the filing, instructing Sharemaster that it must file financials audited by a PCAOB-registered firm.[3] Sharemaster responded that it qualified for an exemption pursuant to Commission Rule 17a-5(e)(1)(i)(A) from the requirement that it file a report audited by a PCAOB-registered firm.[4]

FINRA held an expedited hearing to consider Sharemaster's argument, and on October 6, 2010, a FINRA hearing panel found that Sharemaster was not entitled to such an exemption. The panel concluded that the exception provided in Rule 17a-5(e)(1)(i)(A) is applicable only to firms whose business is limited to one issuer and that Sharemaster did not meet that standard because it had business arrangements with more than one issuer in 2009. Therefore, the panel concluded that Sharemaster's 2009 annual report filing was deficient. To compel Sharemaster to file a properly audited report, the panel then ordered:

> Sharemaster is suspended until it files the requisite annual report. At the end of six months, the suspension will convert to an expulsion if [Sharemaster] has at that time not filed a properly audited annual report for 2009. [Sharemaster] is also ordered to pay costs of $1,785.00, which includes an administrative fee of $750.00 and the cost of the hearing transcript.[5]

Thus, the FINRA hearing panel imposed a coercive sanction—in the form of a suspension—on Sharemaster to induce compliance.[6]

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[3] FINRA Order 1-2.

[4] *Id.* at 2. Section 17(e)(1)(A) of the Exchange Act and Rule 17a-5(d) thereunder generally require registered broker-dealers to file annual reports containing financial statements audited by PCAOB-registered firms. Rule 17a-5(e)(1)(i)(A) provides an exemption to that general requirement; under that provision, a broker or dealer need not file audited financial statements if

> [t]he securities business of such broker or dealer has been limited to acting as broker (agent) for the issuer in soliciting subscriptions for securities of such issuer, said broker has promptly transmitted to such issuer all funds and promptly delivered to the subscriber all securities received in connection therewith, and said broker has not otherwise held funds or securities for or owed money or securities to customers.

[5] FINRA Order 2-6.

[6] *See id.*

Thereafter, on October 29, 2010, Sharemaster filed an application for Commission review of FINRA's decision. Sharemaster did not seek a stay of the suspension pursuant to Rule 401(d) of the Commission's Rules of Practice pending our consideration of the appeal.[7] Instead, on November 1, 2010—before any other action in this matter—Sharemaster filed a compliant 2009 annual report that contained financial statements audited by a PCAOB-registered firm.[8] On November 12, 2010, FINRA filed with the Commission a certified record of the proceeding pursuant to Commission Rule of Practice 420(e).[9] Sharemaster filed its opening brief on January 13, 2011, and on February 22, 2011, FINRA filed its response. Between those two dates, on January 24, 2011, FINRA lifted Sharemaster's suspension and sent Sharemaster a letter so advising it.[10]

On March 22, 2011, we directed the parties to address "what impact, if any, Sharemaster's subsequent compliance and FINRA's lifting of the suspension would have on the Commission's consideration" of Sharemaster's application.[11] FINRA and Sharemaster filed responsive briefs on April 11, 2011 and April 12, 2011, respectively, asserting that Sharemaster's compliance and the lifting of the suspension did not preclude Commission review.[12] In its supplemental briefing, Sharemaster also asserted for the first time and in less-than-clear terms that by continuing the suspension beyond November 1, 2010, when Sharemaster had filed a compliant annual report, FINRA had impermissibly [illegible]tended the suspension period in violation of the terms of the hearing panel's order. [illegible]aremaster contended that we should review this alleged violation. Furthermore, Sharemaster argued "FINRA's failure to comply with the October 6, 2010 Hearing Panel Order by lifting Sharemaster's suspension as of January 24, 2011 instead of November 1, 2010, caused injury through Sharemaster's loss of commission payments" that it would

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[7] 17 C.F.R. § 201.401(d)(1) ("A motion for a stay of an action by a self-regulatory organization for which the Commission is the appropriate regulatory agency, for which action review may be sought pursuant to [Rule 420], may be made by any person aggrieved thereby at the time an application for review is filed in accordance with [Rule 420] or thereafter.").

[8] *See, e.g.*, FINRA April 11, 2011 Br. at 2.

[9] 17 C.F.R. § 201.420(e) (requiring an SRO to file a certified copy of the record upon which the action complained of was taken within fourteen days after receipt of an application for review).

[10] Though the parties dispute when the suspension should have lifted, they agree that FINRA actually lifted it on January 24, 2011. *See* FINRA April 11, 2011 Br. at 2 ("On January 24, 2011, FINRA lifted the suspension imposed by the Hearing Panel . . . ."); Sharemaster June 25, 2012 Br. at 8.

[11] March 22, 2011 Order Directing the Filing of Additional Briefs at 2.

[12] [illegible]NRA contended that costs that had been assessed against—but not yet paid by—Sharemaster were sufficient to preserve statutory jurisdiction. FINRA April 11, 2011 Br. at 5.

have otherwise have received.[13] To support its argument, Sharemaster sought to introduce four checks dated November 26, 2010, December 10, 2010, December 17, 2010, and December 23, 2010 that Sharemaster claims had stop-payment orders placed on them due to Sharemaster's suspension.[14]

On October 14, 2011, we issued an order finding that because FINRA's suspension of Sharemaster was no longer in effect, we lacked jurisdiction over this matter pursuant to Section 19(d) of the Exchange Act.[15] Sharemaster subsequently filed a petition for review of our order with the United States Court of Appeals for the Ninth Circuit.[16] Before that court, Sharemaster elaborated on the argument first alluded to in its April 12, 2011 supplemental Commission brief, explicitly arguing that the Commission possessed jurisdiction, pursuant to Exchange Act Section 19(d), to consider FINRA's extension of Sharemaster's suspension beyond November 1, 2010, because that extension constituted either a disciplinary sanction or a denial of access to services.[17] On March 9, 2012, we requested that the Ninth Circuit remand the matter to us, and on May 7, 2012, the Ninth Circuit granted our motion.[18]

On May 23, 2012, Sharemaster filed a motion requesting the Commission's "Full Review of FINRA's Hearing Panel Decision of 10/6/10 and the Disciplinary Actions [t]aken by FINRA." On May 24, 2012, we issued an order instructing the parties to file [b]riefs "address[ing] Sharemaster's argument that the Commission had the authority—pursuant to Exchange Act Section 19(d)—to order the lifting of the suspension corrected because FINRA's asserted delay in lifting the suspension constituted either a disciplinary sanction or a denial of access to services."[19] We now consider those—and the parties' earlier—filings.

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[13] Sharemaster April 12, 2011 Br. at 12 & n.22.

[14] *See id.* Sharemaster had previously filed, on April 1, 2011, a motion to adduce additional evidence, which included, among other things, copies of these four checks. These checks total $25.00.

[15] *Sharemaster*, Order Dismissing Proceedings, Exchange Act Release No. 65570, 2011 WL 4889100 (Oct. 14, 2011).

[16] *Sharemaster v. SEC, appeal docketed*, No. 11-73328 (9th Cir. Nov. 3, 2011).

[17] *Sharemaster v. SEC*, No. 11-73328 (9th Cir.), Sharemaster Opening Br. at 11; *see also id.* at 7-8.

[18] *[S]haremaster v. SEC*, No. 11-73328 (9th Cir. May 7, 2012).

[19] Order Scheduling Briefs on Remand at 2.

III.

We conclude that we lack statutory jurisdiction to consider Sharemaster's application to review the coercive sanction imposed by FINRA because there is currently no live sanction for us to act upon. Originally, Sharemaster and FINRA argued that we had jurisdiction to consider Sharemaster's application. On remand, Sharemaster contends that we have authority to review both its original suspension and the continuation of that suspension beyond November 1, 2010. Reversing its earlier position, FINRA now argues that we lack jurisdiction. We conclude that none of the arguments advanced by the parties identifies a supportable basis for jurisdiction.

A. The Commission lacks statutory jurisdiction to review FINRA's October 6, 2010 order suspending Sharemaster.

As noted, on October 6, 2010, a FINRA hearing panel suspended Sharemaster until it filed a compliant annual report; if Sharemaster did not do so within six months, the suspension would convert to an expulsion. When Sharemaster filed an application seeking review of that order on October 29, 2010, FINRA's coercive sanction was in effect. Sharemaster could have, but did not, seek a stay of the suspension pending our resolution of this matter.[20] On November 1, 2010, Sharemaster opted to comply with the hearing panel order, and FINRA has since lifted the suspension. There is, therefore, no sanction currently in effect, and the question is whether that fact divests us of jurisdiction.

Our jurisdiction to review FINRA and other self-regulatory organization ("SRO") disciplinary actions is governed by Exchange Act Sections 19(d) and (e). Those sections do not unambiguously answer the question before us. Section 19(d) provides that certain FINRA actions "shall be subject to review" by the Commission, and it lists reviewable actions as those that: (1) impose a final disciplinary sanction; (ii) deny membership or participation to an applicant; (iii) prohibit or limit any person with respect to access to services offered by FINRA or a FINRA member; or (iv) bar any person from becoming associated with a member.[21] Section 19(e) governs review of any "final disciplinary sanction," but neither that section nor any other provision of the Exchange Act defines that term or expressly addresses whether a coercive sanction must be in force at the time of Commission review.

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[20] The suspension here was imposed as a result of expedited proceedings, and neither our rules nor FINRA's provide for an automatic stay of suspensions in expedited cases. *See* FINRA Rule 9550-series. By contrast, outside of the expedited review context, FINRA Rule 9370 provides for an automatic stay—except for bars and expulsions—upon the filing of an application for review.

[21] 15 U.S.C. § 78s(d).

In light of the statutory ambiguity, we must decide whether the statutory framework provided by Congress should be interpreted to require that a coercive sanction be in effect for us to review it.[22] For several reasons, we conclude that the better approach is to construe Sections 19(d) and (e) as imposing such a requirement.

First, though it does not definitively answer the question, the statutory language defining our jurisdiction suggests that a live sanction is required for review. In particular, Section 19(e), which describes what we may do in response to a final disciplinary sanction imposed by an SRO appears to contemplate that there be a sanction in place—at the time of review—for us to act upon. For instance, in describing "any proceeding to review a final disciplinary sanction," Section 19(e)(1) provides that there must be, among other things, "opportunity for the presentation of supporting reasons to *affirm, modify, or set aside the sanction*."[23] Moreover, Section 19(e)(1)(A) provides that if an SRO acted appropriately, the Commission "shall so declare *and*, as appropriate, *affirm the sanction* imposed by the [SRO], *modify the sanction . . . , or remand* to the [SRO] for further proceedings."[24] And similarly, Section 19(e)(1)(B) provides that if an SRO did not act appropriately, the Commission "shall, by order, *set aside the sanction* imposed by the [SRO] and, if appropriate, remand to the [SRO] for further proceedings."[25] The statutory text therefore appears to contemplate a live sanction for the Commission to act upon.[26]

Second, coercive sanctions operate like judicial civil contempt sanctions, and we believe they ought to be treated similarly. Like civil contempt—and unlike traditional disciplinary sanctions—a coercive sanction is designed to compel a particular action and will generally lift upon completion of that action. In the civil contempt context, once a contemnor has complied and the sanction has lifted, the contemnor is generally not entitled

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[22] As noted above, this is an unusual situation; in many cases our jurisdiction will be preserved because an applicant automatically receives a stay pursuant to FINRA's rules in non-expedited proceedings. *See supra* footnote 20. And in expedited proceedings such as this where FINRA's rules do not provide for an automatic stay, the applicant may, of course, seek a stay, which if granted would preserve our jurisdiction.

[23] 15 U.S.C. § 78s(e)(1) (emphasis added); *see also SEC v. Vittor*, 323 F.3d 930, 934 (11th Cir. 2003) (noting Section 19(e) provides "that if … the SEC confirms the SRO's findings of misconduct, the SEC by order, shall so declare and, as appropriate, affirm the sanction imposed by the self-regulatory organization" (internal quotation marks omitted)).

[24] 15 U.S.C. § 78s(e)(1)(A) (emphasis added).

[25] 15 U.S.C. § 78s(e)(1)(B) (emphasis added).

[26] *See Marshall Fin., Inc.*, Exchange Act Release No. 50343, 57 SEC 869, 876-77, 2004 WL [redacted]8, at *3 (Sept. 10, 2004) (finding a lack of jurisdiction where a suspension "was never imposed" and there was, consequently, nothing under "Exchange Act Section 19(e) . . . to 'set aside'").

to appellate review.[27] Because coercive sanctions operate in the same way, we believe it makes policy sense to follow that long established practice.

Third, a contrary conclusion could compel the Commission to issue effectively advisory opinions in the context of coercive sanctions that have long since lifted. Based on the statutory scheme, we do not believe that Congress has expressed an intent or desire that we be required to issue opinions with no direct, real world effect. Indeed, we believe that little would be gained from requiring us to engage in such a practice.[28]

Fourth, we believe that reading Sections 19(d) and (e) to require such advisory examinations could waste limited Commission resources and possibly come at the expense of parties with genuine, urgent, and ongoing disputes.[29] Federal courts similarly decline to review hypothetical disputes because, as they have often explained, limited judicial resources should be used to resolve real controversies.[30]

Fifth, requiring a live sanction ensures meaningful review because the parties will have a substantial and concrete interest in the outcome of the proceedings. By contrast, when a decision will have no direct effect—because the purpose of a sanction has been

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See SEC v. Hickey, 322 F.3d 1123, 1128 (9th Cir. 2003) (purging of contempt renders dispute over contempt moot); *United States v. Paccione*, 964 F.2d 1269, 1274 (2d Cir. 1992) (because "[w]ithin the designated time period, [contemnor] complied and apparently purged himself . . . his appeal from the order finding him in civil contempt is moot"); *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1479-80 (9th Cir. 1992) (decision not to comply and face contempt prevented objections to discovery order from mooting); *In re Grand Jury Subpoena Duces Tecum*, 955 F.2d 670, 672 (11th Cir. 1992) ("In the context of purely coercive civil contempt, a contemnor's compliance with the district court's underlying order moots the contemnor's ability to challenge his contempt adjudication. 'A long line of precedent holds that once a civil contempt is purged, no live case or controversy remains for adjudication.' " (quoting *In re Campbell*, 628 F.2d 1260, 1261 (9th Cir. 1980) (per curiam))).

[28] We note that we may—and do—issue topic-specific advisory statements. These statements come in various forms, including interpretive guidance, responses to frequently asked questions, and no-action letters, but whether and when to do so remains within the Commission's sound discretion. We do not believe that Congress intended a different result here.

[29] *See, e.g., NLRB v. A. Duie Pyle, Inc.*, 730 F.2d 119, 124 (3d Cir. 1984) ("[I]t is difficult to justify the time expended in the administrative and judicial process to adjudicate a 'settled' dispute when the limited resources could be used to resolve controversies of genuine interest to the parties.").

[30] *See Florida State Conference of NAACP. v. Browning*, 522 F.3d 1153, 1161 (11th Cir. 2008) (a purpose of case or controversy requirement is "the reservation of judicial resources to resolve more concrete and pressing disputes"); *Senty-Haugen v. Goodno*, 462 F.3d 876, 889 (8th Cir. 2006) ("the ripeness doctrine avoids wasting scarce judicial resources in attempts to resolve speculative or indeterminate factual issues" (internal quotation marks omitted)).

fulfilled—parties frequently may have little, if any, incentive to effectively, diligently, and vigorously present all of the issues.

Applying those considerations here, we construe Sections 19(d) and (e) to require a live coercive sanction at the time of our review, and we conclude that the Commission lacks jurisdiction to review the now-lifted coercive sanction imposed in this case. If Sharemaster had either not complied with the coercive sanction or had sought a stay, the sanction it seeks to have reviewed would have remained in place and we could have undertaken the review contemplated by Section 19(e). Sharemaster, however, opted to comply, and at that point, the sanction lifted. There is, accordingly, nothing for the Commission, as Section 19(e) contemplates, to "affirm, modify, or set aside." Thus, we lack jurisdiction over this matter.

B. The Commission lacks statutory jurisdiction to review FINRA's extension of Sharemaster's suspension beyond November 1, 2010.

We also conclude that we lack jurisdiction to consider Sharemaster's argument that its suspension was wrongfully extended beyond November 1, 2010, when it filed a compliant annual report. Sharemaster contends that its suspension was wrongfully extended or that a new sanction was imposed when FINRA failed to lift its suspension until January 24, 2011, nearly three months after it complied with the hearing panel order.[31] Nonetheless, we still lack jurisdiction because the suspension has lifted and, as discussed above, there is nothing to "affirm, modify, or set aside."[32]

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[31] The plain text of the FINRA hearing panel order provided that, "Sharemaster is suspended *until it files the requisite annual report*." FINRA Order 6 (emphasis added). Nevertheless, FINRA contends that Sharemaster's suspension did not lift when Sharemaster filed a compliant annual report. FINRA June 14, 2012 Br. at 4-6. Instead, FINRA maintains that Sharemaster's suspension did not lift until—nearly three months later—after FINRA completed a review designed to ensure that report was compliant. *See id.* FINRA, however, does not explain how the language quoted above could have reasonably notified Sharemaster that the suspension would not lift until FINRA conducted and completed such a review.

[32] Sharemaster contends that FINRA's extension of the suspension beyond November 1, 2010 constituted both a disciplinary sanction and a denial of access under Exchange Act Section 19(d). Sharemaster June 25, 2012 Br. at 8. FINRA has treated the extended suspension as a final disciplinary action and the harms (both actual and potential) that Sharemaster alleges (such as lost commissions and the specter of a FINRA enforcement proceeding) appear to flow from FINRA's treatment of the extended suspension as a final disciplinary action. *E.g.*, *id.* at 9-11. Based on those considerations, we believe that for purposes of determining jurisdiction in this case the extended suspension was inseparably intertwined with the October 6 FINRA hearing panel order and, as a result, it is appropriately considered a final disciplinary sanction and not a denial of access.

Seeking to avoid this conclusion, Sharemaster points to two harms that it contends the Commission may remedy. First, "Sharemaster asserts that if an incorrect date for lifting [its] suspension is allowed to stand, Sharemaster remains subject to disciplinary sanctions for conducting business during the period of November 1, 2010 to January 24, 2011." To substantiate its claim, Sharemaster contends that "during a cyclical FINRA examination of Sharemaster in September 2011, a FINRA examiner explained that for firms which had been suspended, FINRA's policy is to review the firm's records to determine if business was conducted during the period of suspension" and that FINRA had requested Sharemaster's "records from October 6, 2010 through January 24, 2011."[33] We do not question the sincerity of Sharemaster's fear, but the record before us does not include any action for us to review. Because the harm Sharemaster alleges is that FINRA *might* discipline it, rather than a claim that it is currently under sanction—or has been disciplined—for engaging in business between November 1, 2010 and January 24, 2011, the issue is not ripe for review. We have previously rejected similar arguments.[34] Furthermore, if FINRA were at some point to discipline Sharemaster for conducting business during that period, Sharemaster would be free at that time to seek our review of that action. As such, we decline to review the possibility of a disciplinary sanction.

Second, Sharemaster points to four checks dated November 26, 2010, December 10, 2010, December 17, 2010, and December 23, 2010 that Sharemaster contends had stop-payment orders placed on them due to Sharemaster's suspension. Sharemaster implies that these checks are commissions which, but for the extended suspension, Sharemaster would have received.[35] Even assuming we may properly consider this

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[33] Sharemaster June 25, 2012 Br. at 11.

[34] *See Allen Douglas Sec., Inc.*, Exchange Act Release No. 50513, 57 SEC 950, 958, 2004 WL 2297414, at *3 (Oct. 12, 2004) ("The possibility, however likely, of Allen Douglas becoming subject to disciplinary proceedings does not, by itself, give rise to a right of review under Section 19(d). In contrast, if Allen Douglas had proceeded with [prohibited conduct] . . . and became subject to an [SRO] disciplinary sanction as a result, the disciplinary action would be reviewable." (footnotes and internal quotation marks omitted)); *see also Morgan Stanley & Co., Inc.*, Exchange Act Release No. 39459, 1997 WL 802072, at *2 (Dec. 17, 1997) (finding that Commission lacked jurisdiction to review SRO's denial of company's exemption application and that company could seek Commission review if the SRO subsequently imposed a disciplinary sanction); *Tague Sec. Corp.*, Exchange Act Release No. 18510, 47 SEC 743, 1982 WL 32205, at *2 (Feb. 25, 1982) (finding that Commission lacked jurisdiction to review SRO's request that company adjust trades, but noting that if the company rejected the request and the SRO imposed disciplinary sanctions, the company could seek Commission review of those sanctions).

[35] *See* Sharemaster April 12, 2011 Br. at 12 & n. 22. Although Sharemaster does not expressly say these payments may be trail commissions, which are paid to a broker-dealer so long as clients remain invested in a mutual fund. Under NASD Rule 2420 and relevant guidance, a suspended broker-dealer may not receive any form of commission for broker-dealer activities, including trail commissions. *See*

evidence, we do not have the power to remedy the harm that Sharemaster alleges and, as such, it is not a basis for jurisdiction. As we have previously held, Congress has not authorized the Commission in Sections 19(d) and (e) to award damages or direct payments to applicants in SRO proceedings under review.[36] Thus, we lack the power to order FINRA—or the private parties who allegedly failed to pay the commissions—to remit to Sharemaster the amount represented by the checks. Accordingly, Sharemaster's

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NASD Rule 2420; *see also* IM-2420-2 Continuing Commissions Policy (interpreting NASD Rule 2420 to mean that, "[u]nder no circumstances shall payment of any kind be made by a member to any person who is not eligible for membership in the Association or eligible to be associated with a member because of any . . . suspension still in effect"). It thus appears that FINRA treats Rule 2420 as encompassing, within the activities prohibited by a suspension, the receipt of broker-dealer compensation. *See also* FINRA June 14, 2012 Br. at 7 ("[A] fair description of a firm's suspension is that it prevents a firm from engaging in *any* business of a broker-dealer." (emphasis in original)).

[36] *See Beatrice J. Feins*, Exchange Act Release No. 33374, 51 SEC 918, 922 n.14, 1993 WL 538913, at *3 n.14 (Dec. 23, 1993) (declining to reach state law or claims for monetary damages because "[w]e are not authorized under statute to award damages"); *see also Marshall Fin., Inc.*, Exchange Act Release No. 50343, 57 SEC 869, 877 n.21, 2004 WL 2026518, at *3 & n.21 ("Exchange Act Section 19 does not authorize to authorize the setting aside of [the SRO's] Fees assessment or authorize 'remission' of the Fees.").

argument does not alter the fact that there is, at present, no final disciplinary sanction in place for us to "affirm, modify, or set aside."[37]

Accordingly, it is ORDERED that Sharemaster's application for review is dismissed.

By the Commission.[38]

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

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[37] Originally, Sharemaster also implied that the Commission could remedy its claimed injuries by ordering FINRA to correct the date that its suspension lifted in FINRA's Central Registration Depository. *See* Sharemaster April 12, 2011 Br. at 10 & n.11. Sharemaster disclaims this argument on remand, asserting, "Sharemaster is not appealing information which FINRA published . . . or asking FINRA to delete disputed information." Sharemaster June 25, 2012 Br. at 12; *see also id.* at 11 (explaining the correction Sharemaster requests is that the Commission order FINRA to correct the date of the suspension, not the registry). Sharemaster and FINRA, at an earlier point, also contended that costs imposed by the FINRA hearing panel might preserve jurisdiction. But we are not empowered to review FINRA's assessment of costs or fees. *See Marshall Fin., Inc.*, Exchange Act Release No. 50343, 57 SEC 869, 877 n.21, 2004 WL 2026518, at *3 & n.21 (Sept. 10, 2004) ("Exchange Act Section 19 does not appear to authorize the setting aside of [the SRO's] Fees assessment or authorize 'remission' of the Fees."); *see also Robert M. Ryerson*, Exchange Act Release No. 57839, 2008 WL 2117161, at *5 (May 20, 2008) (no jurisdiction to grant a stay of SRO fee collection efforts). Furthermore, even if we were so empowered, we would, as courts do, decline to exercise jurisdiction solely to litigate the issue of costs and fees. *E.g.*, *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 480 (1990) ("[R]easonable caution is needed to be sure that mooted litigation is not pressed forward, and unnecessary judicial pronouncements on even constitutional issues obtained, solely in order to obtain reimbursement of sunk costs."); *Bank of Marin v. England*, 385 U.S. 99, 111 n.1 (1966) (Fortas, J., dissenting) (stating that it is well-established that dispute over costs will not salvage an otherwise moot case); 1A C.J.S. ACTIONS § 76 (2012) ("Generally, a moot action will not be retained for determination merely to decide incidental questions such as liability for costs or attorney's fees." (citing cases)). Sharemaster also now contends that "FINRA assessed and received payment of a $1000 fine against Sharemaster," Sharemaster June 25, 2012 Br. at 12, but the document Sharemaster cites—which it does not explain—simply lists this charge as a "late fee," not a fine, *see id.* at 13, Appendix B-3. As such, it appears to be another example of costs assessed as part of the FINRA proceedings here, but even if this amount did not represent an assessment of costs, we would still, as explained above, lack the power to order FINRA to repay Sharemaster. *See supra* at footnote 36.

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

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-9447; 34-70298/ August 30, 2013]

Order Making Fiscal Year 2014 Annual Adjustments to Registration Fee Rates

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 ("Securities Act") requires the Commission to collect fees from issuers on the registration of securities.[1] Section 13(e) of the Securities Exchange Act of 1934 ("Exchange Act") requires the Commission to collect fees on specified repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.[3]

The Investor and Capital Markets Fee Relief Act of 2002 ("Fee Relief Act")[4] required the Commission to make annual adjustments to the fee rates applicable under these sections for each of the fiscal years 2003 through 2011 in an attempt to generate collections equal to yearly targets specified in the statute.[5] Under the Fee Relief Act, each year's fee rate was announced on the preceding April 30, and took effect five days after the date of enactment of the Commission's regular appropriation.

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1 15 U.S.C. 77f(b).

2 15 U.S.C. 78m(e).

3 15 U.S.C. 78n(g).

4 Public Law 107-123, 115 Stat. 2390 (2002).

5 *See* 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(5) and 78n(g)(6).

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[6] changed many of the provisions related to these fees. The Dodd-Frank Act created new annual collection targets for FY 2012 and thereafter. It also changed the date by which the Commission must announce a new fiscal year's fee rate (August 31) and the date on which the new rate takes effect (October 1).

II. Fiscal Year 2014 Annual Adjustment to the Fee Rate

Section 6(b)(2) of the Securities Act, as amended by the Dodd-Frank Act, requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b).[7] The annual adjustment to the fee rate under Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.[8]

Section 6(b)(2) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2014. Specifically, the Commission must adjust the fee rate under Section 6(b) to a "rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2014], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target fee collection amount for [fiscal year 2014]." That is, the adjusted rate is determined by dividing the "target fee collection amount" for fiscal year 2014 by the "baseline estimate of the aggregate maximum offering prices" for fiscal year 2014.

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6 Public Law 111-203, 124 Stat.1376 (2010).

7 15 U.S.C. 77f(b)(2). The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the "target fee collection amount" specified in Section 6(b)(6)(A) for that fiscal year.

8 15 U.S.C. 78m(e)(4) and 15 U.S.C. 78n(g)(4).

Section 6(b)(6)(A) specifies that the "target fee collection amount" for fiscal year 2014 is $485,000,000. Section 6(b)(6)(B) defines the "baseline estimate of the aggregate maximum offering price" for fiscal year 2014 as "the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2014] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget . . . ."

To make the baseline estimate of the aggregate maximum offering price for fiscal year 2014, the Commission used a methodology similar to that developed in consultation with the Congressional Budget Office ("CBO") and Office of Management and Budget ("OMB") to project the aggregate offering price for purposes of the fiscal year 2012 annual adjustment (and identical to the methodology employed during fiscal year 2013).[9] Using this methodology, the Commission determines the "baseline estimate of the aggregate maximum offering price" for fiscal year 2014 to be $3,766,638,654,272.[10] Based on this estimate, the Commission calculates the fee rate for fiscal 2014 to be $128.80 per million. This adjusted fee rate applies to Section 6(b) of the Securities Act, as well as to Sections 13(e) and 14(g) of the Exchange Act.

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9 For the fiscal year 2011 estimate, the Commission used a ten-year series of monthly observations ending in March 2011. For fiscal year 2012, the Commission used a ten-year series ending in July 2011. For fiscal year 2013, the Commission used a ten-year series ending in July 2012. For fiscal year 2014, the Commission used a ten-year series ending in July 2013.

10 Appendix A explains how we determined the "baseline estimate of the aggregate maximum offering price" for fiscal year 2014 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2014 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its "baseline estimate of the aggregate maximum offering price" for fiscal year 2014.

III. Effective Dates of the Annual Adjustments

The fiscal year 2014 annual adjustments to the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act will be effective on October 1, 2013.[11]

IV. Conclusion

Accordingly, pursuant to Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act,[12]

IT IS HEREBY ORDERED that the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act shall be $128.80 per million effective on October 1, 2013.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

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11 15 U.S.C. 77f(b)(4), 15 U.S.C. 78m(e)(6) and 15 U.S.C. 78n(g)(6).

12. 15 U.S.C. 77f(b), 78m(e) and 78n(g).

APPENDIX A

With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress has, among other things, established a target amount of monies to be collected from fees charged to issuers based on the value of their registrations. This appendix provides the formula for determining such fees, which the Commission adjusts annually. Congress has mandated that the Commission determine these fees based on the "aggregate maximum offering prices," which measures the aggregate dollar amount of securities registered with the Commission over the course of the year. In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected aggregate maximum offering prices. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected aggregate maximum offering prices.

For 2014, the Commission has estimated the aggregate maximum offering prices by projecting forward the trend established in the previous decade. More specifically, an ARIMA model was used to forecast the value of the aggregate maximum offering prices for months subsequent to July 2013, the last month for which the Commission has data on the aggregate maximum offering prices.

The following sections describe this process in detail.

A. Baseline estimate of the aggregate maximum offering prices for fiscal year 2014.

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (July 2003 - July 2013). Next, calculate the percentage change in the AMOP from month to month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach allows one to model the effect that an exceptionally high (or low) observation of AMOP tends to be followed by a more "typical" value of AMOP.

Use the estimated moving average model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the total dollar value of registrations. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years, from July 2003 to July 2013.

2. Divide each month's AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t, the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in log(AAMOP) from the previous month as $\Delta_t = \log(\text{AAMOP}_t) - \log(\text{AAMOP}_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where e_t denotes the forecast error for month t. The forecast error is simply the difference between the one-month ahead forecast and the actual realization of Δ_t. The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta e_{t-1}$. The model can be estimated using standard commercially available software. Using least squares, the estimated parameter values are $\alpha = -0.0003334$ and $\beta = -0.90946$.

6. For the month of August 2013 forecast $\Delta_{t=8/12} = \alpha + \beta e_{t=7/12}$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for October 2013 is given by $FLAAMOP_{t=10/12} = \log(AAMOP_{t=7/12}) + \Delta_{t=8/12} + \Delta_{t=9/12} + \Delta_{t=10/12}$.

8. Under the assumption that e_t is normally distributed, the n-step ahead forecast of AAMOP is given by $\exp(FLAAMOP_t + \sigma_n^2/2)$, where σ_n denotes the standard error of the n-step ahead forecast.

9. For October 2013, this gives a forecast AAMOP of $14.93 billion (Column I), and a forecast AMOP of $343.4 billion (Column J).

10. Iterate this process through September 2014 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2014 of $3,766,638,654,272.

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

1. Using the data from Table A, estimate the aggregate maximum offering prices between 10/1/13 and 9/30/14 to be $3,766,638,654,272.

2. The rate necessary to collect the target $485,000,000 in fee revenues set by Congress is then calculated as: $485,000,000 ÷ $3,766,638,654,272= 0.000128762.

3. Round the result to the seventh decimal point, yielding a rate of 0.0001288 (or $128.80 per million).

Table A. Estimation of baseline of aggregate maximum offering prices .

Fee rate calculation.

a. Baseline estimate of the aggregate maximum offering prices, 10/1/13 to 9/30/14 ($Millions)	3,766,639
b. Implied fee rate ($485 Million / a)	$128.80

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Log (Change in AAMOP)	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Jul-03	22	304,383	13,836	23.351					
Aug-03	21	328,351	15,636	23.473	0.122				
Sep-03	21	459,563	21,884	23.809	0.336				
Oct-03	23	285,039	12,393	23.240	-0.569				
Nov-03	19	257,779	13,567	23.331	0.091				
Dec-03	22	244,998	11,136	23.133	-0.197				
Jan-04	20	369,784	18,489	23.640	0.507				
Feb-04	19	221,517	11,659	23.179	-0.461				
Mar-04	23	448,543	19,502	23.694	0.514				
Apr-04	21	260,029	12,382	23.240	-0.454				
May-04	20	227,239	11,362	23.154	-0.086				
Jun-04	21	370,668	17,651	23.594	0.441				
Jul-04	21	305,519	14,549	23.401	-0.193				
Aug-04	22	179,688	8,168	22.823	-0.577				
Sep-04	21	357,007	17,000	23.556	0.733				
Oct-04	21	254,489	12,119	23.218	-0.338				
Nov-04	21	363,406	17,305	23.574	0.356				
Dec-04	22	570,918	25,951	23.979	0.405				
Jan-05	20	375,484	18,774	23.656	-0.324				
Feb-05	19	338,922	17,838	23.605	-0.051				
Mar-05	22	590,862	26,857	24.014	0.409				
Apr-05	21	282,018	13,429	23.321	-0.693				

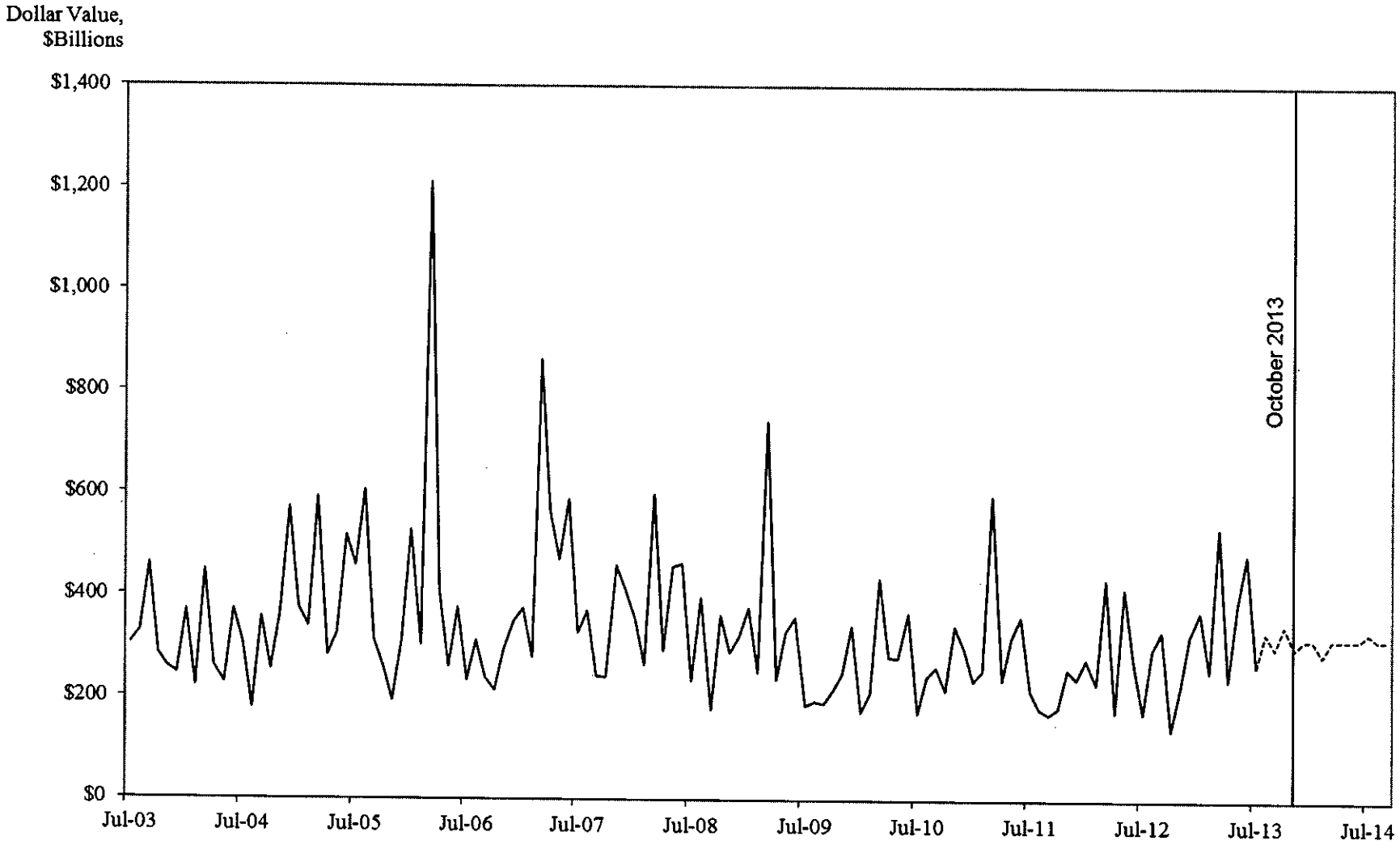
Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Log (Change in AAMOP)	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
May-05	21	323,652	15,412	23.458	0.138				
Jun-05	22	517,022	23,501	23.880	0.422				
Jul-05	20	457,487	22,874	23.853	-0.027				
Aug-05	23	605,534	26,328	23.994	0.141				
Sep-05	21	312,281	14,871	23.423	-0.571				
Oct-05	21	258,956	12,331	23.235	-0.187				
Nov-05	21	192,736	9,178	22.940	-0.295				
Dec-05	21	308,134	14,673	23.409	0.469				
Jan-06	20	526,550	26,328	23.994	0.585				
Feb-06	19	301,446	15,866	23.487	-0.506				
Mar-06	23	1,211,344	52,667	24.687	1.200				
Apr-06	19	407,345	21,439	23.788	-0.899				
May-06	22	260,121	11,824	23.193	-0.595				
Jun-06	22	375,296	17,059	23.560	0.367				
Jul-06	20	232,654	11,633	23.177	-0.383				
Aug-06	23	310,050	13,480	23.325	0.147				
Sep-06	20	236,782	11,839	23.195	-0.130				
Oct-06	22	213,342	9,697	22.995	-0.200				
Nov-06	21	292,456	13,926	23.357	0.362				
Dec-06	20	349,512	17,476	23.584	0.227				
Jan-07	20	372,740	18,637	23.648	0.064				
Feb-07	19	278,753	14,671	23.409	-0.239				
Mar-07	22	862,786	39,218	24.392	0.983				
Apr-07	20	562,103	28,105	24.059	-0.333				
May-07	22	470,843	21,402	23.787	-0.272				
Jun-07	21	586,822	27,944	24.053	0.267				
Jul-07	21	326,612	15,553	23.468	-0.586				
Aug-07	23	369,172	16,051	23.499	0.032				
Sep-07	19	241,059	12,687	23.264	-0.235				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Log (Change in AAMOP)	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Oct-07	23	239,652	10,420	23.067	-0.197				
Nov-07	21	458,654	21,841	23.807	0.740				
Dec-07	20	410,200	20,510	23.744	-0.063				
Jan-08	21	354,433	16,878	23.549	-0.195				
Feb-08	20	263,410	13,171	23.301	-0.248				
Mar-08	20	596,923	29,846	24.119	0.818				
Apr-08	22	292,534	13,297	23.311	-0.809				
May-08	21	456,077	21,718	23.801	0.491				
Jun-08	21	461,087	21,957	23.812	0.011				
Jul-08	22	232,896	10,586	23.083	-0.730				
Aug-08	21	395,440	18,830	23.659	0.576				
Sep-08	21	177,636	8,459	22.858	-0.800				
Oct-08	23	360,494	15,674	23.475	0.617				
Nov-08	19	288,911	15,206	23.445	-0.030				
Dec-08	22	319,584	14,527	23.399	-0.046				
Jan-09	20	375,065	18,753	23.655	0.255				
Feb-09	19	249,666	13,140	23.299	-0.356				
Mar-09	22	739,931	33,633	24.239	0.940				
Apr-09	21	235,914	11,234	23.142	-1.097				
May-09	20	329,522	16,476	23.525	0.383				
Jun-09	22	357,524	16,251	23.511	-0.014				
Jul-09	22	185,187	8,418	22.854	-0.658				
Aug-09	21	192,726	9,177	22.940	0.086				
Sep-09	21	189,224	9,011	22.922	-0.018				
Oct-09	22	215,720	9,805	23.006	0.085				
Nov-09	20	248,353	12,418	23.242	0.236				
Dec-09	22	340,464	15,476	23.463	0.220				
Jan-10	19	173,235	9,118	22.933	-0.529				
Feb-10	19	209,963	11,051	23.126	0.192				

[redacted] Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	[redacted] (E) log(AAMOP)	(F) Log (Change in AAMOP)	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	[redacted] (J) Forecast Aggregate Maximum Offering Prices, in $Millions
Mar-10	23	432,934	18,823	23.658	0.533				
Apr-10	21	280,188	13,342	23.314	-0.344				
May-10	20	278,611	13,931	23.357	0.043				
Jun-10	22	364,251	16,557	23.530	0.173				
Jul-10	21	171,191	8,152	22.822	-0.709				
Aug-10	22	240,793	10,945	23.116	0.295				
Sep-10	21	260,783	12,418	23.242	0.126				
Oct-10	21	214,988	10,238	23.049	-0.193				
Nov-10	21	340,112	16,196	23.508	0.459				
Dec-10	22	297,992	13,545	23.329	-0.179				
Jan-11	20	233,668	11,683	23.181	-0.148				
Feb-11	19	252,785	13,304	23.311	0.130				
Mar-11	23	595,198	25,878	23.977	0.665				
Apr-11	20	236,355	11,818	23.193	-0.784				
May-11	21	319,053	15,193	23.444	0.251				
Jun-11	22	359,727	16,351	23.518	0.073				
Jul-11	20	215,391	10,770	23.100	-0.418				
Aug-11	23	179,870	7,820	22.780	-0.320				
Sep-11	21	168,005	8,000	22.803	0.023				
Oct-11	21	181,452	8,641	22.880	0.077				
Nov-11	21	256,418	12,210	23.226	0.346				
Dec-11	21	237,652	11,317	23.150	-0.076				
Jan-12	20	276,965	13,848	23.351	0.202				
Feb-12	20	228,419	11,421	23.159	-0.193				
Mar-12	22	430,806	19,582	23.698	0.539				
Apr-12	20	173,626	8,681	22.884	-0.813				
May-12	22	414,122	18,824	23.658	0.774				
Jun-12	21	272,218	12,963	23.285	-0.373				
Jul-12	21	170,462	8,117	22.817	-0.468				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Log (Change in AAMOP)	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Aug-12	23	295,472	12,847	23.276	0.459				
Sep-12	19	331,295	17,437	23.582	0.305				
Oct-12	21	137,562	6,551	22.603	-0.979				
Nov-12	21	221,521	10,549	23.079	0.476				
Dec-12	20	321,602	16,080	23.501	0.422				
Jan-13	21	368,488	17,547	23.588	0.087				
Feb-13	19	252,148	13,271	23.309	-0.279				
Mar-13	20	533,440	26,672	24.007	0.698				
Apr-13	22	235,779	10,717	23.095	-0.912				
May-13	22	382,950	17,407	23.580	0.485				
Jun-13	20	480,624	24,031	23.903	0.322				
Jul-13	22	263,869	11,994	23.208	-0.695				
Aug-13	22					23.361073	0.361	14,924	328,338
Sep-13	20					23.360740	0.363	14,927	298,549
Oct-13	23					23.360406	0.364	14,930	343,400
Nov-13	20					23.360073	0.366	14,933	298,669
Dec-13	21					23.359739	0.367	14,936	313,666
Jan-14	21					23.359406	0.368	14,939	313,729
Feb-14	19					23.359073	0.370	14,942	283,907
Mar-14	21					23.358739	0.371	14,945	313,855
Apr-14	21					23.358406	0.373	14,948	313,918
May-14	21					23.358073	0.374	14,951	313,981
Jun-14	21					23.357739	0.376	14,954	314,044
Jul-14	22					23.357406	0.377	14,957	329,065
Aug-14	21					23.357073	0.378	14,961	314,171
Sep-14	21					23.356739	0.380	14,964	314,234

Figure A
Aggregate Maximum Offering Prices Subject to Securities Act Section 6(b)
(Dashed Line Indicates Forecast Values)



Commissioner Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9446 / August 30, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70292 / August 30, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3658 / August 30, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30682 / August 30, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15446

In the Matter of J.S. OLIVER CAPITAL MANAGEMENT, L.P., IAN O. MAUSNER, AND DOUGLAS F. DRENNAN Respondents.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against J.S. Oliver Capital Management, L.P. ("JS Oliver"), Ian O. Mausner ("Mausner"), and Douglas F. Drennan ("Drennan") (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. This proceeding involves misconduct by JS Oliver, a registered investment adviser, and its founder, president, head portfolio manager, and control person, Mausner, for engaging in two distinct schemes: fraudulent trade allocation by "cherry-picking" favorable trades for JS Oliver's affiliated hedge fund clients to the detriment of other, unfavored client accounts, and misusing client commission credits called "soft dollars." Drennan, a purported outside research analyst for JS Oliver, participated in and substantially assisted with some of the misconduct concerning the misuse of soft dollars.

2. From June 2008 to November 2009, JS Oliver and Mausner disproportionately allocated favorable trades to six client accounts, including four affiliated hedge funds, ultimately harming three unfavored clients by approximately $10.7 million. Mausner financially benefitted from the cherry-picking scheme because he and his family were personally invested in the hedge funds, and he earned additional fees from one of the hedge funds based on the boost in its performance as a result of the cherry-picking.

3. From January 2009 through November 2011, JS Oliver and Mausner used over $1.1 million in soft dollar credits in a manner not disclosed to clients. Soft dollar credits arise from the client commission arrangement between an investment adviser and the broker-dealer that handles the trades for the adviser. Generally, a client's investment assets are used to pay additional commissions – called "soft dollar credits" – that the broker-dealer sets aside as payment for legitimate research and brokerage expenses of the adviser. The Respondents' misuse of these soft dollar credits included: (1) $329,265 paid to Mausner's ex-wife for amounts due pursuant to a divorce agreement; (2) $300,000 in grossly inflated "rent" paid to a company Mausner owned, the majority of which was funneled directly to Mausner's personal bank account; (3) approximately $480,000 paid to Drennan's company, Powerhouse Capital, Inc. ("Powerhouse Capital"), for purported outside research and analysis performed by Drennan, who was actually a JS Oliver employee; and (4) nearly $40,000 in payments for fees on Mausner's personal timeshare in New York, New York. Drennan participated in and substantially assisted with some of this misconduct by submitting false information to support the misuse of some of the soft dollar credits, and approving some of the improper payments. Drennan also financially benefitted through improper soft dollar credits paid to Powerhouse Capital.

B. RESPONDENTS

4. **JS Oliver** is a California limited partnership with its principal place of business in San Diego, California. JS Oliver registered with the Commission as an investment adviser in 2004 and has approximately $115 million in assets under

management. JS Oliver provides investment advice to separate client accounts and is the investment manager of four affiliated hedge funds: J.S. Oliver Investment Partners I, L.P.; J.S. Oliver Offshore Investments, Ltd.; J.S. Oliver Investment Partners II, L.P. (collectively referred to as "JS Partner Funds"); and J.S. Oliver Concentrated Growth Fund ("CGF" and with JS Partner Funds, "JS Oliver Funds").

5. **Mausner** is JS Oliver's founder, president, head portfolio manager, and sole control person. At all relevant times, Mausner was responsible for the management of JS Oliver's business. He was the chief compliance officer of JS Oliver from June 2008 through June 2011. Mausner held securities license series 3, 5, 15, 17, 24, 63 and 65, and from 1985 through 2004 was a registered representative with several registered broker-dealers.

6. **Drennan** has been a portfolio manager and the chief compliance officer of JS Oliver since June 2011. From February 2009 to June 2011, Drennan was the sole owner and employee of Powerhouse Capital, a purported independent analyst providing research and analysis to JS Oliver. From January 2004 to May 2008, Drennan was an employee of JS Oliver, working as a portfolio manager and research analyst.

C. OTHER RELEVANT ENTITY

7. **Powerhouse Capital, Inc.** was a California corporation formed in 2009, with its principal place of business in San Diego, California. Drennan formed Powerhouse Capital as a purported research consulting firm, and he acted as the president, vice president, and chief financial officer of the company, while Drennan's wife served as secretary. Powerhouse Capital had no other employees and JS Oliver was its only client.

D. FACTUAL BACKGROUND

1. JS Oliver and Mausner Engaged in a Fraudulent Cherry-Picking Scheme Causing Approximately $10.7 Million in Harm to Three Clients

8. From at least June 2008 through November 2009, JS Oliver and Mausner disproportionately allocated profitable equity trades (including buys and sells) to six client accounts to the detriment of three clients. The favored accounts in the cherry-picking scheme included the JS Oliver Funds. JS Oliver's clients who were disfavored in the cherry-picking scheme were a widowed client ("Client A"), a profit sharing plan ("Client B"), and a charitable foundation ("Client C").

9. In perpetrating the cherry-picking scheme, Mausner made block trades in omnibus accounts at various broker-dealers. The block trades were reported to JS Oliver's prime broker and then Mausner allocated the shares among the client accounts through the prime broker's online platform. Mausner often delayed allocating trades until after the close of trading or the following day, allowing him to determine which securities had appreciated or declined in value.

10. Mausner's cherry-picking strategy was two-fold. His primary methodology was to allocate disproportionately to the favored accounts the trades that increased in value during the day, and allocate to the disfavored accounts the trades that decreased in value during the day. In addition, when there were multiple trades in a single security over the course of the day, Mausner allocated the most favorably priced trades to the favored accounts.

11. By disproportionately allocating the more favorable trades to the favored accounts through this cherry-picking scheme, Mausner inflicted approximately $10.7 million in total harm on Clients A, B and C.

12. Mausner formed CGF in June 2008 and relied on the profits generated by his cherry-picking scheme to boost CGF's performance. He then marketed by mass emails to current and prospective investors CGF's positive monthly returns and made a "strong" recommendation for investments in CGF. For example, in a November 2008 email, Mausner touted that CGF had gained almost 13% when the S&P declined almost 17% during the same period.

13. JS Oliver and Mausner profited at their clients' expense from the cherry-picking scheme. Mausner and his family were investors in some of the JS Oliver Funds that were the favored accounts. For CGF in particular, as of December 31, 2008, the aggregate value of Mausner's and his related-party entities' investments accounted for $1.4 million of the $7.9 million invested in CGF. In addition, for 2008, CGF paid JS Oliver over $212,000 in performance fees.

14. JS Oliver's trade allocation practices were contrary to its representations to clients and its written policies and procedures. JS Oliver's client agreements provided that it would treat clients fairly when allocating investment opportunities among clients, specifically stating that JS Oliver did not have an "obligation to purchase or sell for the [client's account] . . . any security that [JS Oliver] . . . may purchase or sell for themselves or for any other clients, so long as it is the Manager's policy and practice, to the extent practicable, to allocate investment opportunities to [the client account] over time on a fair and equitable basis relative to other clients of the Manager." Specifically, JS Oliver's written policies and procedures provided that allocations among client accounts would be completed "in a manner that is fair and equitable to all clients, generally meaning in proportion to account assets or targeted percentage levels ...."

2. JS Oliver and Mausner Engaged in a Fraudulent Soft Dollar Scheme with Drennan's Knowledge and Substantial Assistance

15. From January 2009 through November 2011, JS Oliver misused over $1.1 million in soft dollar credits that were accrued from trading commissions paid by JS Oliver clients. JS Oliver accumulated and used soft dollar credits primarily at a single broker-dealer (the "Soft-Dollar Broker") through equity and options trading for client accounts, including the JS Oliver Funds and some of its individual client accounts, including Clients A, B and C discussed above.

16. Under its soft dollar arrangement with JS Oliver, the Soft-Dollar Broker agreed to give JS Oliver a soft dollar credit of typically $0.0225 for every $0.03 of brokerage commissions generated per share by JS Oliver clients' equity trades; soft dollar credits for option trades varied. The trading (which included both buying and selling securities) that generated the soft dollar credits at issue was conducted on behalf of the JS Oliver Funds and some of its separately managed client accounts. JS Oliver, through the Soft-Dollar Broker, used soft dollar credits for expenses that fell both within and outside the safe harbor provided in Section 28(e) of the Exchange Act for the use of commission credits for certain research and brokerage expenses.

17. JS Oliver disclosed allowable uses of soft dollar credits in its Form ADV and in the offering memoranda for the JS Oliver Funds. Each of these documents had language disclosing that soft dollars may be used for research and brokerage payments under Section 28(e). The Form ADV, Part II, Items 12 and 13, filed March 30, 2007 and March 3, 2009 ("Forms ADV, Part II"), and the offering memoranda contained additional soft dollar disclosures as follows.

- The Form ADV (which JS Oliver offered and/or provided to clients and prospective clients), filed March 30, 2007, provided that soft dollars may be used for "expenses of and travel to professional and industry conferences and hardware and software used in the General Partner's administrative activities ... [and] may even include such 'overhead' expenses as telephone charges, legal and accounting expenses of the Investment Manager or General Partner and office services, equipment and supplies." In its Form ADV, Part II, filed March 3, 2009, JS Oliver amended this disclosure to reflect that it may use soft dollars earned from trading in the hedge funds, with no disclosure provided for the use of soft dollars generated from trading in its separately managed clients' accounts. JS Oliver did not change any language concerning the allowed uses of soft dollars to include additional permissible uses for soft dollars consistent with how it was actually using soft dollars.
- For the JS Partner Funds, the disclosures in the offering memoranda provided that soft dollars may be used for "expenses of and travel to professional and industry conferences and hardware and software used in the General Partner's administrative activities ... [and] may even include such 'overhead' expenses as telephone charges, legal and accounting expenses of the Investment Manager or General Partner and office services, equipment and supplies."
- For CGF, the disclosures in the offering memorandum provided, in relevant part, that soft dollars may be used for "evaluating potential investment opportunities (including travel, meals and lodging related to such evaluation) ... and may even include such 'overhead' expenses as office rent, salaries, benefits and other compensation of employees or of consultants to the Investment Manager ...."

18. JS Oliver, through Drennan, provided the Soft-Dollar Broker's soft dollar department only with the CGF offering memorandum to support requests for

reimbursement and payments using soft dollar credits, even though JS Oliver also earned soft-dollar credits through the trades of individual clients and the JS Partners Funds.

a. JS Oliver and Mausner Used Soft Dollars To Pay Mausner's Personal Obligation to His Ex-Wife Pursuant to a Divorce Agreement

19. In May 2009, JS Oliver requested that the Soft-Dollar Broker reimburse JS Oliver $329,365 using soft dollar credits for a payment to Mausner's ex-wife based on Mausner's misrepresentations that the payment was employee compensation. In reality, JS Oliver paid the funds to Mausner's ex-wife pursuant to the Mausners' divorce agreement.

20. When requesting the reimbursement from the Soft-Dollar Broker using soft dollar credits for JS Oliver's payment to Mausner's ex-wife, Mausner misrepresented the nature of the payment. Among other things, Mausner sent an email to the Soft-Dollar Broker (drafted by Drennan with Mausner's guidance) misrepresenting that he intended to keep his ex-wife on JS Oliver's payroll and that she had remained an employee of JS Oliver since 2005. These statements were false. In particular, Mausner's ex-wife was not under any obligation to perform work for JS Oliver as of December 31, 2006 and, in fact, she did not do any work at JS Oliver in exchange for the payment.

21. Mausner also emailed to the Soft-Dollar Broker a document on JS Oliver's letterhead with an excerpt from a purported contract between JS Oliver and Mausner's ex-wife. Before sending the document, however, Mausner instructed Drennan to materially alter the language to hide that the payout was Mausner's personal obligation. These alterations included misrepresenting that the excerpt was from a contract between JS Oliver and Mausner's ex-wife when the excerpt came from the Mausners' divorce agreement. Mausner also instructed Drennan to delete from the excerpt items covered by the $329,365 lump sum payment that were clearly personal in nature, including the Mausners' country club membership, nanny, weekly housekeeper, and the ex-wife's assistant. In June 2009, the Soft-Dollar Broker reimbursed JS Oliver the $329,365 using soft dollar credits.

22. Drennan drafted the excerpt as instructed by Mausner, even though Drennan knew that the changes Mausner instructed him to make were false and that the excerpt was to be provided to the Soft-Dollar Broker to support the $329,365 payment to Mausner's ex-wife.

23. JS Oliver and Mausner did not disclose in the March 3, 2009 Form ADV, Part II, Items 12 and 13, and JS Oliver Funds' offering memoranda that they would use soft dollar credits to pay Mausner's ex-wife pursuant to the Mausners' divorce agreement.

b. JS Oliver and Mausner Used Soft Dollars to Pay Inflated Rent Payments to a Company Mausner Owned

24. JS Oliver used a portion of Mausner's personal residence to conduct its business. Through February 2009, JS Oliver paid $6,000 in rent to a company Mausner owned, which in turn paid approximately $5,445 to the bank for the monthly mortgage payment. Mausner controlled the amount of the rent charged to JS Oliver. Beginning in January 2009, JS Oliver requested that the Soft-Dollar Broker use soft dollars to pay JS Oliver's rent.

25. Once the Soft-Dollar Broker started paying the rent in early 2009, JS Oliver claimed that the monthly rent was $10,000. Then, in July 2009, JS Oliver instructed the Soft-Dollar Broker to pay $15,000 per month in rent using soft dollars. Thus, in a span of only a few months, Mausner increased the rent from $6,000 to $15,000 – a 150% increase.

26. Mausner had no basis to increase JS Oliver's rent other than to personally enrich himself. Beginning in May 2009, Mausner transferred the amount in excess of the mortgage payment from his company's bank account to his personal bank account.

27. In 2009 and 2010, the Soft-Dollar Broker paid Mausner's company a total of $300,000 in rent payments using JS Oliver's soft dollar credits, of which Mausner received over $200,000. Drennan approved the payment of some of the rent invoices on the Soft-Dollar Broker's online system.

28. The disclosures in the Forms ADV, Part II, and JS Partner Funds' offering memoranda did not provide that JS Oliver could use soft dollars to pay rent. A reasonable client or investor would not have known that JS Oliver would pay rent on a property that Mausner also used for personal purposes, paid inflated rent on that personal property, and that the principal could divert soft dollars for his personal use.

c. JS Oliver and Mausner Used Soft Dollars To Pay Drennan Improperly Through His Company, Powerhouse Capital

29. In 2009 and 2010, JS Oliver used soft dollar credits to pay Drennan approximately $480,000 for purported research pursuant to the safe harbor of Section 28(e) of the Exchange Act. JS Oliver misrepresented to two soft dollar brokers that Powerhouse Capital was an outside research firm that provided research analysis to JS Oliver. Drennan drafted each of the Powerhouse Capital invoices for submission to the two soft dollar brokers for payment using soft dollars.

30. The payments to Powerhouse Capital did not fall within the Section 28(e) safe harbor and were actually salary and a bonus for Drennan. Drennan was not an outside research analyst but rather a full-time JS Oliver employee. Drennan had previously worked for JS Oliver from its inception in 2004 through May 2008, after which he worked at a different firm for six months. In January 2009, he returned to JS Oliver and essentially resumed his prior duties at the firm. For example, Drennan served as one of the primary

contacts for JS Oliver in its soft dollar relationship with the Soft-Dollar Broker, including initiating the soft dollar account and approving – on JS Oliver's behalf – the Soft-Dollar Broker's initial payments to Powerhouse Capital and the reimbursement for the payment to Mausner's ex-wife; signed documents as a "trader" for JS Oliver with at least one brokerage firm, giving him trading authorization on the JS Oliver account; communicated directly with brokerage firms regarding JS Oliver trades (including executing and allocating trades and problem-solving issues); worked full time in JS Oliver's office as the so-called "team leader"; and participated in executive coaching sessions provided to all JS Oliver employees.

31. The Forms ADV, Part II, and the JS Partner Funds' offering memoranda did not disclose that soft dollars could be used to pay employee salaries or other compensation.

d. JS Oliver and Mausner Used Soft Dollars to Pay Maintenance Fees on Mausner's Personal Timeshare Property

32. Mausner's family trust owned a timeshare in New York, New York. In 2009, JS Oliver submitted two invoices to the Soft-Dollar Broker for payment of "maintenance fee" and "back-up reserve" expenses on the timeshare totaling almost $40,000. The invoices characterized the purpose of the expenses as evaluating "potential investment opportunities, including travel."

33. With respect to travel expenses, the Forms ADV and JS Partner Funds' offering memoranda provided for the use of soft dollars to reimburse travel expenses related to conferences only. Thus, on the face of the invoices, the soft dollar use was contrary to the Forms ADV and JS Partner Funds' offering memoranda.

34. Moreover, these expenses were not for travel because they were fees and expenses for Mausner's personal timeshare. This use of soft dollars was not disclosed to JS Oliver's clients or investors in the JS Oliver Funds.

3. JS Oliver Failed to Maintain Required Books and Records

35. From May 2008 through June 2009, JS Oliver failed to maintain a memorandum of each order it gave for the purchase or sale of any security.

36. JS Oliver failed to maintain originals of Mausner's email messages, which reflected the recipients of the emails, that promoted CGF's performance, and contained his "strong" recommendation that the recipients invest in CGF. In particular, JS Oliver failed to retain emails showing the blind carbon copy recipients of the emails.

E. VIOLATIONS

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

38. As a result of the conduct described above, Drennan willfully aided and abetted and caused JS Oliver's violations of Sections 17(a)(1) and (2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

39. As a result of the conduct described above, JS Oliver and Mausner willfully violated Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which prohibit fraudulent conduct by an investment adviser.

40. As a result of the conduct described above, Drennan willfully aided and abetted and caused JS Oliver's violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

41. As a result of the conduct described above, JS Oliver willfully violated, and Mausner willfully aided and abetted and caused JS Oliver's violations of, Section 204 of the Advisers Act and Rule 204-1(a)(2) promulgated thereunder, which require investment advisers that use the mails or any means or instrumentality of interstate commerce in connection with their business to update their Form ADV annually, and to amend Part II of the Form ADV promptly, if information therein becomes materially inaccurate.

42. As a result of the conduct described above, JS Oliver willfully violated, and Mausner willfully aided and abetted and caused JS Oliver's violations of, Section 204 of the Advisers Act and Rule 204-2(a)(3) promulgated thereunder, which requires, among other things, that a registered investment adviser make and keep true, accurate and current records relating to its business including a memorandum of each order given by the investment adviser for the purchase or sale of any security.

43. As a result of the conduct described above, JS Oliver willfully violated, and Mausner willfully aided and abetted and caused JS Oliver's violations of, Section 204 of the Advisers Act and Rule 204-2(a)(7) promulgated thereunder, which requires that a registered investment adviser maintain originals of all written communications the investment adviser sends relating to "any recommendation made or proposed to be made and any advice given or proposed to be given."

44. As a result of the conduct described above, JS Oliver willfully violated, and Mausner willfully aided and abetted and caused violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which requires, among other things, that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and its rules.

45. As a result of the conduct described above, JS Oliver and Mausner willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

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 JS Oliver pursuant to Section 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

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

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

E. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondents JS Oliver and Mausner should be ordered to cease and desist from committing or causing violations of and any future violations of, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 204, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-1(a)(2), 204-2(a)(3), 204-2(a)(7), 206(4)-7, and 206(4)-8 thereunder; whether Respondent Drennan should be ordered to cease and desist from committing or causing violations of and any future violations of, Sections 17(a)(1) and (2) of the Securities Act, Section 10(b) of the 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; whether Respondents should be ordered to pay civil penalties pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company 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, Sections 203(j) and 203(k)(5) of the Advisers Act, and Section 9(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 not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

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

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

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

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

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary